# CITY OF SOUTH ST. PAUL
## MEETING AGENDA

### CITY COUNCIL

Council Chambers
125 3rd Avenue North
South St. Paul, MN 55075

Monday, April 20, 2026
7:00 PM

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. INVOCATION**

**4. PLEDGE OF ALLEGIANCE**

**5. PRESENTATIONS**

A. Wellhead Protection Plan – Part 1 Amendment

B. South St. Paul River Beautification Project

C. Clark Grace United Church of Christ invitation to the Community

D. Plant-A-Thon Invitation

**6. CITIZEN'S COMMENTS**

Comments are limited to 3 minutes in length.

**7. APPROVAL OF AGENDA**

**8. CONSENT AGENDA**

All items listed on the Consent Agenda are items, which are considered routine and will be approved by one motion. There will be no separate discussion of these items unless requested by a member of the governing body or citizen, in which case the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

A. City Council Meeting Minutes of April 6, 2026 and Work Session Minutes of April 13, 2026.

B. Accounts Payable

C. Business Licenses

D. Acceptance of Gift Donations

E. Joint Powers Agreement - Criminal Justice Network Board

F. Approve Employment Offer to D. Quade as Building Inspector/Code Enforcement

G. Conditional Employment Offer - Police Officer

H. Approve Proposal for Construction Materials Testing - Marie Avenue Reconstruction Project Phase 2

I. Approve Proposal for Construction Support Services - Marie Avenue Reconstruction Project Phase 2

J. Final Payment for the Well No. 3 Water Treatment Plant (City Project No. 2023-011)

K. Approval of Construction Manager at Risk (CMaR) agreement for the Northview Aquatics Project

L. Employee Service Recognition Program Policy

M. Approve Encroachment Agreement for 557 8th Avenue South

**9. ITEMS REMOVED FROM CONSENT AGENDA**

**10. PUBLIC HEARINGS**

**11. GENERAL BUSINESS**

A. Southview Shopping Center Sign Variance

B. Twin City Hide and Tanning PUD Extension

C. Retirement of the Residential Permit Parking Zones by McMorrow Field and Lorraine Park

D. Second Reading — An Ordinance Updating the Lawful Gambling Ordinance to Establish New Rules for Bingo Halls

E. Second Reading — Ordinance Amendment Updating Lot Coverage and Landscaping Regulations in Industrial Zoning Districts.

F. First Reading: Ordinance Updating Zoning Requirements in the R-2 Single-and-Two Family Zoning District

**12. MAYOR AND COUNCIL COMMUNICATIONS**

**13. ADJOURNMENT**

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Engineering
**PREPARED BY:** Kelsey Gelhar
**AGENDA ITEM NUMBER:** 5.A.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Wellhead Protection Plan – Part 1 Amendment

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
NA

**OVERVIEW**
Wellhead protection is a method used to safeguard public water supply wells by preventing contaminants from entering the areas that contribute water to the well or wellfield. This program began in Minnesota when the Minnesota Department of Health (MDH) implemented its Wellhead Protection Rules in November 1997. The MDH initiated its Wellhead Protection Plan (WHPP) Program in response to the 1986 Safe Drinking Water Act Amendments, with statutory authority granted by the Minnesota Groundwater Protection Act of 1989. The MDH requires public water suppliers to update their WHPP every ten years. South St. Paul's original WHPP was prepared in 2003 and the last amendment was approved in 2014.

On March 17, 2025, the City Council approved an agreement with AE2S to update the City's Wellhead Protection Plan. The amendment process typically takes about two years to complete and consists of two main parts: Part 1 involves collecting relevant data to refine the City's existing conceptual hydrogeologic model and delineating the wellhead protection area (WHPA). Part 2 focuses on gathering additional data to complete the inventory of potential contaminant sources and developing updated land use or management strategies for the WHPA.

The Part 1 Amendment was approved by the MDH on March 6, 2026. As part of the amendment process, the changes to Part 1 must be presented at a public meeting. AE2S staff will present the changes to Part 1 of the City's Wellhead Protection Plan.

**SOURCE OF FUNDS**
Updates to the WHPP are funded through the Water Utility Fund

**ATTACHMENTS**
None

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Community Affairs
**PREPARED BY:** Deb Griffith
**AGENDA ITEM NUMBER:** 5.B.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
South St. Paul River Beautification Project

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
No action needed

**OVERVIEW**
Deb Griffith, Community Affairs, will update and invite the residents to the Annual River Beautification project taking place on Thursday, April 23rd, starting at 5:00 pm at the Spiral Bridge.

**SOURCE OF FUNDS**
Community Affairs budget

**ATTACHMENTS**
None

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Community Affairs
**PREPARED BY:** Deb Griffith
**AGENDA ITEM NUMBER:** 5.C.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Clark Grace United Church of Christ invitation to the Community

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
No action required

**OVERVIEW**
Pastor Oliver White from Clark Grace United Church of Christ will be joining us and inviting the City Council and the Community to an afternoon of good food and BINGO at their Church.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
None

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Monika Miller
**AGENDA ITEM NUMBER:** 5.D.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Plant-A-Thon Invitation

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Inform the Mayor, Council, and Members of the Community about the Plant-A-Thon event with Tree Trust on Saturday, May 16th

**OVERVIEW**
Monika Miller, Associate Planner and Jaycie Korth, Conservation Corps Member will provide information about the Plant-A-Thon on Saturday, May 16th. The Plant-A-Thon will be the City's last community tree planting event with Tree Trust. The goal of the event is to plant 76 new boulevard trees over the course of two shifts. A small Arbor Day/ Thank You celebration will take place at Lorraine Park in tandem with the event with a cook-out, live music, and family-friendly tree activities.

**SOURCE OF FUNDS**
The trees planted at the Plant-A-Thon will be purchased and planted using funds from a grant received from the Minnesota Department of Natural Resources.

**ATTACHMENTS**
None

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** City Clerk
**PREPARED BY:** Deanna Werner
**AGENDA ITEM NUMBER:** 8.A.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
City Council Meeting Minutes of April 6, 2026 and Work Session Minutes of April 13, 2026.

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve as presented by consent.

**OVERVIEW**
Approval of meeting minutes for the Regular City Council Meeting held on Monday, April 6th, 2026 and Work Session held on Monday, April 13th, 2026.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. 04-06-2026 Council Minutes (2)
2. 04-13-2026 WS Minutes RG

# SOUTH ST. PAUL CITY COUNCIL
# MINUTES OF APRIL 6, 2026

## 1. CALL TO ORDER

Mayor Jimmy Francis called the regular meeting of the City Council to order at 7:00 PM on Monday, April 6, 2026.

## 2. ROLL CALL

Present: Todd Podgorski, Matt Thompson, Joe Kaliszewski, Jimmy Francis, Pam Bakken, Lori Hansen

Absent: Tom Seaberg

Staff Present:
Ryan Garcia, City Administrator
Kori Land, City Attorney
Deanna Werner, City Clerk
Brian Wicke, Chief of Police

## 3. INVOCATION

## 4. PLEDGE OF ALLEGIANCE

## 5. PRESENTATIONS

A. Mizpah Lodge #191 Annual Taco Feed

B. 5th Annual South St. Paul Environmental Resource Fair

C. 2026 Election Update

## 6. CITIZEN'S COMMENTS

Comments are limited to 3 minutes in length.

Shireen Bhatia
Heather Thornton

## 7. APPROVAL OF AGENDA

Moved by: Matt Thompson / Joe Kaliszewski
Moved: To approve the Agenda as presented.
Vote: 6 ayes / 0 nays, motion Passed

## 8. CONSENT AGENDA

All items listed on the Consent Agenda are items, which are considered routine and will be approved by one motion. There will be no separate discussion of these items unless requested by a member of the governing body or citizen, in which case the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

Resolved, the City Council of South St. Paul does hereby approve the following:

A. City Council Meeting Minutes of March 16, 2026, and Work Session Minutes of March 23, 2026.

B. Accounts Payable

C. Business Licenses

D. Acceptance of Gift Donations

E. Purchase of Police Vehicle

F. Approve conditional offer of employment to S. Moua as Housing Office Specialist

G. Approve conditional offer of employment to B. Brunette as Police Support Specialist

H. Accept Bids and Award Contract - Verderosa Avenue Extension Project

I. ~~Approval of Administrative Policy - Employee Service Recognition Program~~ *Removed for further discussion.*

J. Approval of Administrative Policy - Public Purpose Expenditures

K. ~~Approval of Administrative Policy - Personal Payment Accounts~~ *Removed for further discussion.*

L. Accept Bids and Award Contract - Marie Avenue Reconstruction Project Phase 2

M. Approve Amendment No. 3 with Kimley-Horn & Associates for Construction Inspection and Administration for the Verderosa Avenue Extension Project

N. Amendment No. 2 to Professional Services Agreement with SEH for the Well No. 3 Water Treatment Plant

O. Approve Land Lease with TAC-J Aviation, LLC at the Fleming Field Airport

P. Accept Quotes and Award Contract - 2026 Airfield Pavement Maintenance (West) Project

Q. Kaposia Park Disc Golf Operations Agreement with Gray Duck Disc Golf LLC

R. Approve Right of Entry and Permanent Easements with Black Dog Properties, Inc. for the Verderosa Avenue Extension Project

S. Approve Temporary Appointment — Police Department

Moved by: Joe Kaliszewski / Lori Hansen
Moved: To approve the Consent Agenda with the removal of Item I and Item K.
Vote: 6 ayes / 0 nays, motion Passed

**9. ITEMS REMOVED FROM CONSENT AGENDA**

A. Item 8-I Approval of Administrative Policy - Employee Service Recognition Program

Moved by: Lori Hansen / Joe Kaliszewski
Moved: To remove Item 8-I from consideration for approval and refer it to a Work Session for further discussion.
Vote: 6 ayes / 0 nays, motion Passed

B. Item 8-K Approval of Administrative Policy - Personal Payment Accounts

Moved by: Joe Kaliszewski / Todd Podgorski
Moved: To Approve Item 8-K - Administrative Policy - Personal Payment Accounts
Vote: 5 ayes / 1 nays, motion Passed

**10. PUBLIC HEARINGS**

A. Public Hearing to consider an On Sale/Sunday Intoxicating License at 1519 5th Ave S.

Moved by: Pam Bakken / Todd Podgorski
Moved: To Approve an On Sale/Sunday Intoxicating License at 1519 5th Ave S, Petey's BBQ
Vote: 6 ayes / 0 nays, motion Passed

**11. GENERAL BUSINESS**

**12. MAYOR AND COUNCIL COMMUNICATIONS**

**13. ADJOURNMENT**

Moved by: Pam Bakken / Joe Kaliszewski
Moved: To Adjourn
Vote: 6 ayes / 0 nays, motion Passed
The meeting was adjourned at 8:02 PM

Deanna Werner

/s/: Deanna Werner
City Clerk

# South St. Paul City Council Work Session

*Session Notes for April 13, 2026*

## 1. CALL TO ORDER

Mayor Pro Tempore Seaberg called the City Council Work Session to order at 7:00 PM on April 13, 2026

No formal Council Action is taken at a work session meeting, this is a summary of discussion that took place.

Council Members Present: Mayor Jimmy Francis and Council Members Lori Hansen, Matt Thompson, Tom Seaberg, Todd Podgorski, Pam Bakken, Joe Kaliszewski

Staff Present: Ryan Garcia, City Administrator, Daniel Salmey, Police Commander, Shannon Young, Parks and Recreation Director, Deanna Werner, City Clerk, Shelly Anderson, Assistant City Administrator / HR Director, Michael Healy, Planning and Zoning Manager, Kelsey Gelhar, City Engineer

## 2. DISCUSSION ITEMS

A. Charter Commission Discussion

Mayor Francis acknowledged the attendance and participation of several pending appointees to the Charter Commission. Mr. Garcia and Ms. Land gave a presentation summarizing the general purpose and function of a City Charter and the Charter Commission's role. Council encouraged input by the previously appointed members when considering new appointees. Staff committed to proceeding with an "application review" session in May, with an eye towards nominating two additional applicants for appointment to the Commission thereafter.

B. Employee Service Recognition Program Policy

Councilmember Hansen thanked Council and Staff for returning this item to a Worksession discussion, as she felt further discussion on service recognition award amounts was warranted. Council discussed the program in the broader context of employee compensation and other benefits, generally agreeing that employees are well-compensated and the recognition awards were appreciated. Council further discussed the possibility of expanding appreciation offerings for employees beyond monetary awards for years of service, such as special recognition and other benefits for employees or departments that could be presented for Council input during budget season. Council ultimately agreed that the policy as modified was sufficient and no further changes were warranted at this time.

C. Northview Aquatic Center Project Check-In

Staff presented a brief summary of current areas of focus for the Northview Aquatic Center project. Staff advised that a recommendation to award a contract for Construction Manager at Risk services for the project to Kraus-Anderson would be presented for consideration at the next Council meeting. In addition, Staff and the design consultants (Nick Nowacki with REengineered and Zach Finstrom and Adam Barnett with JLG Architects) reviewed the

project design as the team is nearly ready to finalize work on construction documents. The design team clarified that unforeseen site conditions related to soil stability and stormwater management have introduced additional cost risk, and that material lead times for the construction project have introduced schedule delay to push completion out to early 2028. Staff and the Design Team reiterated that a key element of the Construction Manager at Risk's role in the project will be to establish a guaranteed maximum price for the project, subject to Council approval, and work with the design team and City to identify whether and how budget alignment will be necessary as the project progresses.

D. Residential Permit Parking Program Phase-Out Follow-Up Discussion

Mr. Healy presented a background on the residential permit parking program and conveyed the cross-departmental recommendation to retire the program in light of changed circumstances – namely significantly expanded on-site parking at public parks in vicinity of two of the permit areas – and the inefficiency and impracticality of administering the program at its current scale. Council discussed the program at length and generally agreed that scaling back the program to focus only on areas around the secondary school made sense. Staff committed to studying how to successfully manage parking in the area around the secondary school and returning to a future Worksession to discuss. Elimination of all other permit parking zones will be presented for consideration at the next Council meeting.

E. 2026 Conference Opportunities

Mr. Garcia reviewed upcoming conference opportunities for council members, in alignment with the Council's Approved 2026 Budget.

## 3. COUNCIL COMMENTS & QUESTIONS

There were none.

## 4. ADJOURNMENT

There being no further business to come before the City Council at the regular work session meeting, Mayor Francis declared the meeting adjourned at 10:18 PM.

Respectfully submitted,
/s/: Ryan Garcia
City Administrator

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Finance
**PREPARED BY:** Jeff Hines
**AGENDA ITEM NUMBER:** 8.B.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Accounts Payable

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Motion to Adopt Resolution 2026-057 approving accounts payable.

**OVERVIEW**
The City Council approves all payments of claims. Approval of audited claims is required before issuance of payment.

Detailed check registers are available upon request from the Finance office.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. 04-20-26 Accounts Payable Resolution
2. 04-20-26 Accounts Payable Summary Check Register
3. 04-20-26 Accounts Payable Detail Check Register

City of South St. Paul
Dakota County, Minnesota

**RESOLUTION NO. 2026-057**

**RESOLUTION APPROVING ACCOUNTS PAYABLE**

**WHEREAS,** the City Council is required to approve payment of claims;

**NOW, THEREFORE, BE IT RESOLVED** that the audited claims listed in the check register attachment are hereby approved for payment:

| | |
|---|---|
| **Check and wires:** | |
| **156848-156974** | **$ 1,230,131.02** |
| **2026122-2026132** | **240,707.31** |
| **801355-801360** | **91,015.49** |
| **Total** | **$ 1,561,853.82** |

Adopted this 20th day of April, 2026.

Deanna Werner, City Clerk

-

| Company | | Amount |
|---|---|---|
| 00101 | GENERAL FUND | 427,219.39 |
| 00213 | GRANTS/DONATIONS PUBLIC W... | 5,000.00 |
| 00243 | DOUG WOOG ARENA | 87,246.98 |
| 00245 | AIRPORT FUND | 4,003.54 |
| 00260 | HOUSING GENERAL | 307.04 |
| 00280 | ECON DEV GENERAL | 3,587.02 |
| 00283 | BUSINESS LOANS | 135,000.00 |
| 00284 | DEVELOPMENT | 93.96 |
| 00402 | CAPITAL PROGRAMS FUND | 234,514.41 |
| 00404 | AIRPORT CAPITAL FUND | 7,670.00 |
| 00440 | 2024 LOCAL IMPROVEMENTS | 14,728.83 |
| 00490 | CONCORD TIF | 99.28 |
| 00494 | HARDMAN TRIANGLE TIF | 55,673.15 |
| 00600 | UTILITY ADMINISTRATION | 953.00 |
| 00605 | WATER UTILITY | 147,248.83 |
| 00606 | SEWER UTILITY | 313,740.69 |
| 00610 | STORM WATER UTILITY | 17,160.75 |
| 00615 | STREET LIGHT UTILITY | 15,737.96 |
| 00677 | NAN MCKAY APT BLDG | 24,306.04 |
| 00678 | JOHN CARROLL APT BLDG | 26,666.30 |
| 00703 | CENTRAL GARAGE FUND | 36,630.61 |
| 00709 | SELF-INSURED DENTAL | 4,266.04 |
| | Report Totals | 1,561,853.82 |

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** City Clerk
**PREPARED BY:** Deanna Werner
**AGENDA ITEM NUMBER:** 8.C.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Business Licenses

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve as presented by consent.

**OVERVIEW**
Municipal Code requires that all licenses are approved by the City Council and subject to submittal of insurance certificates, forms and background investigation, when required, prior to issuance. The attached listing contains new and/or renewal applications which have been applied for since the last City Council Meeting. These licenses will expire as indicated on the attached report.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. City Council Report (Licenses)

# City of South St Paul
# City Council Report



| ID | Company | License # | License Type | Status | Issued | Expires | Address | Complex | Council |
|---|---|---|---|---|---|---|---|---|---|
| 9899 | United States Bench Corporation | 00017118 | Benches | A | 04/10/2026 | 05/31/2027 | 3300 Snelling Ave | | 04/20/2026 |
| 9918 | T's Discount Liquor II, Inc. | 00017122 | Cigarette and Tobacco Sales | A | 04/15/2026 | 05/31/2027 | 333 Concord Exchange N | | 04/20/2026 |
| 14924 | Homtech, Inc. | 00017173 | Housing Evaluator-TOS | A | 04/08/2026 | 05/31/2027 | | Time of Sale | 04/20/2026 |
| 14537 | Patrick Leahy | 00017180 | Housing Evaluator-TOS/Rental | A | 04/15/2026 | 05/31/2027 | | Time of Sale & Rental Housing | 04/20/2026 |
| 14546 | Brent Williams | 00017182 | Housing Evaluator-TOS/Rental | A | 04/07/2026 | 05/31/2027 | | Time of Sale & Rental Housing | 04/20/2026 |
| 15390 | Paochoua Ethan Vang | 00017186 | Housing Evaluator-TOS/Rental | A | 04/13/2026 | 05/31/2027 | | Time of Sale & Rental Housing | 04/20/2026 |
| 15748 | Southview Wellness | 00017219 | Massage Therapy | A | 04/06/2026 | 05/31/2027 | 625 Southview Blvd | | 04/20/2026 |
| 14431 | Steppingstone Massage, LLC | 00017141 | Massage Therapy | A | 04/09/2026 | 05/31/2027 | 1335 Thompson Ave B | | 04/20/2026 |
| 15745 | ThriveGate Five LLC | 00017218 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 105 10th Ave N | | 04/20/2026 |
| 15164 | Ngoc Nhu Tran | 00016736 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 203 11th Ave N | | 04/20/2026 |
| 15287 | Pamela Sue Enlund | 00016797 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 215 11th Ave S | | 04/20/2026 |
| 15153 | Washington Tuan Nguyen | 00016731 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 252 11th Ave S | | 04/20/2026 |
| 15276 | Redpoint Properties, LLC | 00016798 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 337 11th Ave S | | 04/20/2026 |
| 12081 | Cheryl Keindl | 00016452 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 417-419 12th Ave N | | 04/20/2026 |
| 15155 | Bruce Campbell Bryant | 00016734 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 121 12th Ave S | Twin Home - One unit owner occipied | 04/20/2026 |
| 15653 | Baylee Lachelle Munce | 00016988 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 312 13th Ave N | | 04/20/2026 |
| 15744 | Timothy Ngoc-Minh Wendroth | 00017216 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 444 13th Ave S | | 04/20/2026 |
| 14448 | Ronald & Cindy Luzinski Trust | 00016460 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 110 14th Ave N | | 04/20/2026 |
| 14742 | Invitation Homes | 00016958 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 118 14th Ave N | | 04/20/2026 |
| 14599 | Brimel Holdings LLC | 00016603 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 130 14th Ave S | | 04/20/2026 |
| 15347 | Gabriel Lynn Gruszynski | 00016824 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 520 15th Ave N | | 04/20/2026 |
| 15663 | Sebastian Bustillos | 00016992 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 425 16th Ave N | | 04/20/2026 |
| 12112 | Juan Paredes | 00016465 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 640 16th Ave N | | 04/20/2026 |
| 15584 | Tyler Carl Becker | 00016960 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 643 16th Ave N | | 04/20/2026 |
| 15202 | Alpine Mangement LLC | 00016757 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 707 16th Ave N | | 04/20/2026 |

# City of South St Paul
# City Council Report



| ID | Company | License # | License Type | Status | Issued | Expires | Address | Complex | Council |
|---|---|---|---|---|---|---|---|---|---|
| 11961 | Laurie Macko | 00016469 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 415 18th Ave N | | 04/20/2026 |
| 11961 | Laurie Macko | 00016474 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 219 19th Ave S | | 04/20/2026 |
| 15565 | Mujahidin Abubeker Bulle | 00016952 | Rental Housing | A | 04/07/2026 | 05/31/2027 | 315 1st Ave S | | 04/20/2026 |
| 15264 | Kenny Tran | 00016784 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 404 1st Ave S | | 04/20/2026 |
| 14446 | Nathan Herschbach | 00016479 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 432 1st Ave S | | 04/20/2026 |
| 14496 | Margaret Mohr | 00016486 | Rental Housing | A | 04/08/2026 | 05/31/2027 | 736 1st Ave S | | 04/20/2026 |
| 15643 | Kyle Freeman Joseph Farizel | 00016983 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 929 20th Ave N | | 04/20/2026 |
| 15229 | Christopher Alan Neubauer | 00016773 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 714 22nd Ave N | | 04/20/2026 |
| 15106 | Kip L. Barnhill | 00016720 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 248 22nd Ave S | | 04/20/2026 |
| 15648 | Kyle James Colbert | 00016984 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 145 23rd Ave S | | 04/20/2026 |
| 14725 | Paul James Reckinger | 00016881 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 157-159 23rd Ave S | 157 23rd Ave, LLC | 04/20/2026 |
| 15495 | Mykola Lagutin | 00016930 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 216 2nd Ave S | | 04/20/2026 |
| 15776 | Corey Adam Hawkinson | 00017294 | Rental Housing | A | 04/07/2026 | 05/31/2027 | 256 2nd Ave S | | 04/20/2026 |
| 14469 | Home Life LLC | 00016493 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 301 2nd Ave S | | 04/20/2026 |
| 15767 | Jesse Stevens-Strom | 00017227 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 336 2nd Ave S | Main House | 04/20/2026 |
| 15767 | Jesse Stevens-Strom | 00017228 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 336 2nd Ave S | ADU - Rear | 04/20/2026 |
| 14928 | Jeffrey R. Lee | 00016867 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 412 2nd Ave S | Jeffrey Ronald Lee | 04/20/2026 |
| 15002 | Invitation Homes | 00016691 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 525 2nd Ave S | | 04/20/2026 |
| 14741 | Invitation Homes | 00016594 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 2110 2nd St S | | 04/20/2026 |
| 15319 | A Solutions | 00016809 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 208 3rd Ave S | Housing with Services - Grandfathered to 6 | 04/20/2026 |
| 14928 | Jeffrey R. Lee | 00016677 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 315-317 3rd Ave S | | 04/20/2026 |
| 12282 | Carol L. Petrich | 00016507 | Rental Housing | A | 03/17/2026 | 05/31/2027 | 1124-1126 3rd St N | | 04/20/2026 |
| 15071 | SRF Borrower 2021-2 LLC | 00016775 | Rental Housing | A | 04/07/2026 | 05/31/2027 | 141 4th Ave S | HPA Borrower 2017-1 LLC | 04/20/2026 |
| 14420 | Lance Stariha | 00016510 | Rental Housing | A | 04/03/2026 | 05/31/2027 | 846 4th Ave S | | 04/20/2026 |
| 15445 | Clarice Ann Wilson | 00016879 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 1430 4th St N | | 04/20/2026 |
| 14457 | Xiaoqiao Wei | 00016516 | Rental Housing | A | 03/26/2026 | 05/31/2027 | 1406 5th Ave S | | 04/20/2026 |
| 15176 | SRF Borrower 2021-2 LLC | 00016429 | Rental Housing | A | 04/07/2026 | 05/31/2027 | 339 5th Ave S | | 04/20/2026 |

# City of South St Paul
# City Council Report



| ID | Company | License # | License Type | Status | Issued | Expires | Address | Complex | Council |
|---|---|---|---|---|---|---|---|---|---|
| 15641 | Connor David Brennan | 00016981 | Rental Housing | A | 04/03/2026 | 05/31/2027 | 458 5th Ave S | | 04/20/2026 |
| 15686 | SouthGate Six, LLC | 00017204 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 226 6th Ave S | | 04/20/2026 |
| 15207 | Eduard Bilik | 00016764 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 417 6th Ave S | | 04/20/2026 |
| 14419 | Randy Petrosfke | 00016520 | Rental Housing | A | 03/24/2026 | 05/31/2027 | 645 6th Ave S | | 04/20/2026 |
| 14803 | Brian Seidl | 00016636 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 943 6th Ave S | | 04/20/2026 |
| 14742 | Invitation Homes | 00016850 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 1146 7th Ave S | | 04/20/2026 |
| 15174 | Jeffrey Ronald Lee | 00016742 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 409 7th Ave S | | 04/20/2026 |
| 14742 | Invitation Homes | 00016848 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 428 7th Ave S | | 04/20/2026 |
| 14921 | Bryan Bourn | 00016653 | Rental Housing | A | 04/07/2026 | 05/31/2027 | 909 7th Ave S | | 04/20/2026 |
| 15276 | Redpoint Properties, LLC | 00016790 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 131 8th Ave N | | 04/20/2026 |
| 15508 | Renee Bryan | 00016936 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 141 8th Ave S | | 04/20/2026 |
| 13539 | Joseph K. Illetschko | 00016534 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 1410-1412 8th Ave S | | 04/20/2026 |
| 12145 | Glenn D. Primeau | 00016535 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 1416 8th Ave S | | 04/20/2026 |
| 15425 | Zachary Nicholas Carchedi | 00016874 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 144 8th Ave S | Zachary Nichoals Carchedi | 04/20/2026 |
| 14765 | Susan Scharenbroich | 00016630 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 220 8th Ave S | | 04/20/2026 |
| 15685 | NorthGate Nine, LLC | 00017203 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 259 9th Ave N | | 04/20/2026 |
| 14506 | Invitation Homes | 00016592 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 1345 9th Ave S | | 04/20/2026 |
| 13607 | Matthew Borucki | 00016537 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 224 9th Ave S | | 04/20/2026 |
| 15769 | Benjamin & Colleen Norman | 00017229 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 749 9th Ave S | | 04/20/2026 |
| 15324 | Heaser Investments | 00016812 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 534 Annapolis St E | | 04/20/2026 |
| 12145 | Glenn D. Primeau | 00016543 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 132-134 Ash St W | | 04/20/2026 |
| 15564 | 150 Ash St LLC | 00016951 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 150-152 Ash St W | | 04/20/2026 |
| 14742 | Invitation Homes | 00016598 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 226 Ash St W | | 04/20/2026 |
| 15422 | Michael Strunk | 00016871 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 220-222 Buron Ln | Michael Strunk | 04/20/2026 |
| 15376 | Corey Jermaine Scott | 00016838 | Rental Housing | A | 04/08/2026 | 05/31/2027 | 239 Buron Ln | Twin Home - Corey Jermaine Scott | 04/20/2026 |
| 15630 | Joseph Ring | 00016971 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 1621 Concord St N | | 04/20/2026 |
| 15055 | Ricardo A. Karel | 00016710 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 1615 Concord St S | | 04/20/2026 |
| 15396 | Jordan K. Blank | 00016852 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 2116 Conver Ave | | 04/20/2026 |

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|---|---|---|---|---|---|---|---|---|---|
| 15636 | Joseph Michael Cahanes | 00016974 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 232-234 Douglas St E | | 04/20/2026 |
| 11961 | Laurie Macko | 00016628 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 1924 Eva Ln | | 04/20/2026 |
| 11961 | Laurie Macko | 00016631 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 1936 Eva Ln | | 04/20/2026 |
| 15252 | Brian Charles Boeh | 00016778 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 2400 Francis St | | 04/20/2026 |
| 14742 | Invitation Homes | 00016590 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 212 Frost St W | | 04/20/2026 |
| 14265 | TMG Real Estate Holdings, LLC | 00016554 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 221 Grand Ave W 103 | | 04/20/2026 |
| 15651 | Ramon Abraham Estrada Marroquin | 00016986 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 221 Grand Ave W 113 | | 04/20/2026 |
| 14514 | T Rental LLC | 00016583 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 221 Grand Ave W 208 | | 04/20/2026 |
| 14070 | Michael Fix | 00016556 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 221 Grand Ave W 212 | | 04/20/2026 |
| 15354 | Cosmina Ramona Strain | 00016963 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 221 Grand Ave W 213 | Cosmina Ramona Strain | 04/20/2026 |
| 15796 | Elizabeth Ann Liesinger | 00017293 | Rental Housing | A | 04/06/2026 | 05/31/2027 | 221 Grand Ave W 301 | | 04/20/2026 |
| 14507 | Nash Golan Nasim | 00016581 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 221 Grand Ave W 314 | | 04/20/2026 |
| 12340 | Seth P. Goettl | 00016557 | Rental Housing | A | 04/20/2026 | 05/31/2027 | 1560 Lincoln Park Dr | | 04/20/2026 |
| 12340 | Seth P. Goettl | 00016558 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 1565 Lincoln Park Dr | | 04/20/2026 |
| 11800 | Richard J. Weldon | 00016561 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 136 Macarthur St E | | 04/20/2026 |
| 12927 | Gregory & Lisa Swanson | 00016442 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 213 Macarthur St E | | 04/20/2026 |
| 14928 | Jeffrey R. Lee | 00016770 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 229 Park St W | | 04/20/2026 |
| 15399 | Xeng Thao | 00016987 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 224 Poplar St E | | 04/20/2026 |
| 14741 | Invitation Homes | 00016601 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 230 Poplar St E | | 04/20/2026 |
| 14849 | James Albrecht | 00016642 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 203 Richmond St W | | 04/20/2026 |
| 12145 | Glenn D. Primeau | 00016568 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 206 South St W | | 04/20/2026 |
| 12004 | Legacy Enterprises, LLC | 00016570 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 1516 Southview Blvd | | 04/20/2026 |
| 12004 | Legacy Enterprises, LLC | 00016571 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 1520 Southview Blvd | | 04/20/2026 |
| 14588 | Boka Properties, LLC | 00016613 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 214 Southview Blvd | | 04/20/2026 |
| 12662 | Wakota Office Machines, Inc. | 00016569 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 708 Southview Blvd | | 04/20/2026 |
| 15283 | Pro Operam Sub XII, LLC | 00016795 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 257 Spruce St E | | 04/20/2026 |
| 15367 | Stormlight Properties LLC | 00016833 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 113-115 Stanley Ave | | 04/20/2026 |

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|---|---|---|---|---|---|---|---|---|---|
| 15487 | Joseph Daniel Gedatus | 00016972 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 140 Warburton St W | | 04/20/2026 |
| 15487 | Joseph Daniel Gedatus | 00016920 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 146 Warburton St W | | 04/20/2026 |
| 14952 | Pro Operam Sub II, LLC | 00016683 | Rental Housing | A | 04/14/2026 | 05/31/2027 | 212 Warburton St W | | 04/20/2026 |
| 15543 | Yohannes & Dawit Tekle | 00016946 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 225-227 Warburton St W | | 04/20/2026 |
| 15634 | Lakeesha Marie Jones | 00016973 | Rental Housing | A | 04/13/2026 | 05/31/2027 | 1529-1531 Wentworth Ave | | 04/20/2026 |
| 14884 | Robert Dahl | 00016646 | Rental Housing | A | 04/09/2026 | 05/31/2027 | 1823 Wentworth Ave | | 04/20/2026 |
| 15773 | Adebayo Ismail Ladipo | 00017234 | Rental Housing | A | 04/15/2026 | 05/31/2027 | 2100 Wentworth Ave | | 04/20/2026 |
| 14929 | Lucien Bell Solefack | 00016678 | Rental Housing | A | 04/10/2026 | 05/31/2027 | 1623 Willis Ave | | 04/20/2026 |
| 15540 | LifeWay Care | 00017112 | Rental Housing Multi Family Dwelling (4+) | A | 04/08/2026 | 05/31/2027 | 225 10th Ave S | | 04/20/2026 |
| 11998 | Dakota County CDA | 00017017 | Rental Housing Multi Family Dwelling (4+) | A | 04/10/2026 | 05/31/2027 | 337 15th Ave N | | 04/20/2026 |
| 15673 | Scholl, LLC | 00017196 | Rental Housing Multi Family Dwelling (4+) | A | 04/09/2026 | 05/31/2027 | 358 1st Ave S | | 04/20/2026 |
| 15197 | Healing Home, LLC | 00017094 | Rental Housing Multi Family Dwelling (4+) | A | 04/15/2026 | 05/31/2027 | 200 3rd Ave S | | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00016998 | Rental Housing Multi Family Dwelling (4+) | A | 04/14/2026 | 05/31/2027 | 205 3rd Ave S | Heritage Crest Apartments | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00016999 | Rental Housing Multi Family Dwelling (4+) | A | 04/13/2026 | 05/31/2027 | 211 3rd Ave S | Heritage Crest Apartments | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00017000 | Rental Housing Multi Family Dwelling (4+) | A | 04/14/2026 | 05/31/2027 | 219 3rd Ave S | Heritage Crest Apartments | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00017001 | Rental Housing Multi Family Dwelling (4+) | A | 04/14/2026 | 05/31/2027 | 225 3rd Ave S | Heritage Crest Apartments | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00017002 | Rental Housing Multi Family Dwelling (4+) | A | 04/13/2026 | 05/31/2027 | 235 3rd Ave S | Heritage Crest Apartments | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00017003 | Rental Housing Multi Family Dwelling (4+) | A | 04/13/2026 | 05/31/2027 | 239 3rd Ave S | Hertitage Crest Apartments | 04/20/2026 |
| 15150 | Heritage Crest Apartments, LLC | 00017004 | Rental Housing Multi Family Dwelling (4+) | A | 04/13/2026 | 05/31/2027 | 241 3rd Ave S | Heritage Crest Apartments | 04/20/2026 |
| 15590 | Greystone Apartments | 00017116 | Rental Housing Multi Family Dwelling (4+) | A | 04/14/2026 | 05/31/2027 | 315 3rd St N | | 04/20/2026 |
| 15197 | Healing Home, LLC | 00017093 | Rental Housing Multi Family Dwelling (4+) | A | 04/15/2026 | 05/31/2027 | 132 4th Ave N | | 04/20/2026 |

# City of South St Paul
# City Council Report



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|---|---|---|---|---|---|---|---|---|---|
| 12694 | Dennis A. Greger | 00017030 | Rental Housing Multi Family Dwelling (4+) | A | 04/09/2026 | 05/31/2027 | 141 5th Ave N | | 04/20/2026 |
| 11908 | David Properties, Inc. | 00017033 | Rental Housing Multi Family Dwelling (4+) | A | 04/09/2026 | 05/31/2027 | 940 5th Ave S | | 04/20/2026 |
| 15285 | Oberon Holdings LLC | 00017106 | Rental Housing Multi Family Dwelling (4+) | A | 04/06/2026 | 05/31/2027 | 1120 Bryant Ave | EIG Property Management | 04/20/2026 |
| 15285 | Oberon Holdings LLC | 00017098 | Rental Housing Multi Family Dwelling (4+) | A | 04/06/2026 | 05/31/2027 | 920 Summit Ave | | 04/20/2026 |
| 11998 | Dakota County CDA | 00017066 | Rental Housing Multi Family Dwelling (4+) | A | 04/10/2026 | 05/31/2027 | 1350 Thompson Ave | | 04/20/2026 |
| 15797 | Roof Ninja Services | 00017295 | Solicitor (Company) | A | 04/07/2026 | 05/31/2027 | | Roof Ninja Services-Company License | 04/20/2026 |
| 15798 | Roof Ninja Services | 00017296 | Solicitor (Individual) | A | 04/07/2026 | 05/31/2027 | | Justin Geisen | 04/20/2026 |
| 15799 | Roof Ninja Services | 00017297 | Solicitor (Individual) | A | 04/07/2026 | 05/31/2027 | | Christpher Sirotiak | 04/20/2026 |
| 15800 | Roof Ninja Services | 00017298 | Solicitor (Individual) | A | 04/07/2026 | 05/31/2027 | | Leif Anderson | 04/20/2026 |
| 10094 | Lightning Disposal Inc. | 00017154 | Trash Hauler | A | 04/09/2026 | 05/31/2027 | | Roll-Off Only; No Routes | 04/20/2026 |
| 10109 | Nitti Sanitation, Inc. | 00017161 | Trash Hauler | A | 04/09/2026 | 05/31/2027 | | Residential AND Commercial Routes | 04/20/2026 |

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** City Clerk
**PREPARED BY:** Deanna Werner
**AGENDA ITEM NUMBER:** 8.D.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Acceptance of Gift Donations

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve as presented by consent.

**OVERVIEW**
Donations will be approved by Resolution as they are received. The amount of the donation and the donors are listed separately on Resolution 2026-052.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. Donation Resolution

City of South St. Paul
Dakota County, Minnesota

**RESOLUTION NO. 2026-052**

Acceptance of Gift Donations

**WHEREAS,** The City of South St. Paul is generally authorized to accept donations of real and personal property pursuant to Minnesota Statutes Section 465.03 for the benefit of its citizens, in accordance with the terms prescribed by the donor.

**WHEREAS, The City of South St. Paul receives donations** from various sources and businesses within the City of South St. Paul and the surrounding areas.

**WHEREAS,** the City of South St. Paul finds it is appropriate to accept the donation(s) offered with appreciation.

**THEREFORE, BE IT RESOLVED**: by the City Council of the City of South St. Paul, Minnesota, to accept the following donation(s):

| Name of Donor | Value of Donation | Designation |
|---|---|---|
| Marie Avenue Service and Glass | $500.00 | Parks & Rec. Color Run |

The City Clerk is hereby directed to issue receipts to each donor acknowledging the City's receipt of the donor's donation.

Adopted this 20th day of April 2026.

_____
City Clerk

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Police
**PREPARED BY:** Brian Wicke
**AGENDA ITEM NUMBER:** 8.E.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Joint Powers Agreement - Criminal Justice Network Board

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve Resolution 2026-049 Authorizing the Execution of the Amended and Restated Joint Powers Agreement for the Criminal Justice Network Board

**OVERVIEW**
Effective January 1st, 2022, the County of Dakota, along with the Cities of Burnsville, Farmington, Hastings, Inver Grove Heights, Mendota Heights, Rosemount, South St. Paul, and West St. Paul entered into a five-year joint powers agreement forming the Criminal Justice Network (CJN) Joint Powers Organization. The purpose of this organization is to enhance public safety through data sharing and collaboration, streamlining critical processes, improving efficiency, and ensuring real-time access to essential information across jurisdictions.

The Agreement provides for the ability to be amended at any time by agreement of all members and in 2024, the City of Plymouth was added as a party, clarification was made surrounding the expiration date, and the funding formula was adjusted.

With the original agreement set to expire in 2026, the parties wish to adopt this amended and restated agreement, which has added a new definition of "user" of CJN services, updated terms of withdrawal, and identified fixed membership fees specific to Dakota County for integrations with the Dakota County Attorney's Office, Dakota County Community Corrections, and the Dakota County Jail.

The agreement has been reviewed by the City Attorney's Office.

**SOURCE OF FUNDS**
2026 Police Protection Budget

**ATTACHMENTS**
1. 2026 0420 Resolution Amended and Restated JPA CJN Board

2. Joint Powers Agreement_CJN _South St. Paul

City of South St. Paul
Dakota County, Minnesota

**RESOLUTION NO. 2026-049**

A RESOLUTION AUTHORIZING THE AMENDED AND RESTATED JOINT POWERS AGREEMENT FOR THE CRIMINAL JUSTICE NETWORK BOARD

**WHEREAS,** Dakota County and the cities of Burnsville, Farmington, Hastings, Inver Grove Heights, Mendota Heights, Rosemount, South St. Paul and West St. Paul ("founding members") entered into a joint powers agreement to form the Criminal Justice Network (CJN) joint powers organization effective January 1, 2022 ("original agreement"); and

**WHEREAS,** in 2024, the founding members and the City of Plymouth entered into a first amendment to the original agreement to add the City of Plymouth as a member, clarify the original expiration date, and adjust the funding formula; and

**WHEREAS,** the work of CJN involves applications and services focused on information sharing and integration among Dakota County law enforcement agencies, the County Sheriff, County Attorney, departments withing county government, Dakota County District Court, and law enforcement agencies across the state; and

**WHEREAS,** a committee made up of members of the CJN Board of Directors and legal staff representing CJN and Dakota County worked to develop the amended and restated joint powers agreement for the Criminal Justice Network Board with an effective date of January 1, 2027; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of South St. Paul, Minnesota, hereby authorizes the mayor to execute the amended and restated joint powers agreement for the Criminal Justice Network Board substantially as presented.

Adopted this 20h day of April 2026.

_____
City Clerk

# Amended and Restated
# Joint Powers Agreement for the
# Criminal Justice Network Board

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**THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT** ("Agreement") is entered into between the undersigned parties (also referred to herein as "Members"), all being political subdivisions of the State of Minnesota, by and through their respective governing bodies.

## RECITALS

**WHEREAS,** the parties to this Agreement previously entered into that Joint Powers Agreement Establishing the Criminal Justice Network Board effective January 1, 2024, as amended by that First Amendment to the Joint Powers Agreement Establishing the Criminal Justice Network effective August 28, 2024 (collectively "Previous Approvals"); and

**WHEREAS,** pursuant to Minn. Stat § 471.59, political subdivisions in the State of Minnesota are empowered to provide assistance to, and act in coordination with, other political subdivisions as deemed necessary to benefit the public; and

**WHEREAS,** the parties to this Agreement desire to jointly and cooperatively provide for the establishment, operation and maintenance of technology systems and services to support criminal justice agencies and information management systems for the use and benefit of the parties and others; and

**WHEREAS,** the parties to this Agreement desire to continue a joint powers entity and joint powers board referred to as the "Criminal Justice Network" or "CJN" to collaboratively accomplish their mutual goals of improving and supporting criminal justice agency information management systems and capabilities; and

**WHEREAS,** the parties desire to amend and restate the Previous Approvals and this Agreement amends, restates, and supersedes the Previous Approvals in their entirety.

**NOW, THEREFORE,** in consideration of the mutual promises and benefits that each Party shall derive here from, the parties agree as follows:

## ARTICLE 1: STATEMENT OF PURPOSE AND POWERS TO BE EXERCISED

The purpose of this Agreement is:

(1) to establish and continue CJN, a joint powers entity, to provide information management systems and technology services to support criminal justice agencies for the use and benefit of the Members and others;

(2) to provide personnel benefits for the employees of CJN;

(3) to define the rights and obligations of the Members with respect to the establishment, operation and maintenance of CJN; and

(4) to provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding criminal justice processes, information systems and integration of criminal justice information systems.

## ARTICLE 2: DEFINITIONS

**Board** means the Criminal Justice Network joint powers board formed by this Agreement.

**Criminal Justice Network or CJN** means the joint powers entity formed by this Agreement.

**Member** is a governmental unit that joined CJN, has use of and access to all the services provided by CJN, and holds a position on the CJN Board.

**Law Enforcement Agency** means a unit of state, local government, or federally-recognized tribe that is authorized by law to grant full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of any state, and/or incarcerating individuals. This includes, without limitation: municipal police departments, county sheriff departments (both patrol and jail functions), the Minnesota Department of Corrections, the Minnesota Bureau of Criminal Apprehension, and the Minnesota State Patrol.

**Membership Fee** means the amount of the operating and capital costs of CJN that is charged to an individual Member for a fiscal year.

**Supermajority** means two-thirds (66.7%) of the Board representatives, rounded up to the nearest whole person.

**System Fees** means the amount of money Users pay to access and use the systems and applications developed or purchased by CJN or services provided by CJN.

**User** is a governmental unit that pays System Fees for the use of CJN product(s) or service(s). A

User does not have a position on the CJN Board and is not a member of CJN.

**Withdrawing Member** means a Member that has given notice of its intent to withdraw from the Agreement pursuant to Article 11.1.

## ARTICLE 3: TERM AND EFFECTIVE DATE

CJN was established on January 1, 2022. This Agreement shall be effective December 31, 2026, and shall continue indefinitely, or until terminated as provided in Article 10 or as required by law or court order.

## ARTICLE 4: MANNER OF EXERCISING POWERS

The joint powers of the Members will be exercised through the Board having the powers and duties described herein. The Board is authorized to exercise the joint powers on behalf of and in cooperation with the Members as provided herein.

## ARTICLE 5: MEMBERSHIP

1. Membership. Provides access to all the benefits and products of CJN, including a voting Board position.

2. Requirement of Good Standing. Continued membership in CJN is contingent upon the payment by each Member of the annual Membership Fees as determined by the Board. After being given notice and 30 calendar days to cure any default for non-payment of fees, Members who are not in good standing may be terminated from this Agreement by a Supermajority vote of the Board. Members who are involuntarily terminated by the Board are not entitled to any distribution of assets or fees paid, all as stated in Article 11.2.

## ARTICLE 6: JOINT POWERS BOARD

1. Establishment of the Board. The parties hereby establish the Board as a joint powers board, which shall jointly exercise such powers and authorities as are necessary to achieve its purposes as provided in Article 1. The Board shall be an entity separate from the parties and shall not be deemed to be an agent or partner of the parties to this Agreement.

2. Powers of the Board. The Board shall have the following powers and duties:

    a. To take actions necessary and convenient to discharge the duty to implement, maintain and operate the systems and applications necessary for the continuation of CJN and its integration of information systems for criminal justice agencies;

    b. To adopt bylaws and rules or policies consistent with this Agreement that are

required to effectively exercise the powers or accomplish the objective of CJN;

c. To adopt an annual operating and capital budget, including a statement of sources of funding and allocation of costs to the Members;

d. To enter into contracts in its own name, including contracts to purchase materials, goods, or services, and contracts to provide its Members and Users with access to and use of systems and applications developed or purchased by CJN and other services provided by CJN;

e. To establish processes for setting and charging Membership Fees and System Fees;

f. To acquire, lease, hold and dispose of property, both real and personal, including transfer of property from a Member to CJN;

g. To arrange with one or more of the Members to incur debt or issue bonds for the benefit of CJN, as permitted by law;

h. To develop, acquire, operate and maintain applications and systems for criminal justice agencies to improve operational efficiencies, integrate information between criminal justice agencies, including those systems acquired jointly and cooperatively for the benefit of the Members;

i. To hire, discipline, or discharge employees required to accomplish the purposes of this Agreement, including employing an Executive Director and delegating personnel authority to the Executive Director;

j. To purchase any insurance or indemnity or surety bonds as necessary to carry out this Agreement and purpose of CJN;

k. To apply for, and accept appropriations, grants, gifts, loans of money, or other assistance as permitted by law from any person or entity, whether public or private;

l. To commence any type of legal action or proceeding permitted by law to protect CJN's property and interests;

m. To exercise all powers necessary and incidental to carrying out the purposes set forth in Article 1 of this Agreement;

n. To contract with a Member or third party for auditing, financial, human resources, information technology, risk management, legal, and other services as needed for CJN; and

o. To approve contracting and purchasing policies for CJN.

3. Board Representatives and Vacancies.

   a. Board Composition. The Board shall consist of one Board representative from each of the Members who is appointed by the respective head of the Member's Law Enforcement Agency. Each Member shall also be entitled to appoint an alternate Board representative, who shall act for the Board representative during that individual's absence. In addition, Dakota County's Board of Commissioners is entitled to appoint one Board representative and one alternate. This Agreement at times uses the term "Board representative" to refer to both a Board representative and that representative's alternate.

   b. Board Compensation. Board representatives shall serve without compensation from CJN**,** but this shall not prevent a Member from providing compensation for a Board representative if such compensation is authorized by the Member and by law.

   c. Representative Terms. The terms of each Board representative will be established in the Board's bylaws. Any Board representative shall be subject to removal by the appointing Member at any time, with or without cause. If any Board representative is removed by the appointing Member, the vacancy shall be filled by that appointing Member. A Board representative's term terminates at such time as the individual ceases to be a member of the governing body of the applicable Member or an employee of the applicable Member.

4. Board Governance - Officers. At first regular meeting of the Board of each calendar year, the Board shall elect a Chair and Vice Chair from among the Board representatives. The Chair and Vice Chair shall be elected by the Board for two-year terms. The Chair shall preside at all meetings of the Board and shall perform other duties and functions as may be determined by the Board. The Vice Chair shall preside at Board meetings and act for the Board during the absence of the Chair.

5. Board Governance - Voting.

   a. Actions of the Board will be taken by vote of the Board in which each Board representative shall have one equal vote. Proxy voting is not permitted. The Board shall function by a majority of the Board representatives present at the time of the vote.

   b. Decisions of the Board will be made by a majority of the votes cast except where a Supermajority is required.

c. A Board representative shall not be entitled to vote on behalf of the Member during the time that such Member is in default on any contribution to CJN or on any contract with CJN. During the existence of such default, the vote or votes of such Member shall not be counted as eligible votes.

6. Board Committees. The Board may appoint standing committees, ad hoc committees and workgroups, with the powers described in the Board's bylaws or in resolutions adopted to establish the committee or workgroup. All meetings of any committee established by the Board shall comply with Minnesota Statutes Ch. 13D, the Minnesota Open Meeting Law.

7. Board Meetings. The Board shall meet as set forth in the bylaws adopted by the Board or upon the call of the Board Chair. All meetings of the Board shall comply with Minnesota Statutes Ch. 13D, the Minnesota Open Meeting Law.

## ARTICLE 7: EXECUTIVE DIRECTOR

CJN shall have a chief operating officer with the title Executive Director. The Executive Director shall be the administrative head of CJN and shall report to the Board and the Executive Committee, if the Board creates one, for the administration and operation of CJN. The Executive Director shall be an employee of CJN. Any vacancy in the office of the Executive Director shall be filled as soon as possible after the effective date of such vacancy. In the case of absence or disability of the Executive Director, the Board may designate any other qualified person to carry out the duties of the Executive Director during such absence or disability.

## ARTICLE 8: BUDGET AND FUNDING

1. Fiscal Year. The fiscal year for CJN shall be the calendar year.

2. Recommended Annual Budget. The annual budget of CJN must be adopted in the following manner:

   a. The Executive Director shall prepare a proposed annual operating budget for the following fiscal year, adjusted for any withdrawal notifications received pursuant to Section 11.1, and a five-year budget projection, for consideration by the Board no later than April 1st of each year;

   b. Annually, prior to April 1st, the Executive Director shall deliver to each Board representative a copy of the proposed budget and five-year budget projection;

   c. Annually, prior to May 1st, the Board will supply each Member with a proposed budget for the following fiscal year and five-year budget projection; and

d. The annual budget for the following fiscal year shall be adopted at a meeting of the Board in June.

If the Board fails to adopt a budget by July 1st of the calendar year, the budget from the current fiscal year shall be deemed approved for the next fiscal year.

3. Member Contributions to Adopted Budget.

a. The Board shall have the authority to establish the Membership Fees and System Fees in amounts sufficient to provide the funds required for CJN's operational, future development, and capital costs in the budget.

b. The CJN annual budget will be comprised of the following funding components:

i. Membership Fees. Each Member's Membership Fee is comprised of their annual contribution to the Operations Fund and Future Development Fund. Payment of the Membership Fee provides the Member with all uses and benefits of CJN's current products and services. If CJN creates specialized products (e.g., jail management services), they will be billed separately.

1. Operations Fund. Members shall contribute to the operations fund follows: (a) 50% of the budgetary formula will be based on population of the geographical areas for which it provides law enforcement services as calculated annually by the Metropolitan Council. For the purposes of this paragraph, the geographical area for which the Dakota County Sheriff's Office provides law enforcement services means that area outside the boundaries of all cities located within Dakota County, but includes the areas within certain city boundaries that are patrolled by the Dakota County Sheriff's Office under municipal contract ("Patrol Area Population"); and (b) the other 50% of the budgetary formula will be based upon the proportional total number of the active user accounts determined as of January 1 of the previous calendar year. For purposes of Dakota County Sheriff's Office, active user accounts will be calculated based on Dakota County Sheriff's Office users (other than correctional/jail users). A fee schedule will be provided annually by July 1st with a total of the Member's Fees for the following calendar year.

2. Future Development Fund. Members will contribute a fixed annual

amount determined by the Board, not to exceed $3,500.

Dakota County Fixed Membership Fee. In addition to the Membership Fees assessed to the Dakota County Sheriff's Office for the Operations Fund and Future Development Fund under this Section, Dakota County shall contribute an annual Fixed Membership Fee of $420,000 in fiscal years 2027 and 2028, $370,000 in fiscal years 2029 and 2030, and $320,000 in fiscal year 2031 and all fiscal years thereafter which includes payment for the additional CJN services received by the Dakota County Community Corrections Department, and Attorney's Office, and Jail, which shall collectively constitute Dakota County's total Membership Fee.

ii. System Fees. Users shall pay the Systems Fees established annually by the Board for the products and/or services the User has contracted with CJN to use.

c. Within 30 days of the adoption of the budget by the Board, each Member is obligated to make payments to CJN for the Member's Membership Fees for the following fiscal year in accordance with this Article. If the current budget is continued due to a failure of the Board to adopt a budget as provided in Article 8, each Member is obligated to make payments to CJN for the Member's Membership Fees for the following fiscal year no later than July 31 of the current year. Notwithstanding the foregoing, no Member shall be obligated to pay the Membership Fee for any fiscal year that commences after the Member's effective date of withdrawal.

4. Expenditure of the Annual Budget.

a. The Board may establish procedures and limitations as may be necessary to preserve the integrity and purpose of the approved operating and capital budget. The Executive Director shall make all expenditures in accordance with such budget. Purchases and letting contracts shall be done in accordance with procedural guidelines established by resolution of the Board, consistent with Minnesota law.

b. The Executive Director shall have the power to transfer funds within the total annual operating budget in order to meet unanticipated needs or changed situations. The Executive Director shall not transfer funds within the total annual capital budget or between the operating budget and capital budget. The Executive Director

shall report any transfer of funds within the annual operating budget to the Board in the next report.

5. In-Kind Contributions. The Board may accept in-kind contributions from any Member. Subject to approval by Dakota County, Dakota County will provide CJN with certain in-kind contributions, which will be subject to, and governed by, the terms of one or more contracts between CJN and Dakota County.

6. Credit or Payment to Members for Services. The Board may approve annual fee payment or cost allocation credits to any Member that provides in-kind contributions to CJN.

## ARTICLE 9: AUDIT

The Board shall call for an annual audit of the financial affairs of CJN, to be performed by an independent Certified Public Accountant and completed in accordance with generally accepted auditing principles. The Board shall provide a copy of the audit report to the Members. CJN's books, reports and records shall be available for and open to inspection by the Members at all reasonable times.

## ARTICLE 10: TERMINATION AND DISSOLUTION

1. Termination. This Agreement shall terminate upon the occurrence of any one of the following events:

    a. When Members withdraw pursuant to Article 11 so that in the judgment of the Board it becomes impractical or uneconomical to continue to operate under this Agreement;

    b. When necessitated by operation of law or as a result of a decision by a court of competent jurisdiction; or

    c. When a Supermajority agrees, pursuant to a resolution of the governing bodies of the Members, to terminate this Agreement.

2. Effect of Termination. Termination shall not discharge any liability incurred by the Board or by the Members during the term of this Agreement. Each Member shall be liable for its own acts and for the acts of the Board to the extent provided by law. Property or surplus money acquired by the Board shall be distributed to the Members in proportion to their contributions. The Board shall approve a final report of its activities and affairs.

3. Distribution of Assets. Prior to termination of this Agreement or if CJN is otherwise disbanded, the Board shall first adopt a plan providing for the orderly disposition of assets and unwinding

of agreements of the Board. Such plan shall provide that following the disposition of any assets owned by the Board and the payment of all obligations of the Board, any funds remaining shall be distributed to the remaining Members who have not previously withdrawn consistent with the approved plan.

## ARTICLE 11: WITHDRAWAL OF A MEMBER

1. Unilateral Withdrawal. The soonest a Member may provide a notice of an intent to withdraw from this Agreement is January 1, 2029. The Member intending to withdraw shall provide at least twenty (20) months' written notice to the Board Chair, prior to the Member's withdrawal date. For example, if a Member wanted to withdraw by August 31, 2030, they would need to provide written notice to the Board Chair no later than January 1, 2029. The written notice shall include a copy of a resolution of its governing body indicating its intent to withdraw from this Agreement.

   Upon receipt of the notice to withdraw and the resolution of the governing body of a Member authorizing withdrawal, the Board Chair shall forward a copy of the resolution to all other Members.

2. Effect of Withdrawal. Withdrawal of any Member shall not terminate this Agreement except as provided in Section 10.1. Withdrawal shall not act to discharge any liability incurred or chargeable to any withdrawing Member before the effective date of withdrawal. Such liability shall continue until appropriately discharged by law or agreement. No withdrawing Member shall be entitled to a refund or distribution of Membership Fees, administrative or operating fees or funds paid, reimbursement or repayment of in-kind contributions, or forgiveness of fees owed to the Board.

## ARTICLE 12: INSURANCE AND INDEMNIFICATION

1. Responsibility for Own Acts and Omissions. No Member shall be liable for the acts or omissions of another Member, unless it has specifically agreed in writing to be responsible for the same. Each Member acknowledges and agrees that it is insured or self-insured consistent with the limits established in Minnesota State Statutes. Each Member agrees to promptly notify all Members if it becomes aware of any potential Board-related claims or facts that are likely to give rise to such claims. Neither the Board nor any Member shall have the power to do any act or thing the effect of which is to create a charge or lien against the property or revenues of the Board or another Member, except as expressly provided herein or in any of the documents authorized herein.

2. No Waiver. Notwithstanding the foregoing, the terms of this Agreement are not to be construed as, nor operate as, waivers of a Member's statutory or common law immunities or limitations on liability, including but not limited to, Minnesota Statutes Chapter 466. Further, the Members' obligations set forth in this Agreement are expressly limited by the provisions of Minnesota Statutes Chapter 466 and Minnesota Statutes section 471.59, and any other applicable law or regulation providing limitations, defenses or immunities to the Members and the Board. For purposes of determining total liability for tort damages, each Member and the Board are considered a single governmental unit and the total liability for all of the Members and the Board shall not exceed the limits on governmental liability for a single governmental unit as specified under Minnesota Statutes Section 466.04, Subd. 1, or as waived or extended by the Board or all Members under Minnesota Statutes Sections 466.06 or 471.981.

3. Indemnification. The Board shall be considered a separate and distinct government joint powers entity to which the Members have transferred all responsibility and control for actions taken pursuant to this Agreement. The Board shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes Chapter 466. Without limiting the application of Section 12.1, to the extent of any liability insurance carried by the Board and available for such purpose, and any tail coverage carried by the Board, the Board shall defend, indemnify and hold harmless each Member from any and all liability arising from or as a result of: (i) any accident, injury to or death of any person or loss or damage to tangible or intangible property that may be directly or indirectly caused by the acts or omissions of the Board; (ii) any act of the Board in the observation or performance of any of its responsibilities, or any failure by the Board to perform any such responsibilities; and/or (iii) any actions or inactions of Members taken as a result of their membership on the Board. Nothing in this Agreement shall be construed to provide liability coverage or indemnification to an officer, employee, or volunteer of any Member for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

4. Insurance. The Board shall provide for worker's compensation benefits for all CJN employees in the amount consistent with state statutes. The Board may also carry additional policies of insurance as it deems appropriate.

5. Uninsured Liability. If the Board incurs liability that is in excess of the insurance obtained by the Board, or incurs liability that is outside the coverage of such insurance, the liability shall be distributed among the Members on the basis of each Member's proportional Membership Fee in the year in which the action or inaction giving rise to the liability occurred.

## ARTICLE 13: MISCELLANEOUS PROVISIONS

1. Amendments. This Agreement may be amended at any time and from time to time by agreement of all Members that have not previously withdrawn pursuant to Article 11.

2. Governing Law and Venue. The laws of the State of Minnesota govern all matters related to this Agreement, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Agreement must be in those courts located within Dakota County, State of Minnesota or U.S. District Court, District of Minnesota.

3. Counterparts. This Agreement may be executed by the Members in any number of counterparts.

[Signatures to Follow on Next Page]

**CITY OF SOUTH ST. PAUL**

By _____

Its _____

Date: _____

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Human Resources
**PREPARED BY:** Shelly Anderson
**AGENDA ITEM NUMBER:** 8.F.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Approve Employment Offer to D. Quade as Building Inspector/Code Enforcement

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve the hire of Derek Quade to the position of Building Inspector/Code Enforcement.

**OVERVIEW**
The 2026 Development Services budget includes funding for a new Building Inspector/Code Enforcement position, with an anticipated start date of May 2026 or later. An internal job posting for the position was issued on February 23, 2026, followed by an external job posting on March 3, 2026. Four applicants were selected for interviews and interviews were conducted on April 2, 2026.

The interview panel consisted of Joe Heimkes, Chief Building Official; Michael Healy, Planning and Zoning Manager; and Shelly Anderson, Assistant City Administrator/HR Director. Following the interview process, a conditional offer of employment was extended to Derek Quade.

Mr. Quade is currently employed as a Building Inspector with the City of Woodbury. Prior to that, he served as a Building Inspector for the City of White Bear Lake and as a Code Enforcement Officer for the City of South St. Paul. He brings extensive experience in both residential and commercial inspections and holds Certified Building Official (BO) and International Code Council (ICC) Residential Inspector B1 certifications.

The Building Inspector/Code Enforcement position falls within the AFSCME bargaining unit; therefore, terms and conditions of employment are governed by the collective bargaining agreement between the City and the union.

Staff recommends approval of the hire of Derek Quade to the position of Building Inspector/Code Enforcement. Based on his experience and current certifications, staff recommends placing Mr. Quade at Step 5.5 of the Building Inspector/Code Enforcement pay range, at a rate of $42.77 per hour. In addition, based on his years of public service, he will accrue vacation at the rate of 120 hours annually. All other terms and conditions of employment will be consistent with the collective bargaining unit.

**SOURCE OF FUNDS**
Development Services Budget

**ATTACHMENTS**
1. Application_Quade, D

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Police
**PREPARED BY:** Brian Wicke
**AGENDA ITEM NUMBER:** 8.G.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Conditional Employment Offer - Police Officer

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Motion to appoint Hunter Fox as a probationary entry level police officer effective on, or after July 20th, 2026, at a starting salary as outlined in the current LELS contract, contingent upon successful completion of a background investigation, physical examination, psychological, evaluation and obtaining peace officer licensing eligibility.

**OVERVIEW**
As part of the 2026 Police Protection Budget, with the inclusion of federal funding, the authorized staffing level for the police department is set at thirty-seven sworn officers. Staff have been working to identify qualified applicants as we are currently staffed at thirty-five, three of which are currently in field training.

During December 2025, the department facilitated a traditional entry level testing process for the position of police officer, with an eligible register established during the February 2nd, 2026 regular meeting of the Civil Service Commission. On April 14th, 2026, the Civil Service Commission certified the top eligible applicants available for appointment.

Hunter Fox is currently employed by the City of South St. Paul as a Community Service Officer and is in the final stages of his law enforcement education and training at Hennepin Technical College, with an anticipated graduation date later this summer.

Alex Howard is currently employed by the State of Minnesota Department of Corrections and intends to complete his peace officer education and training if offered the opportunity to do so through the ICPOET program.

Christopher Smith is currently employed by the State of Minnesota Department of Transportation and intends to complete his peace officer education and training if offered the opportunity to do so through the ICPOET program.

Police Department staff have reviewed the application, testing material, and preliminary background information and recommend Hunter Fox be given a conditional employment offer as

a probationary police officer effective on, or after July 20th, 2026, contingent upon successful completion of a background investigation, physical examination, psychological examination, and obtaining peace officer licensing eligibility.

**SOURCE OF FUNDS**
2026 Police Protection Budget

**ATTACHMENTS**
1. 2025-3 FINAL Eligible Register as of 20260202 - COMBINED
2. Officer Certification
3. Hunter Fox - Redacted
4. Alex Howard - Redacted
5. Christopher Smith - Redacted

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Engineering
**PREPARED BY:** Kelsey Gelhar
**AGENDA ITEM NUMBER:** 8.H.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Approve Proposal for Construction Materials Testing - Marie Avenue Reconstruction Project Phase 2

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve a proposal with WSB in the amount of $23,470.00 to perform construction materials testing for the Marie Avenue Reconstruction Project Phase 2 (Project No. 2025-01)

**OVERVIEW**
McNamara Contracting Inc. was awarded a construction contract for the Marie Avenue Reconstruction Project Phase 2 on April 6th, 2026. To comply with State Aid requirements, construction materials testing is necessary. Staff sent a request for quotes to three qualified firms that provide this service. We received three quotes, and the lowest quote was submitted by WSB. Below is a summary of the quotes:

| COMPANY | QUOTE |
|---|---|
| WSB | $23,470.00 |
| Braun Intertec | $27,982.00 |
| American Engineering Testing | $34,207.00 |

Staff recommends that the Council approve the proposal from WSB in the amount of $23,470.00.

**SOURCE OF FUNDS**
This project is funded by Municipal State Aid, Infrastructure Fund, Water Utility, Storm Sewer Utility, Sanitary Sewer Utility, and Special Assessments.

**ATTACHMENTS**
None

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Engineering
**PREPARED BY:** Kelsey Gelhar
**AGENDA ITEM NUMBER:** 8.I.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Approve Proposal for Construction Support Services - Marie Avenue Reconstruction Project Phase 2

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve a proposal with Bolton & Menk, Inc. in the amount of $67,175.00 for construction support services for the Marie Avenue Reconstruction Project Phase 2 (Project 2025-01)

**OVERVIEW**
A construction contract for the Marie Avenue Reconstruction Project Phase 2 was awarded to McNamara Contracting Inc during the City Council meeting on April 6, 2026. Although the city staff will handle most of the construction inspection and administration in-house, we will need a consultant to assist with construction staking and support for various administration items.

Staff recommends that the Council approve a proposal with Bolton & Menk, Inc. in the amount of $67,175.00. Bolton & Menk, Inc. assisted with the design of the project and provided the design and details for specialty items, such as street lighting.

**SOURCE OF FUNDS**
This project is funded by Municipal State Aid, Infrastructure Fund, Water Utility, Storm Sewer Utility, Sanitary Sewer Utility, and Special Assessments.

**ATTACHMENTS**
1. BMI - Marie Avenue Phase 2 Construction 04132026

BOLTON & MENK
Real People. Real Solutions.

7533 Sunwood Drive NW
Suite 206
Ramsey, MN 55303-5119

Ph: (763) 433-2851
Fax: (763) 427-0833
Bolton-Menk.com

April 13, 2026

Kelsey Gelhar, PE
City Engineer
City of South St. Paul
125 3rd Avenue North
South St. Paul, MN 55075

RE: Proposal for Construction Assistance for Marie Avenue Phase 2 Improvements

Dear Ms. Gelhar:

The City of South St. Paul is preparing to implement Phase 2 of the Marie Avenue improvements between 9th Avenue and 15th Avenue.

## SCOPE

Project scope assumptions used in creating this fee proposal include the following:

- **Construction Staking** of the improvements will consist of the following tasks:
  - Planning, scheduling, and QA/QC related tasks,
  - Re-establishing Control,
  - Staking Right-of-Way,
  - Staking of watermain and storm sewer,
  - Staking curb & gutter,
  - Setting blue tops, and
  - Performing an as-built survey.

  We have included a spreadsheet depicting the proposed surveying tasks, hours and fees for review.

- **Construction Engineering** will occur as needed throughout the duration of construction. Tasks could include the following:
  - Attendance at the Pre-Construction Conference,
  - Attendance at select weekly construction meetings,
  - Plan interpretations, clarifications and revisions,
  - Intermittent site inspections for items related to street lights, and
  - Assistance with pay applications and/or other administrative tasks, as needed.

  The number of hours required for this task are unknown and will depend upon construction activities. We recommend establishing a budget of $20,000 for this task that can be used by City

Bolton & Menk is an equal opportunity employer.

staff as needed throughout the duration of construction. No time will be invoiced unless services are requested by City staff.

## FEES

Our proposed fees are as follows:

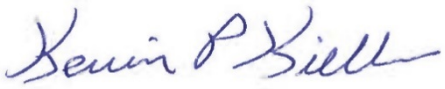
| Task | Fees |
|---|---|
| Construction Staking | $ 47,175.00 |
| Construction Engineering (Budget Amount) | $ 20,000.00 |
| Total | $ 67,175.00 |

Based on our understanding of the improvements, we recommend setting a not-to-exceed budget of $67,175 for the project.

If there are any questions related to this proposal, please call me at (651) 968-7760.

Sincerely,

**Bolton & Menk, Inc.**



**Kevin P. Kielb, P.E.**
Principal Engineer

ATTACHMENT: Survey Related Spreadsheet

**City of South St. Paul**
**Marie Avenue Phase 2**
**Construction Staking**
**Fee Estimate**

BOLTON & MENK
Real People. Real Solutions.

| | PROJECT WORK TASK | LICENSED SURVEYOR (HOURS) | TECHNICIAN (HOURS) | SURVEY CREW (HOURS) | TOTALS |
|---|---|---|---|---|---|
| | | | | | |
| **CONSTRUCTION STAKING** | | | | | |
| - | **PLANNING AND SCHEDULING** | 12 | | | 12 |
| - | **PROJECT SETUP** | 1 | | | 1 |
| - | **CONTROL** | 1 | | 12 | 13 |
| - | **QA/QC** | | | 6 | 6 |
| | **RIGHT OF WAY (By City)** | | 0 | 0 | 0 |
| | **BLUE TOPS** | | 1 | 22 | 23 |
| | **WATERMAIN (~2600ft) (6 hydrants)** | | 5 | 28 | 33 |
| | **STORM (32 Structures)** | | 4 | 26 | 30 |
| | **SIDEWALK (Not including Alt 1)** | | 2 | 16 | 18 |
| | **SIDEWALK FOR ALT 1** | | 1 | 5 | 6 |
| | **CURB (~4800ft, single sided)(24 Quadrants, 120 Sticks)** | | 8 | 58 | 66 |
| | **STRIPING (By City)** | | 0 | 0 | 0 |
| | | | | | |
| | | | | | |
| **ASBUILT** | | | | | |
| - | **PLANNING AND SCHEDULING** | 2 | | | 2 |
| - | **SHOOTING RIMS (Completed by City)** | | | | 0 |
| - | **INVENTORIES Completed by City)** | | | | 0 |
| - | **LEVEL LOOP** | | 4 | 22 | 26 |
| | | | | | |
| | | | | | |
| | | | | | |
| | **TOTAL HOURS** | 16 | 25 | 195 | 236 |
| | **HOURLY RATE** | $215.00 | $166.00 | $203.00 | |
| | **TOTAL PROJECT SURVEY COST** | $3,440.00 | $4,150.00 | $39,585.00 | **$47,175.00** |

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Engineering
**PREPARED BY:** Kelsey Gelhar
**AGENDA ITEM NUMBER:** 8.J.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Final Payment for the Well No. 3 Water Treatment Plant (City Project No. 2023-011)

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Motion to approve Final Payment to Municipal Builders Inc for the Well No. 3 Water Treatment Plant Project (City Project No. 2023-011).

**OVERVIEW**
Enclosed is the final payment for the Well No. 3 Water Treatment Plant Project (City Project No. 2023-011). The contractor for the project was Municipal Builders Inc. The amount of this final payment is $43,128.64, bringing the total project cost to $8,706,939.13. The project was successfully constructed, all punch list items have been completed, and all close-out documents have been received and reviewed. Work to repair the generator is being handled through insurance and does not impact the final payment of the project.

Staff recommends the City Council consider approving the final payment to Municipal Builders Inc in the amount of $43,128.64.

**SOURCE OF FUNDS**
This project was funded by the Minnesota Public Facilities Authority's Drinking Water Revolving Fund Loan.

**ATTACHMENTS**
1. Project 2023-11 - Pay App 27 - FINAL

April 13, 2026

RE: Transmittal of Contractor's Payment Application No. 27
Well No. 3 Water Treatment Plant
City of South St. Paul
South St. Paul, Minnesota
City Project CIP WS-21-1
SEH No. SSTPA 167313.07.73

Kelsey Gelhar, PE, City Engineer
City of South St. Paul
125 3rd Avenue North
South St. Paul, MN 55075

Dear Kelsey:

Transmitted herewith is Payment Application No. 27 from Municipal Builders, Inc. (MBI) for the Well No. 3 Water Treatment Plant project. The reported total sum of work completed to date is $8,706,939.13. This sum covers O&M manuals and work completed in previous pay periods. From this total sum of work $0.00 for retainage is withheld as well as the previously paid sum of $8,663,810.49, so the amount of the request for this Payment Application No. 27 is $43,128.64. We have reviewed this request for payment, and it is our opinion that value stated is appropriate. As such, we are recommending payment be made in the amount of $43,128.64. This is the final application for payment.

If, upon review of the transmitted documents, you agree with our findings, please process the payment application in due course of the City's regular business by signing the payment application document and issuing a check to MBI in the amount of $43,128.64 along with a signed copy of the payment application. Please also send a copy to our office, while keeping one for your records.

If you do not agree with our recommendation for payment or wish to discuss the pay application in any detail, please do not hesitate to call me at 248.962.8230.

Respectfully submitted,

SHORT, ELLIOTT, HENDRICKSON, INC.

Andrew Knapp, PE
Engineer III - Water

cc: Miles Jensen

**CONTRACTOR'S REQUEST FOR PAYMENT**

WELL NO. 3 WATER TREATMENT PLANT
CITY OF SOUTH ST. PAUL
SOUTH ST. PAUL, MINNESOTA
CITY PROJECT CIP WS-21-1
SEH FILE NO. 167313.07.73

Payment No.: 27 FINAL For Period: February 1, 2026 - March 17, 2026 Date: 04/13/26

SUMMARY

| | | | | |
|---|---|---|---|---|
| 1 | Original Contract Amount | | | $ 8,094,000.00 |
| 2 | Change Order - Addition | $ 502,354.10 | | |
| 3 | Change Order - Deduction | $ 23,336.54 | | |
| 4 | Revised Contract Amount | | | $ 8,573,017.56 |
| 5 | Value Completed to Date | | | $ 8,706,939.13 |
| 6 | Material on Hand | | | $ 0.00 |
| 7 | Amount Earned | | | $ 8,706,939.13 |
| 8 | Less Retainage LS | | | $ 0.00 |
| 9 | Subtotal | | | $ 8,706,939.13 |
| 10 | Less Amount Paid Previously | | | $ 8,663,810.49 |
| 11 | Liquidated Damages | | | $ 0.00 |
| 12 | AMOUNT DUE THIS REQUEST FOR PAYMENT NO. | 27 | | $ 43,128.64 |

Recommended for Approval by:
**SEH**

Date:
4/13/2026

Approved by Owner:
**CITY OF SOUTH ST PAUL**

Date:
4/15/2026

Approved by Contractor:
**MUNICIPAL BUILDERS, INC**

Date:
04/16/26

Approved by Owner:
**CITY OF SOUTH ST PAUL**

Date:

Contractor:Municipal Builders, Inc.
Eng: SEH
Owner: City of South St. Paul, MN
Project: Well#3 Water Treatment Plant

APPLICATION FOR PAYMENT SCHEDULE

PART 1 - UNIT PRICES

APPLICATION #: 26
Period: December 1, 2025 - February 1, 2026

| A | B | C | D | E | F | G | H | I | J | K | % | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ITEM N0 | DESCRIPTION OF WORK | UNIT | QUANTITY | UNIT PRICE | SCHEDULED VALUE | WORK COMPLETED (FROM PREVIOUS APPLCATION) UNITS INSTALLED PREVIOUSLY | WORK COMPLETED (FROM PREVIOUS APPLCATION) VALUE COMPLETED PREVIOUSLY | WORK COMPLETED (THIS APPLICATION) UNITS INSTALLED | WORK COMPLETED (THIS APPLICATION) VALUE COMPLETED | TOTAL COMPLETED & STORED TO DATE (H+J) | % COMPLETE (K/F) | BALANCE TO FINISH VALUE (F-K) | RETAINAGE (0.05%K) |
| 1 | **PART 1 - UNIT PRICES** | | | | | | | | | | | | |
| 2 | MOBILIZATION | LS | 1 | $ 400,000.00 | $ 400,000.00 | 1.00 | $ 400,000.00 | | $ - | $ 400,000.00 | 100.00% | $ - | $ - |
| 3 | TRAFFIC CONTROL | LS | 1 | $ 3,850.00 | $ 3,850.00 | 1.00 | $ 3,850.00 | | $ - | $ 3,850.00 | 100.00% | $ - | $ - |
| 4 | EROSION CONTROL | LS | 1 | $ 19,895.00 | $ 19,895.00 | 0.95 | $ 18,900.25 | | $ - | $ 18,900.25 | 95.00% | $ 994.75 | $ - |
| 5 | CLEARING AND GRUBBING | ACRE | 1 | $ 23,180.00 | $ 23,180.00 | 1.00 | $ 23,180.00 | | $ - | $ 23,180.00 | 100.00% | $ - | $ - |
| 6 | SALVAGE AND REINSTALL SIGN | EA | 13 | $ 175.00 | $ 2,275.00 | 6.50 | $ 1,137.50 | | $ - | $ 1,137.50 | 50.00% | $ 1,137.50 | $ - |
| 7 | REMOVE SEWER PIPE (SANITARY) | LF | 50 | $ 30.00 | $ 1,500.00 | 65.00 | $ 1,950.00 | | $ - | $ 1,950.00 | 130.00% | $ (450.00) | $ - |
| 8 | REMOVE WATER MAIN | LF | 450 | $ 9.20 | $ 4,140.00 | 450.00 | $ 4,140.00 | | $ - | $ 4,140.00 | 100.00% | $ - | $ - |
| 9 | REMOVE SEWER PIPE (STORM) | LF | 180 | $ 232.00 | $ 41,760.00 | 374.00 | $ 86,768.00 | | $ - | $ 86,768.00 | 207.78% | $ (45,008.00) | $ - |
| 10 | REMOVE MANHOLE | EA | 3 | $ 530.00 | $ 1,590.00 | 7.00 | $ 3,710.00 | | $ - | $ 3,710.00 | 233.33% | $ (2,120.00) | $ - |
| 11 | REMOVE GATE VALVE AND BOX | EA | 2 | $ 60.00 | $ 120.00 | 5.00 | $ 300.00 | | $ - | $ 300.00 | 250.00% | $ (180.00) | $ - |
| 12 | REMOVE GRAVEL | CY | 150 | $ 0.01 | $ 1.50 | | $ - | | $ - | $ - | 0.00% | $ 1.50 | $ - |
| 13 | REMOVE CURB AND GUTTER | LF | 190 | $ 3.50 | $ 665.00 | 194.00 | $ 679.00 | | $ - | $ 679.00 | 102.11% | $ (14.00) | $ - |
| 14 | REMOVE CHAIN LINK FENCE AND GATE | LF | 720 | $ 5.00 | $ 3,600.00 | 251.00 | $ 1,255.00 | | $ - | $ 1,255.00 | 34.86% | $ 2,345.00 | $ - |
| 15 | SAWING BITUMINOUS PAVEMENT (FULL DEPTH) | LF | 250 | $ 4.50 | $ 1,125.00 | 203.00 | $ 913.50 | | $ - | $ 913.50 | 81.20% | $ 211.50 | $ - |
| 16 | REMOVE BITUMINOUS PAVEMENT | SY | 410 | $ 2.75 | $ 1,127.50 | 655.00 | $ 1,801.25 | | $ - | $ 1,801.25 | 159.76% | $ (673.75) | $ - |
| 17 | SAWING CONCRETE PAVEMENT (FULL DEPTH) | LF | 40 | $ 4.90 | $ 196.00 | 13.00 | $ 63.70 | | $ - | $ 63.70 | 32.50% | $ 132.30 | $ - |
| 18 | REMOVE CONCRETE PAVEMENT | SY | 50 | $ 10.00 | $ 500.00 | 62.00 | $ 620.00 | | $ - | $ 620.00 | 124.00% | $ (120.00) | $ - |
| 19 | REMOVE CATCH BASIN GRATE | EACH | 2 | $ 290.00 | $ 580.00 | 2.00 | $ 580.00 | | $ - | $ 580.00 | 100.00% | $ - | $ - |
| 20 | EXCAVATION - COMMON (P) | CY | 3653 | $ 34.70 | $ 126,759.10 | 3653.00 | $ 126,759.10 | | $ - | $ 126,759.10 | 100.00% | $ - | $ - |
| 21 | EXCAVATION - SUBGRADE | CY | 160 | $ 9.00 | $ 1,440.00 | 160.00 | $ 1,440.00 | | $ - | $ 1,440.00 | 100.00% | $ - | $ - |
| 22 | HAUL AND DISPOSE - UNREGULATED FILL | TON | 6205 | $ 18.40 | $ 114,172.00 | 6205.00 | $ 114,172.00 | | $ - | $ 114,172.00 | 100.00% | $ - | $ - |
| 23 | TEMPORARY SHORING | LS | 1 | $ 458,000.00 | $ 458,000.00 | 1.00 | $ 480,408.45 | | | $ 480,408.45 | 104.89% | $ (22,408.45) | $ - |
| 24 | AGGREGATE BASE (CV) CLASS 5 | CY | 340 | $ 29.85 | $ 10,149.00 | 470.00 | $ 14,029.50 | | $ - | $ 14,029.50 | 138.24% | $ (3,880.50) | $ - |
| 25 | SELECT GRANULAR EMBANKMENT (CV) | CY | 680 | $ 34.90 | $ 23,732.00 | 680.00 | $ 23,732.00 | | $ - | $ 23,732.00 | 100.00% | $ - | $ - |
| 26 | TYPE SP 9.5 WEARING COURSE MIXTURE (2,B) | TON | 138 | $ 150.00 | $ 20,700.00 | 113.50 | $ 17,025.00 | | $ - | $ 17,025.00 | 82.25% | $ 3,675.00 | $ - |
| 27 | TYPE SP 12.5 NON WEARING COURSE MIXTURE (2,B) | TON | 230 | $ 150.00 | $ 34,500.00 | 234.00 | $ 35,100.00 | | $ - | $ 35,100.00 | 101.74% | $ (600.00) | $ - |
| 28 | SIDEWALK CONCRETE (3S52) | SF | 1662 | $ 20.50 | $ 34,071.00 | 2723.31 | $ 55,827.86 | | $ - | $ 55,827.86 | 163.86% | $ (21,756.86) | $ - |
| 29 | CONCRETE CURB AND GUTTER - B618 | LF | 220 | $ 52.00 | $ 11,440.00 | | $ - | | $ - | $ - | 0.00% | $ 11,440.00 | $ - |
| 30 | CONCRETE CURB AND GUTTER - B618 (TIP-OUT) | LF | 270 | $ 52.00 | $ 14,040.00 | 321.43 | $ 16,714.36 | | $ - | $ 16,714.36 | 119.05% | $ (2,674.36) | $ - |
| 31 | SURMOUNTABLE CURB AND GUTTER | LF | 60 | $ 52.00 | $ 3,120.00 | | $ - | | $ - | $ - | 0.00% | $ 3,120.00 | $ - |
| 32 | ADJUST FRAME & RING CASTING | EA | 1 | $ 500.00 | $ 500.00 | 1.00 | $ 500.00 | | $ - | $ 500.00 | 100.00% | $ - | $ - |
| 33 | RECONSTRUCT MANHOLE | EA | 1 | $ 7,475.00 | $ 7,475.00 | 2.00 | $ 14,950.00 | | $ - | $ 14,950.00 | 200.00% | $ (7,475.00) | $ - |
| 34 | CONNECT TO EXISTING WATER MAIN | EA | 3 | $ 3,030.00 | $ 9,090.00 | 4.00 | $ 12,120.00 | | $ - | $ 12,120.00 | 133.33% | $ (3,030.00) | $ - |
| 35 | 6" DIP CL-52 WATER MAIN | LF | 20 | $ 100.00 | $ 2,000.00 | 44.00 | $ 4,400.00 | | $ - | $ 4,400.00 | 220.00% | $ (2,400.00) | $ - |
| 36 | 8" DIP CL-52 WATER MAIN | LF | 230 | $ 98.70 | $ 22,701.00 | 220.00 | $ 21,714.00 | | $ - | $ 21,714.00 | 95.65% | $ 987.00 | $ - |
| 37 | 12" DIP CL-52 WATER MAIN | LF | 290 | $ 150.00 | $ 43,500.00 | 403.00 | $ 60,450.00 | | $ - | $ 60,450.00 | 138.97% | $ (16,950.00) | $ - |
| 38 | 8" GATE VALVE AND BOX | EA | 3 | $ 3,585.00 | $ 10,755.00 | 5.00 | $ 17,925.00 | | $ - | $ 17,925.00 | 166.67% | $ (7,170.00) | $ - |
| 39 | 12" GATE VALVE AND BOX | EA | 4 | $ 6,135.00 | $ 24,540.00 | 4.00 | $ 24,540.00 | | $ - | $ 24,540.00 | 100.00% | $ - | $ - |
| 40 | HYDRANT, INCL. 6" GATE VALVE AND BOX | EA | 2 | $ 9,225.00 | $ 18,450.00 | 3.00 | $ 27,675.00 | | $ - | $ 27,675.00 | 150.00% | $ (9,225.00) | $ - |
| 41 | DIP FITTINGS | LB | 6450 | $ 12.00 | $ 77,400.00 | 7303.00 | $ 87,636.00 | | $ - | $ 87,636.00 | 113.22% | $ (10,236.00) | $ - |
| 42 | FURNISH AND INSTALL SANITARY MH CASTING NEENAH 17 | EA | 2 | $ 1,090.00 | $ 2,180.00 | 2.00 | $ 2,180.00 | | $ - | $ 2,180.00 | 100.00% | $ - | $ - |
| 43 | CONSTRUCT SANITARY MH | EA | 2 | $ 17,193.00 | $ 34,386.00 | 2.66 | $ 45,733.38 | | $ - | $ 45,733.38 | 133.00% | $ (11,347.38) | $ - |
| 44 | 4" PVC SANITARY SERVICE | LF | 60 | $ 73.00 | $ 4,380.00 | 60.13 | $ 4,389.49 | | $ - | $ 4,389.49 | 100.22% | $ (9.49) | $ - |
| 45 | 6" PVC SANITARY SERVICE | LF | 13 | $ 50.81 | $ 660.53 | 23.64 | $ 1,201.15 | | $ - | $ 1,201.15 | 181.85% | $ (540.62) | $ - |
| 46 | 10" PVC - SDR-26 | LF | 28 | $ 97.55 | $ 2,731.40 | | $ - | | $ - | $ - | 0.00% | $ 2,731.40 | $ - |
| 47 | 18" RCP SANITARY SEWER, CLASS 5 | LF | 24 | $ 122.00 | $ 2,928.00 | 24.00 | $ 2,928.00 | | $ - | $ 2,928.00 | 100.00% | $ - | $ - |
| 48 | FURNISH AND INSTALL STORM MH CASTING NEENAH R-17 | EA | 4 | $ 860.00 | $ 3,440.00 | 5.00 | $ 4,300.00 | | $ - | $ 4,300.00 | 125.00% | $ (860.00) | $ - |
| 49 | FURNISH AND INSTALL 4" DRAINTILE | LF | 250 | $ 31.00 | $ 7,750.00 | 250.00 | $ 7,750.00 | | $ - | $ 7,750.00 | 100.00% | $ - | $ - |
| 50 | 4" PVC STORM SERVICE | LF | 60 | $ 35.00 | $ 2,100.00 | 64.00 | $ 2,240.00 | | $ - | $ 2,240.00 | 106.67% | $ (140.00) | $ - |
| 51 | CONSTRUCT SURGE BASIN | EA | 1 | $ 3,000.00 | $ 3,000.00 | 1.00 | $ 3,000.00 | | $ - | $ 3,000.00 | 100.00% | $ - | $ - |
| 52 | CONSTRUCT 48" STORM MH | EA | 2 | $ 5,375.00 | $ 10,750.00 | 3.00 | $ 16,125.00 | | $ - | $ 16,125.00 | 150.00% | $ (5,375.00) | $ - |
| 53 | CONSTRUCT 108" STORM MH | EA | 2 | $ 39,200.00 | $ 78,400.00 | 3.00 | $ 117,600.00 | | $ - | $ 117,600.00 | 150.00% | $ (39,200.00) | $ - |
| 54 | 12" RCP STORM SEWER, CLASS 5 | LF | 30 | $ 81.00 | $ 2,430.00 | 32.00 | $ 2,592.00 | | $ - | $ 2,592.00 | 106.67% | $ (162.00) | $ - |
| 55 | 15" RCP STORM SEWER, CLASS 5 | LF | 50 | $ 93.00 | $ 4,650.00 | 32.00 | $ 2,976.00 | | $ - | $ 2,976.00 | 64.00% | $ 1,674.00 | $ - |
| 56 | 72" RCP STORM SEWER, CLASS 5 | LF | 160 | $ 1,200.00 | $ 192,000.00 | 136.00 | $ 163,200.00 | | $ - | $ 163,200.00 | 85.00% | $ 28,800.00 | $ - |
| 57 | DRY SWALE UNDER DRAIN | LS | 1 | $ 1,800.00 | $ 1,800.00 | 1.00 | $ 1,800.00 | | $ - | $ 1,800.00 | 100.00% | $ - | $ - |
| 58 | STRIPING | LS | 1 | $ 3,500.00 | $ 3,500.00 | 1.00 | $ 3,500.00 | | $ - | $ 3,500.00 | 100.00% | $ - | $ - |
| 59 | RESTORATION | LS | 1 | $ 40,000.00 | $ 40,000.00 | 1.00 | $ 40,000.00 | | $ - | $ 40,000.00 | 100.00% | $ - | $ - |
| 60 | STREET SWEEPING (WITH PICKUP BROOM) | HR | 20 | $ 120.00 | $ 2,400.00 | 21.00 | $ 2,520.00 | | $ - | $ 2,520.00 | 105.00% | $ (120.00) | $ - |
| 61 | 8" CONCRETE DRIVEWAY PAVEMENT | SY | 60 | $ 148.50 | $ 8,910.00 | 60.00 | $ 8,910.00 | | $ - | $ 8,910.00 | 100.00% | $ - | $ - |
| 62 | **TOTAL PART 1 - UNIT PRICES** | | | | **$ 1,983,035.03** | | **$ 2,139,911.48** | | **$ -** | **$ 2,139,911.48** | **107.91%** | **$ (156,876.45)** | $ - |

Contractor:Municipal Builders, Inc.
Eng: SEH
Owner: City of South St. Paul, MN
Project: Well#3 Water Treatment Plant

# APPLICATION FOR PAYMENT SCHEDULE

PART 2

APPLICATION # 26
Period: 12/1/2025 to 2/4/26

| A | B | C | D | E | F | G | % | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM N0 | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK (FROM PREVIOUS APPLCATION) | COMPLETED (THIS APPLICATION) | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED & STORED TO DATE (D+E+F) | % COMPLETE (G/C) | BALANCE TO FINISH | RETAINAGE |
| 1 | **PART 1 - UNIT PRICES (From Previous Page)** | | | | | | | | |
| 2 | **TOTAL PART - 1 UNIT PRICES** | **$ 1,983,035.03** | **$ 2,139,911.48** | **$ -** | | **$ 2,139,911.48** | **107.91%** | **$ (156,876.45)** | **$ -** |
| 3 | | | | | | | | | |
| 4 | **PART 2 - LUMP SUM** | | | | | | | | |
| 5 | Bonds & Insurances | $ 109,000.00 | $ 109,000.00 | | | $ 109,000.00 | 100.00% | $ - | $ - |
| 6 | Field Office | $ 35,000.00 | $ 35,000.00 | | | $ 35,000.00 | 100.00% | $ - | $ - |
| 7 | Fencing | $ 58,000.00 | $ 58,000.00 | | | $ 58,000.00 | 100.00% | $ - | $ - |
| 8 | Backwash Tank Base Slab | $ 188,000.00 | $ 188,000.00 | | | $ 188,000.00 | 100.00% | $ - | $ - |
| 9 | Backwash Tank Walls | $ 243,000.00 | $ 243,000.00 | | | $ 243,000.00 | 100.00% | $ - | $ - |
| 10 | Backwash Tank Cover Slab | $ 197,000.00 | $ 197,000.00 | | | $ 197,000.00 | 100.00% | $ - | $ - |
| 11 | Wing Wall | $ 202,000.00 | $ 202,000.00 | | | $ 202,000.00 | 100.00% | $ - | $ - |
| 12 | Footings | $ 97,000.00 | $ 97,000.00 | | | $ 97,000.00 | 100.00% | $ - | $ - |
| 13 | Foundation Walls | $ 258,000.00 | $ 258,000.00 | | | $ 258,000.00 | 100.00% | $ - | $ - |
| 14 | Floor Slabs | $ 118,000.00 | $ 118,000.00 | | | $ 118,000.00 | 100.00% | $ - | $ - |
| 15 | Precast | $ 103,385.97 | $ 103,385.97 | | | $ 103,385.97 | 100.00% | $ - | $ - |
| 16 | Masonry | $ 587,540.00 | $ 587,540.00 | | | $ 587,540.00 | 100.00% | $ - | $ - |
| 17 | Misc Metals/ Alum Rail | $ 153,000.00 | $ 153,000.00 | | | $ 153,000.00 | 100.00% | $ - | $ - |
| 18 | Misc Carpentry / Well 3 | $ 75,250.00 | $ 75,250.00 | | | $ 75,250.00 | 100.00% | $ - | $ - |
| 19 | Wood Casework | $ 13,060.00 | $ 13,060.00 | | | $ 13,060.00 | 100.00% | $ - | $ - |
| 20 | EPDM Roofing / SM FLAS | $ 100,000.00 | $ 100,000.00 | | | $ 100,000.00 | 100.00% | $ - | $ - |
| 21 | Metal Roof / Soffit | $ 41,000.00 | $ 41,000.00 | | | $ 41,000.00 | 100.00% | $ - | $ - |
| 22 | Caulking | $ 28,510.00 | $ 28,510.00 | | | $ 28,510.00 | 100.00% | $ - | $ - |
| 23 | Waterproofing | $ 56,435.00 | $ 56,435.00 | | | $ 56,435.00 | 100.00% | $ - | $ - |
| 24 | HM Doors/Frames/Hardware | $ 96,000.00 | $ 96,000.00 | | | $ 96,000.00 | 100.00% | $ - | $ - |
| 25 | Windows | $ 53,604.00 | $ 53,604.00 | | | $ 53,604.00 | 100.00% | $ - | $ - |
| 26 | Painting | $ 199,897.00 | $ 199,897.00 | | | $ 199,897.00 | 100.00% | $ - | $ - |
| 27 | Acoustical Ceilings | $ 5,300.00 | $ 5,300.00 | | | $ 5,300.00 | 100.00% | $ - | $ - |
| 28 | Building Letters & Signs | $ 8,500.00 | $ 8,500.00 | | | $ 8,500.00 | 100.00% | $ - | $ - |
| 29 | Extinguishers | $ 1,500.00 | $ 1,500.00 | | | $ 1,500.00 | 100.00% | $ - | $ - |
| 30 | Toilet Accessories | $ 1,600.00 | $ 1,600.00 | | | $ 1,600.00 | 100.00% | $ - | $ - |
| 31 | Filter Equipment and O&M Manuals | $ 780,000.00 | $ 780,000.00 | | | $ 780,000.00 | 100.00% | $ - | $ - |
| 32 | Filter Installation and Start-Up | $ 35,000.00 | $ 35,000.00 | | | $ 35,000.00 | 100.00% | $ - | $ - |
| 33 | Chem Feed and O&M Manuals | $ 259,500.00 | $ 259,500.00 | | | $ 259,500.00 | 100.00% | $ - | $ - |
| 34 | Chem Feed Installation and Start-Up | $ 15,000.00 | $ 15,000.00 | | | $ 15,000.00 | 100.00% | $ - | $ - |
| 35 | Submersible Pumps and O&M Manuals and Start-Up | $ 12,000.00 | $ 9,990.00 | $ 2,010.00 | | $ 12,000.00 | 100.00% | $ - | $ - |
| 36 | Interior Process Piping - DIP | $ 225,000.00 | $ 225,000.00 | | | $ 225,000.00 | 100.00% | $ - | $ - |
| 37 | Process valves, O&M Manuals and Start-Up | $ 75,000.00 | $ 75,000.00 | | | $ 75,000.00 | 100.00% | $ - | $ - |
| 38 | Fire Sprinkler | $ 19,633.00 | $ 19,633.00 | | | $ 19,633.00 | 100.00% | $ - | $ - |
| 39 | Air Compressor, Piping, O&M Manuals and Start-Up | $ 17,500.00 | $ 15,000.00 | $ 2,500.00 | | $ 17,500.00 | 100.00% | $ - | $ - |
| 40 | General Conditions - HVAC | $ 8,000.00 | $ 8,000.00 | | | $ 8,000.00 | 100.00% | $ - | $ - |
| 41 | Testing & Balancing | $ 3,800.00 | $ 3,800.00 | | | $ 3,800.00 | 100.00% | $ - | $ - |
| 42 | Ductwork Insulation | $ 7,500.00 | $ 7,500.00 | | | $ 7,500.00 | 100.00% | $ - | $ - |
| 43 | HVAC Controls, O&M Manuals and Start-Up | $ 28,500.00 | $ 28,500.00 | | | $ 28,500.00 | 100.00% | $ - | $ - |
| 44 | Refrigeration Piping - L | $ 10,000.00 | $ 10,000.00 | | | $ 10,000.00 | 100.00% | $ - | $ - |
| 45 | Refrigeration Piping - M | $ 10,800.00 | $ 10,800.00 | | | $ 10,800.00 | 100.00% | $ - | $ - |
| 46 | Ductwork - L | $ 32,000.00 | $ 32,000.00 | | | $ 32,000.00 | 100.00% | $ - | $ - |
| 47 | Ductwork - M | $ 65,800.00 | $ 65,800.00 | | | $ 65,800.00 | 100.00% | $ - | $ - |
| 48 | HVAC Equipment with O&M Manuals - L | $ 17,100.00 | $ 17,100.00 | | | $ 17,100.00 | 100.00% | $ - | $ - |
| 49 | HVAC Equipment and Start-Up - M | $ 54,900.00 | $ 54,900.00 | | | $ 54,900.00 | 100.00% | $ - | $ - |
| 50 | Dehumidification Unit with O&M Manuals- L | $ 2,600.00 | | $ 2,600.00 | | $ 2,600.00 | 100.00% | $ - | $ - |
| 51 | Dehumidification Unit and Start-Up - M | $ 78,900.00 | $ 77,555.00 | $ 1,345.00 | | $ 78,900.00 | 100.00% | $ - | $ - |
| 52 | Below Grade W & V - M | $ 82,500.00 | $ 82,500.00 | | $ - | $ 82,500.00 | 100.00% | $ - | $ - |
| 53 | Below Grade W & V - L | $ 17,800.00 | $ 17,800.00 | | | $ 17,800.00 | 100.00% | $ - | $ - |
| 54 | Above Grade W & V - M | $ 6,500.00 | $ 6,500.00 | | | $ 6,500.00 | 100.00% | $ - | $ - |
| 55 | Above Grade W & V - L | $ 7,020.00 | $ 7,020.00 | | | $ 7,020.00 | 100.00% | $ - | $ - |
| 56 | Water Piping - M | $ 18,500.00 | $ 18,500.00 | | | $ 18,500.00 | 100.00% | $ - | $ - |
| 57 | Water Piping - L | $ 18,250.00 | $ 18,250.00 | | | $ 18,250.00 | 100.00% | $ - | $ - |
| 58 | Roof Drain Piping - M | $ 15,225.00 | $ 15,225.00 | | | $ 15,225.00 | 100.00% | $ - | $ - |

Pages 3 and 4

Contractor:Municipal Builders, Inc.
Eng: SEH
Owner: City of South St. Paul, MN
Project: Well#3 Water Treatment Plant

# APPLICATION FOR PAYMENT SCHEDULE

PART 2

APPLICATION # 26
Period: 12/1/2025 to 2/4/26

| A | B | C | D | E | F | G | % | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM N0 | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK (FROM PREVIOUS APPLCATION) | COMPLETED (THIS APPLICATION) | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED & STORED TO DATE (D+E+F) | % COMPLETE (G/C) | BALANCE TO FINISH | RETAINAGE |
| 59 | Roof Drain Piping - M | $ 18,875.00 | $ 18,875.00 | | | $ 18,875.00 | 100.00% | $ - | $ - |
| 60 | Gas Piping - M | $ 5,950.00 | $ 5,950.00 | | | $ 5,950.00 | 100.00% | $ - | $ - |
| 61 | Gas Piping - L | $ 11,850.00 | $ 11,850.00 | | | $ 11,850.00 | 100.00% | $ - | $ - |
| 62 | Compressed Air - M | $ 18,875.00 | $ 18,875.00 | | | $ 18,875.00 | 100.00% | $ - | $ - |
| 63 | Compressed Air - L | $ 6,350.00 | $ 6,350.00 | | | $ 6,350.00 | 100.00% | $ - | $ - |
| 64 | Pipe Insulation | $ 28,745.00 | $ 28,745.00 | | | $ 28,745.00 | 100.00% | $ - | $ - |
| 65 | General Conditions - Plumbing | $ 12,410.00 | $ 12,410.00 | | | $ 12,410.00 | 100.00% | $ - | $ - |
| 66 | General Conditions - Electric PROV | $ 100,000.00 | $ 100,000.00 | | | $ 100,000.00 | 100.00% | $ - | $ - |
| 67 | Branch Power / Lights | $ 42,000.00 | $ 42,000.00 | | | $ 42,000.00 | 100.00% | $ - | $ - |
| 68 | Light Fixtures | $ 24,000.00 | $ 24,000.00 | | | $ 24,000.00 | 100.00% | $ - | $ - |
| 69 | Power Distribution Equipment and O&M Manuals | $ 108,000.00 | $ 108,000.00 | | | $ 108,000.00 | 100.00% | $ - | $ - |
| 70 | Power Distribution - L&M | $ 38,000.00 | $ 38,000.00 | | | $ 38,000.00 | 100.00% | $ - | $ - |
| 71 | Generator and O&M Manuals | $ 168,700.00 | $ 168,700.00 | | | $ 168,700.00 | 100.00% | $ - | $ - |
| 72 | Motor Control Equipment and O&M Manuals | $ 87,000.00 | $ 87,000.00 | | | $ 87,000.00 | 100.00% | $ - | $ - |
| 73 | Motor Control Equipment - L&M | $ 143,900.00 | $ 143,900.00 | | | $ 143,900.00 | 100.00% | $ - | $ - |
| 74 | Control Equipment Submittals | $ 50,400.00 | $ 50,400.00 | | | $ 50,400.00 | 100.00% | $ - | $ - |
| 75 | New Control Panels | $ 102,000.00 | $ 102,000.00 | | | $ 102,000.00 | 100.00% | $ - | $ - |
| 76 | Instruments and O&M Manuals | $ 91,000.00 | $ 91,000.00 | | | $ 91,000.00 | 100.00% | $ - | $ - |
| 77 | Electrical Start-Up and Commissioning | $ 55,000.00 | $ 55,000.00 | | | $ 55,000.00 | 100.00% | $ - | $ - |
| 78 | Fire Alarm and O&M Manuals | $ 14,000.00 | $ 14,000.00 | | | $ 14,000.00 | 100.00% | $ - | $ - |
| 79 | **TOTAL PART 2 - LUMP SUM** | **$ 6,080,964.97** | **$ 6,072,509.97** | **$ 8,455.00** | **$ -** | **$ 6,080,964.97** | **100.00%** | **$ -** | $ - |
| 80 | | | | | | | | | $ - |
| 81 | **ALLOWANCES** | | | | | | | | $ - |
| 82 | Computers and Hardware | $ 10,000.00 | $ - | $ - | $ - | $ - | 0.00% | $ 10,000.00 | $ - |
| 83 | Electric Service, Transformer and Gas Service | $ 20,000.00 | $ 7,045.12 | | $ - | $ 7,045.12 | 35.23% | $ 12,954.88 | $ - |
| 84 | **TOTAL ALLOWANCES** | **$ 30,000.00** | **$ 7,045.12** | **$ -** | **$ -** | **$ 7,045.12** | **23.48%** | **$ 22,954.88** | $ - |
| 85 | | | | | | | | | $ - |
| 86 | **TOTAL ORIGINAL CONTRACT** | **$ 8,094,000.00** | **$ 8,219,466.57** | **$ 8,455.00** | **$ -** | **$ 8,227,921.57** | **101.65%** | **$ (133,921.57)** | $ - |
| 87 | | | | | | | | | $ - |
| 88 | **CHANGE ORDER NO. 1 - ERW** | $ 106,178.10 | $ 106,178.10 | $ - | $ - | $ 106,178.10 | 100.00% | $ - | $ - |
| 89 | **CHANGE ORDER NO. 1 - Bypass Water Main** | $ 17,500.00 | $ 17,500.00 | $ - | $ - | $ 17,500.00 | 100.00% | $ - | $ - |
| 90 | **CHANGE ORDER NO. 1 - Dryden Excavation for topo** | $ 111,170.00 | $ 111,170.00 | $ - | $ - | $ 111,170.00 | 100.00% | $ - | $ - |
| 91 | **CHANGE ORDER NO. 1 - Concrete work** | $ 200,265.96 | $ 200,265.96 | | $ - | $ 200,265.96 | 100.00% | $ - | $ - |
| 92 | **CHANGE ORDER NO. 2 - Fill 72" pipe with Flowable Fill** | $ 22,685.00 | $ 22,685.00 | | $ - | $ 22,685.00 | 100.00% | $ - | $ - |
| 93 | **CHANGE ORDER NO. 2 - Changes to temp earth wall** | $ 31,211.00 | $ 31,211.00 | | $ - | $ 31,211.00 | 100.00% | $ - | $ - |
| 94 | **CHANGE ORDER NO. 3 - DEDUCTION** | $ 14,049.00 | $ 14,049.00 | | $ - | $ 14,049.00 | 100.00% | $ - | $ - |
| 95 | **CHANGE ORDER NO. 4 - DEDUCTION** | $ 3,961.18 | $ 3,961.18 | | $ - | $ 3,961.18 | 100.00% | $ - | $ - |
| 96 | **CHANGE ORDER NO. 5 - Addition** | $ 13,344.04 | $ 13,344.04 | | $ - | $ 13,344.04 | 100.00% | $ - | $ - |
| 97 | **CHANGE ORDER NO. 5 - Deduction** | $ 5,326.36 | $ 5,326.36 | $ - | $ - | $ 5,326.36 | 100.00% | $ - | $ - |
| 98 | **CHANGE ORDER NO. 6 - Addition** | $ - | $ - | $ - | $ - | $ - | #DIV/0! | $ - | $ - |
| 99 | **CHANGE ORDER NO. 6 - Deduction** | $ - | $ - | $ - | $ - | $ - | #DIV/0! | $ - | $ - |
| 100 | **CHANGE ORDER NO. 7 - Addition** | $ - | $ - | $ - | $ - | $ - | #DIV/0! | $ - | $ - |
| 101 | **CHANGE ORDER NO. 7 - Deduction** | $ - | $ - | $ - | $ - | $ - | #DIV/0! | $ - | $ - |
| 102 | | | | | | | | | $ - |
| 103 | **TOTAL CHANGE ORDERS - Additions** | $ 502,354.10 | $ 502,354.10 | $ - | $ - | $ 502,354.10 | 100.00% | $ - | $ - |
| 104 | **TOTAL CHANGE ORDERS - Deductions** | $ 23,336.54 | $ 23,336.54 | $ - | $ - | $ 23,336.54 | 100.00% | $ - | $ - |
| 105 | **TOTAL CHANGE ORDERS** | $ 479,017.56 | $ 479,017.56 | $ - | $ - | $ 479,017.56 | 100.00% | $ - | $ - |
| 106 | | | | | | | | | $ - |
| 107 | **PROJECT GRAND TOTALS** | **$ 8,573,017.56** | **$ 8,698,484.13** | **$ 8,455.00** | **$ -** | **$ 8,706,939.13** | **101.56%** | **$ (133,921.57)** | $ - |

Pages 3 and 4

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Parks & Recreation
**PREPARED BY:** Shannon Young
**AGENDA ITEM NUMBER:** 8.K.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Approval of Construction Manager at Risk (CMaR) agreement for the Northview Aquatics Project

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Adopt Resolution 2026-051 approving a Construction Manager at Risk (CMaR) agreement with Kraus-Anderson for pre-construction and construction services for the Northview Aquatics Center project.

**OVERVIEW**
The City is advancing plans for the development of the Northview Aquatics Center, a significant capital improvement project intended to enhance community recreation.
Based on successful use in similar projects, JLG Architects is recommending the Construction Manager at Risk (CMaR) delivery method. This approach allows the City to bring a construction manager on board early in the process to assist with bidding, cost control, and construction oversight.
Under this model, the CMaR functions similarly to a general contractor, managing subcontractor selection, overseeing the public bidding process, coordinating day-to-day construction activities, and ensuring the project stays on schedule and within budget. This is particularly important as the City does not have the internal capacity to manage a project of this size and complexity.
The CMaR method is widely used across the country and has been authorized for municipal use in Minnesota since 2023. Communities using this approach often see more competitive and transparent bidding, along with stronger cost control.
As part of the process, the selected CMaR will provide a Guaranteed Maximum Price (GMP), giving the City cost certainty before construction begins. Any cost savings identified during the project are typically shared with the City.
City staff and JLG Architects conducted a competitive RFQ/RFP process in early 2026 and interviewed four firms. The interview panel was very impressed by Kraus-Andersons proposal and qualifications. Additionally, they proposed the smallest construction fee of the four (1.8% of the total construction cost). Based on this process, Kraus-Anderson is recommended to serve as the City's Construction Manager at Risk.
If approved, Kraus-Anderson will manage the aquatics center construction project on behalf of the City, with construction performed by subcontractors under their supervision. The GMP will be brought back to the City Council for approval prior to construction.

The CMaR delivery method is recommended because it:

- Provides a Guaranteed Maximum Price (GMP) for cost certainty
- Allows early contractor involvement during design
- Improves project coordination and constructability
- Reduces risk of cost overruns and change orders
- Enhances schedule efficiency

**SOURCE OF FUNDS**

KA has quoted a $15,000 lump sum for all Preconstruction Services (estimating/value management, budgeting, scheduling and bidding). KA has quoted fees for the Construction Phase at 1.8% of construction costs plus standard hourly rates.

**ATTACHMENTS**

1. Resolution CMAR Agreement
2. A133-2019 - SSP Aquatics Contract Documents

CITY OF SOUTH ST. PAUL
DAKOTA COUNTY, MINNESOTA

**RESOLUTION NO. _2026-051_____**

**A RESOLUTION APPROVING A CONSTRUCTION MANAGER AT RISK (CMaR) AGREEMENT WITH KRAUS-ANDERSON FOR THE NORTHVIEW AQUATICS CENTER PROJECT**

**WHEREAS,** the City of South St. Paul is advancing plans for the development of the Northview Aquatics Center as a significant capital improvement project intended to enhance community recreation; and

**WHEREAS,** JLG Architects has recommended the use of the Construction Manager at Risk (CMaR) delivery method based on its successful use in similar projects; and

**WHEREAS,** the CMaR delivery method allows the City to engage a construction manager early in the design process to assist with bidding, cost estimating, scheduling, and construction oversight; and

**WHEREAS,** under the CMaR model, the construction manager functions similarly to a general contractor by managing subcontractor selection, overseeing the public bidding process, coordinating day-to-day construction activities, and ensuring the project remains on schedule and within budget; and

**WHEREAS,** the City does not have the internal capacity to manage a project of this size and complexity without the assistance of a construction manager; and

**WHEREAS,** the CMaR delivery method has been authorized for municipal use in Minnesota since 2023 and is widely used across the country to promote competitive and transparent bidding and improved cost control; and

**WHEREAS,** the selected Construction Manager at Risk will provide a Guaranteed Maximum Price (GMP) prior to construction, establishing cost certainty, with any cost savings typically shared with the City; and

**WHEREAS,** City staff and JLG Architects conducted a competitive RFQ/RFP process in early 2026 and interviewed four firms; and

**WHEREAS,** Kraus-Anderson was determined to be the most qualified firm based on its proposal, experience, and interview, and proposed the lowest construction fee of 1.8 percent of total construction costs; and

**WHEREAS,** Kraus-Anderson has proposed a lump sum fee of $15,000 for pre-construction services, including estimating, value management, budgeting, scheduling, and bidding, and construction phase services at 1.8 percent of construction costs plus standard hourly rates; and

**WHEREAS,** City staff recommends approval of a Construction Manager at Risk (CMaR) agreement with Kraus-Anderson for the Northview Aquatics Center project.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of South St. Paul, Minnesota, as follows:

1. Approval. The City Council hereby approves the Construction Manager at Risk (CMaR) agreement with Kraus-Anderson for pre-construction and construction services for the Northview Aquatics Center project.
2. Guaranteed Maximum Price. The Guaranteed Maximum Price (GMP) shall be presented to the City Council for approval prior to the commencement of construction.
3. Funding. Funding for pre-construction and construction services shall be provided through the Capital Programs Fund.

Adopted this 20th day of April 2026.

_____
City Clerk

# AIA® Document A133® – 2019

## *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

**AGREEMENT** made as of the 20th day of April in the year 2026
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

City of South St. Paul
125 Third Avenue N.
South St. Paul, MN 55075

and the Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

for the following Project:
*(Name, location, and detailed description)*

City of South St. Paul – Northview Aquatics Center
635 18th Avenue N
South St. Paul, MN 55075

The Architect:
*(Name, legal status, address, and other information)*

JLG Architects
710 S 2nd Street, 8th Floor
Minneapolis, MN 55401

The Owner and Construction Manager agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 INITIAL INFORMATION

**§ 1.1** This Agreement is based on the Initial Information set forth in this Section 1.1.
*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

**§ 1.1.1** The Owner's program for the Project, as described in Section 4.1.1:
*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

See Section 1.1.2

**§ 1.1.2** The Project's physical characteristics:
*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

The Project includes the demolition of an existing building, outdoor pool, and associated site elements. New construction will consist of a bathhouse building (including admissions, concessions, changing/restrooms, and pool mechanical spaces), outdoor leisure and lap pools (including zero-depth entry), slides and aquatic features, as well as associated site improvements (e.g., fencing, parking, and stormwater management).

**§ 1.1.3** The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:


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*(Provide total and, if known, a line item breakdown.)*

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Construction Documents anticipated May 2026

.2 Construction commencement date:

Anticipate construction to commence Fall 2026, pending final design

.3 Substantial Completion date or dates:

.4 Other milestone dates:

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
*(Identify any requirements for fast-track scheduling or phased construction.)*

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, prior to commencement of Work the Owner and Construction Manager shall endeavor to define the terms, conditions and services related to the Owner's Sustainable Objective and may agree to complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this ~~Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective.~~ Agreement. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** Other Project information:
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:
*(List name, address, email address and other contact information.)*

Shannon Young, Director of Parks and Recreation
City of South St. Paul
125 3rd Avenue North
South St. Paul, MN 55075
Email: syoung@southstpaul.org
Phone: 651-366-6203

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

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*(List name, address and other contact information.)*

**§ 1.1.10** The Owner shall retain the following consultants and contractors:
*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

**§ 1.1.11** The Architect's representative:
*(List name, address, and other contact information.)*

Adam Barnett, Principal Architect
JLG Architects
710 S 2nd Street, 8th Floor
Minneapolis, MN 5540
Email: abarnett@jlgarchitects.com
Phone: 612-746-4260

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Article 3:
*(List name, address, email address and other contact information.)*

Mike Phillips, Sr. Project Manager
Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404
Email: mike.phillips@krausanderson.com
Phone: 651-447-3247

**§ 1.1.13** The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
*(List any Owner-specific requirements to be included in the staffing plan.)*

**§ 1.1.14** The Owner's requirements for subcontractor procurement for the performance of the Work:
*(List any Owner-specific requirements for subcontractor procurement.)*

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§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.


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**§ 3.1 Preconstruction Phase**

**§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may ~~require.~~require and necessary changes shall be accomplished by appropriate Modification to the Contract Documents.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

**§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall ~~advise~~ consult with the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible ~~cost reductions.~~ cost reductions ("Value Engineering"). The Owner acknowledges that such Value Engineering services are advisory and are not professional design services, and that in many instances the opportunity to reduce costs by using alternate or different materials, equipment or methods may come with corresponding tradeoffs in quality, performance, aesthetics, maintenance, or operations. The Owner shall have the obligation to ensure that any Value Engineering cost savings proposals are independently evaluated by the Owner, the Architect and other members of the Owner's design team to determine whether the potential cost saving opportunities are acceptable for incorporation or use in the Work, including any differences in quality, performance, aesthetics, maintenance, operations or other material aspects. Such Value Engineering services shall be considered a part of Preconstruction Services whether performed before or after commencement of the Construction Phase. The Construction Manager shall consult with the Architect regarding ~~professional~~ Value Engineering services to be provided by the Construction Manager during the Construction Phase.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing ~~written~~ protocols for the development, use, transmission, ~~reliance, and exchange of digital data, including building information models for the Project.~~ and exchange of digital data.

**§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

**§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

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**§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.9** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

**§ 3.1.10** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as ~~required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager-as-Constructor Edition, attached to this Agreement.~~per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objective.

**§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** ~~If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the~~ The Construction Manager shall provide a subcontracting ~~plan, addressing the Owner's requirements,~~ plan for the Owner's review and ~~approval.~~approval in accordance with Minn. Stat. §471.463, subd. 5(b).

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project.

**§ 3.1.11.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

**§ 3.1.11.4** With the written consent of the Owner, the Construction Manager or a related party, as defined in Section 7.8, may self-perform portions of the Work that may otherwise be performed by trade subcontractors (the "Self-Perform Work") with the understanding that the pricing for such Self-Perform Work will be competitive with market prices for such Work. If the Owner consents to any Self-Perform Work, the Construction Manager shall include any category of Self-Perform Work as a separate lump sum line item in its GMP and schedule of values (the "Self-Perform Lump Sum"). The Self-Perform Lump Sum shall be treated as a Subcontract Cost under Section 7.3 and shall not be subject to further audit as part of the Cost of the Work. Furthermore, (i) the Owner shall have no obligation to pay amounts in excess of the Self-Perform Lump Sum for the Self-Perform Work, except to the extent the Self-Perform Lump Sum is subject to additions and deductions by Change Order as provided in the Contract Documents and (ii) the Construction Manager shall have no obligation to return any portion of the Self-Perform Lump Sum to the Owner as Project Savings, nor shall any portion of the Self-Perform Lump Sum be treated as Project Savings. For purposes of this section, "Project Savings" is defined as the difference between the Guaranteed Maximum Price less (a) the final Cost of the Work and (b) the Construction Manager's Fee.

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### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 3.1.13 Compliance with Laws

~~The~~ Subject to Section 3.1.1, the Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

### § 3.2 Guaranteed Maximum Price Proposal

**§ 3.2.1** ~~At a time to be mutually agreed upon by the Owner and the Construction Manager,~~ When the Drawings and Specifications are sufficiently complete, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs ~~that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or~~ considered reimbursable as a Cost of the Work but not included in a Change Order.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information

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presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager in accordance with the schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

**§ 3.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

**§ 3.3 Construction Phase**

**§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** ~~The Construction Phase shall commence upon the Owner's~~ Unless otherwise provided in the Guaranteed Maximum Price Amendment, the Construction Phase shall commence upon five (5) days following (a) the execution of the Guaranteed Maximum Price ~~Amendment or, prior to acceptance~~ Amendment, (b) the date the Owner provides reasonable evidence pursuant to Section 4.1.2 that financial arrangements have been made to fulfill the Owner's obligations of the contract, and (c) receipt of the Building Permit for the Project or, prior to execution of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

**§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

**§ 3.3.2.3 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

**§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site,

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problems that might affect progress of the work, accidents, injuries, and other information reasonably required by the Owner.

**§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

**§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 4.1.4.1** The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.1.4.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 4.1.5** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as agreed between the Owner and Construction Manager or as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, if attached to this Agreement.

**§ 4.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall have the authority to make decisions on behalf of the Owner and bind the Owner concerning the Project, and shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and ~~interests.~~interests, and as are necessary to provide the information and services required under Section 4.1. The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

**§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Lump Sum of Fifteen Thousand Dollars and No Cents ($15,000.00) for 4 months of Preconstruction Phase Services from the date of this Agreement. Should the Preconstruction Phase duration exceed the above period, the Construction Manager's time shall be billed at the hourly rates set forth in Section 5.1.2.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

| Individual or Position | Rate |
|---|---|
| Project Director | $220.00 / hour |
| Senior Project Manager/Executive | $185.00 / hour |
| Project Manager | $165.00 / hour |
| Preconstruction Manager | $165.00 / hour |
| Quality Manager | $180.00 / hour |
| MEP Coordinator | $180.00 / hour |
| Project Coordinator | $82.00 / hour |

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

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§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within four ( 4 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 5.2 Payments**

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~(~~ thirty (30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
*(Insert rate of monthly or annual interest agreed upon.)*

~~%~~ Payments due and unpaid shall bear interest from the date payment is due at an annual rate of interest computed on the basis of the actual number of days elapsed in a 365-day year equal to two percent (2%) over the reference rate of interest from time to time announced by U.S. Bank as its reference rate, with each change in such annual rate of interest to be effective when any change in such reference rate announced by U.S. Bank becomes effective.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

**§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The Construction Manager's Fee calculation will be done at the time the Guaranteed Maximum Price is established for the Project via the Guaranteed Maximum Price Amendment and shall be determined by multiplying the estimated Cost of the Work by a rate of One and Eighty-Hundredths percent (1.80%). The Construction Manager's Fee will become a fixed amount at the time the Guaranteed Maximum Price Amendment is executed and shall not be reduced.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

The Construction Manager's Fee shall be increased at the rate of One and Eighty-Hundredths percent (1.80%) multiplied by the Cost of the Work for additive changes in the work.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

N/A

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Eighty-Five percent ( 85 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any.)*

N/A

§ 6.1.7 Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the

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Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

**§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" and "an amount for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

**§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The Owner's execution of the Guaranteed Maximum Price Amendment shall constitute the Owner's approval of all costs identified within the Guaranteed Maximum Price.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

**§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's ~~prior~~ approval, at off-site workshops.

**§ 7.2.2** ~~Wages or salaries of the~~ Construction Manager's supervisory and administrative personnel when stationed at the site and performing ~~Work, with the Owner's prior approval.~~ Work at the hourly rates set forth below:

| Personnel Category | Rate Per Hour |
|---|---|
| Project Director/VP/DOO | $220.00 / hour |
| Sr. Project Manager/Construction Exec./Project Exec. | $185.00 / hour |
| Project Manager | $165.00 / hour |
| Assistant Project Manager | $140.00 / hour |
| Project Engineer/Field Engineer | $120.00 / hour |

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| | |
|---|---|
| Director of Preconstruction | $185.00 / hour |
| Preconstruction Manager | $165.00 / hour |
| Estimator | $160.00 / hour |
| Assistant Estimator | $118.00 / hour |
| Project Intern | $65.00 / hour |
| Safety Director | $172.00 / hour |
| Safety Engineer/Safety Manager | $156.00 / hour |
| Quality Director | $200.00 / hour |
| Quality Manager/MEP Manager | $180.00 / hour |
| MEP Specialist | $173.00 / hour |
| VDC/BIM | $144.00 / hour |
| General Superintendent | $180.00 / hour |
| Field Superintendent | $162.00 / hour |
| Assistant Superintendent | $140.00 / hour |
| Project Coordinator/Accountant/Marketing | $82.00 / hour |
| Computer/IT | $105.00 / hour |
| Yard Delivery | $136.00 / hour |

The rates set forth above shall be in effect through December 31, 2026. Thereafter the rates shall be increased by three percent (3.0%) per year as of January 1 of each subsequent year.

**§ 7.2.2.1** ~~Wages or salaries of the~~ Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the ~~site,~~ site at the hourly rates set forth in Section 7.2.2, but only for that portion of time required for the ~~Work, and limited to the personnel and activities listed below:~~
~~*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*~~

Work.

**§ 7.2.3** ~~Wages and salaries of the~~ Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for ~~the Work.~~ the Work at the hourly rates set forth in Section 7.2.2.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and ~~pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~ pensions for construction workers described in Section 7.2.1. Such costs for taxes, insurance, contributions, and assessments (excluding benefits) shall be forty-eight percent (48%) of gross payroll. Gross payroll consists of wages and benefits.

**§ 7.2.5** ~~If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~ Reserved.

**§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.


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**§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of ~~materials, supplies, temporary facilities, machinery, equipment, and tools,~~ Construction Manager-owned materials, supplies, and tools not included on Exhibit "C" referenced in Section 7.5.2, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. ~~Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval.~~ Rental charges for facilities, machinery, equipment, and hand tools rented from the Contractor shall be as set forth on the attached Exhibit "C". Other rental charges shall not be higher than standard rates at the place of the Project. The total rental cost of any such equipment may not exceed the purchase price of any comparable ~~item.~~item and related owning and operating costs during the term of such item's use on the Project.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. The premiums for other liability insurance, including, but not limited to, Commercial General Liability Insurance, Automobile Liability Insurance, Professional Liability Insurance and Pollution Liability Insurance shall be charged as a Cost of the Work at the rate of one and eight hundredths percent (1.08%) of the Guaranteed Maximum Price (excluding this charge), and such amount shall be considered approved by the Owner and shall not be subject to audit.

**§ 7.6.1.1** Costs for ~~self-insurance,~~ self-insured deductibles or retentions carried by the Contractor, for either full or partial amounts of the coverages required by the Contract ~~Documents, with the Owner's prior approval.~~Documents.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under ~~Article 13~~ Section 13.4 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by ~~Article 3~~ Section 3.17 of

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AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the ~~Work and located at the site, with the Owner's prior approval.~~Work.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard ~~written~~ personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the ~~Work, with the Owner's prior approval.~~Work.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.6.12 The cost for Construction Manager's administration of warranties required by the Contract Documents after Project completion shall be charged as a Cost of the Work at the rate of fifteen hundredths of one percent (0.15%) of the Guaranteed Maximum Price), and such amount shall be considered approved by the Owner and shall not be subject to audit.

§ 7.6.13 A fixed rate equal to One and One-Tenth Percent (1.1%) of the aggregate of subcontract costs and material costs under this Agreement (excluding, however, those subcontract costs and material costs which are incurred pursuant to subcontracts or material agreements for which the Construction Manager has purchased separate subcontract bonds), established at the time of GMP (as adjusted by Change Orders, if any), for the estimated costs of covering the risk of those certain subcontractor defaults through subcontractor default insurance or other similar insurance and/or self-insurance, to protect against the risk of default by such subcontractors and material suppliers. Such 1.1% charge shall not be adjusted for cost overruns or savings as a result of managing the risk of subcontractor defaults. Self-insured deductibles or retentions carried by the Construction Manager for subcontractor default insurance shall also be considered a Cost of the work.

**§ 7.7 Other Costs and Emergencies**

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

**§ 7.8 Related Party Transactions**

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager;

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or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager. Notwithstanding anything in this Section 7.8.1 to the contrary, Kraus-Anderson Insurance Agency shall not be considered a "related party."

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

**§ 7.9 Costs Not To Be Reimbursed**

**§ 7.9.1** The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the ~~Owner,~~ Owner or Construction Change Directives, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. ~~The~~ In addition to the persons or entities designated by the Construction Manager, the Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The

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Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

**§ 11.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

**§ 11.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 11.1.3** Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the twenty-fifth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than twenty ( 20 ) days after the Architect receives the Application for Payment.
*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 11.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.


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§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

~~§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.~~

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections ~~11.1.7.1.1 and 11.1.7.1.2~~ 11.1.7.1.1, 11.1.7.1.2 and 11.1.7.1.3 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections ~~11.1.7.1.1 and 11.1.7.1.2~~ 11.1.7.1.1, 11.1.7.1.2 and 11.1.7.1.3 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in ~~Article 9~~ Section 9.5.1 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in ~~Article 9~~ Section 9.5.1 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

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Five percent (5%) of the value of the Work completed. The Owner and the Contractor may agree upon retainage reductions during the course of the Project.

**§ 11.1.8.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

There shall be no retainage withheld on the Construction Manager's Fee, the Construction Manager's General Conditions costs, or material-only purchases made by the Contractor.

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes all the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

One hundred fifty percent (150%) of the reasonable estimated cost of any incomplete Work and any unsettled Claims may be withheld by the Owner. Such withheld amount shall be paid to Construction Manager monthly as such incomplete Work is completed and Claims are settled.

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 11.1.10** Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. The Construction Manager may, in its sole discretion, distribute any reduction in retainage described in Section 11.1.8.1 or 11.1.8.3 among Construction Manager's Subcontractors.

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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**§ 11.2.2** Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in ~~Article 9~~ Section 9.5.1 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in ~~Article 9~~ Section 9.4.1 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within ~~30~~ 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this ~~30-day~~ 60-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

Payment or any binding determination of a dispute under the Contract Documents.

**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

### § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
*(Insert rate of interest agreed upon, if any.)*

~~%~~ Invoices due and unpaid under the Contract Documents shall bear interest from the date payment is due at an annual rate of interest of two percent (2%) over the reference rate of interest from time to time announced by U.S. Bank Minneapolis, NA as its reference rate, with each change in interest rate hereunder to become effective on the date the corresponding change in such reference rate as announced by U.S. Bank Minneapolis, NA becomes effective.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. If the parties appoint an

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individual other than the Architect to serve as the Initial Decision Maker, the Initial Decision Maker's fees and expenses shall be split equally between the parties.
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 12.2 Binding Dispute Resolution**
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ X ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

~~If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.~~

**ARTICLE 13 TERMINATION OR SUSPENSION**
**§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**
**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

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.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. ~~To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.~~

**§ 13.1.6.1** ~~If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement.~~ The Construction Manager will terminate all subcontracts, purchase orders or rental agreements and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

**§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**
**§ 13.2.1 Termination**
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

**§ 13.2.2 Termination by the Owner for Cause**
**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

**§ 13.2.3 Termination by the Owner for Convenience**
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

One and Eighty-Hundredths percent (1.80%) of the estimated Cost of the Work not completed as of the date of termination.

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**§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, or makes such assignment with or without consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 14.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

**§ 14.3.1.1** Commercial General Liability with policy limits of not less than Two Million and 00/100 Dollars ($ 2,000,000.00 ) for each occurrence and Four Million and 00/100 Dollars ($ 4,000,000.00 ) in the aggregate for bodily injury and property damage.

**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million and 00/100 Dollars ($ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million and 00/100 Dollars ($ 1,000,000.00 ) each accident, One Million and 00/100 Dollars ($ 1,000,000.00 ) each employee, and One Million and 00/100 Dollars ($ 1,000,000.00 ) policy limit.

**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million and 00/100 Dollars ($ 5,000,000.00 ) per claim and Ten Million and 00/100 Dollars ($ 10,000,000.00 ) in the aggregate.

**§ 14.3.1.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*


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| Coverage | Limits |
|---|---|

**§ 14.3.1.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella ~~policies~~ polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

**§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and ~~Bonds, and elsewhere in the Contract Documents.~~Bonds.

**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit ~~B, and elsewhere in the Contract Documents.~~B.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given ~~in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~
~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

to the email address of the parties' representatives set forth in Article 1.

**§ 14.5** Other provisions:

## ARTICLE 15 SCOPE OF THE AGREEMENT

**§ 15.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 15.2** The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 ~~Building Information Modeling Exhibit, if completed:~~

Reserved

.6 Other Exhibits:
*(Check all boxes that apply.)*

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

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[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

.7 Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Exhibit C – Tool and Equipment Rates

This Agreement is entered into as of the day and year first written above. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this document by facsimile, pdf or other generally accepted electronic means (e.g., DocuSign) shall be effective as delivery of a manually executed counterpart of this document.

| CITY OF SOUTH ST. PAUL | KRAUS-ANDERSON CONSTRUCTION COMPANY |
|---|---|
| | Patrick Mulcahey |
| **OWNER** *(Signature)* | **CONSTRUCTION MANAGER** *(Signature)* |
| James P. Francis, Mayor | Patrick Mulcahey, VP / Director of Operations |
| *(Printed name and title)* | *(Printed name and title)* |
| **OWNER** *(Signature)* | |
| Deanna Werner, City Clerk | |
| *(Printed name and title)* | |

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:25:05 ET on 04/15/2026 under Order No. 3104239500 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price,other than changes shown in the attached final document by underscoring added text and striking over deleted text.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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# AIA® Document A133® – 2019 Exhibit B

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 20th day of April in the year 2026
*(In words, indicate day, month and year.)*

for the following **PROJECT**:
*(Name and location or address)*

City of South St. Paul – Northview Aquatics Center
635 18th Avenue N
South St. Paul, MN 55075

**THE OWNER:**
*(Name, legal status, and address)*

City of South St. Paul
125 Third Avenue N
South St. Paul, MN 55075

**THE CONSTRUCTION MANAGER:**
*(Name, legal status, and address)*

Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

**TABLE OF ARTICLES**


**B.1 GENERAL**

**B.2 OWNER'S INSURANCE**

**B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

**B.4 SPECIAL TERMS AND CONDITIONS**


### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

### ARTICLE B.2 OWNER'S INSURANCE

**§ B.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.



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**§ B.2.2 Liability Insurance**
The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ B.2.3 Required Property Insurance**
**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Cause of Loss | Sub-Limit |
|---|---|
| Flood | No less than $1,000,000 for Flood Zone B. |
| Earthquake | No less than $5,000,000. |

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and ~~startup.~~ startup, and for portions of the Work stored off the site and portions of the Work in transit. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure

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against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ X ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ X ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.


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**§ B.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

[ ] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ X ] **§ B.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

**§ A.2.5.2.1 Boiler and Machinery Insurance**
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**Coverage** **Limits**

**ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
**§ B.3.1 General**
**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured ~~on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.~~as required by Section B.3.1.3 up to the limits required by Sections B.3.2.2 and B.3.2.4.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the ~~Owner, the Architect, and the Architect's consultants as additional insureds~~ Owner as additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be ~~no less than~~ equivalent to that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 ~~07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32~~ 07 04.

**§ B.3.2 Construction Manager's Required Insurance Coverage**
**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General ~~Conditions, unless a different duration is stated below:~~

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~~*(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*~~

Conditions.

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million and 00/100 Dollars ($ 2,000,000.00 ) each occurrence, Four Million and 00/100 Dollars ($ 4,000,000.00 ) general aggregate, and Four Million and 00/100 Dollars ($ 4,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

.2 personal injury and advertising injury;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 bodily injury or property damage arising out of completed operations; and

.5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

**§ B.3.2.2.2** The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million and 00/100 Dollars ($ 1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ B.3.2.4** The Construction Manager shall obtain umbrella/excess liability insurance with a combined single limit of ten million dollars ($10,000,000). The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment ~~by~~ of the underlying ~~insurers.~~limits.

**§ B.3.2.5** Workers' Compensation at statutory limits.


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**§ B.3.2.6** Employers' Liability with policy limits not less than One Million and 00/100 Dollars ($ 1,000,000.00 ) each accident, One Million and 00/100 Dollars ($ 1,000,000.00 ) each employee, and One Million and 00/100 Dollars ($ 1,000,000.00 ) policy limit.

**§ B.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ B.3.2.8** If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Five Million and 00/100 Dollars ($ 5,000,000.00 ) per claim and Ten Million and 00/100 Dollars ($ 10,000,000.00 ) in the aggregate.

**§ B.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than Five Million and 00/100 Dollars ($ 5,000,000.00 ) per claim and Ten Million and 00/100 Dollars ($ 10,000,000.00 ) in the aggregate.

**§ B.3.2.10** ~~Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Reserved.

**§ B.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Reserved.

**§ B.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than Two Million and 00/100 Dollars ($ 2,000,000.00 ) per claim and Four Million and 00/100 Dollars ($ 4,000,000.00 ) in the aggregate.

**§ B.3.3 Construction Manager's Other Insurance Coverage**

**§ B.3.3.1** Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until ~~the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:~~

~~*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*~~

substantial completion of the Work.

**§ B.3.3.2** The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ ] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under ~~Section B.2.3~~ Section B.2.3, except with respect to Section B.2.3.3 and except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The ~~Owner~~ Construction Manager shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General ~~Conditions unless otherwise set forth below:~~Conditions.

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.*


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*Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

§ B.3.3.2.1.1 Such insurance shall be maintained until the Work is Substantially Complete. Once the Work is Substantially Complete, the Owner shall replace the insurance policy required under Section B.3.3.2.1 with permanent property insurance covering the Project.

§ B.3.3.2.1.2 If the insurance required by Section B.3.3.2.1 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

[ ] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ ] **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ ] **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ ] **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[ ] **§ B.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

| Coverage | Limits |
|---|---|

**§ B.3.4 Performance Bond and Payment Bond**
The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | 100% of Contract Sum. |
| Performance Bond | 100% of Contract Sum. |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

N/A


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KRAUS-ANDERSON®
*Construction Company*

2026 TOOLS/EQUIPMENT RATES
Most Often Rented Tools
Rates are based on
40 Hr. week

12/11/2025

Exhibit C

| Tool Description | Weekly Rate |
|---|---|
| Air Compressor Twin Tank- Elec | $119.64 |
| UTV- Ranger 2- Passenger | $314.50 |
| Blanket- Insulated | $9.39 |
| Bobcat - Auger Head - Round/Hex Shaft | $220.36 |
| Bobcat Attachments- Forks | $140.89 |
| Bobcat Attachments- Grappler Bucket | $198.96 |
| Bobcat Attachments- Hydro Hammer | $614.13 |
| Bobcat Attachments- Sweeper w/Attachments | $225.88 |
| Bobcat- Skid Steer Bobcat (track machine) S590 | $815.86 |
| Bobcat- Skid Steer Bobcat (tire machine) T590 | $1,087.36 |
| Carpet Tools- Carpet Puller | $171.65 |
| Cart-Trash Cart- 1 Yard | $65.03 |
| Compactor- Plate Tamper -Battery | $230.48 |
| Compactor- Plate Tamper | $230.48 |
| Containment Unit | $997.41 |
| Cut-Out Tool/Roto-Zip | $33.17 |
| Drill- SDS Roto Hammer Max | $139.71 |
| Drill- Hammer SDS Roto Hammer 3/8" Corded | $55.72 |
| Drill- Hammer SDS Roto Hammer 3/8" Cordless | $61.04 |
| Drill- 18 Volt | $32.63 |
| Drill- Right Angle 3/8" | $22.10 |
| Fan - 36" Barrel | $41.56 |
| Fan- Pedestal Fan | $59.61 |
| Forklift- Rough Terrain 5,000#- | $809.44 |
| Forklift- Pneumatic | $539.26 |
| Forklift- Rough Terrain 10,000#- | $1,973.41 |
| Gang Box- Chest Type | $68.00 |
| Generator 3800 Watts | $168.30 |
| Generator- Elec Generator 6500 watt | $170.00 |
| Glass Cup | $15.61 |
| Grinder- 7" | $38.90 |
| Grinder- Floor Ginder | $170.00 |
| Glass Cup-Single | $22.10 |
| Ground Thaw- 6000 sf | $3,068.50 |

| Equipment Description | Weekly Rate |
|---|---|
| Jobsite Office Trailer- 8' x 36' | $331.58 |
| Jobsite Office Trailer- 10' x 40' | $355.30 |
| Jobsite Office Trailer- 12' x 60' | $436.70 |
| Ladder- Extension 24' | $27.21 |
| Ladder- Extension 32' | $39.90 |
| Ladder- Step, 6', Fiberglass | $12.82 |
| Laser- Laser Level- Rotating | $89.00 |
| Cement Mixer-5 cubic ft.-Wheel Barrow Type | $160.35 |
| Nailer- Air/Pneumatic- Framing | $54.13 |
| Nailer- Coil Roofing | $56.59 |
| Nailer- Powder Actuated | $72.96 |
| Panther- Floor Stripper Model 7700 | $2,031.10 |
| Planer- Door | $45.98 |
| Pressure Washer - Gas | $167.12 |
| Pump Water- 2" Trash | $101.80 |
| Router | $27.86 |
| Sander - Belt, 3" x 21" | $40.59 |
| Saw- Circular 7-1/4" | $30.56 |
| Saw- Compound Miter Sliding 12" | $83.57 |
| Saw- Partner- Electric | $116.99 |
| Saw- Partner- Gas | $223.85 |
| Saw- Port-a-Band | $103.26 |
| Saw- Sawzall Cut Saw | $40.85 |
| Saw- Table- 10" | $155.99 |
| Saw- Walk Behind Concrete Saw | $283.33 |
| Survey- Eye Level | $100.19 |
| Sweeper- Walk Behind- Battery Powered | $463.51 |
| Wheelbarrow | $15.03 |
| Hammer- Jack Hammer- Electric 60# | $72.51 |
| HEPA price does not include filters | |
| HEPA-Air Scrubber-500CFM-Blue-16 x 16 | $191.25 |
| HEPA Aire Scrubber- 2000CFM | $191.25 |

# AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

**for the following PROJECT:**
*(Name and location or address)*

City of South St. Paul – Northview Aquatics Center
635 18th Avenue N
South St. Paul, MN 55075

**THE OWNER:**
*(Name, legal status and address)*

City of South St. Paul
125 Third Avenue N
South St. Paul, MN 55075

**THE ARCHITECT:**
*(Name, legal status and address)*

JLG Architects
710 S 2nd Street, 8th Floor
Minneapolis, MN 55401

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES


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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.6 Notice**

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic ~~transmission if a method for electronic transmission is set forth in the Agreement.~~transmission.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

**§ 1.7 Digital Data Use and Transmission**

~~The parties shall agree upon written protocols governing the transmission and use of, and reliance on,~~ If the parties intend to transmit Instruments of Service or any other information or documentation in digital ~~form.~~form, prior to commencement of Work they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.


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~~§ 1.8 Building Information Models Use and Reliance~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

## ARTICLE 2 OWNER

### § 2.1 General

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended ~~appropriately.~~appropriately, and the Contract Sum shall be equitably adjusted.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination ~~and~~ of construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review pursuant to Section 3.2 is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may ~~require.~~require and necessary changes shall be accomplished by appropriate Modification to the Contract Documents.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, as between the Owner and the Contractor, shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall ~~propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~not proceed with that portion of the Work without further written instructions from the Architect.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner and Architect for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes or tariffs for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contract Sum shall be equitably adjusted by Change Order to account for any such taxes, tariffs or other changes in law legally enacted after bids are received or negotiations concluded.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** ~~The~~ Subject to Section 3.2.3, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** ~~If~~ Subject to Section 3.2.3, if the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted. The Architect will promptly investigate such conditions and, if the Architect

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determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor ~~encounters human remains or~~ recognizes the existence of human remains, burial markers, or archaeological sites ~~or wetlands~~ not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. ~~Requests for adjustments in~~ If such conditions are encountered, the Contract Sum and Contract Time ~~arising from the existence of such remains or features may be made as provided in Article 15.~~ shall be equitably adjusted.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in ~~the Contract Sum but not in the~~ such stated allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect ~~(1)~~ the difference between actual costs and the allowances under Section 3.8.2.1 and ~~(2) changes in Contractor's costs under~~ Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~ in sufficient time to avoid delay in the Work.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent~~ Contractor's Project Manager shall represent the Contractor, and communications given to the ~~superintendent~~ Contractor's Project Manager shall be as binding as if given to the Contractor.

**§ 3.9.2** The ~~Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~ Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed, unless such person becomes unable to perform his or her duties due to death, disability, resignation, or termination of employment. If the superintendent is no longer capable of performing his or her duties as described above, the Contractor shall promptly submit to the Owner the resume of any person Contractor requests to instate as a substitute, and unless the Owner reasonably objects, such person shall be substituted.

~~**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~


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### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract ~~Documents.~~ Documents, and the Contractor shall not be responsible for the adequacy and accuracy of such performance and design criteria. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor ~~the~~ all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form reasonably specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, ~~codes,~~ rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored as close as reasonably practicable under the circumstances to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except

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with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The term "Architect" means the Architect or the Architect's authorized representative.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract ~~Documents.~~Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 Communications**

The Owner and Contractor shall endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and


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assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall promptly notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing ~~within any time limits agreed upon or otherwise with reasonable promptness.~~ with reasonable promptness, but in no event later than fifteen (15) days after receipt of such request. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within ~~14~~ 7 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the ~~14-day~~ 7-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction ~~schedules.~~ schedules when directed to do so. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

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### § 7.3 Construction Change Directives

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- **.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- **.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- **.5** Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and

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certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 Delays and Extensions of Time

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work (1) by ~~(1)~~ an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by disruptions in labor or materials resulting from a health crisis regardless of whether an infectious disease, epidemic, pandemic or outbreak isolated to areas from which such labor and materials are supplied; (5) by delay authorized by the Owner pending mediation and binding dispute resolution; or ~~(5)~~ (6) by other causes that the Contractor ~~asserts,~~ asserts and the Architect determines, justify delay, then the Contract Time ~~shall be extended for such reasonable time as the Architect may determine.~~ and the Contract Sum shall be equitably adjusted by Change Order.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

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## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor as compensation for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and conditional releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for amounts owed to such Subcontractor or material or equipment supplier for Work properly performed or material or equipment suitably ~~delivered.~~ delivered by such Subcontractor or material or equipment supplier. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall promptly pay each Subcontractor, ~~no later than seven days~~ after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate

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agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall,

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before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

**§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien,


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claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.~~ **§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.1.2** The Owner and the Contractor acknowledge and agree that the obligations of Contractor related to protection of persons and property are obligations that run to the Owner only, and nothing in this Article 10 is intended to limit or otherwise reduce the safety responsibilities of the Subcontractors. Contractor and Owner further agree that Contractor's Subcontractors are independent contractors and that the Subcontractors and the Subcontractors' employees are not the employees of Owner or Contractor.

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** ~~The~~ Subject to Section 3.2.3, the Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and ~~10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss~~ 10.2.1.3, except to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance,~~ If a material or substance reasonably believed by the Contractor to be hazardous, toxic, petroleum or a constituent thereof, including but not limited to asbestos or polychlorinated biphenyl (PCB), is encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from ~~performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself),~~ the presence on the site of any hazardous or toxic material or substance, including but not

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limited to asbestos, polychlorinated biphenyl (PCB), or petroleum or a constituent thereof, except to the extent that such damage, loss, or expense is due to the sole fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs ~~(1)~~ for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, ~~or (2) where the Contractor fails to perform its obligations under Section 10.3.1,~~ provided that such material or substance was not required by the Contract Documents, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable ~~by a government agency~~ for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement or elsewhere in the Contract Documents.~~ Agreement. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The ~~Owner, Architect, and Architect's consultants~~ Owner shall be named as additional ~~insureds~~ insured under the Contractor's commercial general liability policy ~~or as otherwise described in the Contract Documents.~~ as set forth in the Agreement.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the ~~Contract Documents.~~ Agreement. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the ~~Contract Documents,~~ Agreement, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

### § 11.2 Owner's Insurance

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement or elsewhere in the Contract Documents.~~ Agreement. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.


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**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the ~~Agreement or elsewhere in the Contract Documents, the~~ Agreement, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights of action against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the ~~Contract Documents,~~ Agreement, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights of action against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, ~~to the extent permissible by such policies,~~ the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

**§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and

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Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have ~~14~~ 30 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's written request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's ~~expense.~~expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 Correction of Work

**§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

~~§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, or makes such assignment with or without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, ~~and~~ costs incurred by reason of such ~~termination.~~ termination, and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed;~~ executed (including the Contractor's Fee thereon); costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. ~~This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.~~

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the ~~Work.~~ Work or such other period provided by applicable law, whichever is less. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor ~~wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, or (6) Owner's suspension, Claim shall be filed in accordance with this Section 15.1.

#### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

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### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any ~~time, subject to the terms of Section 15.2.6.1.~~ time.

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~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.3 Mediation**

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of ~~binding dispute resolution~~ any litigation proceedings but, in such event, mediation shall proceed in advance of ~~binding dispute resolution proceedings,~~ litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~ **Reserved.**

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~**§ 15.4 Arbitration**~~

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

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~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~


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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:25:19 ET on 04/15/2026 under Order No. 3104239500 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction,other than changes shown in the attached final document by underscoring added text and striking over deleted text.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Administration
**PREPARED BY:** Ryan Garcia, Shelly Anderson
**AGENDA ITEM NUMBER:** 8.L.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Employee Service Recognition Program Policy

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Through consent, motion to approve Revised Employee Service Recognition Program Policy.

**OVERVIEW**
In 2017, City Council approved an Employee Recognition Program Policy. The purpose of the policy is to recognize those employees who reach service milestones with the City for their years of service. State Law allows a City to (1) establish and operate a program of preventive health and employee recognition services for its employees; (2) to provide necessary staff, equipment and facilities; and (3) to expend funds, as necessary, to achieve the objectives of the program. The program must be documented in writing and state clear wellness and recognition objectives, and the City Council must approve the program, with the council determining the amount necessary to achieve the objectives of the program. Initially, the policy provided recognition in the form of "value points" which could be redeemed for products within an approved South St. Paul catalog of merchandise. In September 2022, the Policy was amended and the manner of recognition was adjusted to provide recipients with either a gift certificate to a local South St. Paul establishment or a Visa/Mastercard Gift Card.

In light of definitive guidance recently published by the Office of the State Auditor as it relates to public expenditures and specifically spending public funds on gift cards, we are recommending changing the Employee Recognition Program Policy to instead provide a service recognition awards as a (taxable) monetary benefit through the City's payroll process. Service awards are based on continuous years of service and granted in five-year length of service blocks. Along with service awards, the City will continue to provide an annual employee appreciation luncheon which is open to all employees. During the employee appreciation luncheon, the City will recognize those employees who have reached service milestones.

Staff recommends approval of the revised Employee Service Recognition Program Policy effective immediately, with the understanding the City Council has the authority to approve, deny, or amend annual budgetary dollars for this program.

**SOURCE OF FUNDS**

Human Resources Budget.

**ATTACHMENTS**

1. Service Recognition Program Policy (April 2026 DRAFT Update)

# EMPLOYEE SERVICE RECOGNITION PROGRAM

**SCOPE**
Execute an Employee Service Recognition Program to recognize employee service and assist in employee retention strategies.

**PURPOSE**
The City of South St. Paul will recognize the service of its employees through the Employee Service Recognition Program which provides an annual employee appreciation luncheon and individual employee service awards based on years of service. This policy is intended to maintain a consistent practice for the type and amount of each service award and employee appreciation program.

**DEFINITIONS**

**Employee Appreciation Program:** Annual all-employee appreciation program to recognize employees who have reached service milestones.

**Service Awards:** Certificate of service and a service award for specified amount based on length of service.

**Length of Service:** Length of service is defined as the total amount of continuous years of service that an employee has been employed with the City of South St. Paul in a regular part-time (20 hours or more) or a full-time position. Length of service does not include service time worked in a part-time (less than 20 hours per week), seasonal, temporary, or variable hour position.

**POLICY**

*Eligibility for Service Awards*. Service awards are given for length of service at regular intervals defined by this policy. Employees will receive the first service award after five years of service and will continue to receive awards every five years thereafter. Length of service is defined as the total amount of continuous years of service that an employee has with the City of South St. Paul in a regular part-time (20 hours of more) or full-time position.

*Employee Appreciation Program.* If budgetarily approved, the City will host an annual employee appreciation luncheon which shall be open to all employees. At the luncheon the City Council, City Administrator, and/or other staff representatives will recognize those employees who have reached service milestones.

**General Guidelines:**
Service Award Certificates shall be presented to employees at the annual Employee Appreciation Program, provided the employee is a current and active employee of the City. Employees are eligible for service awards based on length of service, in five-year increments. Eligible employees will receive a Service Award in the amount listed below. Service Awards are taxable and will be processed on the payroll period following the Employee Appreciation Program.

Service Awards, based on length of continuous service are as follows:

- 5 years of service: $50.00
- 10 years of service: $75.00
- 15 years of service: $100.00
- 20 years of service: $125.00
- 25 years of service: $150.00
- 30 years of service: $175.00
- 35 years of service: $200.00
- 40+ years of service $225.00

**PROCESS**

The Human Resources budget will include funds for the Employee Service Recognition Program. The City Council will review and have the option to approve, deny, or amend the budgetary dollars for this program.

Human Resource personnel, along with the assistance of the Wellness Committee shall be responsible for the planning and coordination of the Employee Service Recognition Program.

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Monika Miller
**AGENDA ITEM NUMBER:** 8.M.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Approve Encroachment Agreement for 557 8th Avenue South

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve an encroachment agreement to allow fencing in the 6th Street South right-of-way

**OVERVIEW**
**Background**

The Applicants, Derek and Jennifer Pletcher, own the single-family home property at the intersection of 8th Avenue South and 6th Street South. The Applicants applied for a fence permit in March of this year to install fencing along the concrete walkway in their side yard along 6th Street South. The walkway provides a convenient connection from the home to the property's rear yard. During the permit review process, it was discovered that the area the Applicants proposed to fence was partially within the 6th Street South right-of-way. The Applicants' house was constructed prior to the City adopting its first zoning code and is closer to the 6th Street South right-of-way than would be allowed today. A portion of the existing walkway encroaches the street right-of-way. There is no way for the Applicants to fence along the walkway without encroaching into a small portion of the 6th Street South right-of-way. The Applicants would like to fence this area for their family's safety and have requested an encroachment agreement to install the fencing as shown in the submitted plans. Staff reviewed the proposed fence plan with the City Engineer who stated that she has no concerns with proposed encroachment, so long as the Applicants receive an encroachment agreement.

**What is an Encroachment Agreement?**

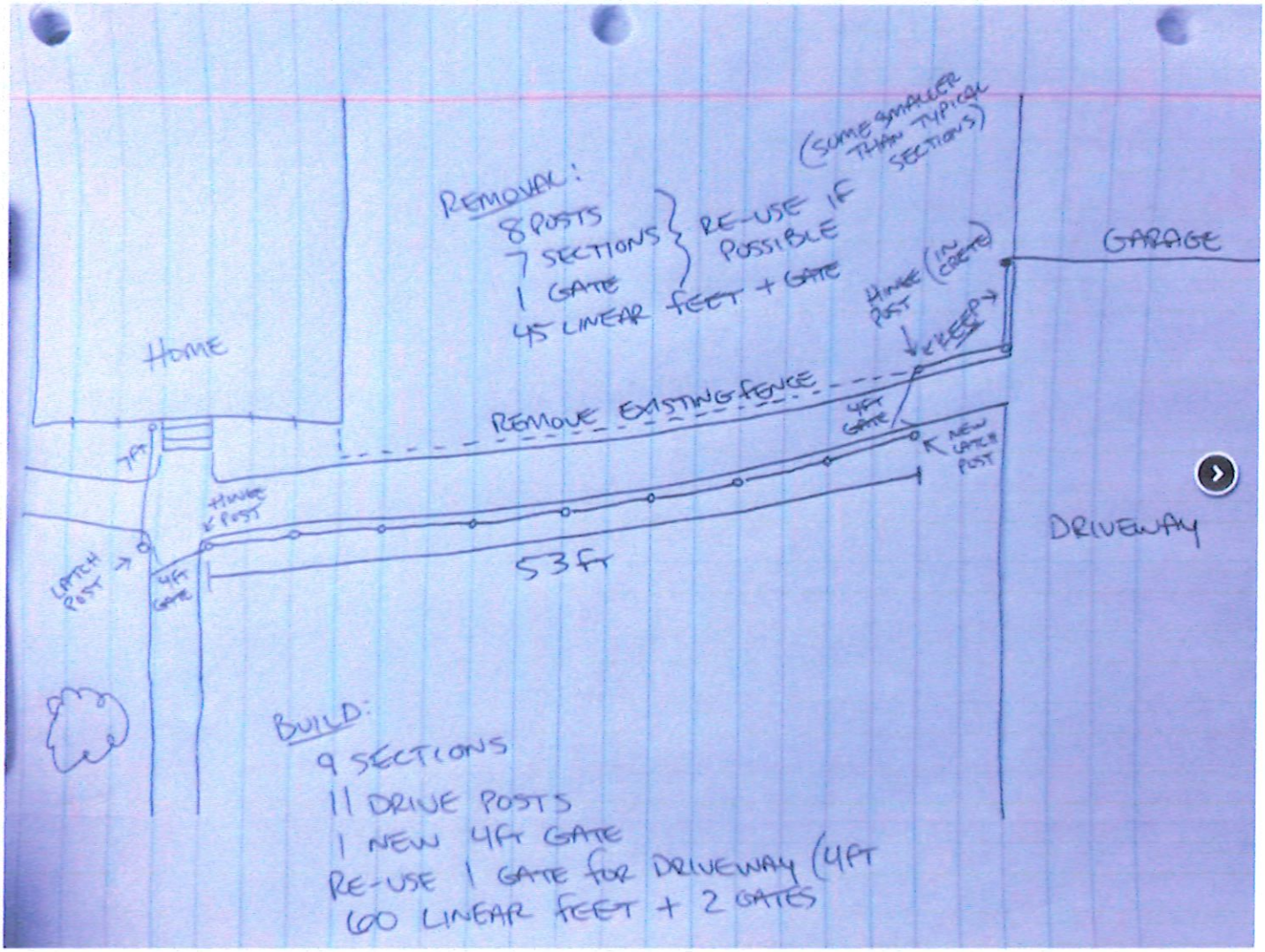
In order for a private improvement (such as a fence or retaining wall) to be installed within a street right-of-way, an encroachment agreement must first be obtained. An encroachment agreement clearly defines the structure that is encroaching in to the City's right-of-way and lays out the City's rights when it comes to removing the improvement to access or maintain the right-of-way. Encroachment agreements are recorded against the property of the person requesting the encroachment agreement which increases the transparency of the situation for current and future homeowners.

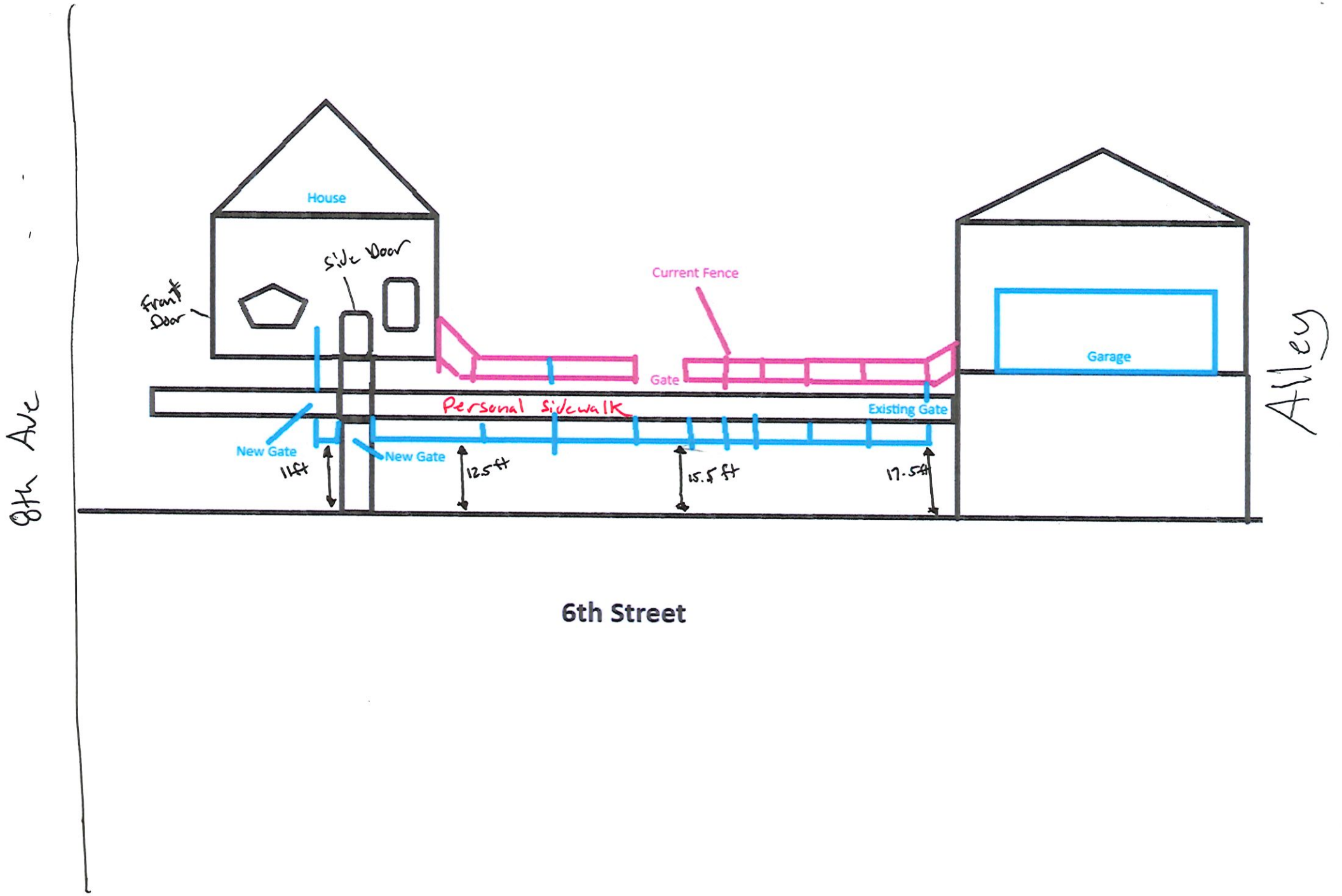
**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. Site Location Map
2. Submitted Fence Plans
3. Narrative
4. Encroachment Agreement

**ATTACHMENT 1**
**SITE LOCATION MAP**

**ATTACHMENT 2**
**SUBMITTED FENCE PLANS**




8th Ave
House
Front Door
Side Door
Current Fence
Gate
Garage
Alley
Personal Sidewalk
Existing Gate
New Gate
New Gate
11ft
12.5ft
15.5 ft
17.5ft
6th Street

Derek Pletcher
557 8th Ave S, South Saint Paul, MN 55075
6' Tan Vinyl Privacy Fence Adjustment
555
557
~ 7'
4'W gate
~ 53'
4'W gate

# THE PLETCHER RESIDENCE

Fence Project

**ATTACHMENT 3**
**NARRATIVE**

City of South St. Paul (Planning and Zoning Committee),

3/31/2026

South St. Paul City Hall
125 3rd Ave N, South St Paul, MN 55075

To Whom It May Concern,

We, Jennifer and Derek Pletcher, are writing to formally request permission to relocate our existing fence. Our plan is to move the fence line from the back of our house to the garage, to extend the fence past our side door to the garage, as shown in the attached plans.

Because our home is located on a corner lot and was built before modern property markers were established, the current markers sit unusually close to our house and the private walkway that existed prior to our ownership. As a result, shifting the fence to the proposed location would cause a small portion of the fence to encroach onto city property.

We are requesting an encroachment allowance for this small section of land so that we can complete the fence relocation. Our primary goal is to improve safety for our family. With two children and pets and given our location at the corner of 6th Street and 8th Avenue, we experience significant foot traffic as well as frequent speeding and failure to stop at the four-way intersection. Extending the fence as proposed would create a safer, more secure environment for our household.

We sincerely appreciate your time and consideration of this request. We hope you will understand the safety concerns that motivate this project and grant approval for the minor encroachment needed to complete it.

Thank you for your attention and assistance.

Respectfully,

Jennifer & Derek Pletcher

X

X

**ATTACHMENT 4**
**ENCROACHMENT AGREEMENT**

# ENCROACHMENT AGREEMENT RELATING TO LANDOWNER'S IMPROVEMENTS AT 557 8TH AVENUE SOUTH, CITY OF SOUTH ST. PAUL, DAKOTA COUNTY, MINNESOTA

**THIS ENCROACHMENT AGREEMENT** ("Agreement") is made, entered into and effective this _____ day of _____, 2026, by and between the City of South St. Paul, a Minnesota municipal corporation, and Jennifer Pletcher and Derek Pletcher, husband and wife. Subject to the terms and conditions herein based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

## ARTICLE 1
## DEFINITIONS

**1.1. Terms.** The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

**1.2. Additional Structures.** "Additional Structures" shall mean retaining walls, irrigation systems, buildings, fences, landscaping, trees or shrubs that are not easily removable and prevent access to the City Improvements.

**1.3. City.** "City" means the City of South St. Paul, a Minnesota municipal corporation.

**1.4. City Improvements.** "City Improvements" means any public improvements located in or to be located in City Property.

**1.5. City Property.** "City Property" means the City's 6th Street South right of way.

**1.6. Encroachment Area.** "Encroachment Area" means the portion of City Property used by Landowner for the Landowner's Improvements, depicted on Exhibit A, attached hereto and incorporated herein.

**1.7. Landowner.** "Landowner" means Jennifer Pletcher and Derek Pletcher, husband and wife, and their successors and assigns in interest with respect to the Landowner's Property.

**1.8. Landowner's Improvements.** "Landowner's Improvements" means Landowner's fence and gates located in the Encroachment Area on City Property as identified on Exhibit A.

**1.9. Landowner's Property.** "Landowner's Property" means the following real property located in the City of South St. Paul, Dakota County, Minnesota:

Lot 15, Block 2, Tarbox Addition to South St. Paul

*Abstract Property*
PID: 36-75100-02-150

**1.10. Maintain.** As used in this Agreement with respect to the Landowner's Improvements, "Maintain" and derivations thereof means to upkeep in accordance with relevant City ordinances and regulations applicable to such improvements.

**1.11. Utility Costs.** "Utility Costs" means all costs incurred by City, (whether performed by City or its agents or contractors), for the inspection of and access to and repair, maintenance and replacement of any City Improvements located in City Property and the placement of additional City Improvements in City Property. Utility Costs, include, without limitation: excavation costs, labor costs, costs of removing fill, costs of re-burying City Improvements, re-compacting the soils over City Improvements, restoring City Property area, and all engineering and attorneys' fees incurred in connection therewith. Utility Costs also include the costs of temporarily removing the Landowner's Improvements and subsequently replacing the Landowner's Improvements in City Property, if such costs have not already been paid by the Landowner.

**1.12. Pre-Encroachment Costs.** "Pre-Encroachment Costs" means a reasonable estimate by City of the costs City would have incurred for Utility Costs if the Landowner's Improvements did not exist.

**1.13. Cost Differential.** "Cost Differential" means the difference between the Pre-Encroachment Costs and the Utility Costs in light of the existence of the Landowner's Improvements. City's determination of the amount of the Cost Differential shall be binding on the Landowner. City's determination shall be appropriately supported by cost estimates obtained from independent contractors or engineers.

## ARTICLE 2
## RECITALS

**2.1.** Landowner owns Landowner's Property.

**2.2.** Landowner's Property is or will be improved with Landowner's Improvements.

**2.3.** Landowner's Improvements are or will be located on City Property.

**2.4.** Subject to the terms of this Agreement, City is willing to allow the Landowner's Improvements to be placed within City Property if the following conditions are met:

(a) Landowner maintains the Landowner's Improvements.

(b) Landowner agrees to pay City any Cost Differential relating to inspections, access, repair, maintenance and replacement of City Improvements and the placement of any additional City Improvements in City Property.

(c) Landowner agrees to temporarily remove the Landowner's Improvements in the event City has need to access the area where the Landowner's Improvements exist in order for City to inspect, repair, maintain, and replace the City Improvements or construct additional City Improvements in City Property.

(d) Landowner removes the Landowner's Improvements pursuant to Section 3.2 below.

## ARTICLE 3
## AGREEMENTS

**3.1.** **Use And Maintenance of Landowner's Improvements.** Under the terms and conditions stated herein, Landowner shall have the right to enjoy the use of the Landowner's Improvements. Landowner shall, at its own cost, maintain the Landowner's Improvements.

**3.2.** **No Additional Structures or Expansion and Termination.** The Landowner's Improvements shall not be relocated, moved or expanded such that any further or different encroachment onto the City Property occurs. Landowner shall not place any Additional Structures within the footprint of the Landowner's Improvements or elsewhere on City Property, except as to replace any preexisting conditions, such as landscaping or sod. If Landowner removes or replaces the Landowner's Improvements that are depicted in Exhibit A, the Landowner's Improvements shall be brought into compliance with applicable City ordinances and regulations and shall be relocated to Landowner's Property, outside of the Encroachment Area and City Property and this Agreement shall terminate.

**3.3.** **City Not Responsible for Landowner's Improvements.** Nothing contained herein shall be deemed an assumption by City of any responsibility for construction, maintenance, replacement or repair of the Landowner's Improvements.

**3.4.** **Continuing Right to Encroachment Area.** Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that City holds to the Encroachment Area.

**3.5. Subordinate Position of Landowner's Improvements.** The Landowner's Improvements are subordinate to the rights of City in the Encroachment Area.

**3.6. Risk of Loss.** Landowner understands and agrees that the Landowner's Improvements within the Encroachment Area may be adversely affected by damage caused to the Landowner's Improvements arising out of City's use of the Encroachment Area. The parties agree that City is not responsible for such events; City shall have no liability to Landowner for such events. Landowner assumes the risk of the Landowner's Improvements in the Encroachment Area.

**3.7. Landowner to Bear Cost of Relocating Landowner's Improvements.** City is responsible for the repair and maintenance of City Improvements in City Property.

City may require Landowner at the expense of Landowner to temporarily remove and subsequently replace the Landowner's Improvements in City Property in order for City to gain access to City Improvements for the purpose of inspecting, repairing, maintaining, or replacing City Improvements or adding future City Improvements.

If Landowner does not perform such tasks, City may perform such tasks and in such case the Landowner shall reimburse City for City's costs and expenses. Prior to commencing such tasks, City shall send a notice to Landowner and allow Landowner twenty (20) days from the date of the written notice to perform the tasks. If Landowner has not completed the work within the twenty (20) days, then City may proceed to perform the tasks. Once City's costs and expenses have been determined by City, City shall send an invoice for such costs and expenses to Landowner. Landowner must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by City for utility billings within City.

**3.8. Emergency.** City shall not be required to give such notice if City's engineer determines that an emergency exists. In such instance, City, without giving notice to Landowner may perform the work and in such case Landowner shall reimburse City for the costs and expenses relating to the work. Once City's costs and expenses have been determined by City, City shall send an invoice for such costs and expenses to Landowner. Landowner must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged to City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by City for utility bills within City.

**3.9. Modifications to Landowner's Improvements.** If in the future City reasonably determines that the Landowner's Improvements interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Improvements, then Landowner, at Landowner's own expense, shall make such modifications to the Landowner's Improvements as directed by City. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Landowner's Improvements.

If Landowner does not make the modifications, City may make the modifications and in such case Landowner shall reimburse City for City's costs and expenses. Prior to commencing such modifications, City shall send Formal Notice to Landowner and allow Landowner twenty (20) days from the date of the Formal Notice to make the modifications. If Landowner does not completely make the modifications, City may proceed to make the modifications. Once City's costs and expenses have been determined by City, City shall send an invoice for such costs and expenses to Landowner. Landowner must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged City by third parties such as contractors as well as the costs for City personnel that may have performed the work relating to the modifications.

**3.10. Cost Deferential.** If a Cost Deferential occurs relating to the access to or inspection, maintenance, repair or replacement of City Improvements or relating to construction of new City Improvements in the future, then Landowner shall pay the Cost Deferential to City. Landowner must make payment for the Cost Deferential within 30 days after the City has sent a written invoice for the Cost Deferential to the Landowner.

**3.11. Remedies.** If Landowner fails to perform its obligations under this Agreement, then City may avail itself of any remedy afforded by law or in equity and any of the following non-exclusive remedies:

(a) City may specifically enforce this Agreement.

(b) If Landowner fails to make payments under Section 3.7, 3.8, 3.9, or 3.10 then City may certify to Dakota County the amounts due as payable with the real estate taxes for the Encroachment Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Landowner waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Encroachment Property.

Further, as an alternate means of collection, if the written billing is not paid by Landowner, City, without notice and without hearing, may specially assess the Encroachment Property for the costs and expenses incurred by City. Landowner hereby waives any and all procedural and substantive objections to special assessments for the costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Encroachment Property. Landowner waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Landowner acknowledges that the benefit from the performance of tasks by City equals or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Encroachment Property.

No remedy herein conferred upon or reserved to City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter

existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**3.12. Indemnification.** Landowner shall indemnify, defend and hold City, its council, agents, consultants, attorneys, employees and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies including interest, penalties and attorneys' fees, that City incurs or suffers, which arise out of, result from or relate to any of the following:

(a) The Landowner's Improvements;

(b) Maintenance of the Landowner's Improvements;

(c) Failure by Landowner to observe or perform any covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement; and

(d) Use of the Encroachment Area for Landowner's Improvements.

**3.13. City Duties.** Nothing contained in this Agreement shall be considered an affirmative duty upon City to perform the Landowner's obligations contained in Article 3 if the Landowner does not perform such obligations.

**3.14. No Third-Party Recourse.** Third parties shall have no recourse against City under this Agreement.

**3.15. Recording.** This Agreement shall be recorded with the Dakota County Recorder against the Landowner's Property.

**3.16. Binding Agreement.** The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with Landowner's Property and shall be binding upon the heirs, successors, administrators and assigns of the parties, for as long as the Landowner's Improvements remain on the Encroachment Area.

**3.17. Amendment And Waiver.** The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement and performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this

Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

**3.18. Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

**3.19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**3.20. Headings.** The subject headings of the sections this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

**3.21. Notice.** Notice shall mean notices given by one party to the other if in writing and if and when delivered in person or by depositing it in the United States mail in a sealed envelope addressed by name and address to the party or person intended addressed as follows:

| | |
|---|---|
| If to City: | City of South St. Paul<br>Attention: City Administrator<br>125 3rd Ave. N.<br>South St. Paul, MN 55075 |
| If to Landowner: | Jennifer Pletcher and Derek Pletcher<br>557 8th Ave. South<br>South St. Paul, MN 55075 |

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on the third day after mailing if mailed by United States postal service as provided above, or within twenty-four (24) hours if sent via overnight courier service provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties have executed this Agreement the year and day first set forth above.

**CITY OF SOUTH ST. PAUL:**

_____
James P. Francis
Its Mayor

_____
Deanna Werner
Its City Clerk

STATE OF MINNESOTA )
) ss.
COUNTY OF DAKOTA )

On this ___ day of _____, 2026, before me a Notary Public within and for said County, personally appeared James P. Francis and Deanna Werner, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the City of South St. Paul, the municipality named in the foregoing instrument, and that said instrument was signed on behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

**LANDOWNER:**

_____
Jennifer Pletcher

_____
Derek Pletcher

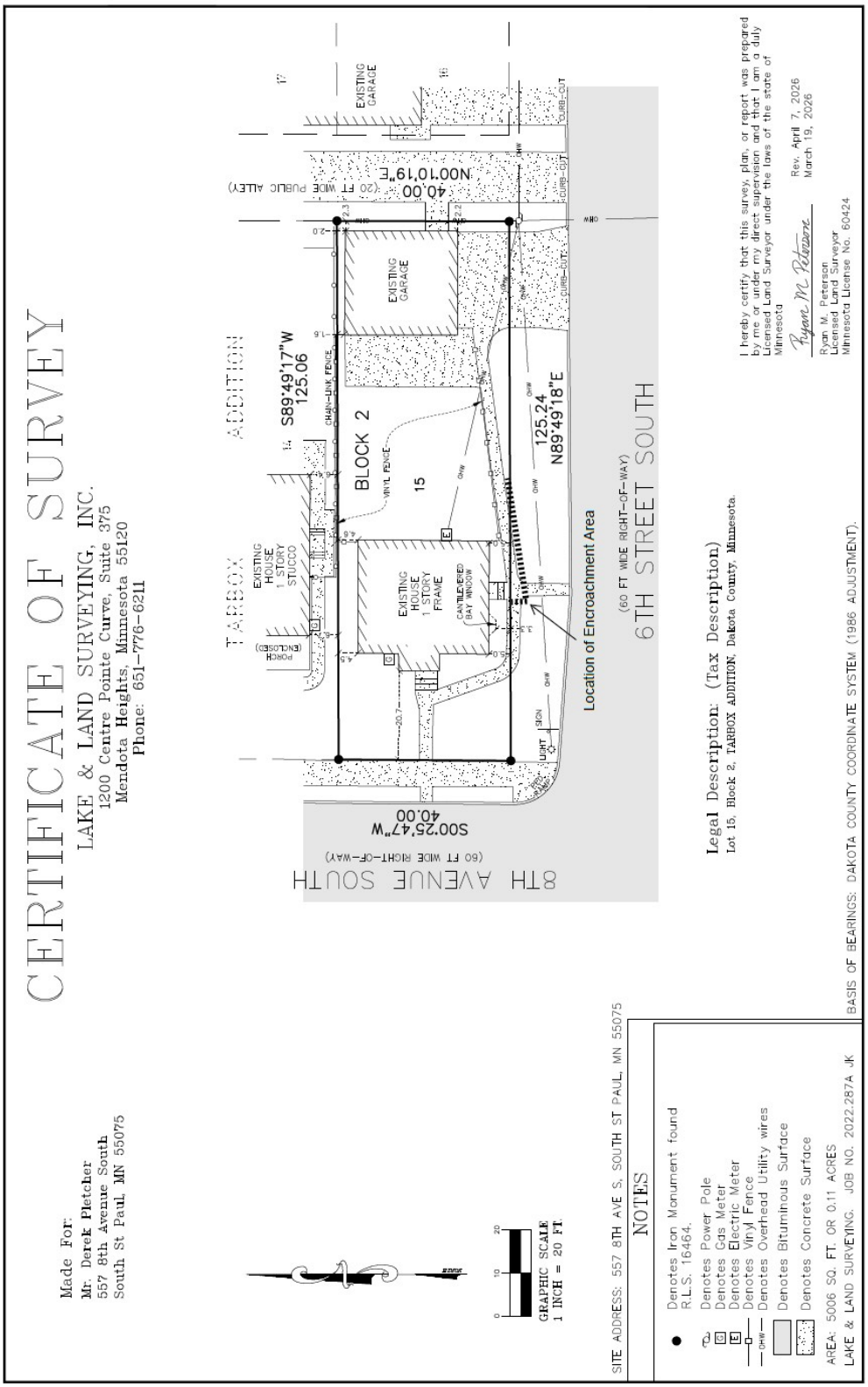
STATE OF MINNESOTA )
) ss.
COUNTY OF DAKOA )

The foregoing instrument was acknowledged before me on _____ day of _____, 2026, by Jennifer Pletcher and Derek Pletcher, husband and wife.

_____
Notary Public

**This instrument drafted by**
**And after recording, please return to:**
Korine L. Land (#262432)
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121

# EXHIBIT A
# DEPICTION OF ENCROACHMENT AREA



# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Monika Miller
**AGENDA ITEM NUMBER:** 11.A.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Southview Shopping Center Sign Variance

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Adopt Resolution 2026-053 approving a sign variance at the Southview Shopping Center

**OVERVIEW**
**Application**

The Applicant, Tony Wind on behalf of Anytime Fitness, is seeking a variance to install two new 87 square foot wall signs on the façades of the Southview Shopping Center. The amount of signage already at the Southview Shopping Center exceeds the amount of signage that a single property in the C-1 Retail Business zoning district is allowed to have, so a variance is needed to install additional signage at the site.

**Review Timeline**

**Complete Application Submittal Date:** March 9, 2026
**Planning Commission:** April 1, 2026
**City Council Meeting:** April 20, 2026
**60-Day Review Deadline:** May 8, 2026

**Background**

The Southview Shopping Center is a multitenant facility constructed in 1958. It features two buildings with a total of approximately 55,914 square feet of leasable floor area. The property was developed under a different set of zoning rules than exists today and has numerous lawful nonconformities (commonly called “grandfather rights”). The most visible lawful nonconformity is an enormous freestanding sign at the corner of Southview Boulevard and 13th Avenue South, which is much taller than the shopping center itself and includes advertising space for all the businesses in the shopping center. The City Code no longer allows this type of enormous sign structure and shopping centers are now limited to 12-foot-tall monument signs.

The Applicant will soon move an Anytime Fitness health club into the northernmost tenant space in the Southview Shopping Center's main building. This tenant space was previously utilized as an Anytime Fitness health club from 2010 to 2021 but has been vacant for the last five years. When Anytime Fitness vacated the suite in 2021, they removed their wall signage entirely and left the walls bare in preparation for the next tenant. The suite sat vacant for several years and recently the Applicant made the decision to re-open an Anytime Fitness health club in the same suite.

As part of the process of preparing the space to re-open, the Applicant engaged with a sign contractor to prepare new wall signs. The Applicant would like to install two wall signs for their business: one on the north façade facing Southview Boulevard and another on the west façade which would face the parking lot. The signs would be in the same location as the previous 'Anytime Fitness' wall signs but would be slightly larger than the previous signs. The sign project cannot move forward without a variance for several reasons:

- Over the decades, the City has had several different regulatory frameworks for reviewing and approving business signage. Under the current framework that was adopted in 2009, each property currently receives a signage allowance that they can use for either freestanding signage or wall signage. The allowance is quite generous and works well for most properties, but it does not anticipate a shopping center where an enormous "grandfathered" freestanding sign eats up almost the entire signage allowance, as is the case with the Southview Shopping Center. The Southview Shopping Center's freestanding sign is so large (almost 400 square feet) that there is not enough signage left under the allowance system for each tenant space to have adequate wall signage.

- The total amount of existing signage at the Southview Shopping Center exceeds the maximum amount of signage that is allowed for a property with C-1 zoning. This means that the Shopping Center is not eligible to have any additional signage, even if they get additional tenants. State Law allows lawful nonconformities to be repaired, maintained, improved and replaced. This means that existing signs can be swapped out with new signs if the new signs are not any larger than what was there before.

- The old Anytime Fitness wall signs were lawful nonconforming ("grandfathered"), but they were taken down five years ago. Grandfather rights expire one calendar year after the lawful nonconformity is removed.

City Staff and the City Attorney believe there is enough wiggle-room in the City Code to allow the Applicant to put up one small wall sign on the west façade of the building because there is language in the City Code that suggests that each tenant in a multitenant building should be allowed at least one wall sign. The Applicant is seeking to put up two full-sized wall signs to properly advertise the endcap space, which cannot occur without some type of variance. The Applicant has requested, at a minimum, a one-off variance that would allow their specific sign project to move forward. City Staff believes that this is a prime opportunity to "fix" the zoning situation at the Southview Shopping Center and develop a signage plan that will work for this tenant and future tenants of the shopping center. Without a long-term fix, the Planning Commission and City Council will need to constantly review sign variances for this property

over the coming years, and it may be difficult for many of the signage projects to properly satisfy the City Code's variance criteria.

**Zoning and Comprehensive Plan Summary**

The Southview Shopping Center property is zoned C-1, retail business district. Health clubs are a permitted use in the C-1 district. The 2040 Comprehensive Plan guides the property for Commercial Use. The proposed use of the northernmost unit as a fitness center and the use of the property as a shopping center aligns with the future land use guidance for the property.

In all commercial and industrial zoning districts, the maximum allowable size for an individual sign is 100 square feet. Properties with C-1 zoning are eligible to have up to 150 square feet of signage or an amount of signage equal to one and one-half (1.5) times the lineal feet of the longest building frontage facing a public street, whatever is greater. Each tenant in a multi-tenant building is permitted to have at least one wall sign; however, the total square footage of the wall signs cannot exceed the maximum amount of signage that is allowed for a single property. The northern building of the Southview Shopping Center has approximately 356 feet of frontage along 12th Avenue South, giving that building a maximum signage allowance of 534 square feet. While the exact amount of signage at the site is unknown, the estimated square footage of the freestanding sign (~ 370 square feet) combined with the existing wall signs on both buildings easily exceed the maximum amount of signage that is allowed at the property. A variance is required to add additional signage to the northern building.

**Proposed Signage**

The Applicant would like to install two wall signs on the exterior building façade of their tenant space. Both signs would be 87 square feet in size and would display the name of the business in channel letters as well as the company's logo and the services offered. The two signs would be placed in the same location as the previous Anytime Fitness signs that were removed in 2021 and would be internally illuminated. The size of each individual sign complies with the maximum allowable size requirement for an individual sign. However, as previously stated, the existing amount of signage at the Southview Shopping Center exceeds the maximum allowable amount of signage for a single property. A variance is needed to add the tenant's proposed signage to the property.

**Options for Properties with Complex Signage Needs**

Zoning rules for signage are written to automatically provide a standard commercial property with a single building a reasonable amount of signage. Certain land uses, such as gas stations, multi-tenant shopping facilities or properties with multiple principal buildings, have signage needs that realistically exceed the amount of signage that would work for a single retail building. Until a few years ago, the City Code did not acknowledge that these types of properties have special signage needs and treated all properties with a "one size fits all" approach that created the need for a sign variance anytime one of these properties wanted to install additional signage. Each time, the sign variances were approved unanimously. In 2022, the City adopted updated signage rules which attempted to offer additional solutions for these types of situations. The tools

included additional sign allowances based on the length of the longest building façade that faces a street and creating a new Master Sign Plan process.

The Master Sign Plan process was created specifically to address signage for gas stations, multi-tenant shopping facilities or properties with multiple principal buildings as just giving large buildings extra signage based on building length does not always address the signage needs of a property. A master sign plan is handled like a site plan review for signage and allows the property owner to propose a signage plan for their overall property and for each tenant space. Staff initially encouraged the Applicant to ask the shopping center's landlord to apply for a master sign plan approval to address the signage needs for the site. This would have been a fairly heavy lift which would have required the landlord to sit down with all their existing tenants, calculate signage needs, and put together a cohesive plan for the property which may involve giving some tenants more rights than other tenants. The landlord expressed that they were not interested in taking this approach. City Staff acknowledges that the Master Sign Plan approach works best in situations where a multitenant retail building is being newly developed and does not have existing tenants with existing signage. With the Southview Shopping Center, City Staff believes that it is possible to accomplish many of the goals of the Master Sign Plan by approving a well-crafted and thoughtful variance that provides long-term guidance for signage at the shopping center.

**Proposed Signage Framework for the Northern Building at the Southview Shopping Center**

To address the Applicant's request and to avoid the need for constant sign variances at this property, Staff has drafted conditions of approval for the project that will function like a master sign plan. The scope of the conditions of approval would only address the northern building of the Southview Shopping Center. The conditions would remove the freestanding sign from the equation of the total allowable amount of signage on the subject property. Each tenant would be given a 90 square foot signage allowance. Each end cap suite would be given an additional 90 square foot allowance. Additionally, each suite would be given a 30 square foot allowance to install signage on the eastern building wall along 12th Avenue South to break up the monotonous and unattractive blank wall that is there today which faces Wakota Credit Union and the vacant lot where the Farmer's Market is located. The northern building would be allowed up to 1,200 square feet of wall signage under the proposed conditions of approval. Parameters about how to handle an increase in tenant space and the opportunity for the property owner to revert to the original signage allowance are included. Staff view this as the best solution to address the signage needs for this property.

**Planning Commission Review**

The Planning Commission reviewed the variance application and held a public hearing for the item at their meeting on April 1, 2026. One email was received prior to the meeting inquiring whether the two wall signs that were proposed by Anytime Fitness would be electronic changeable copy signs. No one was present at the meeting to comment on the application. The Planning Commission discussed the amount of signage that would be allowed on each wall through Staff's recommended approach and whether this amount of signage was appropriate for

the site. The consensus was that the proposed amount of signage was reasonable and that allowing additional signage for the northern building would not result in a sudden, dramatic increase in signage. At the conclusion of the public hearing, the Planning Commission voted to recommend approval of the variance as presented with a 7-0 vote.

**Discussion**

The Southview Shopping Center was constructed several decades before the City adopted formal signage rules and the signage at the site would have originally been approved at the discretion of the Planning Commission and the City Council, including the very large freestanding sign. In 1983, South St. Paul adopted more modern signage standards that regulated how large a single sign should be and the amount of signage a property could have based on its zoning. Even with more modern zoning codes, multi-tenant properties tend to have complex signage needs due to the nature of having multiple businesses in one building on a property. Several of the recent sign code updates have attempted to reduce the barriers to signage for new tenants of multi-tenant buildings while reducing the number of sign variances the Planning Commission and City Council must review. While the updates have generally been successful, variances are still necessary from time to time. In this case, Staff would like to use the requested variance as an opportunity to establish a comprehensive signage framework for the shopping center's northern building, addressing its needs holistically while supporting business-friendly outcomes and minimizing the need for future variances for otherwise code-compliant wall signage.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. Resolution 2026-53 - Approving Sign Variance at Southview Shopping Center
2. Sign Variance For 1205 Southview Boulevard

City of South St. Paul
Dakota County, Minnesota

**RESOLUTION NO. 2026-53**

**A RESOLUTION APPROVING A SIGN VARIANCE FOR THE SOUTHVIEW SHOPPING CENTER**

**WHEREAS**, the City received an application from Tony Wind requesting a signage variance to install additional signage at the Southview Shopping Center; and

**WHEREAS**, the subject property ("the Property") has several addresses but is generally addressed as 1205 Southview Boulevard and is legally described in Attachment A; and

**WHEREAS**, the Planning Commission held a public hearing on the application at their April 1, 2026 meeting, preceded by notice as required by law; and

**WHEREAS**, the Planning Commission recommended Approval of the application at their April 1, 2026 meeting with a 6-0 vote; and

**WHEREAS,** the City Council has considered the application, the recommendation of the Planning Commission and other evidence presented for consideration;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of South St. Paul, Minnesota as follows:

1. Facts. The facts found by the Planning Commission as stated in the Planner's report dated April 1, 2026 regarding this matter are hereby adopted and included herein by reference including the following attachments:

    a. Site Location Map
    b. Proposed Wall Sign- North Wall
    c. Proposed Wall Sign- West Wall
    d. Photos of Previous "Anytime Fitness' Signs at Subject Property
    e. Existing Building Facades
    f. Variance Narrative

2. Findings.

    A. The City Council determines the setback variance is consistent with the following criteria:

i. That the variance is in harmony with the general purpose and intent of the ordinance.

*The variance is in harmony with the general purpose and intent of the ordinance. The sign code is designed to provide adequate signage for businesses to promote commerce while preventing excessive signage that negatively impacts the aesthetics and character of a property. The Master Sign Plan process and the PUD process both allow for deviations from the sign code for complex multi-tenant projects. The Southview Shopping Center is a complex site with many building facades that face multiple different public streets. The shopping center also features a large lawful nonconforming freestanding sign that strains the property's signage allowance in a way that imposes a unique practical difficulty. Using a variance to address the situation in a manner that is similar to a Master Sign Plan or PUD approval is consistent with the purpose and intent of the zoning ordinance.*

ii. That the terms of the variance are consistent with the Comprehensive Plan.

*The variance is consistent with the comprehensive plan, which generally calls for creating a thriving walkable commercial area with good aesthetics and good urban design on the part of Southview Boulevard where the Southview Shopping Center is located. The property needs adequate signage to achieve its economic development potential. If the Applicant is not granted a variance, they will be unable to have wall signage along Southview Boulevard, and their business will be oriented solely towards the parking lot. The comprehensive plan calls for orienting businesses towards pedestrians, and this means having signage face the public right-of-way along Southview Boulevard.*

iii. That economic considerations are not the reasoning for the variance.

*Economic considerations are not the reason for the variance. The Applicant is seeking to install signage for his corner suite that is consistent with the typical signage placement for an endcap space in a multi-tenant building.*

iv. That the Property Owner proposes to utilize the property in a reasonable manner.

*The Applicant is proposing to use the property in a reasonable manner. The desire to install signage on the building facades that face the customer parking lot and the nearest street frontage is reasonable and logical. A variance that establishes a cohesive set of rules for signage at*

*the Southview Shopping Center is reasonable and is what the City Code tries to accomplish with the Master Sign Plan and PUD process. All the proposed new signs are consistent with the maximum allowable size for an individual sign, and the variance would establish a reasonable framework for administering the many lawful nonconformities that are already present at the Southview Shopping Center.*

v. That the plight of the property is due to a unique circumstance not created by the property owner.

*The plight of the property is due to a unique circumstance not created by the property owner. The shopping center's current owner is not the original group that developed the property. Multi-tenant shopping facilities have unique signage needs that exceed those of a single retail facility. Beyond the need for additional signage for multi-tenant facilities, the property has a large lawful nonconforming freestanding sign that takes up most of the signage allowance for the property. There are unique practical difficulties that make a variance a supportable tool for establishing a signage framework for the Southview Shopping Center instead of requiring the property owner to obtain a Master Sign Plan approval or PUD approval, which are the City Code's other vehicles for securing flexibility from sign code requirements.*

vi. That the variance will not alter the essential character of the neighborhood.

*The variance will not alter the essential character of the neighborhood. Shopping centers commonly have signs for each tenant on the wall that face the customer parking lot and additional signage on the closest street frontage for corner suites. The Applicant's proposed signage will be very similar to the previous wall signs for this suite. The proposed signage framework that will be established by the variance will work well in the context of the Southview Shopping Center's neighborhood.*

B. The City Council approves the Variance, subject to the following conditions:

1. **Status of Existing Freestanding Sign.** The Southview Shopping Center has an existing freestanding pylon sign which is lawful nonconforming today. It will be administered as a lawful nonconformity in accordance with City Code and State Statute. The freestanding sign will not count towards the property's signage allowance so long as each building within the Southview Shopping Center complies with the terms of this variance, unless the variance is terminated as provided below.

2. **Wall Signage for Northern Building.** The northern building of the Southview Shopping Center currently contains eight first floor tenant spaces and one basement tenant space. The northern building shall be governed by the following provisions related to wall signage:

    a. **Total Amount of Wall Signage.** The total amount of wall signage for the northern building shall not exceed 1,200 square feet. In addition to adhering to this total limit, the owner of the property must also adhere to the specific limits that govern each facade.

    b. **West Façade.** Each first-floor tenant may have up to 90 square feet of wall signage on the west façade. The basement tenant may have up to 60 square feet of wall signage on the west façade.

    c. **North Façade.** The endcap tenant may have up to 90 square feet of wall signage on the north facade in addition to any signage that they place on the west facade. The north facade shall not have more than 90 square feet of wall signage.

    d. **South Façade**. The endcap tenant may have up to 90 square feet of wall signage on the south facade in addition to any signage that they place on the west facade. The south facade shall not have more than 90 square feet of wall signage.

    e. **East Façade.** Each first-floor tenant may have up to 30 square feet of wall signage on the east facade in addition to any signage that they place on the other facades. The east facade shall not have more than 240 square feet of wall signage.

3. **Lawful Nonconforming Wall Signs on the West Facade of the Northern Building.** Any existing wall signage already on the west facade of the northern building at the time that this variance is approved shall be treated as lawful nonconforming if it exceeds the per-tenant allowance and will be administered as a lawful nonconformity in accordance with the City Code and State Statute.

4. **Handling an Increase in the Number of Tenant Spaces in the Northern Building**. If the property owner reconfigures the northern building in a way that results in more than eight first floor tenants or more than one basement tenant, they may re-apportion the wall signage for any façade so long as there is no more than 780 square feet of wall signage on the west façade, no more than 90 square feet of signage on the north façade, no more than 90 square feet of signage on the south façade, and no more than 240 square feet of signage on the east façade.

5. **Property Owner May Request a Reversion to Standard Sign Code Requirements.** The owner of the northern building of the Southview Shopping Center may revert to standard sign code requirements by filing a notarized statement with the Zoning Administrator surrendering this variance and requesting that standard sign code requirements for the underlying zoning district be placed back into effect.

6. **Wall Signage for the Southern Building.** The southern building of the Southview Shopping Center is not the subject of this variance. The southern building shall be treated as a separate “property” for the purposes of calculating its signage allowance. The wall

signage shall continue to be administered in accordance with standard City Code requirements. However, any signage located on the Southview Shopping Center's lawful nonconforming pylon sign shall not be counted against the signage allowance for the southern building.

7. **Sign Permits Required.** The tenant or property owner shall obtain a sign permit prior to installing any new signage at the property that requires a permit.

8. **Termination**. This variance will terminate in the following situations:

    a. The City Council may terminate the variance, following a hearing, if there is noncompliance with the conditions of approval.

    b. The variance may be terminated by the Property Owner if the Property Owner obtains a Master Sign Plan approval that sets up a different approach for overall site signage.

    c. The variance may be terminated by the Property Owner if the Property Owner of the northern building of the Southview Shopping Center files a notarized statement with the Zoning Administrator stating that they wish to terminate the variance and have the property revert to the standard zoning requirements of the underlying zoning district.

Adopted this 20th day of April, 2026

_____

City Clerk

**ATTACHMENTS**

A- Legal Description

**ATTACHMENT A**
**LEGAL DESCRIPTION**

Lots One (1), Two (2), Three (3) and Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29) and Thirty (30) in Block Five (5) of Minnesota and Northwestern Addition, together with the vacated alley in said Block 5, Minnesota and Northwestern Addition accruing thereto by reason of said vacation, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County and State.

Torrens Property

Certificate of Title No. 161418

PIDs # 36-48800-05-030, 36-48800-05-100, 36-48800-05-110, 36-48800-05-150, 36-48800-05-170, 36-48800-05-180, 36-48800-05-190, 36-48800-05-210, 36-48800-05-260, 36-48800-05-300

# PLANNING COMMISSION AGENDA REPORT

**DATE:** April 1, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Monika Miller
**AGENDA ITEM NUMBER:** 4.B.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Sign Variance for Anytime Fitness at the Southview Shopping Center

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
A motion recommending approval or denial of a variance request to install additional signage at the Southview Shopping Center

**OVERVIEW**

**Application**

The Applicant, Tony Wind on behalf of Anytime Fitness, is seeking a variance to install two new 87-square-foot wall signs on the façades of the Southview Shopping Center. The amount of signage already at the Southview Shopping Center exceeds the amount of signage that a single property in the C-1 Retail Business zoning district is allowed to have, so a variance is needed to install additional signage at the site.

**Review Timeline**

Complete Application Submittal Date: March 9, 2026
Planning Commission: April 1, 2026
Tentative City Council Meeting: April 20, 2026
60-Day Review Deadline: May 8, 2026

**Background**

The Southview Shopping Center is a multi-tenant retail facility constructed in 1958. It features two buildings with a total of approximately 55,914 square feet of leasable floor area. The property was developed under a different set of zoning rules than exists today and has numerous lawful nonconformities (commonly called “grandfather rights”). The most visible lawful nonconformity is the enormous freestanding sign at the corner of Southview Boulevard and 13th Avenue South, which is much taller than the shopping center itself and includes advertising space for all the businesses in the shopping center. The City Code no longer allows this type of enormous sign structure and shopping centers are now limited to 12-foot-tall monument signs.

The Applicant will soon move an Anytime Fitness health club into the northernmost tenant space in the Southview Shopping Center's main building. The suite is addressed as 1205 Southview Boulevard. This tenant space was previously utilized as an Anytime Fitness health club from 2010 to 2021 but has been vacant for the last five years. When Anytime Fitness vacated the suite in 2021, they removed their wall signage entirely and left the walls bare in preparation for the next tenant. The suite sat vacant for several years and recently the Applicant made the decision to re-open an Anytime Fitness health club in the same suite.

As part of the process of preparing the space to re-open, the Applicant engaged with a sign contractor to prepare new wall signs. The Applicant would like to install two 87-square-foot wall signs for their business: one on the north façade of the building facing Southview Boulevard and another on the west façade which would face the parking lot. The signs would be in the same location as the previous 'Anytime Fitness' wall signs but would be slightly larger than the previous signs. The sign project cannot move forward without a variance for several reasons:

- Over the decades, the City has had several different regulatory frameworks for reviewing and approving business signage. Under the current framework that was adopted in 2009, each property receives a signage allowance that they can use for either freestanding signage or wall signage. The allowance is quite generous and works well for most properties, but it does not anticipate a shopping center where an enormous "grandfathered" freestanding sign eats up almost the entire signage allowance, as is the case with the Southview Shopping Center. The Southview Shopping Center's freestanding sign is so large (almost 400 square feet) that there is not enough signage left under the allowance system for each tenant space to have adequate wall signage.

- The total amount of existing signage at the Southview Shopping Center exceeds the maximum amount of signage that is allowed for a property with C-1 zoning. This means that the Shopping Center is not eligible to have any additional signage, even if they get additional tenants. State Law allows lawful nonconformities to be repaired, maintained, improved and replaced. This means that existing signs can be swapped out with new signs if the new signs are not any larger than what was there before.

- The old Anytime Fitness wall signs were lawful nonconforming ("grandfathered"), but they were taken down five years ago. Grandfather rights expire one calendar year after the lawful nonconformity is removed.

City Staff and the City Attorney believe there is enough wiggle-room in the City Code to allow the Applicant to put up one small wall sign on the west façade of the building because there is language in the City Code that suggests that each tenant in a multitenant building should be allowed at least one wall sign. The Applicant is seeking to put up two full-sized wall signs to properly advertise the endcap space, which cannot occur without some type of variance. The Applicant has requested, at a minimum, a one-off variance that would allow their specific sign project to move forward. City Staff believes that this is a prime opportunity to "fix" the zoning situation at the Southview Shopping Center and develop a signage plan that will work for this

tenant and future tenants of the shopping center. Without a long-term fix, the Planning Commission and City Council will need to constantly review sign variances for this property over the coming years, and it may be difficult for many of the signage projects to properly satisfy the City Code's variance criteria.

**Existing Site Conditions**

The Southview Shopping Center is one of the city's main multi-tenant retail facilities. The shopping center is easily identifiable by the large freestanding sign at the corner of Southview Boulevard and 13th Avenue South. The property has frontage on 4 different streets: Southview Boulevard, 3rd Street South, 12th Avenue South, and 13th Avenue South. Staple tenants of the shopping center including Knowlan's Fresh Food, Hong Kong Restaurant, and Angelo's Pizza.

The shopping center contains two buildings: a northern building with nine tenant suites (eight on the first floor and one in the basement) and a southern building with three tenant suites. The two buildings share a large 206-stall parking lot. Most of the tenant spaces have wall signs in addition to having signage on the freestanding sign. The exact square footage of signage at the shopping center is difficult to confirm because permits have not consistently been obtained as signs have been replaced over the years.

**Zoning and Comprehensive Plan Summary**

The Southview Shopping Center property is zoned C-1, retail business district. Health clubs are a permitted use in the C-1 district. The 2040 Comprehensive Plan guides the property for Commercial Use. The proposed use of the northernmost unit as a fitness center and the use of the property as a shopping center aligns with the future land use guidance for the property.

In all commercial and industrial zoning districts, the maximum allowable size for an individual sign is 100 square feet. Properties with C-1 zoning are eligible to have up to 150 square feet of signage or an amount of signage equal to one and one-half (1.5) times the lineal feet of the longest building frontage facing a public street, whatever is greater. Each tenant in a multi-tenant building is permitted to have at least one wall sign; however, the total square footage of the wall signs cannot exceed the maximum amount of signage that is allowed for a single property. The northern building of the Southview Shopping Center has approximately 356 feet of frontage along 12th Avenue South, giving that building a maximum signage allowance of 534 square feet. While the exact amount of signage at the site is unknown, the estimated square footage of the freestanding sign (~ 370 square feet) combined with the existing wall signs on both buildings easily exceeds the maximum amount of signage that is allowed at the property. A variance is required to add additional signage to the northern building.

**Relevant Zoning Code Sections**

- City Code Section 118-39 regulates Variances
- City Code Sections 118-64 through 118-66 regulate Lawful Nonconformities
- City Code Section 118-333 regulates On Premises Signage

- City Code Section 118-335 regulates signage based on the underlying zoning district
- City Code Section 118-336 lays out the process and procedures for a Master Sign Plan

**Proposed Signage**

The Applicant would like to install two wall signs on the exterior building façade of their tenant space. Both signs would be 87 square feet in size and would display the name of the business in channel letters as well as the company's logo and the services offered. The two signs would be placed in the same location as the previous Anytime Fitness signs that were removed in 2021 and would be internally illuminated. The size of each individual sign complies with the maximum allowable size requirement for an individual sign. However, as previously stated, the existing amount of signage at the Southview Shopping Center exceeds the maximum allowable amount of signage for a single property. A variance is needed to add the tenant's proposed signage to the property.

**Options for Properties with Complex Signage Needs**

Zoning rules for signage are written to automatically provide a standard commercial property with a single building a reasonable amount of signage. Certain land uses, such as gas stations, multi-tenant shopping facilities or properties with multiple principal buildings, have signage needs that realistically exceed the amount of signage that would work for a single retail building. Until a few years ago, the City Code did not acknowledge that these types of properties have special signage needs and treated all properties with a "one size fits all" approach that created the need for a sign variance anytime one of these properties wanted to install additional signage. Each time, the sign variances were approved unanimously. In 2022, the City adopted updated signage rules which attempted to offer additional solutions for these types of situations. The tools included additional sign allowances based on the length of the longest building frontage that faces a street and creating a new Master Sign Plan process.

The Master Sign Plan process was created specifically to address signage for gas stations, multi-tenant shopping facilities or properties with multiple principal buildings, as giving large buildings extra signage based on building length does not always address the signage needs of a property. A master sign plan is handled like a site plan review for signage and allows the property owner to propose a signage plan for their overall property and for each tenant space. With a master sign plan, a property can have up to two times the amount of signage that is allowed in the underlying zoning district without needing a variance. A variance would still be required if a property's signage needs are so complex that they need more than two times the standard signage allowance.

Staff initially encouraged the Applicant to ask the shopping center's landlord to apply for a master sign plan approval to address the signage needs for the site. This would have been a fairly heavy lift which would have required the landlord to sit down with all their existing tenants, calculate signage needs, and put together a cohesive plan for the property which may involve giving some tenants more rights than other tenants. The landlord expressed that they were not interested in taking this approach. Additionally, the Applicant wants to open their business this

spring, and they want to get some type of zoning approval as soon as possible so that they can begin fabrication of their new signs. City Staff acknowledges that the Master Sign Plan approach works best in situations where a multi-tenant retail building is being newly developed and does not have existing tenants with existing signage. With the Southview Shopping Center, City Staff believes that it is possible to accomplish many of the goals of the Master Sign Plan by approving a well-crafted and thoughtful variance that provides long-term guidance for signage at the shopping center.

**Proposed Signage Framework for the Northern Building at the Southview Shopping Center**

To address the Applicant's request and to avoid the need for constant sign variances at this property, Staff has drafted conditions of approval for the project that will function like a master sign plan. The scope of the conditions of approval would only address the northern building of the Southview Shopping Center. The conditions would remove the freestanding sign from the equation of the total allowable amount of signage on the subject property. Each main floor tenant would be given a 90-square-foot wall sign allowance for the western building wall and the basement tenant would be given a 60-square-foot allowance on the western building wall. The western wall faces the parking lot and is where most of the existing wall signage is located. Each end-cap suite would be given an additional 90-square-foot allowance, allowing the northernmost tenant to install a sign on the exterior wall that fronts Southview Boulevard and the southernmost tenant to install a wall sign facing the drive aisle. Additionally, each main floor tenant would be given a 30-square-foot allowance to install signage on the eastern building wall along 12th Avenue South to break up the monotonous and unattractive blank wall that is there today which faces Wakota Credit Union and the vacant lot where the Farmer's Market is located. The northern building would be allowed up to 1,200 square feet of wall signage under the proposed conditions of approval. Parameters about how to handle an increase in tenant space and the opportunity for the property owner to revert to the original signage allowance are included. Staff view this as the best solution to address the signage needs for this property.

**Variance Criteria**

The Planning Commission is asked to review the proposed variance using the criteria laid out in City Code Section 118-39. Staff have prepared an analysis the Planning Commission can use if they wish to recommend approval of the variance using City Staff's proposed approach which will cohesively "fix" the signage situation at the Southview Shopping Center:

1. That the variance is in harmony with the general purpose and intent of the ordinance.

   *The variance is in harmony with the general purpose and intent of the ordinance. The sign code is designed to provide adequate signage for businesses to promote commerce while preventing excessive signage that negatively impacts the aesthetics and character of a property. The Master Sign Plan process and the PUD process both allow for*

*deviations from the sign code for complex multi-tenant projects. The Southview Shopping Center is a complex site with many building facades that face multiple different public streets. The shopping center also features a large lawful nonconforming freestanding sign that strains the property's signage allowance in a way that imposes a unique practical difficulty. Using a variance to address the situation in a manner that is similar to a Master Sign Plan or PUD approval is consistent with the purpose and intent of the zoning ordinance.*

2. That the terms of the variance are consistent with the Comprehensive Plan.

   *The variance is consistent with the comprehensive plan, which generally calls for creating a thriving walkable commercial area with good aesthetics and good urban design on the part of Southview Boulevard where the Southview Shopping Center is located. The property needs adequate signage to achieve its economic development potential. If the Applicant is not granted a variance, they will be unable to have wall signage along Southview Boulevard, and their business will be oriented solely towards the parking lot. The comprehensive plan calls for orienting businesses towards pedestrians, and this means having signage face the public right-of-way along Southview Boulevard.*

3. That economic considerations are not the reasoning for the variance. Economic considerations are not the reason for the variance.

   *Economic considerations are not the reason for the variance. The Applicant is seeking to install signage for his corner suite that is consistent with the typical signage placement for an endcap space in a multi-tenant building*.

4. That the Property Owner proposes to utilize the property in a reasonable manner.

   *The Applicant is proposing to use the property in a reasonable manner. The desire to install signage on the building facades that face the customer parking lot and the nearest street frontage is reasonable and logical. A variance that establishes a cohesive set of rules for signage at the Southview Shopping Center is reasonable and is what the City Code tries to accomplish with the Master Sign Plan and PUD process. All the proposed new signs are consistent with the maximum allowable size for an individual sign, and the variance would establish a reasonable framework for administering the many lawful nonconformities that are already present at the Southview Shopping Center.*

5. That the plight of the property is due to a unique circumstance not created by the property owner.

   *The plight of the property is due to a unique circumstance not created by the property owner. The shopping center's current owner is not the original group that developed the property. Multi-tenant shopping facilities have unique signage needs that exceed those of a single retail facility. Beyond the need for additional signage for multi-tenant facilities, the property has a large lawful nonconforming freestanding sign that takes up most of the*

*signage allowance for the property. There are unique practical difficulties that make a variance a supportable tool for establishing a signage framework for the Southview Shopping Center instead of requiring the property owner to obtain a Master Sign Plan approval or PUD approval, which are the City Code's other vehicles for securing flexibility from sign code requirements.*

6. That the variance will not alter the essential character of the neighborhood.

   *The variance will not alter the essential character of the neighborhood. Shopping centers commonly have signs for each tenant on the wall that faces the customer parking lot and additional signage on the closest street frontage for corner suites. The Applicant's proposed signage will be very similar to the previous wall signs for this suite. The proposed signage framework that will be established by the variance will work well in the context of the Southview Shopping Center's neighborhood.*

**Discussion**

For many years, signage for commercial and industrial properties did not need permits and instead required discretionary approval by the Planning Commission and the City Council. In 1983, South St. Paul adopted more modern signage standards that regulated how large a single sign should be and the amount of signage a property could have based on its zoning. The Southview Shopping Center was constructed several decades before the City adopted formal signage rules and the signage at the site would have originally been approved at the discretion of the Planning Commission and the City Council, including the very large freestanding sign. Even with more modern zoning codes, multi-tenant properties tend to have complex signage needs due to the nature of having multiple businesses in one building on a property. Several of the recent sign code updates have attempted to reduce the barriers to signage for new tenants of multi-tenant buildings while reducing the number of sign variances the Planning Commission and City Council must review. While the updates have generally been successful, variances are still necessary from time to time. In this case, Staff would like to use the requested variance as an opportunity to establish a comprehensive signage framework for the shopping center's northern building, addressing its needs holistically while supporting business-friendly outcomes and minimizing the need for future variances for otherwise code-compliant wall signage.

**Staff Recommendation**

City Staff recommends approval of the sign variance, subject to the following conditions:

1. **Status of Existing Freestanding Sign.** The Southview Shopping Center has an existing freestanding pylon sign which is lawful nonconforming today. It will be administered as a lawful nonconformity in accordance with City Code and State Statute. The freestanding sign will not count towards the property's signage allowance so long as each building within the Southview Shopping Center complies with the terms of this variance, unless the variance is terminated as provided below.

2. **Wall Signage for the Northern Building.**The northern building of the Southview Shopping Center currently contains eight first floor tenant spaces and one basement tenant space. The northern building shall be governed by the following provisions related to wall signage:

    a. **Total Amount of Wall Signage**. The total amount of wall signage for the northern building shall not exceed 1,200 square feet. In addition to adhering to this total limit, the owner of the property must also adhere to the specific limits that govern each facade.

    b. **West Façade.** Each first-floor tenant may have up to 90 square feet of wall signage on the west façade. The basement tenant may have up to 60 square feet of wall signage on the west façade.

    c. **North Façade.** The endcap tenant may have up to 90 square feet of wall signage on the north facade in addition to any signage that they place on the west facade. The north facade shall not have more than 90 square feet of wall signage.

    d. **South Façade.** The endcap tenant may have up to 90 square feet of wall signage on the south facade in addition to any signage that they place on the west facade. The south facade shall not have more than 90 square feet of wall signage.

    e. **East Façade**. Each first-floor tenant may have up to 30 square feet of wall signage on the east facade in addition to any signage that they place on the other facades. The east facade shall not have more than 240 square feet of wall signage.

3. **Lawful Nonconforming Wall Signs on the West Facade of the Northern Building**. Any existing wall signage already on the west facade of the northern building at the time that this variance is approved shall be treated as lawful nonconforming if it exceeds the per-tenant allowance and will be administered as a lawful nonconformity in accordance with the City Code and State Statute.

4. **Handling an Increase in the Number of Tenant Spaces in the Northern Building.** If the property owner reconfigures the northern building in a way that results in more than eight first floor tenants or more than one basement tenant, they may re-apportion the wall signage for any façade so long as there is no more than 780 square feet of wall signage on the west façade, no more than 90 square feet of signage on the north façade, no more than 90 square feet of signage on the south façade, and no more than 240 square feet of signage on the east façade.

5. **Property Owner May Request a Reversion to Standard Sign Code Requirements.** The owner of the northern building of the Southview Shopping Center may revert to standard sign code requirements by filing a notarized statement with the Zoning Administrator surrendering this variance and requesting that standard sign code requirements for the underlying zoning district be placed back into effect.

6. **Wall Signage for the Southern Building**. The southern building of the Southview Shopping Center is not the subject of this variance. The southern building shall be treated as a separate "property" for the purposes of calculating its signage allowance. The wall signage shall continue to be administered in accordance with standard City Code requirements. However, any signage located on the Southview Shopping Center's lawful nonconforming pylon sign shall not be counted against the signage allowance for the southern building.

7. **Sign Permits Required.** The tenant or property owner shall obtain a sign permit prior to installing any new signage at the property that requires a permit.

8. **Termination.** This variance will terminate in the following situations:

    - The City Council may terminate the variance, following a hearing, if there is noncompliance with the conditions of approval.

    - The variance may be terminated by the Property Owner if the Property Owner obtains a Master Sign Plan approval that sets up a different approach for overall site signage.

    - The variance may be terminated by the Property Owner if the Property Owner of the northern building of the Southview Shopping Center files a notarized statement with the Zoning Administrator stating that they wish to terminate the variance and have the property revert to the standard zoning requirements of the underlying zoning district.

**Required Action**

The Planning Commission has the following actions available for the application:

**Approval of Sign Variance As Presented**

If the Planning Commission wishes to recommend approval of the variance to allow additional signage at the Southview Shopping Center, the following action should be taken:

- Motion to recommend approval of a sign variance for the Southview Shopping Center as presented, subject to the conditions listed in the staff report.

**Denial of Sign Variance**

If the Planning Commission wishes to recommend denial of the sign variance on the grounds that the request does not meet the variance criteria, the following action should be taken:

- Motion to recommend denial of a sign variance for the Southview Shopping Center. If the Planning Commission wishes to recommend denial of the variance, specific

findings would need to be adopted that the variance does not meet the variance approval criteria.

**Alternative Approach: Approval of One-Off Variance for Anytime Fitness's Two Wall Signs**

The Planning Commission also has the option of declining to support City Staff's proposed solution for "fixing" the signage situation at the shopping center but still supporting the Applicant's variance request. If the Planning Commission feels that a one-off variance to allow the two 87 square foot Anytime Fitness signs is supportable, the Planning Commission can adopt its own findings and approve a variance that is more limited in scope.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. Site Location Map
2. Proposed Wall Sign- North Wall
3. Proposed Wall Sign- West Wall
4. Photos Of Previous "Anytime Fitness " Signs At Subject Property
5. Existing Building Facades
6. Variance Narrative

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Michael Healy
**AGENDA ITEM NUMBER:** 11.B.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Twin City Hide and Tanning PUD Extension

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**

Approve Resolution #2026-54 approving an amendment extending the conditional use permit for a planned unit development for Twin City Hide and Tanning.

**OVERVIEW**

**Application**

The Applicant, Twin City Hide, is continuing to implement their multi-phase Planned Unit Development (PUD) at 491 Malden Street which was initially approved in 2017 and granted extensions in 2019 and 2023. Twin City Hide operates out of a campus with multiple buildings that is connected to the campus of their sister company, Twin City Tanning. The PUD governs both properties and allows the two companies to phase the demolition of existing buildings and the construction of replacement buildings. The PUD approval is a framework for the redevelopment project and each new building must be presented to the Planning Commission and City Council for a site plan review before it is eligible for a building permit.

Twin City Hide and Tanning have completed four of the five phases contemplated in their PUD Plan. Their approval currently requires them to obtain site plan approval and commence the construction of their final building (Phase 5) no later than May 31, 2026. They are requesting:

1. An amendment to their Conditional Use Permit for a Planned Unit Development to extend the deadline to finish implementing Phase 5 of their approved plan. They are requesting a 3- year extension.

**Review Timeline**

***Complete Application Submittal:*** February 19, 2026
***Planning Commission:*** April 1, 2026

***City Council Meeting:*** April 20, 2026
***Original 60-Day Review Deadline:*** April 20, 2026
***Extended 120-Day Review Deadline:*** June 19, 2026

**Background**

Twin City Hide and Twin City Tanning are two interrelated businesses located on adjacent parcels at 491 Malden Street and 501 Malden Street. Twin City Hide cleans and preserves cow hides and Twin City Tanning turns cow hides into leather. Both businesses are owned by the same parent company, TCH Realty Inc. Twin City Tanning has frontage on two public streets while Twin City Hide is completely landlocked but has access to Malden Street through an easement across the Twin City Tanning property. The two companies obtained a Conditional Use Permit for a Planned Unit Development in 2017 that would allow them to phase in improvements to their properties. The "master plan" enshrined in the PUD contemplated redevelopment taking place in five (5) phases which were originally set to all take place prior to May 2020. The Applicant has obtained two PUD extensions and currently has until May of 2026 to commence the final phase.

- Phase 1 of the PUD plan, which was completed in 2017, was the construction of a new 30,000 square foot detached warehouse for wet hides.

- Phase 2, which was completed in 2019, was the demolition of an old 17,000 square foot attached warehouse that was located at the northern end of the site.

- Phase 3, which was completed in late 2024, was the construction of a new 45,817 square foot hide processing facility on the site of the old warehouse that was demolished.

- Phase 4, which was completed in late 2024, was the demolition of the old 35,247 square foot hide processing facility.

- Phase 5 will be the construction of a new roughly 35,645 square foot attached warehouse on the site of the old processing facility. The building will also include new offices and a break room for employees. This project has not yet received site plan approval and is still in the planning stages.

The Applicant is seeking to extend the terms of their PUD because their final phase will not commence prior to May 31, 2026, as is currently required.

**Zoning and Comprehensive Plan Guidance**

Both the Twin City Hide parcel and the Twin City Tanning parcel are zoned I-Industrial, which allows “manufacturing in an enclosed building with permanent walls and roof” as a permitted use. The I-Industrial district has a list of types of manufacturing uses that are prohibited, and it does not prohibit hide processing or hide tanning.

Both parcels are guided “Industrial” on the 2040 Comprehensive Plan’s future land use map:

> *“Industrial” includes anything that could go into a light industrial area, as well as some remaining general industrial uses such as the barge/bulk terminal, warehousing and storage, and some railroad uses. Some industrial areas may also allow animal processing uses as long as adequate controls are in place to prevent odor pollution and other nuisances. Industrial uses are generally located to the south of I-494 and east of Concord Street. The Metropolitan Council equivalent is part of “Industrial.”*

The City Council approved the South Concord Corridor Small Area Plan in 2025. This plan calls for continuing to allow animal processing uses in the area just south of Interstate 494 where Twin City Hide and Tanning is located. In accordance with the small area plan, this area may be rezoned to a new “Industrial Flex” zoning district in the future, which will be the only zoning district where animal processing uses will still be allowed, subject to strict requirements for odor management.

**Why Did the City Approve the Original PUD Plan in 2017?**

The approved PUD plan was set up in 2017 to provide the redevelopment project with flexibility from zoning code requirements that would normally apply to a development project in the Industrial zoning district. The PUD plan was proposed as a win-win for the businesses and the City. Twin City Hide has operated a hide processing plant on the subject property since the 1970’s. Many of the original buildings were functionally obsolete by 2017 and needed to be replaced or upgraded for the company to keep operating. The subject property had numerous zoning nonconformities which have been corrected or lessened as part of the PUD project. Additionally, the new buildings feature state-of-the-art odor mitigation technology and reflect Twin City Hide and Tanning's continued commitment to fully complying with South St. Paul's odor ordinance. Twin City Hide and Twin City Tanning have not had a "verified odor complaint" (a reading of 7 or higher on the Nasal Ranger field olfactometer, following a complaint) since 2021.

A more detailed analysis of the project's PUD flexibility and the City's rationale for approving the original PUD plan is included in the attached Planning Commission memo.

**Why Does the Applicant Need an Extension?**

The Applicant was granted a 3-year extension in 2023 because Phase 3, the construction of the new processing plant, was delayed due to COVID-19-related supply chain issues. That earlier

extension gave the Applicant until May 31, 2026 to complete Phase 4 and commence Phase 5, which is the construction of a new warehouse building.

The Applicant's new extension request is driven by unexpected challenges that arose during the implementation of Phase 3 and Phase 4.

- Phase 3 Challenges: The new hide processing plant was mostly complete by Spring 2023, but it uses complex computerized technologies that did not initially perform as expected due to software problems. These software issues were time-consuming to address because specialists needed to be flown in from Europe. The new hide processing plant ultimately could not be brought fully online until Fall 2024, which meant that the Phase 4 demolition of the old hide processing plant was delayed until Winter 2024. The Applicant has continued to have software issues and stated that they recently hired a local vendor named Cyber Trol and are going to implement a new software system.

- Phase 4 Challenges: After the old hide processing plant was demolished, it was determined that the soil underneath was contaminated and needed to be replaced with clean soil before the Phase 5 building can be built (it will have roughly the same footprint as the old building). The Applicant says that the soil replacement requirement resulted in a $1 million cost overrun.

The Applicant says that the challenges with fully implementing Phase 3 and Phase 4 have delayed their planning for Phase 5. The Applicant wants to coordinate with the Metropolitan Council and potentially implement water reclamation technologies that would lessen the company’s impact on the regional sewer system, so there could be a somewhat lengthy planning process. The Applicant believes that a 3-year extension will give them enough time to finish planning Phase 5, go through a site plan review with the Planning Commission and City Council, and commence construction of the final building.

**Status of Temporary Breakroom Facility**

The Phase 4 demolition project removed the building that previously housed Twin City Hide’s offices, employee locker room, and employee break room. Since 2022, the Applicant has been allowed to keep a temporary modular building on site to provide those facilities. The temporary building is governed by an Interim Use Permit (IUP). The IUP will expire on December 31, 2027, and the temporary building will need to be removed from the site within three (3) months of that date unless the City agrees to grant a new interim use permit.

The IUP’s expiration will provide the City with another opportunity to check in with the Applicant regarding the status of Phase 5. The Applicant should have a more clearly defined project timeline by Fall of 2027 when the IUP is up for reconsideration.

**CUP and PUD Review Criteria**

The Applicant needs an amendment to their Conditional Use Permit for a Planned Unit Development (CUP/PUD) in order to complete the final phase of their redevelopment project. The Code states that a Conditional Use Permit should only be recommended for approval if the City Council has made the following determinations:

1. *That the conditional use, with such conditions as the commission shall determine and attach, conforms to the general purpose and intent of this chapter.*
2. *If the application is based on the conditional use provision in this chapter that the issuance conforms to the general characteristics of the district of which it will become a part.*
3. *That the conditional use will not impede the normal and orderly development and improvement of property in the neighborhood for uses permitted in the district or districts affected.*
4. *That adequate utilities, access roads, streets, drainage, and other necessary facilities have been or will be provided.*
5. *That adequate measures have been or will be taken to provide ingress and egress in such a manner as to minimize traffic congestion and hazards in the public streets.*

In industrial districts, there are additional criteria to be considered*:*

*Certain uses may be considered generally unsuitable in industrial districts because of conditions that would tend to discourage other industrial development in the vicinity; these conditions may include noise, vibrations, dust, glare, unsightliness, or similar nuisances. Certain other industrial land uses are considered generally inappropriate because they represent underutilization of land, which, in turn, means a low tax return from land that under fuller development would be contributing needed revenue to the city's tax base.*

Additionally, the City Council is asked to consider the following factors when evaluating a Planned Unit Development request:

1. *That the proposed use will not be detrimental to the health, safety, morals, or general welfare of the city.*
2. *That said use is fully consistent with the purposes of Chapter 118-132 PUD, Planned Unit Development and the comprehensive municipal plan.*

**DISCUSSION**

The City puts expiration dates in development approvals for two main reasons. The first reason is that it is logistically infeasible to have open-ended development approvals. It would be a nightmare for City Staff if a property owner came forward with a major development project that had been approved 60 years prior and demanded a building permit based on the old approval.

Zoning requirements change periodically and the City needs to have the opportunity to review a project again after significant time has passed to verify that the project still meets code requirements. A second related reason for putting expiration dates in development approvals is that a City may change its vision for an area (i.e. an industrial area may be re-guided and rezoned for residential development). The City would not want a very old development approval to give a property owner the infinite right to expand a business in a manner that no longer aligns with the vision or the zoning. If an existing business is rezoned and becomes lawful nonconforming ("grandfathered"), the building can be repaired, maintained, improved, and replaced but not expanded.

The Applicant's request is reasonable and their explanation for why they need additional time makes sense. The area is zoned industrial and guided industrial, so the Applicant's PUD plan is consistent with the purpose and intent of the zoning code and the comprehensive plan. Furthermore, the City recently approved the South Concord Corridor Small Area Plan, which affirms that this is an area where animal processing uses should be allowed to take place as long as odor mitigation is addressed.

**PLANNING COMMISSION PUBLIC HEARING**

The Planning Commission held a public hearing for the PUD extension at their meeting on April 1st. No members of the public attended the public hearing or submitted comments. The Applicant's attorney, Paul Rogosheske, was present to answer questions and provide an update on the status of the project. They are still in the planning stage for the Phase 5 building, but if all goes well, they are hopeful that they will be able to secure site plan approval and begin construction in late 2026.

The Planning Commission is recommending approval with a 7-0 vote.

**STAFF RECOMMENDATION**

City Staff recommends approval of Resolution #2026-54 approving an amendment extending the conditional use permit for a planned unit development for Twin City Hide and Tanning.

**LINKS**

South Concord Corridor Small Area Plan

**SOURCE OF FUNDS**

NA

**ATTACHMENTS**

1. Resolution #2026-54
2. Planning Commission Memo

City of South St. Paul
Dakota County, Minnesota

**RESOLUTION NO. 2026-54**

**A RESOLUTION APPROVING AN AMENDMENT EXTENDING THE CONDITIONAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT FOR TWIN CITY HIDE AND TANNING**

**WHEREAS**, the City received an application from Twin City Hide. Along with sister company Twin City Tanning, they are continuing to implement their multi-phase Planned Unit Development (PUD) which was approved in 2017, extended in 2019, and extended again in 2023. Their approval currently requires them to commence the construction of their Phase 5 building by no later than May 31, 2026. They are requesting the following:

- An amendment to their Conditional Use Permit for a Planned Unit Development to extend the deadline to finish implementing their approved Planned Unit Development. *They are requesting a 3- year extension.*

**WHEREAS**, the subject property is located at the 491-501 Malden Street ("the Property"); and is legally described as follows:

(See Exhibit A)

**WHEREAS**, the Planning Commission held a public hearing on the application at their April 1, 2026 meeting, preceded by notice as required by law; and

**WHEREAS**, the Planning Commission recommended Approval (7 –0) of the application at their April 1, 2026 meeting; and

**WHEREAS,** the City Council has considered the application, the recommendation of the Planning Commission and other evidence presented for consideration;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of South St. Paul, Minnesota as follows:

1. Facts. The facts found by the Planning Commission as stated in the amended Planner's report dated April 1, 2026 regarding this matter are hereby adopted and included herein by reference including the following attachments:

    a. Site Location Map
    b. Site Plan Showing Project Site Before PUD Project
    c. Site Plan Showing PUD Project at Final Buildout

d. Original PUD Approval Resolution
e. Applicant's Narrative

2. Findings.

A. The City Council determines that the proposed conditional use permit extension is consistent with the following criteria:

i. That the conditional use, with such conditions as the commission shall determine and attach, conforms to the general purpose and intent of this chapter.
ii. If the application is based on the conditional use provision in this chapter that the issuance conforms to the general characteristics of the district of which it will become a part.
iii. That the conditional use will not impede the normal and orderly development and improvement of property in the neighborhood for uses permitted in the district or districts affected.
iv. That adequate utilities, access roads, streets, drainage, and other necessary facilities have been or will be provided.
v. That adequate measures have been or will be taken to provide ingress and egress in such a manner as to minimize traffic congestion and hazards in the public streets.
vi. That the proposed use is not an inappropriate underutilization of land and is an acceptable use in an industrial zoning district.

B. The City Council determines that the proposed Planned Unit Development extension is consistent with the following criteria:

i. The proposed extension of the already approved use will not be detrimental to the health, safety, morals, or general welfare of the city.

ii. The proposed extension of the already approved development is consistent with the purposes of Chapter 118-132 PUD, Planned Unit Development and the comprehensive municipal plan.

C. The City Council approves an amendment extending the Conditional Use Permit for a Planned Unit Development for Twin City Hide and Twin City Tanning subject to the following conditions:

1. **Revised Deadline for Remaining PUD Phases.** The Applicant must obtain a site plan approval and building permit for the Phase 5 building and commence the construction of the Phase 5 building by no later than May 31, 2029.

2. **Continued Compliance with Previous PUD Approvals.** Other than the revised deadline for the final phases of the PUD, the site shall continue to comply with all terms and conditions found in the Conditional Use Permit for a Planned Unit Development approved via City Council Resolutions #2017-102, #2017-129, #2017-146, #2019-187, and #2020-35, and #2023-40.

Adopted this 20th day of April, 2026.

_____

City Clerk

**Exhibits**

A- Legal Description

**EXHIBIT A**
**LEGAL DESCRIPTION**

Parcel 1:

That part of the S½ of the SE¼ of the SE¼ of Section 27, Township 28 North, Range 22 West described as follows:

Commencing at a point on the South line thereof, said point being 99.45 feet West of the Southeast corner of said Section 27, said point also being 8.5 feet West of the centerline of a spur track in place; thence North, parallel with the East line of said Section 27, a distance of 48.78 feet to the point of beginning of the property to be described; thence continuing North along the last described course 149.92 feet; thence on a tangential curve concave to the East, radius 1154.78 feet, central angle 12 degrees 51 minutes, arc distance 258.9 feet (chord definition); thence tangent to said curve 15.3 feet; thence on a non-tangential curve concave to the West, radius 1424.19 feet, central angle 7 degrees 46 minutes 04 seconds, arc distance 192.96 feet (chord definition) to the North line of the S½ of SE¼ of the SE¼ of Section 27, said point being 36.2 feet West of the East line of said Section 27; thence West along said North line 55.4 feet to a point which is 20 feet Southeasterly of the centerline of a spur track in place, when measured at right angle to said centerline; thence Southwesterly along a curve concave to the Northwest which is parallel with and 20 feet distant from the centerline of said spur track, said curve having a radius of 498.34 feet, central angle of 31 degrees 34 minutes 43 seconds, arc distance 274.2 feet to a point which is 300 feet West of the East line of said Section 27; thence North and parallel with said East line 12.6 feet; thence Southwesterly, parallel with and 8.5 feet distant from the centerline of said spur track along a curve concave to the Northwest, radius 486.84 feet, central angle 5 degrees 19 minutes 45 seconds, arc distance 45.2 feet (chord definition) thence tangent to said curve Southwesterly 200 feet; thence deflect 89 degrees 45 minutes to the left 393.66 feet; thence deflect 71 degrees 01 minutes 45 seconds to the left 298.59 feet to the point of beginning, Dakota County, Minnesota.

Abstract Property

Parcel 1A:

Together with Easement for driveway purposes, created in Grant of Easement dated October 18, 1972, as Document No. 407909.

Articles of Agreement Pertaining to Easements dated December 27, 1972, filed June 12, 1973, as Document No. 410762.

Parcel 2:

That part of the S½ of the SE¼ of SE¼ of Section 27 and that part of the NE¼ of the NE¼ of Section 34, all in Township 28 North, Range 22 West, described as follows:

Beginning at a point on the South line of Section 27, said point being 99.45 feet West of the Southeast corner thereof; thence North and parallel with the East line of said Section 27 a distance of 48.78 feet; thence deflect 90 degrees 40 minutes 30 seconds to the left 298.59 feet; thence deflect 71 degrees 01 minute 45 seconds to the right 75.86 feet; thence deflect 90 degrees 16 minutes to the left 355.2 feet to a point on the South line of said Section 27, distant 658.06 feet West of the Southeast corner of said Section 27; thence West along said South line 107.53 feet to the Easterly right of way of a 50 foot road in place; thence deflect 109 degrees 20 minutes 47 seconds to the left 436.95 feet to the Northerly line of Malden St.; thence deflect 92 degrees 03 minutes left 304.51 feet along said Northerly line; thence deflect 21 degrees 27 minutes 16 seconds to the right along the Northerly line of Malden St., 335.38 feet to a point which is 99.45 feet West of the East line of Section 34; thence North and parallel with said East line 301.75 feet to the point of beginning, Dakota County, Minnesota.

Abstract Property.

# PLANNING COMMISSION AGENDA REPORT

**DATE:** April 1, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Michael Healy
**AGENDA ITEM NUMBER:** 4.C.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Twin City Hide and Tanning PUD Extension

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**

A motion recommending approval or denial of an amendment extending Twin City Hide's conditional use permit for a planned unit development.

**OVERVIEW**

**Application**

The Applicant, Twin City Hide, is continuing to implement their multi-phase Planned Unit Development (PUD) at 491 Malden Street which was initially approved in 2017 and granted extensions in 2019 and 2023. Twin City Hide operates out of a campus with multiple buildings that is connected to the campus of their sister company, Twin City Tanning. The PUD governs both properties and allows the two companies to phase the demolition of existing buildings and the construction of replacement buildings. The PUD approval is a framework for the redevelopment project and each new building must be presented to the Planning Commission and City Council for a site plan review before it is eligible for a building permit.

Twin City Hide and Tanning have completed four of the five phases contemplated in their PUD Plan. Their approval currently requires them to obtain site plan approval and commence the construction of their final building (Phase 5) no later than May 31, 2026. They are requesting:

1. An amendment to their Conditional Use Permit for a Planned Unit Development to extend the deadline to finish implementing Phase 5 of their approved plan. They are requesting a 3- year extension.

**Review Timeline**

***Complete Application Submittal:*** February 19, 2026
***Planning Commission:*** April 1, 2026

***Tentative City Council Meeting:*** April 20, 2026
***60-Day Review Deadline:*** April 20, 2026

**Background**

Twin City Hide and Twin City Tanning are two interrelated businesses located on adjacent parcels at 491 Malden Street and 501 Malden Street. Twin City Hide cleans and preserves cow hides and Twin City Tanning turns cow hides into leather. Both businesses are owned by the same parent company, TCH Realty Inc. Twin City Tanning has frontage on two public streets while Twin City Hide is completely landlocked but has access to Malden Street through an easement across the Twin City Tanning property. The two companies obtained a Conditional Use Permit for a Planned Unit Development in 2017 that would allow them to phase in improvements to their properties. The "master plan" enshrined in the PUD contemplated redevelopment taking place in five (5) phases which were originally set to all take place prior to May 2020. The Applicant has obtained two PUD extensions and currently has until May of 2026 to commence the final phase.

- Phase 1 of the PUD plan, which was completed in 2017, was the construction of a new 30,000 square foot detached warehouse for wet hides.

- Phase 2, which was completed in 2019, was the demolition of an old 17,000 square foot attached warehouse that was located at the northern end of the site.

- Phase 3, which was completed in late 2024, was the construction of a new 45,817 square foot hide processing facility on the site of the old warehouse that was demolished.

- Phase 4, which was completed in late 2024, was the demolition of the old 35,247 square foot hide processing facility.

- Phase 5 will be the construction of a new roughly 35,645 square foot attached warehouse on the site of the old processing facility. The building will also include new offices and a break room for employees. This project has not yet received site plan approval and is still in the planning stages.

The Applicant is seeking to extend the terms of their PUD because their final phase will not commence prior to May 31, 2026, as is currently required.

**Zoning and Comprehensive Plan Guidance**

Both the Twin City Hide parcel and the Twin City Tanning parcel are zoned I-Industrial, which allows "manufacturing in an enclosed building with permanent walls and roof" as a permitted use. The I-Industrial district has a list of types of manufacturing uses that are prohibited, and it does not prohibit hide processing or hide tanning.

Both parcels are guided "Industrial" on the 2040 Comprehensive Plan's future land use map:

> *"Industrial" includes anything that could go into a light industrial area, as well as some remaining general industrial uses such as the barge/bulk terminal, warehousing and storage, and some railroad uses. Some industrial areas may also allow animal processing uses as long as adequate controls are in place to prevent odor pollution and other nuisances. Industrial uses are generally located to the south of I-494 and east of Concord Street. The Metropolitan Council equivalent is part of "Industrial."*

The City Council approved the South Concord Corridor Small Area Plan in 2025. This plan calls for continuing to allow animal processing uses in the area just south of Interstate 494 where Twin City Hide and Tanning is located. In accordance with the small area plan, this area may be rezoned to a new "Industrial Flex" zoning district in the future, which will be the only zoning district where animal processing uses will still be allowed, subject to strict requirements for odor management.

**Why was a PUD Approval Needed for the 5-Phase Plan?**

The approved PUD plan was set up in 2017 to provide the redevelopment project with flexibility from zoning code requirements that would normally apply to a development project in the Industrial zoning district. The following flexibility was provided:

1. The PUD plan allowed greater lot coverage by buildings than the 40% that is generally allowed in the Industrial zoning district. It a*llowed up to 44.6% lot coverage.*

2. The PUD plan allowed multiple principal structures on a single lot. *This requires either PUD approval or a conditional use permit.*

3. The PUD plan allowed the somewhat unusual arrangement of having buildings on two parcels with a 0-foot setback along common walls. *A minimum 20-foot property line setback is typically required for industrial buildings in the I-Industrial district.*

4. The subject properties are in the Flood Fringe area (the 100-year floodplain on FEMA flood maps). Development is allowed in this area but the only development approach that is automatically allowed is constructing buildings on raised fill to a specific elevation with the fill meeting specific design standards. Any alternative approach to floodproofing a building requires conditional use permits, variances, or a PUD plan.

5. The PUD plan allowed an odor-mitigation scrubber system to be installed in the new hide processing building that needed a conditional use permit to exceed 50 feet in height.

6. The PUD plan granted flexibility from the City Code's default minimum off-street parking requirements for industrial uses.

7. The PUD plan allowed a new employee parking lot to be constructed near Malden Street without meeting front yard setback requirements for parking lots.

**Why Did the City Approve the Original PUD Plan in 2017?**

Twin City Hide has operated a hide processing plant on the subject property since the 1970's. Many of the original buildings were functionally obsolete by 2017 and needed to be replaced or upgraded for the company to keep operating. The old buildings had numerous zoning nonconformities. The PUD plan was proposed as a win-win for the company and the City for the following reasons:

- The PUD "asks" were reasonable. Much of the PUD flexibility relates to the uniqueness of having two sister companies on adjacent parcels with intertwined operations.

- The new buildings are large and of high quality. They will add to the property tax base in a manner that is consistent with the goals of the I-Industrial zoning district and the comprehensive plan.

- The City has taken odor mitigation very seriously since the adoption of the 2030 Comprehensive Plan in 2011. The City adopted its first odor ordinance in 2014, and City Staff uses the Nasal Ranger® field olfactometer to investigate complaints about odor nuisances and issue citations to businesses that violate the odor ordinance. A "verified odor complaint" is any odor that generates a complaint where City Staff observes an odor

reading of “7” or higher on the Nasal Ranger® beyond the property lines of the entity causing the odor. The old buildings at Twin City Hide and Tanning were not designed to fully manage odors, although the Applicant did as much odor mitigation as they could with retrofits. The new buildings constructed under the PUD plan feature state-of-the-art odor management technologies. The Applicant’s overall approach to odor management has been a success and Twin City Hide and Twin City Tanning have not had a verified odor complaint since 2021.

- Twin City Hide has completely reworked their industrial processes and is focused on giving their employees a better quality of life, which will aid in employee attraction and retention. Their old hide processing plant required employees to manually wash manure-covered cow hides using a system of water-filled raceways (essentially an indoor lazy river full of dirty hides). The new hide processing plant features conveyor belts and enclosed drums which are essentially giant washing machines for cow hides. Employees charged with hide cleaning now use technology to get the job done and there is a reduced need for dirty and strenuous physical labor in the cleaning process.

- The PUD plan aims to address many longstanding zoning nonconformities and provides significantly expanded off-street parking for employees. Previously, most employees needed to park on public streets.

**Why Does the Applicant Need an Extension?**

The Applicant was granted a 3-year extension in 2023 because Phase 3, the construction of the new processing plant, was delayed due to COVID-19-related supply chain issues. That earlier extension gave the Applicant until May 31, 2026 to commence Phase 5, which is the construction of a new warehouse.

The Applicant's new extension request is driven by unexpected challenges that arose during the implementation of Phase 3 and Phase 4.

- Phase 3 Challenges: The new hide processing plant was mostly complete by Spring 2023, but it uses complex computerized technologies that did not initially perform as expected due to software problems. These software issues were time-consuming to address because specialists needed to be flown in from Europe. The new hide processing plant ultimately could not be brought fully online until Fall 2024, which meant that the Phase 4 demolition of the old hide processing plant was delayed until Winter 2024. The Applicant has continued to have software issues and stated that they recently hired a local vendor named Cyber Trol and are going to implement a new software system.

- Phase 4 Challenges: After the old hide processing plant was demolished, it was determined that the soil underneath was contaminated and needed to be replaced with clean soil before the Phase 5 building can be built (it will have roughly the same footprint as the old building). The Applicant says that the soil replacement requirement resulted in a $1 million cost overrun.

The Applicant says that the challenges with fully implementing Phase 3 and Phase 4 have delayed their planning for Phase 5. The Applicant wants to coordinate with the Metropolitan Council and potentially implement water reclamation technologies that would lessen the company's impact on the regional sewer system, so there will be a somewhat lengthy planning process. The Applicant believes that a 3-year extension will give them enough time to finish planning Phase 5, go through a site plan review with the Planning Commission and City Council, and commence construction of the final building.

**Status of Temporary Breakroom Facility**

The Phase 4 demolition project removed the building that previously housed Twin City Hide's offices, employee locker room, and employee break room. Since 2022, the Applicant has been allowed to keep a temporary modular building on site to provide those facilities. The temporary building is governed by an Interim Use Permit (IUP). The IUP will expire on December 31, 2027, and the temporary building will need to be removed from the site within three (3) months of that date unless the City agrees to grant a new interim use permit.

The IUP's expiration will provide the City with another opportunity to check in with the Applicant regarding the status of Phase 5. The Applicant should have a more clearly defined project timeline by Fall of 2027 when the IUP is up for reconsideration.

**CUP and PUD Review Criteria**

The Applicant needs an amendment to their Conditional Use Permit for a Planned Unit Development (CUP/PUD) in order to complete the final phase of their redevelopment project. The Code states that a Conditional Use Permit should only be recommended for approval if the Planning Commission has made the following determinations:

1. *That the conditional use, with such conditions as the commission shall determine and attach, conforms to the general purpose and intent of this chapter.*
2. *If the application is based on the conditional use provision in this chapter that the issuance conforms to the general characteristics of the district of which it will become a part.*
3. *That the conditional use will not impede the normal and orderly development and improvement of property in the neighborhood for uses permitted in the district or districts affected.*
4. *That adequate utilities, access roads, streets, drainage, and other necessary facilities have been or will be provided.*

5. *That adequate measures have been or will be taken to provide ingress and egress in such a manner as to minimize traffic congestion and hazards in the public streets.*

In industrial districts, there is additional criteria to be considered*:*

*Certain uses may be considered generally unsuitable in industrial districts because of conditions that would tend to discourage other industrial development in the vicinity; these conditions may include noise, vibrations, dust, glare, unsightliness, or similar nuisances. Certain other industrial land uses are considered generally inappropriate because they represent underutilization of land, which, in turn, means a low tax return from land that under fuller development would be contributing needed revenue to the city's tax base.*

Additionally, the Planning Commission is asked to consider the following factors when evaluating a Planned Unit Development request:

1. *That the proposed use will not be detrimental to the health, safety, morals, or general welfare of the city.*
2. *That said use is fully consistent with the purposes of Chapter 118-132 PUD, Planned Unit Development and the comprehensive municipal plan.*

**DISCUSSION**

The City puts expiration dates in development approvals for two main reasons. The first reason is that it is logistically infeasible to have open-ended development approvals. It would be a nightmare for City Staff if a property owner came forward with a major development project that had been approved 60 years prior and demanded a building permit based on the old approval. Zoning requirements change periodically and the City needs to have the opportunity to review a project again after significant time has passed to verify that the project still meets code requirements. A second related reason for putting expiration dates in development approvals is that a City may change its vision for an area (i.e. an industrial area may be re-guided and rezoned for residential development). The City would not want a very old development approval to give a property owner the infinite right to expand a business in a manner that no longer aligns with the vision or the zoning. If an existing business is rezoned and becomes lawful nonconforming (“grandfathered”), the building can be repaired, maintained, improved, and replaced but not expanded.

The Applicant’s request is reasonable and their explanation for why they need additional time makes sense. The area is zoned industrial and guided industrial, so the Applicant’s PUD plan is consistent with the purpose and intent of the zoning code and the comprehensive plan. Furthermore, the City recently approved the South Concord Corridor Small Area Plan, which affirms that this is an area where animal processing uses should be allowed to take place as long as odor mitigation is addressed.

## STAFF RECOMMENDATION

Staff recommends approval of the amendment to the conditional use permit for a planned unit development, subject to the following conditions:

1. **Revised Deadline for Remaining PUD Phase.** The Applicant must obtain a site plan approval and building permit for the Phase 5 building and commence the construction of the Phase 5 building by no later than May 31, 2029.

2. **Continued Compliance with Previous PUD Approvals.** Other than the revised deadline for the final phases of the PUD, the site shall continue to comply with all terms and conditions found in the Conditional Use Permit for a Planned Unit Development approved via City Council Resolutions #2017-102, #2017-129, #2017-146, #2019-187, #2020-35, and #2023-40.

## ACTION NEEDED

The Planning Commission has the following actions available on the proposed application:

1. Approval.If the Planning Commission wishes to recommend approval of the amendment, the following action should be taken:

- Motion to recommend approval of an amendment to Twin City Hide's conditional use permit for a planned unit development granting a 3-year extension.

2. Denial.If the Planning Commission wishes to recommend denial of the amendment, the following action should be taken:

- Motion to recommend denial of an amendment to Twin City Hide's conditional use permit for a planned unit development.

*If the recommendation is denial, the Planning Commission must explicitly lay out the rationale behind the denial recommendation. Specifically, they must state how the application fails to comply with Code criteria for a conditional use permit or a planned unit development.*

## LINKS

South Concord Corridor Small Area Plan

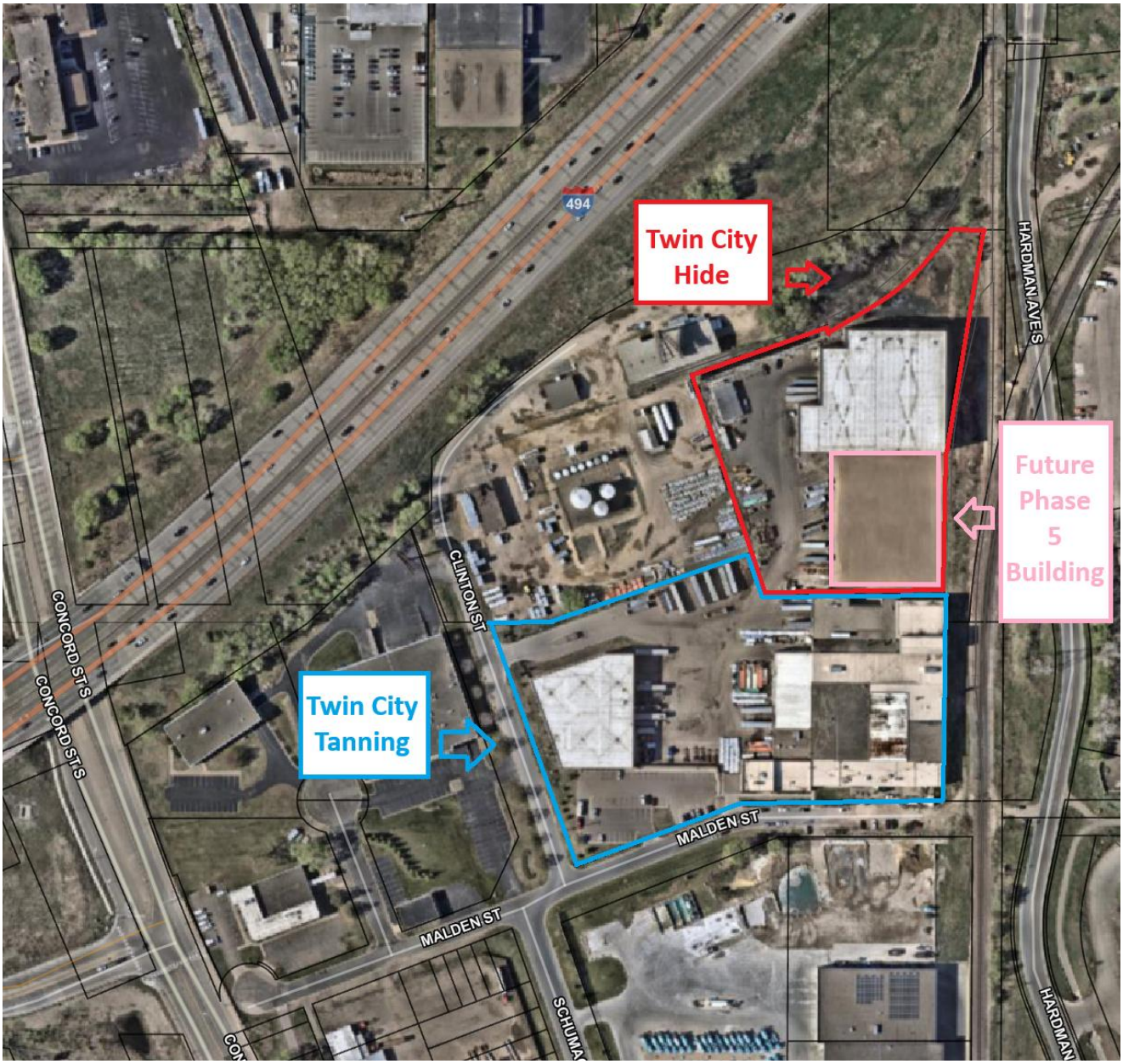
## SOURCE OF FUNDS

NA

**ATTACHMENTS**

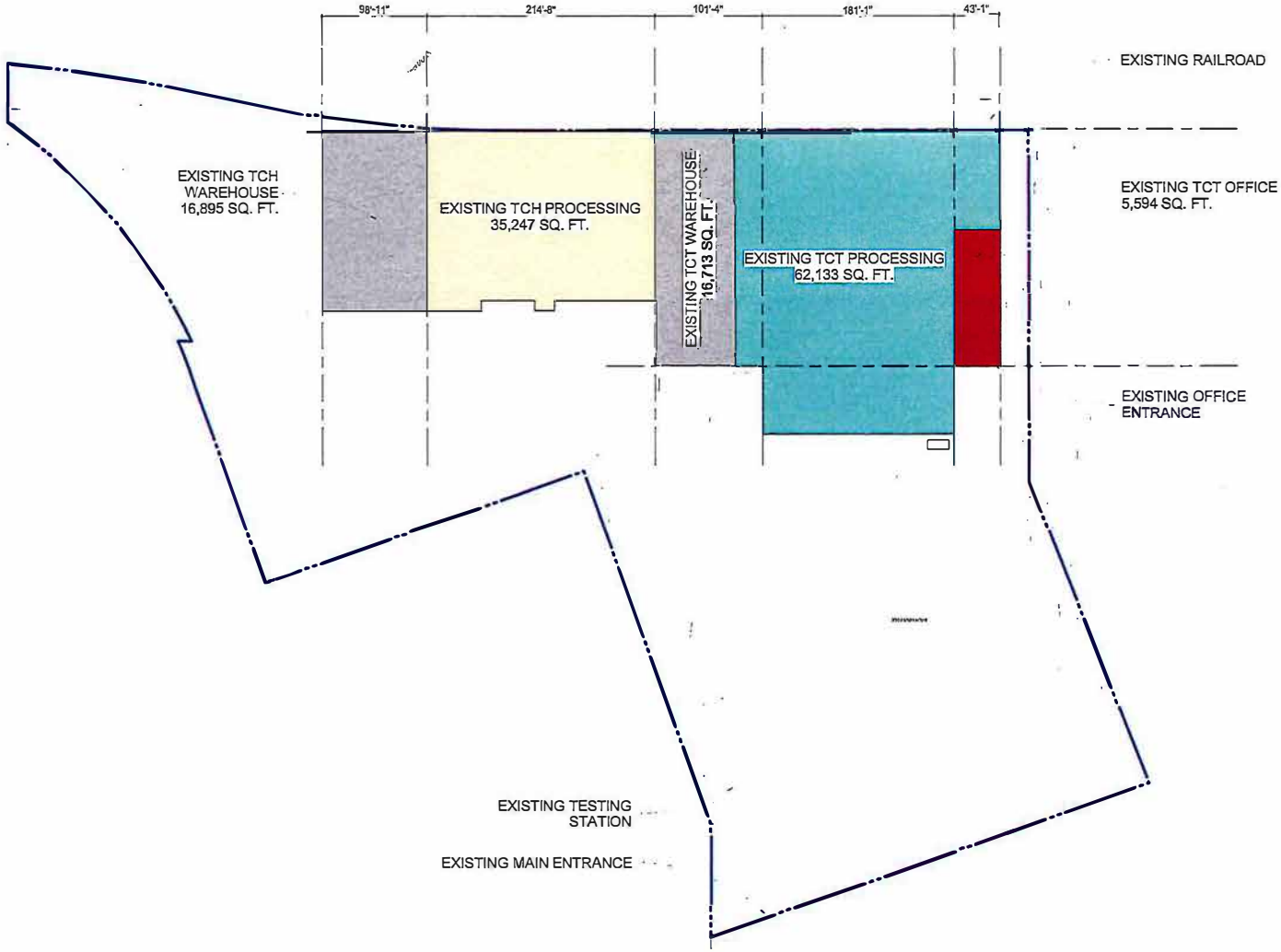
1. Site Location Map
2. Site Plan Showing Project Site Before PUD Project
3. Site Plan Showing PUD Project at Final Buildout
4. Original PUD Approval Resolution
5. Applicant's Narrative

# ATTACHMENT 1
# SITE LOCATION MAP




Map Showing Rough Footprint of Future “Phase 5” Building

# ATTACHMENT 2
# SITE PLAN SHOWING PROJECT SITE BEFORE PUD PROJECT




SITE PLAN GENERAL NOTES

A) SITE INFORMATION HAS BEEN TAKEN FROM A SITE SURVEY PREPARED BY LOUCKS DATED 11/29/16. GENERAL CONTRACTOR IS TO VERIFY ALL SITE INFORMATION BEFORE STARTING CONSTRUCTION, AND NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES.

B) REFER TO THE GENERAL NOTES FOR OTHER APPLICABLE INFORMATION.

NOT FOR CONSTRUCTION

POPE ARCHITECTS, INC.

GUNDERSON CONSTRUCTION, INC.

TWIN CITY HIDE
NEW WAREHOUSE
SOUTH ST. PAUL, MN

APR 03 2017

04/03/2017
PUD SUBMITTAL

SITE PLAN - EXISTING REFERENCE

EXISTING

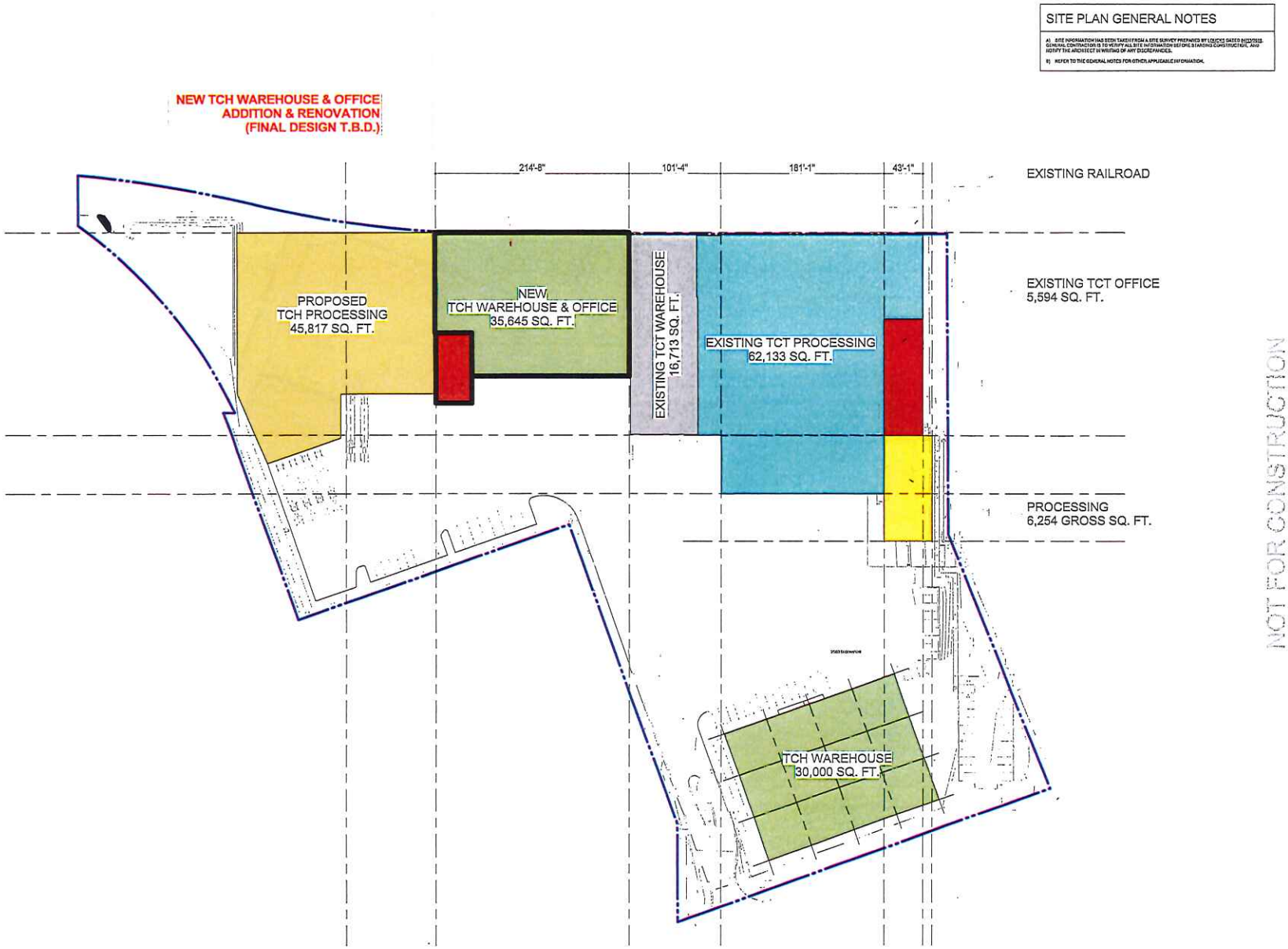
37522-17027
MHA
PH

SHEET
A1.0

1 A1.0 SITE PLAN - EXISTING REFERENCE
1" = 40'-0"

TRUE

# ATTACHMENT 3
# SITE PLAN SHOWING PUD PROJECT AT FINAL BUILDOUT



# ATTACHMENT 4
# ORIGINAL PUD APPROVAL RESOLUTION

City of South St. Paul
Dakota County, Minnesota

**RESOLUTION NO. 2017-102**

**A RESOLUTION APPROVING A PLANNED UNIT DEVELOPMENT / CONDITIONAL USE PERMIT FOR THE REDEVELOPMENT OF THE SITE AT 491-501 MALDEN STREET**

**WHEREAS**, the City received an application from Gunderson Construction on behalf of Twin City Hide and TCH Realty, Inc. for a Planned Unit Development to allow a phased redevelopment of the hide processing operation on the site at 491-501 Malden Street and legally described as follows:

(See Attached Exhibit A)

**WHEREAS**, the Planning Commission held a public hearing on the application at their May 3, 2017 meeting, preceded by notice as required by law; and

**WHEREAS**, the Planning Commission took action to recommend approval of the application at their May 3, 2017 meeting; and

**WHEREAS,** the City Council has considered the application, the recommendation of the Planning Commission and other evidence presented for consideration;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of South St. Paul, Minnesota as follows:

1. Facts. The facts found by the Planning Commission as stated in the Planner's report regarding this matter are hereby adopted and included herein by reference.

2. Findings. The City Council determines that the proposed Planned Unit Development will not be detrimental to the health, safety, or general welfare of the community, nor will it cause serious traffic congestion or hazards, nor will it seriously depreciate surrounding property values, and it is in harmony with the general purpose and intent of the Zoning Code. Additionally, the request is in harmony with the purpose and intent of the ordinance and the terms are consistent with the Comprehensive Plan.

3. Planned Unit Development /Conditional Use Permit. The proposed Planned Unit Development for the phased redevelopment of the site and Conditional Use Permit for development within the Flood Fringe area would include the development of a stand-alone 30,000 s.f. warehouse, demolition of existing facility, development of a new 46,000 s.f. processing facility, and development of an attached 35,000 s.f. warehouse

is hereby approved for the property at 491-501 Malden Street subject to the following conditions:

A) **Compliance with Plan Submittals.** The site shall be utilized in substantial conformance, in the reasonable opinion of the City Council, with the application, narratives, and with the following plans on file with the Engineering Department:

| | | |
|---|---|---|
| a) | **Application / Narrative (Gunderson / TCH, Pope)** | **dated 04/03/2017** |
| b) | **Civil Plans (Loucks, Pope)** | **dated 04/03/2017** |
| c) | **Site / Architectural Plans (Pope)** | **dated 04/03/2017** |

B) **Project Phasing.** The project consists of several phases of development including:

1) Phase 1 – construction of a 30,000 s.f. detached warehouse
2) Phase 2 – demolition of the existing 17,000 s.f. warehouse
3) Phase 3 – construction of a new 46,000 s.f. processing facility
4) Phase 4 – demolition of the existing 35,000 s.f. processing facility
5) Phase 5 – construction of a new 35,000 s.f. attached warehouse

All phases of the proposed development shall be completed within 3 years from the date of approval of this PUD by the City or the applicant must return to the City to amend the PUD.

C) **Building Permits Required.** Building permits are required for the proposed improvements. All building plans and specifications are subject to the review and approval of the City Building Official and South Metro Fire Marshal.

D) **Sign Permits Required.** The applicant shall file the necessary sign permit application and supplementary material as necessary and shall be subject to the review and approval of the City Planner.

E) **Revised Plans.**

a) Revised plans should be submitted for changes to the site plans and/or landscape plans. No architectural plans were submitted for any phase beyond the warehouse in Phase 1. Architectural plans, floor plans, civil plans, landscaping plans including a detailed planting schedule, fence/screening plans, and photometric plans shall be required at the time of Site Plan review. The applicant shall submit revised architectural plans noting materials, heights, and percentage of different materials.
b) Plans shall include location of sidewalks and pedestrian ways. Provide sidewalk/pedestrian way through the site to provide pedestrian access to the Twin City Hide facility.
c) The current plans show that utilities serving the Twin City Hide site do not follow existing easements. Easements or utility locations shall be corrected to ensure that access to these utilities is protected.
d) The site does not show a sufficient number of parking spaces to comply with City Code. If a variation from the parking standards is requested through the Planned Unit Development, then the applicants must show how they will provide sufficient

parking to accommodate the facility. This analysis should demonstrate whether the gap in parking is present during normal shifts or just during periods where shifts may overlap. The applicants shall provide the City with revised plans demonstrating how the site will accommodate additional parking on site, a shared parking agreement to meet the parking requirements, or some combination of those elements.

F) **Screening/Fencing.** Dumpsters shall be screened in accordance with City Code, such screening is subject to the review and approval of the City Planner. Any exterior storage (if approved through the application) shall be screened by landscaping or screening. Barbed wire security fence is prohibited.

G) **Approvals from other agencies**. The applicant shall obtain all necessary approvals from other applicable agencies such as MnDNR, MnDOT, and Dakota County.

H) **Flood Protection / Flood-Proofing.** As an industrial property in the Flood Fringe area the Flood plain regulations require that the buildings shall be protected from flooding by elevating the floor levels equal to the height of the regulatory flood protection, designed to flood internally and according to FP-1 or FP-2 standards from the Building Code or other means as allowed under the Floodplain ordinance.

I) **Additional Odor Monitoring During Temporary Warehouse Use.** The applicant shall provide an escrow which would be used for the City to perform additional odor monitoring around the proposed facility during the temporary use of the 30,000 s.f. warehouse for wet hide storage. The amount of the escrow shall be established by the City in consultation with their Odor Consultant and shall be sufficient to cover the cost to the City for the additional odor monitoring of the warehouse during the temporary use. If during the odor monitoring the City determines that the facility is in violation of the odor ordinance, then the applicant will be required to install odor mitigation to bring the facility into compliance with the odor ordinance.

J) **Odor Mitigation.** The applicant shall provide the City with an odor mitigation plan that shall be reviewed and approved by the City, the odor mitigation plan shall be required prior to issuance of building permits.

K) **Stormwater Maintenance Agreement.** The applicant will need to maintain their stormwater system to ensure that it functions properly. A stormwater maintenance agreement will be required and an escrow for the stormwater maintenance improvements is required prior to issuance of building permits.

L) **Compliance with Laws and Approvals.** The property must remain compliant with all federal, state, and local laws and ordinances and all prior City approvals.

M) **Review of the Planned Unit Development / Conditional Use Permit**. The Planned Unit Development / Conditional Use Permit will be reviewed in approximately 1 year to determine compliance with the PUD / CUP.

N) **Termination of the Planned Unit Development / Conditional Use Permit.** The Planned Unit Development / Conditional Use Permit will terminate if improvements have not

substantially begun within 1-year from the date of approval of the PUD / CUP. The violation of a condition of approval shall terminate the PUD/CUP. The property must be continually operated for the use specified in the PUD/CUP to remain valid. If the property is not used for the use listed in this PUD/CUP for a period of 1-year then the PUD/CUP shall terminate.

Adopted this 15th day of May, 2017

Christy M. Wilcox

City Clerk

Exhibit A
Legal Description

Parcel 1:
That part of the S½ of the SE¼ of the SE¼ of Section 27, Township 28 North, Range 22 West described as follows:

Commencing at a point on the South line thereof, said point being 99.45 feet West of the Southeast corner of said Section 27, said point also being 8.5 feet West of the centerline of a spur track in place; thence North, parallel with the East line of said Section 27, a distance of 48.78 feet to the point of beginning of the property to be described; thence continuing North along the last described course 149.92 feet; thence on a tangential curve concave to the East, radius 1154.78 feet, central angle 12 degrees 51 minutes, arc distance 258.9 feet (chord definition); thence tangent to said curve 15.3 feet; thence on a non-tangential curve concave to the West, radius 1424.19 feet, central angle 7 degrees 46 minutes 04 seconds, arc distance 192.96 feet (chord definition) to the North line of the S½ of SE¼ of the SE¼ of Section 27, said point being 36.2 feet West of the East line of said Section 27; thence West along said North line 55.4 feet to a point which is 20 feet Southeasterly of the centerline of a spur track in place, when measured at right angle to said centerline; thence Southwesterly along a curve concave to the Northwest which is parallel with and 20 feet distant from the centerline of said spur track, said curve having a radius of 498.34 feet, central angle of 31 degrees 34 minutes 43 seconds, arc distance 274.2 feet to a point which is 300 feet West of the East line of said Section 27; thence North and parallel with said East line 12.6 feet; thence Southwesterly, parallel with and 8.5 feet distant from the centerline of said spur track along a curve concave to the Northwest, radius 486.84 feet, central angle 5 degrees 19 minutes 45 seconds, arc distance 45.2 feet (chord definition) thence tangent to said curve Southwesterly 200 feet; thence deflect 89 degrees 45 minutes to the left 393.66 feet; thence deflect 71 degrees 01 minutes 45 seconds to the left 298.59 feet to the point of beginning, Dakota County, Minnesota.

Abstract Property

Parcel 1A:
Together with Easement for driveway purposes, created in Grant of Easement dated October 18, 1972, as Document No. 407909.

Articles of Agreement Pertaining to Easements dated December 27, 1972, filed June 12, 1973, as Document No. 410762.

Parcel 2:
That part of the S½ of the SE¼ of SE¼ of Section 27 and that part of the NE¼ of the NE¼ of Section 34, all in Township 28 North, Range 22 West, described as follows:

Beginning at a point on the South line of Section 27, said point being 99.45 feet West of the Southeast corner thereof; thence North and parallel with the East line of said Section 27 a distance of 48.78 feet; thence deflect 90 degrees 40 minutes 30 seconds to the left 298.59 feet; thence deflect 71 degrees 01 minute 45 seconds to the right 75.86 feet; thence deflect 90 degrees 16 minutes to the left 355.2 feet to a point on the South line of said Section 27, distant 658.06 feet West of the Southeast corner of said Section 27; thence West along said South line 107.53 feet to the Easterly right of way of a 50 foot road in place; thence deflect 109 degrees 20 minutes 47 seconds to the left 436.95 feet to the Northerly line of Malden St.; thence deflect 92 degrees 03 minutes left 304.51 feet along said Northerly line; thence deflect 21 degrees 27 minutes 16 seconds to the right along the Northerly line of Malden St., 335.38 feet to a point which is 99.45 feet West of the East line of Section 34; thence North and parallel with said East line 301.75 feet to the point of beginning, Dakota County, Minnesota.

Abstract Property.

## ATTACHMENT 5
## APPLICANT'S NARRATIVE

# TWIN CITY HIDE'S REQUEST

We would respectfully request an extension to allow for the construction of Phase 5 of the previously approved PUD of May 15, 2017, amended on March 16, 2020, and further amended on March 20, 2023.

Twin City Hide and Twin City Tanning are two inter-related businesses located on adjacent parcels at 491 Malden Street and 501 Malden Street, respectfully. Both businesses are owned by the same parent company, TCH Reality, Inc. Twin City Hide is a processing facility which receives unprocessed hides and takes them through a cleaning/curing process. Their product includes warehousing these processed "wet hides" or "wet cured hides" in their space on the north side of their existing facility. The neighboring property to the south at 501 Malden Street is Twin City Tanning, which takes the processed hides through the next stage in the process all the way to a wet blue hide. The two businesses obtained a Planned Unit Development/Conditional Use Permit in 2017 that would allow them to phase in improvements to their properties. The "master plan" enshrined in the PUD contemplated redevelopment taking place in five (5) phases which were originally set to all take place prior to May 2020. The businesses obtained a PUD extension in 2019, 2023 and now has until 2026 to finish the improvements. When the City approved the original PUD in 2017, the decision was made to approve a fairly "bare bones" framework for the redevelopment. In 2017, the Applicant had not yet designed all of the buildings that they were going to construct but knew roughly how the site was going to be laid out. The original PUD approval stated that the Applicant would need to come in for a site plan review and approval prior to the construction of each building.

Phase I of the PUD plan, which was completed in 2017, was the construction of a 30,000 square foot detached warehouse for wet hides. Phase 2, which was completed in 2019, was the demolition of the 17,000 square foot attached warehouse to the processing facility which was located at the northern end of the site. Phase 3 was the construction of a 45,626 square foot processing facility on the site of the recently demolished warehouse. This processing facility was completed in October of 2024. Demolition of the old processing plant was completed in November, 2024.

The request for the extensions of the PUD is needed to finish Phase 5 which would be the design and construction of a new warehouse with refrigeration to speed the processing to Twin City Tanning, along with new offices and a break room for employees.

The reason for the past extension was due to delays caused by the pandemic and shipping crisis, as well as extensive design changes and extensive research with respect to equipment changes related to the processing of hides in "drums and conveyor systems" as opposed to open raceways. In addition, prior to completing the new processing facility (Phase 3), we were delayed due to new construction of Twin City Tanning ("TCT") in conjunction with Twin City Hide ("TCH") by adding a 63,000 square foot building addition to the southwest corner of TCT to allow for new business opportunities to take place with respect to collagen processing. We added a refrigerated space with airflow system, along with revamped scrubbers to the exhaust system in order to increase the efficiency and limit and reduce odors from the processing of wet blue hides at TCT. This was completed and is running and adding to our efficiency, as well as the increased reduction of odors from the processing of hides.

Based on new technology, Twin City Hide have replaced the fresh water raceways with a drum and conveyor system. Twin City Hide has placed ten drums at a cost of $250,000 per drum

to now process the incoming hides. These drums are totally contained and thus reduce any odor that were emitted from the open raceways.

When the processing plant began operating, massive problems with the design and implementation of the software to control the conveyor system and drums occurred due to the software designs coming from Germany. Many attempts were made by the German company to fix the system until it was determined that we needed a new system with a local vendor. We have hired Cyber Trol and the agreement with their company has just been signed. This has delayed the planning of Phase 5. Along with drum size and the conveyor system, it was determined that installation of a water reclamation technology in conjunction with the Metropolitan Council would be a better fit with more space in Phase 5.

Due to new technology and water reclamation, Phase 5 of the new facility, which will contain refrigeration and a cleaner path to Twin City Tanning to finish processing the wet blue hides, is a work in progress. We have had many changes in the design, and it is much like our first Phase - it is a work in progress without final working documents.

When we demolished the old processing building, we had cost overruns of $1 million needed for the replacement of the contaminated soil. We worked with the Minnesota Pollution Control Administration to excavate and replace the old soil with clean soil. The site is now building ready.

We are confident that the Twin City Hide today, with its new technology of the drums and the conveyor system has reduced tremendously the odors of the old processing facility. This technology is the state of the art in the industry and will contribute to less odor and less water usage. By completing our process with Phase 5, we will be able to store more hides in refrigeration

thus reducing odor within the plant. In addition, we will have the capacity to reduce the amount of discharge to the waste water treatment center.

Because of the cost overruns caused by Covid, the software malfunction and now the new tariffs, we anticipate a three-year extension would be needed to be on the safe side to complete Phase 5. We believe that we have significantly improved the processing of hides by Phases 1 through 4 and significantly reduced odor. We have complied with and will continue to follow our Order Management Plan. As per all our applications for the PUD, we would need to come in for a Site Plan Review and approval prior to the construction of the new building. We look forward to finally completing our process with the new building in Phase 5.

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Council and Board
**PREPARED BY:** Michael Healy, Kelsey Gelhar, Deanna Werner, Brian Wicke
**AGENDA ITEM NUMBER:** 11.C.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Retirement of the Residential Permit Parking Zones by McMorrow Field and Lorraine Park

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**

Approve Resolution #2026-55 retiring the residential permit parking zone in the neighborhood north of McMorrow Field.

Approve Resolution #2026-56 retiring the residential permit parking zone in the neighborhood south of Lorraine Park.

**OVERVIEW**

**Background**

The City Council discussed the status of the residential permit parking program at a Worksession meeting on July 22, 2024 with a follow-up discussion on April 13, 2026, after public engagement was completed. City Staff brought the discussions forward because the residential permit parking program is no longer working well and has been causing administrative challenges and policing challenges. For various reasons, many residents living in the permit parking zones have stopped coming to City Hall to get permit stickers and many now park their own cars and guest cars on the street without displaying a permit sticker. As in most Minnesota communities, all enforcement of permit parking zones is complaint-based due to staffing constraints. The Police Department does occasionally get complaints from a handful of residents in the permit parking zones who do not like it when people park near their house, and the police do issue parking tickets in response to those complaints if a car does not have a permit sticker attached to its rear windshield as the City Code requires. This has resulted in neighborhood conflicts and an increasing number of negative interactions between neighborhood residents and the Police Department.

The permit parking program was developed in the early 1980s and still operates in a manner that is close to its original format. The program consists of a roll of permit stickers and a 3-ring

binder, and the success of the program depends largely on self-reporting and the honor system. Residents living in a permit parking zone can come to City Hall and get free permit stickers by writing their name in the 3-ring binder alongside a note about how many permit stickers they are taking for their friends and family. The permit parking zones do have policies about how many permits each household is supposed to get, but these policies are not in the City Code and are instead handwritten in the binder since they were the result of motions at City Council meetings held in the 1990s. The permit stickers are not numbered, and they are good for a lifetime, so there is no way for City Staff to track the status of any individual parking permit or accurately track how many active permit stickers a household might currently have since the program has been operating for over 40 years. Many houses in each permit zone have been sold one or more times during that 40 years. If a resident moves into a new house, loses a permit sticker, needs more permit stickers, or gets a new car, they can come to City Hall and explain their situation to City Staff, who will write a note in the binder and give out more free permit stickers if it seems warranted (using the honor system).

The City Council shared during the April 13th Worksession that the permit parking program was a very effective tool back in the 1980's and 1990's for helping to resolve several challenging neighborhood disputes. South St. Paul utilizes a "lean" staffing model, and most City employees wear multiple hats. The City did not have the staffing resources or technology resources in the early 1980's to develop a robust staff-intensive permit parking program (like Minneapolis and Saint Paul) and instead chose to use a self-reporting system that relied largely on residents policing themselves. According to the City Council, this system worked well for many years because residents were invested in the program and took the self-reporting requirement seriously. Based on the discussion at the April 13th Worksession, the City Council acknowledges that today there is rampant noncompliance with the program and acknowledges that at least two of the permit parking zones appear to no longer serve a legitimate public purpose.

At the April 13th Worksession, the City Council provided City Staff with the following direction:

- There is a consensus that it is time to retire the permit parking zones that are near McMorrow Field and Lorraine Park. Conditions at each of these public parks have changed significantly since the zones were created in 1984 and 1995 respectively. While some residents do enjoy that the permit parking signs essentially give them private parking in front of their own houses, it is not a good use of Police Department resources or City Hall resources to continue to administer and enforce a permit parking program in these neighborhoods.

- There is not yet a consensus about what the best path forward is for the permit parking zone by the high school that was established in 1993. There are two blocks on 6th Avenue North across the street from the high school where there have historically been concerns about daily parking conflicts between residents, students, and school event attendees. The Council asked City Staff to evaluate what it would cost in terms of money and staff time to administer an updated permit parking program for these two blocks that is not reliant

on self-reporting and uses modern software for tracking permits. City Staff will gather additional information about potential program costs and will report back at a future Worksession meeting.

**Existing Permit Parking Zones**

Currently, there are three residential areas in South St. Paul where a parking permit sticker is required to be fastened to the rear windshield to park a car on the public street:

1. A 1 ½-block stretch of the east side of 6th Avenue North across the street from the high school. *Per the posted signs, a permit is required to park a car in this zone at any time.*

2. A 2-block stretch of 8th Street South, a 1-block stretch of 3rd Avenue South, and a 1-block stretch of 2nd Avenue South near McGuire Field at Lorraine Park. *Per the posted signs, a permit is required to park a car in this zone only "during ballgames."*

3. A 2-block stretch of South Street East, a 1-block stretch of 1st Avenue South, and a 1-block stretch of Syndicate Avenue near McMorrow Field. *Per the posted signs,* a *permit is required to park a car in this zone at any time.*

**How is a Permit Parking Zone Created or Retired?**

Section 58-103 of the City Code authorizes the City Council to establish permit parking zones. To establish a permit parking zone, they must adopt a finding that "*the occupants of dwellings in certain residential areas may not have suitable and adequate on-street parking available because vehicles of employees, patrons, visitors of commercial establishments, schools, public buildings and similar establishments have occupied the available on-street parking areas in such residential areas, that posted limited parking in such residential areas denies dwelling occupants reasonable on-street parking availability, and that it is in the public interest to afford dwelling occupants reasonable and suitable on-street parking in such residential areas*."

The existing permit parking zones were established by simple motions at regular City Council meetings in the 1980's and 1990's. City Staff would recommend that the permit parking zones by McMorrow Field and Lorraine Park be retired by resolution instead of by simple motion so that the City Council can document the reasoning for retiring the two zones and create a clear written record.

**Rationale for the Retirement of the Permit Parking Zone by McMorrow Field**

There appears to be almost no compliance with the permit parking program rules in the permit parking zone north of McMorrow Field. City Staff visited the permit parking zone on various days in 2024 in preparation for the first Worksession discussion and observed that none of the cars parked on the street in the permit parking zone were displaying permit parking stickers. During public engagement, residents living in this zone indicated that they primarily use the permit parking signs to call the Police Department to report parking by uninvited visitors, and they do not get parking permits for themselves or their invited guests even though they do park cars on the street. Beyond the issues with noncompliance, this permit parking zone should be retired for the following reasons:

1. This permit parking zone was created in 1984 when McMorrow Field had limited off-street parking and some of the off-street parking was low-quality parking with gravel surfacing and odd dimensions. Additional paved parking was added during the early 2000s and the park was completely overhauled in 2016/2017 following the success of the 2014 parks referendum. McMorrow Field now features 309 striped stalls of paved off-street parking.

2. In the 1980s, McMorrow Field was a major hub of softball activity, and this drove large amounts of traffic to the neighborhood. Softball continues to be a traffic driver in South St. Paul. All softball fields were removed from McMorrow Field as part of the 2016/2017 renovation and most major softball events now take place at the new Kaposia Landing softball fields where there is no impact on residential neighborhoods.

3. Some of the existing permit parking signs are at the end of their useful life and are badly faded. There is no compelling reason for the City to continue to incur the expense of fabricating and installing new permit parking signage in this area.

**Rationale for the Retirement of the Permit Parking Zone by Lorraine Park**

The permit parking zone south of Lorraine Park was established solely to address resident complaints about large baseball games taking place at McGuire Field, a baseball field located at the south end of the park along 8$^{th}$ Street South. This permit parking zone should be retired for the following reasons:

1. This permit parking zone was created in 1995. Shortly after the creation of the permit parking zone, the off-street parking lot next to McGuire Field was expanded from 30 stalls to 62 stalls. This has at least somewhat softened the demand for on-street parking

during many ballgame events.

2. Softball and baseball continue to be a traffic driver in South St. Paul and McGuire Field continues to host some large sporting events. However, at least some of the games that would have taken place at McGuire Field back in the 1990s now take place at the new Kaposia Landing softball fields, where there is no impact on residential neighborhoods.

3. Living next to a popular and amenity-rich public park has many advantages, but one downside is overflow parking during special events. Cities need to weigh the pros and cons every time they expand a parking lot at a public park. In addition to the financial cost of building and maintaining a larger parking lot and managing more stormwater runoff, every square foot of additional asphalt is a square foot of green amenity space that the community no longer gets to enjoy. Most cities build parking lots at public parks to accommodate normal demand with the expectation that special events will need to utilize some amount of on-street parking. McGuire Field does sometimes host ballgame events that have more attendees than its 62-stall parking lot can accommodate. Today, those attendees drive one block away and park in front of the first group of homes that are not in the permit parking zone. This is causing neighborhood disputes and sore feelings because some blocks have parking permits and others do not.

4. This permit parking zone is only in effect “during ballgames” which means that neighborhood residents, Lorraine Park visitors, and people visiting houses in the neighborhood are allowed to park on the street most of the time without a permit. The Police Department will write a parking ticket if they receive a parking complaint about a car being parked on the street without a permit while any kind of ballgame is taking place at McGuire Field. It would be very easy for someone to park in this permit zone and unknowingly break the law and get a parking ticket because a ballgame that they are not aware of starts while they are away from their vehicle. This could become a real problem if a new resident ever moves into this neighborhood who is aggressive about calling the police during ballgames.

5. Some of the existing permit parking signs are at the end of their useful life and are badly faded. There is no compelling reason for the City to continue to incur the expense of fabricating and installing new permit parking signage in this area.

**Staff Recommendation**

Staff recommends that the City Council approve two resolutions retiring the permit parking zones next to Lorraine Park and McMorrow Field.

**SOURCE OF FUNDS**

NA

**ATTACHMENTS**

1. South St. Paul Permit Parking Ordinance
2. Resolution #2025-55
3. Resolution #2026-56

# ATTACHMENT 1
# SOUTH ST. PAUL PERMIT PARKING ORDINANCE

## Sec. 58-103. Residence parking permit.

(a) *Policy.* The council finds that the occupants of dwellings in certain residential areas may not have suitable and adequate on-street parking available because vehicles of employees, patrons, visitors of commercial establishments, schools, public buildings and similar establishments have occupied the available on-street parking areas in such residential areas, that posted limited parking in such residential areas denies dwelling occupants reasonable on-street parking availability, and that it is in the public interest to afford dwelling occupants reasonable and suitable on-street parking in such residential areas.

(b) *Parking zones.* The council may by resolution designate residential permit parking zones within residential areas upon a showing of necessity therefor to provide reasonable and suitable on-street parking availability to occupants of dwellings within the zone because of the circumstances set forth in subsection (a) of this section.

(c) *Permits.* A resident within a designated residential permit parking zone may obtain residential parking permits in such number as may be determined by the council on a case-by-case basis for the parking of resident and guest motor vehicles. The permit authorizes the motor vehicle to be parked in the residential permit parking zone for a continuous period of time, not exceeding 20 consecutive hours, notwithstanding any posted limited parking, but does not authorize parking in a no parking zone nor parking in violation of snow removal provisions of this Code. The permit is issued by the clerk.

(d) *Fee.* The permit fee shall be as established by chapter 26.

(e) *Form of permit.* The residence parking permit is circular in shape, red in color, bears the letter "R" on its face, bears a code number representing the residence address of the owner of the vehicle on file in the office of the clerk, and must be capable of affixation to the inside of the rear window of the motor vehicle, or in such format as determined by the council.

(f) *Placement.* The residence parking permit must be affixed to the inside of the rear window of the motor vehicle in the lower corner of the driver's side and located so as not to obstruct the vision of the driver; or, in the case of a nonsticker permit, it shall be located visibly in the rear window area on the driver's side or affixed temporarily to the rear window on the driver's side.

(Code 1992, § 1305.25)

City of South St. Paul
Dakota County, Minnesota

# RESOLUTION NUMBER 2026-55

## A RESOLUTION RETIRING THE RESIDENTIAL PERMIT PARKING ZONE IN THE NEIGHBORHOOD NORTH OF MCMORROW FIELD

**WHEREAS**, Section 58-103 of the City Code states that the City Council finds that the occupants of dwellings in certain residential areas may not have suitable and adequate on-street parking available because vehicles of employees, patrons, visitors of commercial establishments, schools, public buildings and similar establishments have occupied the available on-street parking areas in such residential areas, that posted limited parking in such residential areas denies dwelling occupants reasonable on-street parking availability, and that it is in the public interest to afford dwelling occupants reasonable and suitable on-street parking in such residential areas; and

**WHEREAS**, Section 58-103 of the City Code states that the City Council can designate a residential permit parking zone within a residential area upon a showing of necessity therefor to provide reasonable and suitable on-street parking availability to the occupants of dwellings within the zone; and

**WHEREAS**, the City Council motioned to designate a residential permit parking zone in the neighborhood north of McMorrow Field park at some point in 1984 or 1985 due to issues with McMorrow Field not having sufficient off-street parking and softball games generating a large parking demand in the adjacent neighborhood; and

**WHEREAS**, this specific residential permit parking zone was created when McMorrow Field had limited off-street parking and some of the off-street parking was low-quality parking with gravel surfacing and odd dimensions. Additional paved parking was added during the early 2000s, and the park was completely overhauled in 2016/2017 following the success of the 2014 parks referendum. McMorrow Field now features 309 striped stalls of paved off-street parking; and

**WHEREAS,** in the 1980s, McMorrow Field was a major hub of softball activity, and this drove large amounts of traffic to the neighborhood. Softball continues to be a traffic driver in South St. Paul. All softball fields were removed from McMorrow Field as part of the 2016/2017 renovation and most major softball events now take place at the new Kaposia Landing softball fields where there is no impact on residential neighborhoods; and

**WHEREAS**, some of the existing permit parking signs are at the end of their useful life and are badly faded. There is no compelling reason for the City to continue to incur the expense of fabricating and installing new permit parking signage in this area; and

**WHEREAS**, the City Council reviewed the status of this permit parking zone at a Workession meeting on July 22, 2024, and held a second Worksession meeting on April 13, 2026 after public engagement had been completed. Residents living in this zone were given an opportunity to submit comments for review by the City Council prior to the second Worksession; and

**WHEREAS**, City Staff has observed rampant noncompliance with the permit parking program in this permit parking zone. No cars parked on the street in this zone have been observed

displaying parking permits correctly during inspections that were carried out to prepare for Worksession discussions. Many residents living in this permit parking zone acknowledged during public engagement that they park their own cars and guest cars on the street without permits and they use the permit parking signs primarily to call the Police Department when an uninvited visitor or a McMorrow Field user parks in the permit parking zone.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of South St. Paul, Minnesota as follows:

1. The City Council officially retires and de-establishes the residential permit parking zone in the neighborhood north of McMorrow Field.

2. The Police Department is directed to stop issuing parking tickets for parking without a residential parking permit in the permit parking zone in the neighborhood north of McMorrow Field. All other traffic laws and parking ordinances shall continue to be enforced normally.

3. The Public Works Department is directed to remove the permit parking signs from the neighborhood north of McMorrow Field.

Adopted this 20th day of April, 2026

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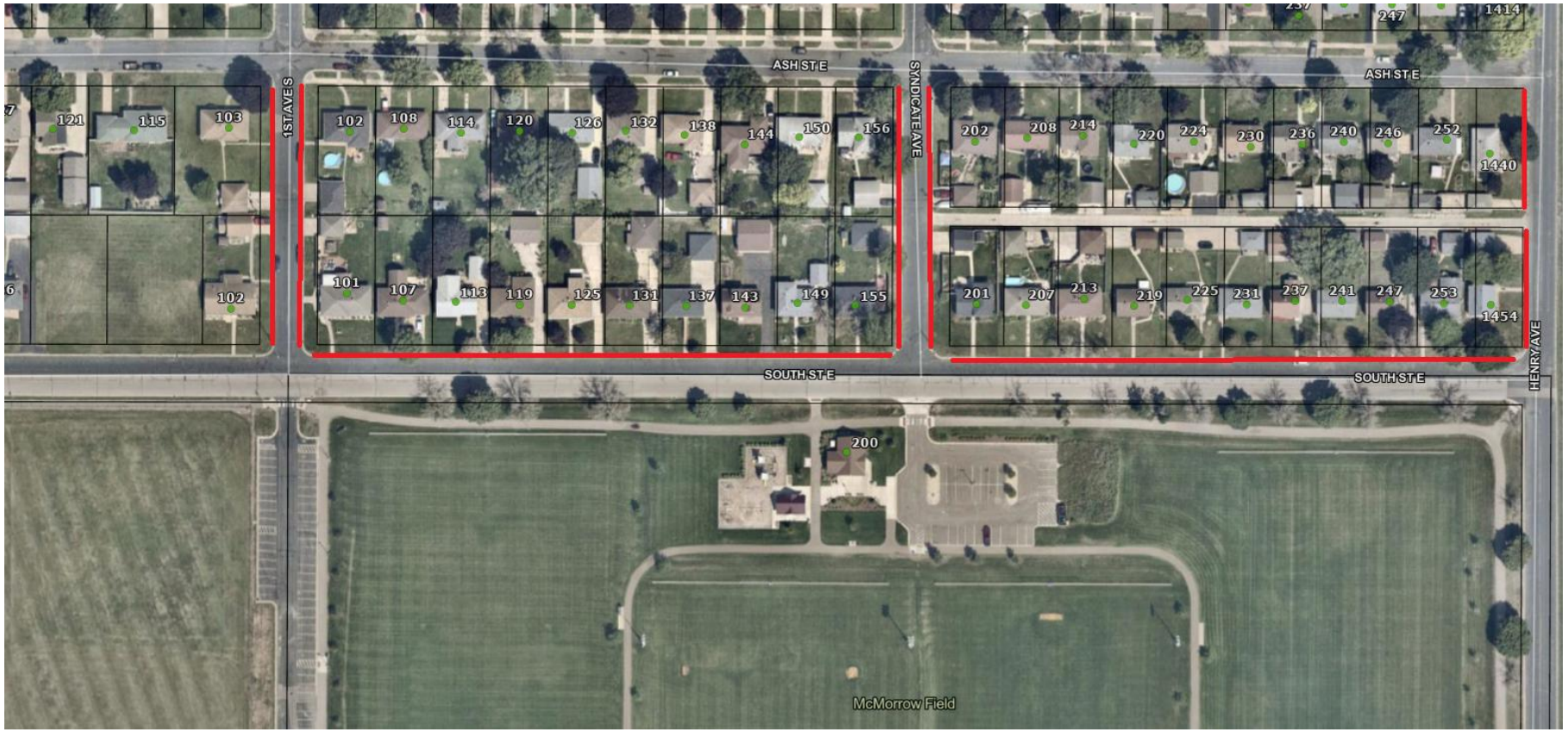
City Clerk

**EXHIBITS**

1- Map of Permit Parking Zone in the Neighborhood North of McMorrow Field

**ATTACHMENT 1**
**MAP OF PERMIT PARKING ZONE IN THE NEIGHBORHOOD NORTH OF MCMORROW FIELD**




= Signs Say "Parking by Permit Only"

City of South St. Paul
Dakota County, Minnesota

# RESOLUTION NUMBER 2026-56

## A RESOLUTION RETIRING THE RESIDENTIAL PERMIT PARKING ZONE IN THE NEIGHBORHOOD SOUTH OF LORRAINE PARK

**WHEREAS**, Section 58-103 of the City Code states that the City Council finds that the occupants of dwellings in certain residential areas may not have suitable and adequate on-street parking available because vehicles of employees, patrons, visitors of commercial establishments, schools, public buildings and similar establishments have occupied the available on-street parking areas in such residential areas, that posted limited parking in such residential areas denies dwelling occupants reasonable on-street parking availability, and that it is in the public interest to afford dwelling occupants reasonable and suitable on-street parking in such residential areas; and

**WHEREAS**, Section 58-103 of the City Code states that the City Council can designate a residential permit parking zone within a residential area upon a showing of necessity therefor to provide reasonable and suitable on-street parking availability to the occupants of dwellings within the zone; and

**WHEREAS**, the City Council motioned to designate a residential permit parking zone in the neighborhood south of Lorraine Park on March 20, 1995 and motioned to expand the boundaries of that zone on June 5, 1995 which established the current boundaries; and

**WHEREAS**, this specific residential permit parking zone was established solely to address resident complaints about large baseball games taking place at McGuire Field, a baseball field located at the south end of Lorraine Park along 8th Street South; and

**WHEREAS**, this specific residential permit parking zone is not always in effect and the posted signage states “Parking by Permit Only-During Ballgame;” and

**WHEREAS**, shortly after the creation of the residential permit parking zone, the off-street parking lot next to McGuire Field was expanded from roughly 30 stalls to 62 stalls. This has at least somewhat softened the demand for on-street parking during many ballgame events.; and

**WHEREAS,** softball and baseball continue to be a traffic driver in South St. Paul and McGuire Field continues to host some large sporting events. However, at least some of the games that would have taken place at McGuire Field back in the 1990s now take place at the new Kaposia Landing softball fields, where there is no impact on residential neighborhoods.; and

**WHEREAS,** living next to a popular and amenity-rich public park has many advantages, but one downside is overflow parking during special events. Cities need to weigh the pros and cons every time they expand a parking lot at a public park. In addition to the financial cost of building and maintaining a larger parking lot and managing more stormwater runoff, every square foot of additional asphalt is a square foot of green amenity space that the community no longer gets to enjoy. Most cities build parking lots at public parks to accommodate normal demand with the expectation that special events will need to utilize some amount of on-street parking. McGuire Field does sometimes host ballgame events that have more attendees than its 62-stall parking lot can accommodate. Today, those attendees drive one block

away and park in front of the first group of homes that are not in the permit parking zone. This is causing neighborhood disputes and sore feelings because some blocks have parking permits and others do not; and

**WHEREAS,** this permit parking zone is only in effect "during ballgames" which means that neighborhood residents, Lorraine Park visitors, and people visiting houses in the neighborhood are allowed to park on the street most of the time without a permit. The Police Department will write a parking ticket if they receive a parking complaint about a car being parked on the street without a permit while any kind of ballgame is taking place at McGuire Field. It would be very easy for someone to park in this permit zone and unknowingly break the law and get a parking ticket because a ballgame that they are not aware of starts while they are away from their vehicle. This could become a real problem if a new resident ever moves into this neighborhood who is aggressive about calling the police during ballgames; and

**WHEREAS**, some of the existing permit parking signs are at the end of their useful life and are badly faded. There is no compelling reason for the City to continue to incur the expense of fabricating and installing new permit parking signage in this area; and

**WHEREAS**, the City Council reviewed the status of this permit parking zone at a Workession meeting on July 22, 2024, and held a second Worksession meeting on April 13, 2026 after public engagement had been completed. Residents living in this zone were given an opportunity to submit comments for review by the City Council prior to the second Worksession.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of South St. Paul, Minnesota as follows:

1. The City Council officially retires and de-establishes the residential permit parking zone in the neighborhood south of Lorraine Park.

2. The Police Department is directed to stop issuing parking tickets for parking without a residential parking permit in the permit parking zone in the neighborhood south of Lorraine Park. All other traffic laws and parking ordinances shall continue to be enforced normally.

3. The Public Works Department is directed to remove the permit parking signs from the neighborhood south of Lorraine Park.

Adopted this 20th day of April, 2026

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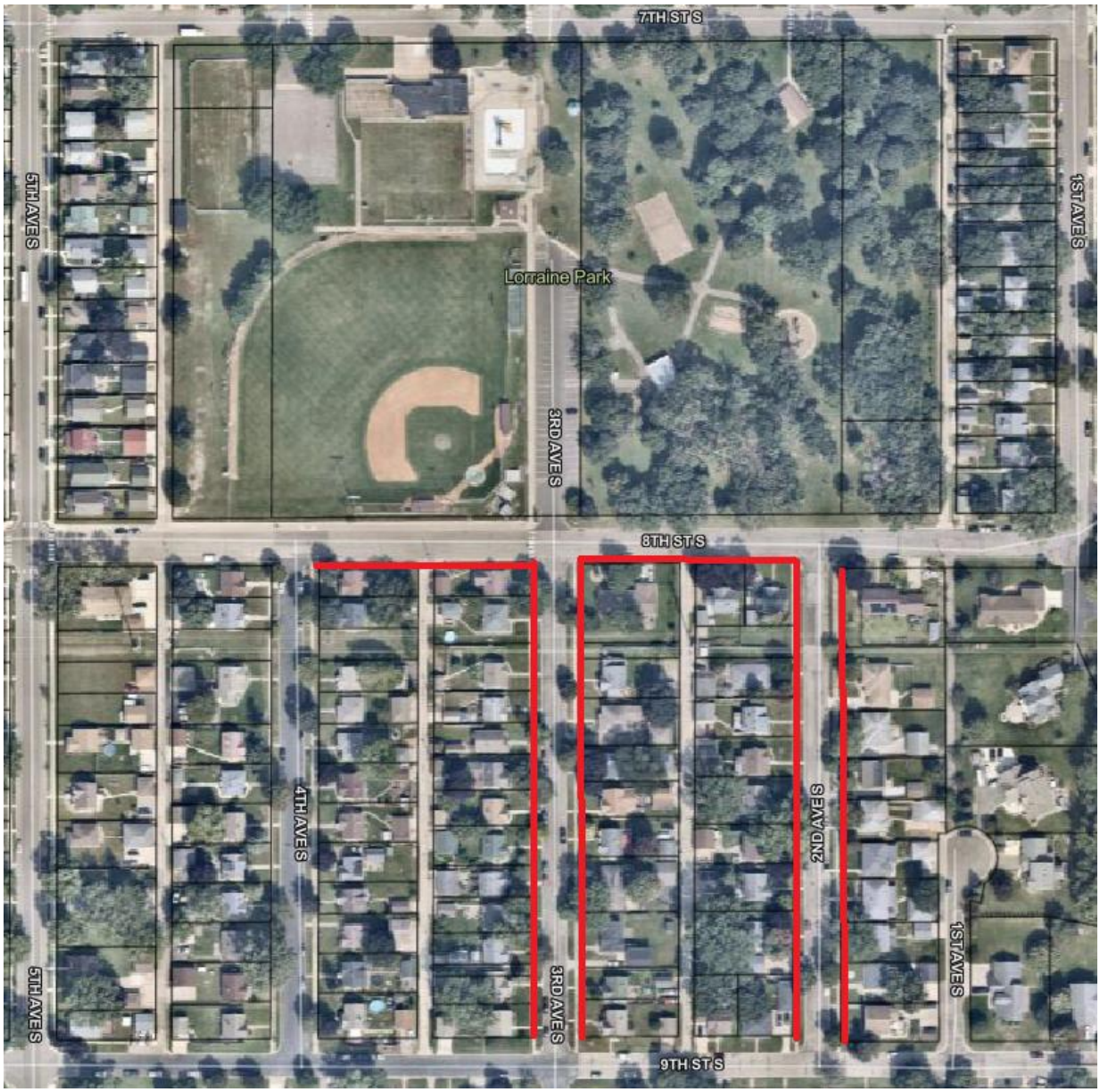
City Clerk

**EXHIBITS**

1- Map of Permit Parking Zone in the Neighborhood South of Lorraine Park

**ATTACHMENT 1**
**MAP OF PERMIT PARKING ZONE IN THE NEIGHBORHOOD SOUTH OF LORRAINE PARK**




= Signs Say "Parking by Permit Only During Ballgame"

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Michael Healy
**AGENDA ITEM NUMBER:** 11.D.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Second Reading — An Ordinance Updating the Lawful Gambling Ordinance to Establish New Rules for Bingo Halls

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Approve Ordinance 1440 updating the lawful gambling ordinance to establish new rules for bingo halls.

**OVERVIEW**

**Applicant**

The Applicant is the City of South St. Paul. The City is proposing an amendment to the lawful gambling ordinance that would do two things:

1. Allow lawful gambling to take place within a "dry" bingo hall. *Currently, the City Code only allows lawful gambling to take place inside a business with a liquor license.*
2. Allow a nonprofit organization that holds its meetings outside city limits to operate a bingo hall in a leased space that is at least 5,000 square feet in size. *Currently, the City Code only allows a nonprofit organization that holds its meetings outside city limits to conduct lawful gambling within city limits if they own the real estate where the lawful gambling is taking place.*

The City Council discussed the proposed ordinance at their Worksession meeting on March 9, 2026, and directed Staff to bring the ordinance forward. A first reading was held at the March 16th City Council meeting. The proposed ordinance does not affect the zoning code in any way, so it is not being reviewed by the Planning Commission.

**Background**

Most gambling is prohibited in Minnesota with the exception of lawful gambling, the state lottery, Indian tribal casinos, and horse racing and specific games at Canterbury Park and

Running Aces Casino. Of these five forms of legalized gambling, only lawful gambling is subject to municipal regulation and only certain qualified organizations can conduct lawful gambling, which is the operation, conduct, or sale of:

- Bingo
- Raffles
- Paddlewheels
- Tipboards
- Pull-tabs
- Certain approved electronic gambling devices (i.e. electronic pull tabs)

Cities do not license lawful gambling; the State of Minnesota does via the Gambling Control Board. However, Cities do have the ability to ban lawful gambling within their borders or to impose restrictions on lawful gambling that go further than the restrictions already contained within State Statute. The City generally must provide written consent before the Gambling Control Board will issue a license for any type of lawful gambling within city limits. Some types of lawful gambling are “exempt” from getting a State license (i.e. occasional church bingo games with low-value prizes) but still have rules that they must follow and still often must register with the City and the State and be approved.

South St. Paul’s current lawful gambling ordinance was adopted in 2010 and replaced an earlier set of regulations from 1985. SSP has adopted local regulations that restrict which organizations can conduct lawful gambling and restrict which types of properties are allowed to have lawful gambling activities on-site.

**Why is a code amendment being proposed?**

The original catalyst for the proposed ordinance amendment was that Mendota Heights AMVETS Post 1 was exploring the relocation of their "West St. Paul Bingo Palace" to the Southview Shopping Center. While studying a potential relocation, AMVETS Post 1 engaged with City Staff and the City Council and brought it to Staff's attention that South St. Paul's lawful gambling ordinance contains provisions that make it difficult (and maybe impossible) for a bingo hall to operate within city limits. AMVETS Post 1 has decided not to pursue the relocation, and they are instead shutting down their bingo program entirely. City Staff believes that it would still be valuable to update the City Code so that a bingo hall could potentially operate in South St. Paul in the future. There are two provisions in SSP's lawful gambling ordinance that would likely prevent a bingo hall from being able to operate in SSP city limits, even in a commercial zoning district that otherwise allows "amusement and entertainment" uses:

1. SSP’s lawful gambling ordinance states that only businesses with an on-sale liquor license can have lawful gambling on-site. Per AMVETS Post 1, the State generally does not allow bingo halls to have liquor licenses, so this requirement may be impossible to

meet.

*The lawful gambling ordinance is designed to allow pulltabs and other lawful gambling as an "accessory use" at bars and restaurants. The ordinance does not contemplate a situation where lawful gambling is the principal use of a building, such as with a bingo hall.*

2. The State only allows lawful gambling to be conducted by nonprofit organizations. South St. Paul has taken this one step further and only allows lawful gambling to be conducted by "local" nonprofit organizations. SSP only considers a nonprofit organization to be "local" if the nonprofit holds its meetings in SSP (and has for at least 2 years) or if the nonprofit organization physically owns a piece of real estate in SSP and all the lawful gambling takes place at that real estate. Most bingo halls operate in a leased space rather than an owned space, which means that a bingo hall can only be operated by a nonprofit that holds its meetings in South St. Paul city limits and has done so for at least two years. This could be a barrier to attracting a bingo hall because it is very challenging to operate a bingo hall, and running a bingo hall is outside the scope of what most nonprofits are looking to take on.

*With charitable gambling, all revenues that are not needed to run the gambling operation must be given away as donations. State Statute lists out which types of charities and other organizations are eligible to receive those donations. SSP requires that at least 55% of the money that is being donated must remain in SSP's trade area. This means that any nonprofit organization conducting lawful gambling in SSP must ensure that at least 55% of the donations that they make are to entities in South St. Paul, West St. Paul, Inver Grove Heights, or Newport. The other 45% of their donations can be sent anywhere in the world if the recipient is eligible to receive donations under State Statute.*

*SSP's lawful gambling ordinance is designed to give fundraising priority to local nonprofits and keep non-local nonprofits from monopolizing pulltab operations at SSP's bars and restaurants. Local nonprofits are likely to be extra generous when it comes to focusing their donations on local causes, so it does make sense to give them preferential treatment when it comes to pulltab operations at bars and restaurants.*

*Pulltab operations at bars and restaurants are a low-overhead, high-profit endeavor that almost any nonprofit organization can successfully manage because the bar or restaurant covers many of the expenses. It makes sense to give local nonprofit organizations "first dibs" when it comes to securing lucrative pulltab contracts with bars and restaurants. A bingo hall is significantly different than a pulltab operation at a bar or restaurant. Bingo halls operate as standalone businesses and have significant overhead (monthly rent, utility costs, maintenance costs, staffing, etc.) so only a few large charities are equipped to operate bingo halls. There are just a handful of bingo halls in the Twin Cities metro, and many communities want a bingo hall but are unable to get one. Consequently, it is common for bingo halls to be treated differently than other types of lawful gambling.*

**Draft Ordinance**

The City Council will need to amend the lawful gambling ordinance if they want to be able to work with a nonprofit in the future to bring a bingo hall to South St. Paul. City Staff and the City Attorney have discussed the matter and agree that the only change that should be made to the lawful gambling ordinance is a very narrowly tailored amendment that treats “bingo halls” differently than pulltab operations and other gambling operations that take place within a bar or restaurant. Staff and the City Attorney have prepared an ordinance amendment that would do the following:

- Expand the definition of a “local” nonprofit organization to include a nonprofit organization that leases at least 5,000 square feet of space in city limits for a dedicated bingo hall.

- Allow a bingo hall that occupies at least 5,000 square feet of dedicated space in a commercial district to conduct lawful gambling activities without needing an on-sale liquor license.

**Discussion**

City Staff is supportive of allowing a bingo hall in town should one seek to locate in SSP. The Police Department has expressed that they do not have any public safety concerns about a bingo hall. Bingo halls are very popular with senior citizens and are not known for drawing a rowdy crowd or generating nuisance impacts. In addition to benefiting local charities, a bingo hall could be very beneficial to nearby restaurants if located in a commercial area, since they generally do not provide food service and customers often order takeout from nearby restaurants as part of their bingo experience. Bingo halls require a conditional use permit for "amusement or entertainment", and the City can attach conditions of approval related to noise and customer conduct to ensure that a bingo hall does not become a public nuisance at any point in the future. A conditional use permit can be revoked if any conditions of approval are violated.

The City Council discussed bingo halls at their March 9th Worksession and the consensus was that they support changing the ordinance to allow a bingo hall in a leased space as long as the nonprofit organization running the bingo hall is fully committed to meeting the requirement that at least 55% of charitable donations made using the gambling profits are dedicated to local causes within SSP's designated trade area (South St. Paul, West. St. Paul, Inver Grove Heights, and Newport). Any nonprofit organization operating a bingo hall will need to file paperwork with the City Clerk each year to prove that they have complied with the 55% requirement.

Based on the discussions about bingo halls that have been had at the Staff level and the City Council level over the past two months, City Staff supports updating the lawful gambling ordinance to allow bingo halls even though the AMVETS Post 1 bingo hall relocation project is not moving forward.

**Recommended Action**

Approve Ordinance 1440 updating the lawful gambling ordinance to establish new rules for bingo halls.

**LINKS**

League of Minnesota Cities' Memo on Minnesota's Lawful Gambling Laws

**SOURCE OF FUNDS**

NA

**ATTACHMENTS**

1. Existing Lawful Gambling Ordinance
2. Ordinance 1440

# ATTACHMENT 3
# EXISTING LAWFUL GAMBLING ORDINANCE

## Chapter 11 LAWFUL GAMBLING

### Sec. 11-1. Adoption of state law by reference.

The provisions of Minn. Stat. ch. 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling are hereby adopted by reference and are made a part of this chapter as if set out in full. It is the intention of the council that all future amendments of Minn. Stat. ch. 349, are hereby adopted by reference or referenced as if they had been in existence at the time this chapter was adopted.

(Ord. No. 1232, § 1, 9-20-2010)

### Sec. 11-2. City may be more restrictive than state law.

The council is authorized by the provisions of Minn. Stat. § 349.213, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on gambling within its limits beyond those contained in Minn. Stat. ch. 349, as it may be amended from time to time.

(Ord. No. 1232, § 1, 9-20-2010)

### Sec. 11-3. Purpose.

The purpose of this chapter is to regulate lawful gambling within the City of South St. Paul, to prevent its commercialization, to insure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

(Ord. No. 1232, § 1, 9-20-2010)

### Sec. 11-4. Definitions.

In addition to the definitions contained in Minn. Stat. § 349.12, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

(1) *Board.* The State of Minnesota Gambling Control Board.

(2) *Licensed organization.* An organization licensed by the board.

(3) *Local organization.* An organization defined by Minn. Stat. § 349.12 that also meets the following criteria:

a. The organization has at least 15 active members at the time of its initial license application; and

b. The physical site for the organization's headquarters or the registered office of the organization is located within the city and has been located within the city for at least two years immediately preceding the application for a license; or

c. The organization owns real estate within the city, and the lawful gambling is conducted on the property owned by the organization within the city; or

d. The physical site where the organization regularly holds its meetings and conducts its activities, other than lawful gambling and fundraising, is within the city and has been located within the city for at least two years immediately preceding application for a license.

(4) *Trade area.* The cities of South St. Paul, Inver Grove Heights, Newport, St. Paul and West St. Paul, Minnesota.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-5. Applicability.

This chapter shall be construed to regulate all forms of lawful gambling within the city except:

(1) Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if the prizes for a single bingo game do not exceed $10.00, total prizes awarded at a single bingo occasion do not exceed $200.00, no more than two bingo occasions are held by the organization or at the facility each week, only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game, no compensation is paid for any persons who conduct the bingo, and a manager is appointed to supervise the bingo.

(2) Raffles if the value of all prizes awarded by the organization in a calendar year does not exceed $1,500.00.

(3) Lawful gambling that is exempt from licensure pursuant to Minn. Stat. § 349.166.

Notwithstanding the preceding, licensed organizations must submit their excluded and exempted permit applications, including LG220 and LG240B, as appropriate, to the city for approval of any excluded or exempted lawful gambling.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-6. Lawful gambling permitted.

Lawful gambling is permitted within the city provided it is conducted in accordance with Minn. Stats. §§ 609.75—609.763, inclusive, as they may be amended from time to time; Minn. Stats. §§ 349.11—349.23, inclusive, as they may be amended from time to time; and this chapter.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-7. Council approval.

Lawful gambling authorized by Minn. Stats. §§ 349.11—349.23, inclusive, as they may be amended from time to time, requiring local approval shall not be conducted unless approved by the council, subject to the provisions of this chapter and state law.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-8. Application and local approval of premises permits.

(a) *Eligibility for a premises permit.* A premises permit may only be issued if:

(1) The premises is an on-sale liquor establishment;

(2) No premises permit currently exists for the premises;

(3) The organization does not already hold a premises permit or the organization holds only one other premises permit within the city;

(4) The organization that will conduct the lawful gambling is eligible for an organization license from the board.

(b) *Process.*

(1) *Application.* Any organization seeking to obtain a premises permit from the board shall file with the clerk an executed, complete duplicate application, together with all exhibits and documents accompanying the application as will be filed with the board. The organization shall pay the city a $250.00 investigation fee. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

(2) *Background investigation.* Upon receipt of an application for issuance of a premises permit, the clerk shall transmit the application to the police department for review and recommendation. The police department shall investigate the matter and make the review and recommendation to the council as soon as possible, but in no event later than 45 days following receipt of the notification by the city. The council shall receive the police department's report and consider the application within 45 days of the date the application was submitted to the clerk.

(3) *Approval or denial of application.* The applicant shall be notified in writing of the date on which the council will consider the recommendation. The council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application.

(c) *Grounds for ineligibility.* The council shall deny an application for issuance of a premises permit for any of the following reasons:

(1) Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling within the last three years.

(2) The organization already holds two premises permits within the city.

(3) The premises for which a premises permit is sought is not an on-sale liquor establishment.

(4) The organization that will conduct the lawful gambling is ineligible for an organizational license from the board.

(5) There is already one licensed organization permitted to conduct lawful gambling activities at the premises.

(6) Failure of the applicant to pay the investigation fee provided by this section within the prescribed time limit.

(7) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

(d) The council is without authority to compel the owner of an on-sale liquor establishment to renew a premises permit.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-9. Priority in approval process.

It is anticipated that there may be more than one organization applying for a premises permit at a single on-sale liquor establishment. Therefore, the following criteria, in the order listed, prioritize and determine the approval for the one available premises permit:

(1) If there are two or more applications, then a local organization will be preferred over an organization that does not meet the definition of local organization. Because of the nuisance prone nature of gambling, compared to other licensing or permitting activities within the city, the city prefers that the organization have a local connection so as to facilitate investigation of applicants and the investigation and arrest of violators. Where two or more organizations seek to have a premises permit at the same on-sale liquor establishment, the organizations that meets the definition of local organization will be preferred over an organization that does not meet the definition.

(2) If two or more nonlocal organizations seek approval, the council will approve the organization which applied first.

(3) If three or more local organizations seek approval, the council will approve the organization which applied first.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-10. Inspections.

(a) All licensed organizations are deemed to have consented to inspection of the licensed or permitted premises by the city.

(b) Authorized employees or agents of the city may inspect, at any reasonable time without notice or search warrant, all records, including gambling accounts and other bank records, required by the board to be maintained and preserved.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-11. License and permit display.

All permits issued under state law or this chapter shall be prominently displayed during the permit year at the premises where gambling is conducted.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-12. Notification of material changes to application.

An organization holding a state-issued premises permit shall notify the city within ten days in writing whenever any material change is made in the information submitted on the application.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-13. Designated trade area.

(a) During the calendar year, each licensed organization within the city having a premises permit within the city shall expend 55 percent lawful purpose expenditures on lawful purposes conducted within the city's trade area.

(b) This section applies only to lawful purpose expenditures of gross profits derived from gambling conducted at a premises within the city's jurisdiction.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-14. Records and reporting.

(a) Licensed organizations shall file with the clerk one copy of all records and reports required to be filed with the board, pursuant to Minn. Stat. ch. 349, as it may be amended from time to time, and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the board.

(b) Licensed organizations shall file an annual report with the city proving compliance with the trade area spending requirements imposed by section 11-13. Such report proving compliance with trade area spending requirements shall be made on a form prescribed by the city. The report shall be submitted within 60 days of June 30 and shall report proceeds received during the calendar year.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-15. Hours of operation.

Lawful gambling shall not be conducted between 2:00 a.m. and 8:00 a.m. on any day of the week.

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-16. Penalty.

(a) In addition to criminal prosecution for violation of this chapter; Minn. Stats. §§ 609.75—609.763, inclusive, as they may be amended from time to time; or Minn. Stats. §§ 349.11—349.21, as they may be amended from time to time or any rules promulgated under those sections, as they may be amended from time to time, the council may report violations to the board and may recommend suspension, revocation, or cancellation of an organization's license.

(b) The council may suspend or revoke its approval for a premises permit for any reason that the board may revoke a premises permit or for violation of this chapter.

(c) Prior to recommending suspension, revocation, or cancellation of an organization's license to the board and prior to suspending or revoking its approval for a premise permit, the council must provide the organization a hearing before the council in accordance with subsection 18-31(b).

(Ord. No. 1232, § 1, 9-20-2010)

## Sec. 11-17. Severability.

If any provision of this chapter is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

(Ord. No. 1232, § 1, 9-20-2010)

**City of South St. Paul**
**Dakota County, Minnesota**

**Ordinance No. 1440**

**AN ORDINANCE AMENDMENT UPDATING THE LAWFUL GAMBLING ORDINANCE TO ESTABLISH NEW RULES FOR BINGO HALLS**

The City Council of the City of South St. Paul does ordain:

**SECTION 1. AMENDMENT**. South St. Paul City Code Section 11-4 is hereby amended as follows:

**Sec. 11-4. Definitions.**

In addition to the definitions contained in Minn. Stat. § 349.12, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

(1) *Board.* The State of Minnesota Gambling Control Board.

(2) *Licensed organization.* An organization licensed by the board.

(3) *Local organization.* An organization defined by Minn. Stat. § 349.12 that also meets the following criteria:

a. The organization has at least 15 active members at the time of its initial license application; and
b. The physical site for the organization's headquarters or the registered office of the organization is located within the city and has been located within the city for at least two years immediately preceding the application for a license; or
c. The organization owns real estate within the city, and the lawful gambling is conducted on the property owned by the organization within the city; or
d. The organization leases real estate within the city for a bingo hall that is at least 5,000 square feet in size and the lawful gambling is conducted within that space; or
e. The physical site where the organization regularly holds its meetings and conducts its activities, other than lawful gambling and fundraising, is within the city and has been located within the city for at least two years immediately preceding application for a license.

(4) *Trade area.* The cities of South St. Paul, Inver Grove Heights, Newport, St. Paul and West St. Paul, Minnesota.

**SECTION 2. AMENDMENT**. South St. Paul City Code Section 11-8 is hereby amended as follows:

**Sec. 11-8. Application and local approval of premises permits.**

(a) *Eligibility for a premises permit.* A premises permit may only be issued if:

(1) The premises is one of the following: ~~an on-sale liquor establishment~~

a. An on-sale liquor establishment; or

b. A bingo hall operating in a commercial district in a dedicated space that is at least 5,000 square feet in size.

(2) No premises permit currently exists for the premises;

(3) The organization does not already hold a premises permit or the organization holds only one other premises permit within the city;

(4) The organization that will conduct the lawful gambling is eligible for an organization license from the board.

(b) *Process.*

(1) *Application.* Any organization seeking to obtain a premises permit from the board shall file with the clerk an executed, complete duplicate application, together with all exhibits and documents accompanying the application as will be filed with the board. The organization shall pay the city a $250.00 investigation fee. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

(2) *Background investigation.* Upon receipt of an application for issuance of a premises permit, the clerk shall transmit the application to the police department for review and recommendation. The police department shall investigate the matter and make the review and recommendation to the council as soon as possible, but in no event later than 45 days following receipt of the notification by the city. The council shall receive the police department's report and consider the application within 45 days of the date the application was submitted to the clerk.

(3) *Approval or denial of application.* The applicant shall be notified in writing of the date on which the council will consider the recommendation. The council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application.

(c) *Grounds for ineligibility.* The council shall deny an application for issuance of a premises permit for any of the following reasons:

(1) Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling within the last three years.

(2) The organization already holds two premises permits within the city.

(3) The premises for which a premises permit is sought is not an on-sale liquor establishment or a bingo hall that meets the requirements of Section 11-8(a)(1).

(4) The organization that will conduct the lawful gambling is ineligible for an organizational license from the board.

(5) There is already one licensed organization permitted to conduct lawful gambling activities at the premises.

(6) Failure of the applicant to pay the investigation fee provided by this section within the prescribed time limit.

(7) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

(d) The council is without authority to compel the owner of an on-sale liquor establishment to renew a premises permit.

(Ord. No. 1232, § 1, 9-20-2010)

**SECTION 3. SUMMARY PUBLICATION**. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

> The ordinance updates the rules for lawful gambling to allow bingo halls that are not part of an establishment with an on-sale liquor license.

**SECTION 4. EFFECTIVE DATE**. This ordinance shall become effective upon publication.

Approved: _____

Published: _____

_____
Deanna Werner, City Clerk

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Michael Healy
**AGENDA ITEM NUMBER:** 11.E.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
Second Reading — Ordinance Amendment Updating Lot Coverage and Landscaping Regulations in Industrial Zoning Districts.

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**

Approval of Ordinance 1441 updating lot coverage and landscaping regulations in industrial zoning districts.

*A first reading was held at the March 16, 2026 City Council meeting.*

**OVERVIEW**

**Applicant**

The City of South St. Paul is the Applicant. *The proposed ordinance amendment would address zoning issues that have been identified by the South St. Paul Economic Development Authority (EDA) as barriers to potential future business expansion projects.*

**Background**

The South St. Paul Economic Development Authority's purpose is to strengthen the City's economy by supporting business growth, job creation, and redevelopment. The Economic Development Authority (EDA) is a 7-member board which is currently comprised of the same seven members as the City Council. City Administrator Ryan Garcia is the current director of the EDA and its primary staff liaison. The EDA is the official owner of most of the vacant land that is owned by the City which is intended for redevelopment. In addition to marketing City-owned land for targeted redevelopment, the EDA also partners with businesses that want to invest in the community to create jobs and/or expand the tax base. The EDA offers loans, provides technical assistance, and assists businesses with procuring grants.

City Staff recently talked to a business about a potential building expansion project in the Bridgepoint Industrial Park. There is a zoning rule on the books which caps building footprints in industrial zoning districts at 40% and the project cannot move forward without a variance if that

rule remains in place. The last time this issue came up was in 2017 and, in that case, the Planning Commission and City Council unanimously granted a planned unit development (PUD) approval with zoning flexibility that allowed Twin City Hide and Tanning to redevelop their industrial campus with new buildings which would result in an overall building footprint of 44.6%. This appears to have been the only time that this zoning rule has ever impacted a project since it was added to the City Code in 1992. The only other industrially zoned property in town that has a building footprint greater than 40% is the old Sportsman's Guide building (411 Farwell) which was developed in 1970 under a different set of zoning regulations.

It seems unlikely that the City would ever enforce the 40% cap and block a development project that meets all other zoning requirements. The City Council will probably always be willing to grant either a variance or a PUD approval to a project that does not meet the 40% rule. PUD approvals and variances are politically complex, however, and add an element of uncertainty to the development review process that can scare away businesses and developers. The EDA is requesting that the City update the zoning rules for the I-Industrial and I-1 Light Industrial districts to simply remove the 40% cap on building footprints to avoid deterring business expansion projects.

**City's Ongoing Efforts to Promote Tax Base Density**

The original rules for the I-Industrial zoning district were enacted in 1992. In 2019, the industrial areas north of Interstate 494 were rezoned to the newly created I-1 Light Industrial zoning district which has identical site design and building design standards but a different set of allowed uses. Since 1992, the City has repeatedly updated the rules for the industrial districts as the Planning Commission and City Council have refined their vision for the City's tax base and job base:

- The original rules required each development parcel to have 25% lot coverage by landscaping, which was challenging to meet and led to variance requests. Today, each development parcel is required to have 15% lot coverage by landscaping, which is a more realistic standard for an industrial area and still results in attractive well-landscaped lots.

- The original rules required each development parcel to have at least a 5,000 square foot building. A business that met this requirement could have unlimited exterior storage as an accessory use. This zoning setup resulted in some businesses buying up large pieces of land, constructing a relatively small building, and then using up most of the acreage for exterior storage (which pays almost no property taxes). In 2016, the City adopted a new zoning rule that requires each industrial parcel to have a minimum floor area ratio (FAR) of 0.2, meaning that at least 20% of each parcel needs to be covered in a 1-story building or at least 10% of each parcel needs to be covered in a 2-story building. This new ordinance was designed to ensure that each business in the industrial park is paying its fair share of property taxes relative to the amount of land that it consumes.

- The original rules allowed the type of low-value industrial buildings one would find in a semi-rural area. The code was updated in 2009 to require all new industrial buildings to be modern, high-quality buildings like one would find in a 21st century urban/suburban industrial park, which is much better for growing the City's tax base.

**Good Opportunity to Update Industrial District Landscaping Requirements**

The zoning rules for the I-1 and I zoning districts were written to ensure that each property is well-landscaped with good curb appeal. In both zoning districts:

1. Each property must have at least 15% lot coverage by landscaping.

2. New developments must prepare a landscaping plan which features overstory trees, understory trees, and plants and shrubs.

3. Each new development must provide at least one (1) overstory tree for each 70 feet of lot perimeter.

4. For each new development, the cost of landscaping must be at least 2% of the cost of constructing the new building. This requirement can be waived for any development where the cost of the new building exceeds $1 million.

The 2% rule is unusual, and it does not appear to have ever been consistently enforced since being added to the City Code in 1992. Today, all new industrial buildings cost at least $1 million, so the requirement is always waived as long as the business or developer files the correct paperwork with their development application. Essentially, the requirement is just red tape now and serves no purpose. Very few cities tie landscaping costs to building costs as a code requirement. City Staff supports removing this provision from the City Code entirely and this simple code update could be made as part of the same ordinance amendment that is eliminating the 40% building footprint cap.

**Proposed Ordinance**

City Staff has prepared an ordinance that would do two things:

1. Remove the 40% cap on building footprints in both the I-Industrial district and I-1 Light

Industrial district.

2. Update both the I-Industrial district and I-1 Light Industrial district landscaping requirements to remove the requirement that development projects featuring a building with a value of less than $1 million must spend at least 2% of the value of the building on landscaping.

**Discussion**

The Planning Commission and the City Council have consistently waived both zoning rules that are slated to be removed for any project that has requested a waiver. It is consistent with the City's ongoing efforts to promote tax base density to sunset these two rules, which add unnecessary red tape to the development process and potentially limit building expansions.

Even if the 40% building footprint limit is removed from the City Code, most industrial developments will not reach that level of lot coverage due to practical considerations and other code provisions. Each development will still need to meet zoning requirements related to landscape area and building setbacks from property lines. Most types of industrial businesses require a substantial amount of pavement area for site circulation because they either have a fleet of commercial vehicles that they park on-site, or they depend upon large trucks for shipping and deliveries and need space for trucks to maneuver and access loading docks.

**Planning Commission Public Hearing**

The Planning Commission held a public hearing for the proposed ordinance amendment at their March 4th meeting. No members of the public attended the hearing or submitted comments. The Planning Commission discussed the proposed ordinance and requested confirmation that there are enough landscaping provisions in other parts of the City Code that the City is not losing an important tool by eliminating the 2% rule. Staff confirmed that the City Code has robust landscaping requirements in industrial zoning districts and the 2% rule does not appear to have been enforced on any projects in recent history.

The Planning Commission recommended approval with a 6-0 vote.

**Recommended Action**

Approval of Ordinance 1441 updating lot coverage and landscaping regulations in industrial zoning districts.

**SOURCE OF FUNDS**
NA

**ATTACHMENTS**

1. Ordinance 1441

**City of South St. Paul**
**Dakota County, Minnesota**

**Ordinance No. 1441**

**AN ORDINANCE AMENDMENT UPDATING LOT COVERAGE AND LANDSCAPING REGULATIONS IN INDUSTRIAL ZONING DISTRICTS**

The City Council of the City of South St. Paul does ordain:

**SECTION 1. AMENDMENT**. South St. Paul City Code Section 118-129 is hereby amended as follows:

**Sec. 118-129. I, industrial district.**

~~(h) *Lot coverage.* Lot coverage by buildings shall not exceed 40 percent of the lot.~~

(~~i~~ h) *Off-street parking and loading signs.*

(1) Off-street parking shall have the following setbacks from the right-of-way line or side or rear lot line:

| | |
|---|---|
| Front yard (any street frontage) | 20 feet |
| Side yard | 10 feet |
| Rear yard | 10 feet |

(2) Signs shall be in accordance with article VI of chapter 118 and shall be shown on the site plan.

(~~j~~ i) *Landscaping Requirements*. In addition to the requirements of section 118-243, all areas in this ~~zone~~ district shall present a detailed landscape plan prepared by a landscape architect or other qualified person approved by the zoning administrator. The landscaping plan shall provide for a landscaped area that is a minimum of 15 percent of the parcel's total area. The landscaping plan shall ~~present a pleasing handling of~~ enhance the aesthetics of the site ~~lot~~ and shall include overstory trees, understory trees and appropriate plants and shrubs. The minimum plant material sizes shall be consistent with the requirements in Section 118-243. ~~The trunks of all deciduous trees shall be at least two and one-half inches in diameter, and all coniferous trees shall be at least six feet in height.~~ The minimum number of overstory trees shall be equal to the perimeter of the lot divided by 70. If any of these specific landscaping requirements are not practicable, as determined by a qualified landscaping expert, due to soil conditions, water tables, ~~availability of plant species~~ or other conditions beyond the control of the property owner, these requirements may be modified by the city at the request of the owner. ~~The plan shall certify that the cost of the plant materials is equal to~~

~~or exceeds two percent of the cost of the proposed building. For buildings over $1,000,000.00 in cost, the amount of landscaping cost may be reduced by the city council.~~

(~~k~~ j) *Exterior building materials.* See section 118-9.

(~~l~~ k) *Standards for Individual Hangar Lots at Fleming Field Municipal Airport.* The following standards shall apply to individual hangar lots located within the official boundaries of Fleming Field Municipal Airport.

**SECTION 2. AMENDMENT**. South St. Paul City Code Section 118-134 is hereby amended as follows:

**Sec. 118-134. I-1, light industrial district.**

~~(i) *Lot coverage.* Lot coverage by buildings shall not exceed 40 percent of the lot.~~

(~~j~~ j) *Off-street parking and loading signs.*

(1) Off-street parking shall have the following setbacks from the right-of-way line or side or rear lot line:

| | |
|---|---|
| Front yard (any street frontage) | 20 feet |
| Side yard | 10 feet |
| Rear yard | 10 feet |

(2) Signs shall be in accordance with article VI of chapter 118 and shall be shown on the site plan.

(~~k~~ j) *Landscaping Requirements.* In addition to the requirements of section 118-243, all areas in this ~~zone~~ district shall present a detailed landscape plan prepared by a landscape architect or other qualified person approved by the zoning administrator. The landscaping plan shall provide for a landscaped area that is a minimum of 15 percent of the parcel's total area. The landscaping plan shall ~~present a pleasing handling of the~~ enhance the aesthetics of the site ~~lot~~ and shall include overstory trees, understory trees and appropriate plants and shrubs. The minimum plant material sizes shall be consistent with the requirements in Section 118-243. ~~The trunks of all deciduous trees shall be at least two and one-half inches in diameter, and all coniferous trees shall be at least six feet in height.~~ The minimum number of overstory trees shall be equal to the perimeter of the lot divided by 70.. If any of these specific landscaping requirements are not practicable, as determined by a qualified landscaping expert, due to soil conditions, water tables, ~~availability of plant species~~ or other conditions beyond the control of the property owner, these requirements may be modified by the city at the request of the owner. ~~The plan shall certify that the cost of the plant materials is equal to or exceeds two percent of the cost of the proposed building. For buildings over $1,000,000.00 in cost, the amount of landscaping cost may be reduced by the city council.~~

(~~l~~ k) *Exterior building materials.* (See section 118-9: Architectural standards.)

**SECTION 3. SUMMARY PUBLICATION**. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

> The ordinance updates the zoning rules for the I-Industrial and I-1 Light Industrial zoning districts to remove the limit on lot coverage by buildings and revise the standards for required landscaping improvements.

**SECTION 4. EFFECTIVE DATE**. This ordinance shall become effective upon publication.

Approved: _____

Published: _____

_____
Deanna Werner, City Clerk

# CITY COUNCIL AGENDA REPORT

**DATE:** April 20, 2026
**DEPARTMENT:** Planning & Zoning
**PREPARED BY:** Michael Healy
**AGENDA ITEM NUMBER:** 11.F.

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
First Reading: Ordinance Updating Zoning Requirements in the R-2 Single-and-Two Family Zoning District

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**

Introduce for a first reading an ordinance updating zoning requirements in the R-2 Single-and-Two Family zoning district.

**OVERVIEW**

**Application**

The Applicant is the City of South St. Paul. The Applicant is proposing to update the R-2 Single-and-Two Family district's zoning requirements related to single-family homes and two-family homes.

*The Planning Commission discussed the R-2 district's zoning rules at their March 4th meeting and requested that the proposed ordinance be brought forward for a public hearing at their April 1st meeting. They recommended approval with a 6-1 vote.*

*The proposed ordinance incorporates a code update that the City Council has discussed related to multifamily rental properties, most recently at their Worksession meeting on April 13th. The proposed ordinance will codify a requirement that any property owner who seeks to add another dwelling unit to their building (i.e. a single-family home that is being converted to a duplex) must agree to provide the minimum required off-street parking stalls for all units within the building. The amendment will make it clear that they are not eligible to use any "grandfather rights" that the original building may have had in order to create a larger building with more units with fewer overall parking stalls than the City Code would require for a new build.*

**Background**

The R-2 Single-and-Two Family zoning district covers 27.5% of the city (about 795 acres) and is South St. Paul's largest zoning district. Most of the land in the R-2 district was platted in the late

1800's with 40-foot-wide home lots which are either 120 or 125 feet deep and either 4,800 or 5,000 square feet in total size. Property owners frequently create larger properties or differently shaped properties in the R-2 district by splitting and combining those original 40-foot lots.

Currently, the R-2 zoning district allows a single-family home to be constructed on any buildable lot that is at least 4,000 square feet in size and allows a duplex or a side-by-side twinhome to be constructed on any buildable lot that is at least 60 feet wide and at least 7,200 square feet in size. Anybody who owns a duplex is allowed to convert it into a single-family home at any time. Anybody who owns a single-family home that is on a lot that is at least 60 feet wide and at least 7,200 square feet in size can lawfully convert their building into a duplex by getting a building permit, renovating the building, and adding additional off-street parking for the second unit (a single-family home requires at least 2 off-street parking stalls while a duplex requires at least 3 off-street parking stalls). Alternatively, somebody who owns a 60-foot-wide home lot can theoretically tear down the existing single-family home and build a new construction duplex or a new construction twin home, but this is cost-prohibitive and rarely happens.

There are very few vacant lots in the R-2 district and almost all the residential buildings in the district were built either before SSP had any zoning rules whatsoever (1948) or before SSP required duplexes to be on larger parcels than single-family homes (1969). Consequently, there are "grandfathered" small apartment buildings throughout the R-2 district and there are many "grandfathered" duplexes on 40-foot lots. Most single-family homes in the R-2 district are on 40-foot lots. Creating a completely new home lot that was not at least 75 feet wide was illegal between 1965-2024 and existing 40-foot home lots were only considered buildable without a variance if they met specific code requirements. This meant that many houses in town were completely dependent on their grandfather rights. Grandfather rights expire 180 days after a building is destroyed by a disaster in a way that takes away more than 50% of its value.

From 1965-2024, there was a real danger that a fire or other disaster could wipe out a classic SSP neighborhood, and many houses in the neighborhood could not be easily rebuilt because insurance claims often take longer than 180 days and many existing home lots would lose their grandfather rights and would stop being buildable lots. In 2024, the Planning Commission and City Council overhauled the zoning code to re-legalize SSP's historic approach to single-family housing and again allow new 40-foot wide home lots in the R-2 district on blocks that are served by an improved alley. The R-2 district also now allows new 50-foot wide home lots on blocks without alleys.

The 2024 zoning code update included design guidelines that affect single-family homes, duplexes, and twinhomes, but the code update was primarily aimed at fixing the zoning rules for single-family homes. It was always City Staff's intention to revisit the rules for duplexes and multifamily buildings in the future (the 2040 Comprehensive Plan and Master Housing Strategy both call for this) but the conversation has been indefinitely postponed while the City waits to see what the Minnesota State Legislature will do regarding local zoning control. Many US states have passed preemption laws in recent years and now require their cities to allow duplexes on all single-family home lots and other types of small multifamily buildings on some single-family home lots. The Minnesota State Legislature vigorously debated the enactment of this type of statewide zoning preemption legislation in 2024 and 2025 and a bipartisan group of legislators is

making another attempt during the 2026 legislative session. City Staff has been taking a "wait and see" approach to avoid wasting time on zoning updates that could quickly be rendered obsolete if the Minnesota State Legislature enacts new statewide zoning standards.

**Why Is this Ordinance Amendment Being Proposed at this Time?**

In March, City Staff and the Planning Commission reviewed the R-2 district zoning standards at the request of City Clerk Deanna Werner who manages the City's rental licensing program. There are many buildings throughout the R-2 district that were built as a duplex prior to 1969 but then "converted" to a single-family home sometime in the past 57 years based on an inspection finding by the Dakota County Tax Assessor. The "conversion" might be as simple as the owner removing some appliances and fixtures from their second kitchen, something that is easily reversible. This has caused major headaches for the rental licensing program because these duplex buildings often have their second kitchen reassembled later, but these buildings cannot qualify for zoning approval to be legally converted back to a duplex if they are not on at least a 60-foot lot. This means that it is unlawful for the 2nd unit to get a rental license, since technically, the second unit does not exist.

The owners of single-family homes that are laid out like duplexes are strongly incentivized to skip getting a rental license if they owner-occupy one of the two units. Their building will show up in tax assessor records as a fully homesteaded single-family home, so the City has no good way of knowing that there is a secret second unit which is being rented out unless a complaint is received and an investigation reveals that rental activity is taking place. Whenever these building owners do the right thing and come in for a rental license, they are limited to renting out all or part of the building as if it is a "single-family home with two kitchens." This usually just means that the building still operates as a duplex, but the owner only needs to pay for a single-family home rental license, so they get a price break every year when they have to renew their rental license. It also makes things very confusing for the City Clerk and the neighbors when it comes to things like occupancy limits and minimum parking requirements (if it is not a real duplex, the City cannot legally require a third parking stall to be added).

One of the major reasons that the City historically did not want duplexes and twinhomes on smaller lots in the R-2 district is that some developers were building very unattractive 2-family homes which provided off-street parking by having the entire front of the building be an attached garage and having the entire front yard be a paved driveway. The Planning Commission and City Council have made updates to the zoning code in recent years to prevent that type of poor urban design:

- No more than 1/3 of a front yard can be paved for parking.
- No more than 60% of the front façade of a residential building can be garage doors.
- No attached garage can stick out more than 8 feet into the front yard.
- Except for corner lots and cul-de-sac lots, any lot which is less than 60 feet in width must use the alley for off-street parking access if an improved alley is available.

**A Quick History Lesson**

South St. Paul was founded in 1887 and most of its original neighborhoods and commercial areas were fully developed before the City adopted its first zoning code in 1948. The City's early zoning rules were geared towards promoting the ongoing development of the community as a traditional walkable town that would have roughly the same character as the development that had already taken place. However, starting in the 1960's, SSP pivoted towards trying to become more suburban (like West St. Paul, Maplewood, or Woodbury) instead of a traditional walkable town:

- In 1965, the City adopted suburban lot size requirements for new neighborhoods. No new residential lot could be created in any zoning district unless it was at least 75 feet wide and at least 9,000 square feet in size.

- In 1969, the City adopted an entirely new zoning code which embraced suburban zoning concepts. All new developments were required to have suburban density and site design instead of traditional walkable town density and site design. New buildings required large setbacks from property lines and new schools, churches, and businesses were no longer allowed to operate unless they had a large suburban-style parking lot that could accommodate all cars that might arrive during a "peak demand" event. It was also made unlawful to reuse an existing commercial building for a new use without constructing a large parking lot or getting a parking variance.

- Between 1960 and 1970, the South St. Paul Housing & Redevelopment Authority (HRA) - at that time a distinct public agency from the City - used federal urban renewal funds to demolish most of the traditional downtown buildings along Concord Exchange (then known as Concord Street). The goal at the time was to redevelop this street with suburban design aesthetics and suburban-style parking facilities to better position the street for future success.

It is important to understand all these efforts in their historic context. City leaders were in a difficult position during the 1960s dealing with the collapse of the meatpacking industry and the nationwide "white flight" phenomenon where many affluent and largely white residents were leaving older cities to build large new single-family homes in suburban areas. Cities across the country, including SSP, felt intense pressure to compete for those residents by making their communities more suburban and moving away from traditional walkable town design.

The suburban zoning rules that were put in place in the 1960s were always an awkward fit for South St. Paul's older neighborhoods. In those neighborhoods, past Planning Commissions and City Councils frequently granted major variances to allow development projects to move forward with traditional town design (i.e. parking lot size reductions, setback reductions, increased lot

coverage, etc.). Additionally, unlike most suburbs, SSP never embraced single-family zoning as the only way to build a high-quality, low-density neighborhood. While SSP does have numerous suburban R-1 single-family neighborhoods, many of SSP's older neighborhoods have always allowed both single-family homes and duplexes and now have R-2 zoning.

Starting about 30 years ago, the Planning Commission and City Council started taking formal steps to move the zoning rules for SSP's older neighborhoods back into alignment with the town's original character:

- In 1995, the Planning Commission and City Council rejected an effort to make it harder to build a new duplex in the R-2 district to make it more of a single-family zoning area. Instead, they added new performance standards to the City Code to ensure that new duplexes are of high quality and have adequate off-street parking.

- In 2003, the City completed a zoning study of Concord Exchange and enacted new mixed-use zoning rules that allowed traditional architecture, pedestrian-oriented site design, and more reasonably sized parking lots.

- In 2004, the City rezoned North Concord to mixed-use with the goal of seeing traditional town development on this corridor as well.

- 2014, the City adopted the Southview Hill Plan, which calls for supporting a traditional, walkable, mixed-use neighborhood around the Southview Boulevard and Marie Avenue business area.

- Following the adoption of the 2040 Comprehensive Plan in October 2020, SSP has undertaken an ambitious program of updating its zoning rules to support traditional walkable town design. Most of the mixed-use and commercial districts have been updated with new zoning standards and the City recalibrated the zoning rules for single-family housing in the R-2 district in 2024. The City updated its parking requirements to give individual business owners more discretion to right-size their non-residential parking facilities. The City also adopted an adaptive reuse ordinance that allows small and mid-sized commercial buildings to be reused by a new business without needing a parking variance.

**Comprehensive Plan Guidance for the R-2 Zoning District**

The neighborhoods with R-2 zoning are all guided "Low-Medium Density Residential" in the 2040 Comprehensive Plan. These neighborhoods are called out as areas that will have single-family homes, duplexes, and twinhomes. The comprehensive plan calls for keeping the character of these neighborhoods intact and keeping the population density in these neighborhoods roughly consistent with their historic platted density of 8–15 units per acre. The comprehensive plan calls for focusing on urban design and walkability and generally states that new neighborhoods should be designed to have the same type of walkability as older neighborhoods.

Many parts of the 2040 Comprehensive Plan call for making it easier for property owners to invest in improving their properties to keep South St. Paul's aging housing stock in good condition. It is expected that this will include renovations of existing buildings as well as some teardown-rebuild activity in situations where existing buildings are in poor condition, lack historic value, and cannot be easily salvaged. Goal 6.7 of the 2040 Plan is:

> *"Encourage different housing types, including more opportunities for life-cycle housing in order to provide housing that meets a variety of needs."*

**Summary of Proposed Ordinance**

City Staff and the City Attorney have prepared a proposed ordinance that would do the following:

1. Make it clear that converting a single-family home to a duplex is only allowed if all three (3) required parking stalls that are required for a duplex are provided.

*The City Council has expressed concerns about older rental properties being intensified (more units and/or more tenants) while utilizing their "grandfather rights" to provide less off-street parking than would be required for a new build. The proposed ordinance would make it clear that a property owner cannot get a building permit to convert their single-family home into a lawful duplex unless they provide all three (3) parking stalls that are required for a duplex. The new duplex would not get credit for any "grandfather rights" that the single-family home might have related to providing less off-street parking.*

*City Staff is also proposing a minor update to the zoning rules for the R-3 General Residence District and R-4 Multifamily Residential District to make it clear that additional dwelling units cannot be added to an existing apartment building unless the entire building is made compliant with minimum off-street parking requirements.*

2. Add existing zoning standards that are already "on the books" into the text of the R-2 Single-and-Two Family district ordinance for improved readability.

*Today's R-2 ordinance is missing many zoning standards and instead references zoning standards that are in the City's R-1 Single Family district ordinance. It is confusing for property*

*owners to have to page back and forth between different ordinances to understand their land rights.*

3. Allow duplexes on 50-foot lots instead of requiring a 60-foot lot.

*This is an appropriate change to make now that the City has design standards in place to ensure that new duplexes, twinhomes, and duplex conversions will match the architectural character of low-density neighborhoods and will not have front yards that are entirely paved for parking.*

4. Allow duplexes on 40-foot lots and other small "lots of record" if they have access to an improved alley.

*Duplexes require three (3) off-street parking stalls. This is easy to accomplish on a 40-foot-wide lot that is served by an alley without eating up the property's green space with pavement. 40-foot lots that do not have an alley are not good candidates for duplex conversions because they cannot meet the parking requirement without paving over most of the yard.*

5. Require exterior staircases for duplex conversions to be in a side yard or rear yard.

*This will prevent unsightly alterations to the front facade of a building as part of a duplex conversion. As with the other design standards that are already in the City Code, the goal is to preserve the architectural character of SSP's low-density neighborhoods.*

6. Establish a flat 5-foot side yard setback for interior lots in the R-2 district. This change would apply to both single-family homes and duplexes.

*Currently, the side setback requirement is 5 feet for most R-2 lots, but it jumps up to 9 feet if a lot is over 60 feet wide. There aren't very many platted lots in the R-2 district that are wider than 60 feet, so this larger width is typically only found when a property owner has acquired multiple lots and completed a lot combination. The requirement that larger lots need a larger setback has created problems. It is common for people to purchase land from their neighbor and do a lot combination, and this may mean that their existing house with a 5-foot setback becomes "lawful nonconforming" because their larger lot now gives them an increased side yard setback requirement.*

*Sometimes a property owner buys two lots because they want to build a large home that needs more space. Other times, they buy two lots because they want to have a larger yard. It benefits the City if property owners who have done a lot combination just for a larger yard keep all their improvements on one platted lot instead of centering the house to straddle both lots. If they keep*

*the house on just one lot, it means that they could do a lot split in the future and another home could be built on the second lot (more tax base and a homeownership opportunity for a future resident).*

**Discussion**

City Staff views the proposed ordinance amendment as a common-sense improvement that will continue the work that has been done over the past 5 years to implement the 2040 Comprehensive Plan and align SSP's zoning code with how property owners are already using their properties. Staff has a few final thoughts to share with the City Council:

- The proposed ordinance is not a policy change, it is a policy refinement. The City is not proposing to allow duplexes or twinhomes in any neighborhoods that do not already allow duplexes or twinhomes. The proposed ordinance relates primarily to off-street parking and the geometry of land development. The City Council has previously expressed that they do not want to allow any single-family home to be converted to a duplex unless the duplex can meet off-street parking requirements (3 stalls required) and the property still has enough green space in the backyard for traditional pastimes like grilling, picnicking, and children's games. Geometrically, a duplex works on a 40-foot lot with an alley as long as the City continues to enforce its lot coverage restrictions. Geometrically, a duplex works on a 50-foot lot without an alley as long as the City continues to enforce its lot coverage restrictions.

- The Planning Commission and City Council reviewed a variance in 2020 where a family owned a duplex on a 40-foot lot that had been "converted" to a single-family home in the 1960s but was still functionally a duplex and had two entirely separate dwelling units on two separate floors that each had their own lockable door, kitchen, bathroom, and set of bedrooms. The Planning Commission was supportive of granting a variance to allow the building to be legally turned back into a duplex and licensed as a lawful duplex. The City Council denied the variance and stated that they were not supportive of granting variances to allow individual duplexes on 40-foot lots. Some on the Council shared that they would be open to revisiting the lot size requirement for duplexes in the future if the Planning Commission wanted to recommend changes, but it would need to be a code amendment and not variances for individual 40-foot lots. The building that was the subject of the 2020 variance request was sold in 2021, and it does not have a rental license today. It is listed by the Dakota County Tax Assessor as being an owner-occupied single-family home and the City has never received any complaints about the property. It is unclear what the new owner is doing with the second dwelling unit, which technically does not exist.

- Single-family homes and duplexes are very similar in terms of how they function in a neighborhood and how they are regulated. Both housing types are often owner-occupied

(in a duplex, the owner often lives in one unit). Both housing types work well when subject to a 35% lot coverage limit and 28-foot height limit (SSP's current R-2 rules) whereas triplexes and larger residential buildings usually need more lot coverage or height to have a functional floor plan. Finally, both single-family homes and duplexes are regulated under the Residential Building Code, which allows for cost-effective construction techniques. Triplexes and larger residential buildings are regulated under the State Building Code as commercial buildings and this drives up costs considerably and requires plans to be prepared by a licensed architect.

- There are many 60-foot lots in SSP with R-2 zoning that already qualify to be used as a duplex or twinhome and City Staff generally sees no more than one duplex or twinhome project each year. Many years have zero duplex or twinhome projects. Other cities in Minnesota that have relaxed their zoning requirements for duplexes have been surprised by just how few property owners want to convert their single-family home into a duplex. In SSP, most of the property owners who call City Hall and are interested in doing a duplex conversion are people who already functionally have a duplex but are blocked from legally turning their building into a duplex, so they need to get a rental license for a single-family home and rent the building out as a "single-family home with two kitchens."

- Every year, City Staff speaks to residents who own a duplex in the R-2 district and are interested in converting it into a single-family home to better serve their family (i.e. turn the second kitchen into a family room). Most of these property owners get cold feet after they learn that their duplex is "grandfathered" to exist on a 40-foot lot, and they will forfeit those grandfather rights if they do a conversion. They recognize correctly that they will be dramatically reducing the resale value of the home if they convert it to a single-family home and this will hurt them in the future when they are ready to sell the property to fund their retirement. Allowing both single-family homes and duplexes on more R-2 lots would allow property owners to toggle back and forth between housing types as their life circumstances change. The building could be used as a single-family home when their children are young and then turned back into a duplex later on if their children are adults and want to keep living on the property but with increased independence. Adding this type of flexibility to the City's housing stock would be consistent with the 2040 Comprehensive Plan's goal of promoting lifecycle housing and helping residents "age in place" with the help of their support network.

- South St. Paul does have many suburban neighborhoods which are characterized by larger lots, larger setbacks between houses, a lack of sidewalks on minor streets, a lack of boulevard trees, a lack of alleys, and car-oriented architecture (i.e. 2–3 stall attached garages on the front of most houses). Some of the residents of these neighborhoods prefer a more suburban lifestyle and choose to live in these parts of SSP deliberately. These

neighborhoods are generally zoned R-1 Single Family and that zoning district is not being modified in any way and will continue to function as a suburban single-family zoning district.

**Planning Commission Recommendation**

The Planning Commission discussed a draft ordinance at their March 4th meeting and held a public hearing for the proposed ordinance at their April 1st meeting. No members of the public attended the hearing or submitted comments. The Planning Commission had a highly technical discussion and asked City Staff a number of clarifying questions about single-family homes, duplexes, and twinhomes and how City Staff and the Dakota County Tax Assessor draw distinctions between the different housing types when there seem to be so many gray areas (i.e. single-family homes with 2 kitchens and/or 2 separate dwelling units). City Staff explained how the zoning rules are administered and also provided some insight into how the code enforcement process works for zoning violations and rental licensing violations.

Ultimately, most of the Planning Commissioners agreed with City Staff that this is not a policy change ordinance and is instead a narrowly tailored policy refinement ordinance related to the geometry of home lots in the R-2 district. They agreed with City Staff that the ordinance will reduce gray areas and make it easier for the Planning Department and the City Clerk to conduct code enforcement and properly license buildings that are clearly being used as duplexes even though they are licensed as single-family homes. Commissioner Fournier shared that he once owned a duplex in South St. Paul on a 40-foot lot, and he agrees with City Staff that this type of property is able to support a duplex with comfortable living conditions for the occupants.

Commissioner Felton disagreed with the other Planning Commissioners and indicated that he still feels that a duplex needs to be on a lot that is at least 60 feet wide. He shared during the discussion that he believes that the owners of smaller properties have enough options already and do not need the option of having their building be considered a lawful duplex. He noted that a lawful single-family home that contains two complete dwelling units (separate kitchens, separate bathrooms, and separate bedrooms) could legally be used by a multi-generational family who are all related to each other, so there are lawful ways to use such a building without needing a rental license. He expressed that some members of the community feel that there are too many rental dwellings in town, and he worries that making more properties eligible to be lawful duplexes could lead to more rental activity.

City Staff reiterated that the proposed ordinance is not a policy change and the R-2 district's explicit purpose is to allow single-family homes and duplexes to exist together in the City's older low-density neighborhoods. There is no proposal to allow duplexes in any neighborhoods that do not already allow duplexes. City Staff also noted that it is extremely expensive to outfit a home with a secondary dwelling unit (separate kitchens, separate bathrooms, and separate bedrooms) for multi-generational living. Most residents are not going to want to invest the money to add a secondary dwelling unit if their hands are tied and the only lawful way to use the building is multi-generational living and the second unit cannot be rented out if one generation passes away and the other generation wants to keep living at the property.

The Planning Commission voted 6-1 (Felton dissenting) to recommend approval.

**Action Needed**

Introduce for a first reading an ordinance updating zoning requirements in the R-2 Single-and-Two Family zoning district.

**SOURCE OF FUNDS**

NA

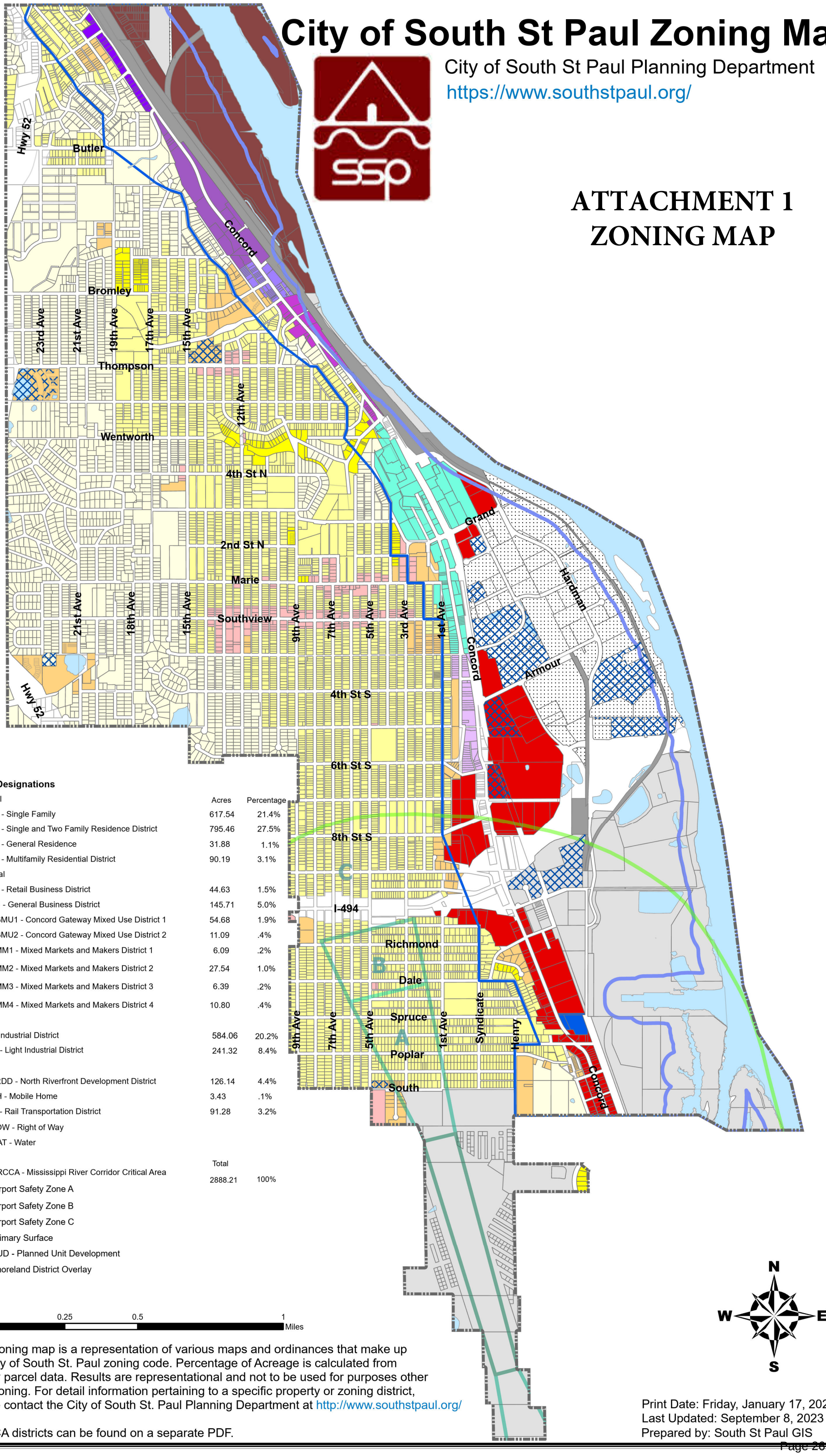
**ATTACHMENTS**

1. Zoning Map
2. Examples of Residential Lot Widths in South St. Paul
3. Proposed Ordinance

# City of South St Paul Zoning Map

City of South St Paul Planning Department
https://www.southstpaul.org/

## ATTACHMENT 1
## ZONING MAP




### Zoning Designations

| | Acres | Percentage |
|---|---|---|
| **Residential** | | |
| R1 - Single Family | 617.54 | 21.4% |
| R2 - Single and Two Family Residence District | 795.46 | 27.5% |
| R3 - General Residence | 31.88 | 1.1% |
| R4 - Multifamily Residential District | 90.19 | 3.1% |
| **Commercial** | | |
| C1 - Retail Business District | 44.63 | 1.5% |
| GB - General Business District | 145.71 | 5.0% |
| CGMU1 - Concord Gateway Mixed Use District 1 | 54.68 | 1.9% |
| CGMU2 - Concord Gateway Mixed Use District 2 | 11.09 | .4% |
| MMM1 - Mixed Markets and Makers District 1 | 6.09 | .2% |
| MMM2 - Mixed Markets and Makers District 2 | 27.54 | 1.0% |
| MMM3 - Mixed Markets and Makers District 3 | 6.39 | .2% |
| MMM4 - Mixed Markets and Makers District 4 | 10.80 | .4% |
| **Industrial** | | |
| I - Industrial District | 584.06 | 20.2% |
| I-1 - Light Industrial District | 241.32 | 8.4% |
| **Other** | | |
| NRDD - North Riverfront Development District | 126.14 | 4.4% |
| MH - Mobile Home | 3.43 | .1% |
| RT- Rail Transportation District | 91.28 | 3.2% |
| ROW - Right of Way | | |
| WAT - Water | | |
| | Total | |
| | 2888.21 | 100% |

MRCCA - Mississippi River Corridor Critical Area
Airport Safety Zone A
Airport Safety Zone B
Airport Safety Zone C
Primary Surface
PUD - Planned Unit Development
Shoreland District Overlay

0 0.25 0.5 1 Miles

N W E S

This Zoning map is a representation of various maps and ordinances that make up the City of South St. Paul zoning code. Percentage of Acreage is calculated from county parcel data. Results are representational and not to be used for purposes other than zoning. For detail information pertaining to a specific property or zoning district, please contact the City of South St. Paul Planning Department at http://www.southstpaul.org/

MRCCA districts can be found on a separate PDF.

Print Date: Friday, January 17, 2025
Last Updated: September 8, 2023
Prepared by: South St Paul GIS

**ATTACHMENT 2**
**EXAMPLES OF RESIDENTIAL LOT WIDTHS IN SOUTH ST. PAUL**

## 40-FOOT-WIDE LOTS

- Almost all of SSP's original neighborhoods were platted in the 1800's with lots that are 40 feet wide and either 120 or 125 feet deep. Most neighborhoods with R-2 zoning were platted with 40-foot-wide lots.

- The home shown below was built on a 40-foot-wide lot with an alley. This is by far the most common type of residential lot in South St. Paul.

## 50-FOOT-WIDE LOTS

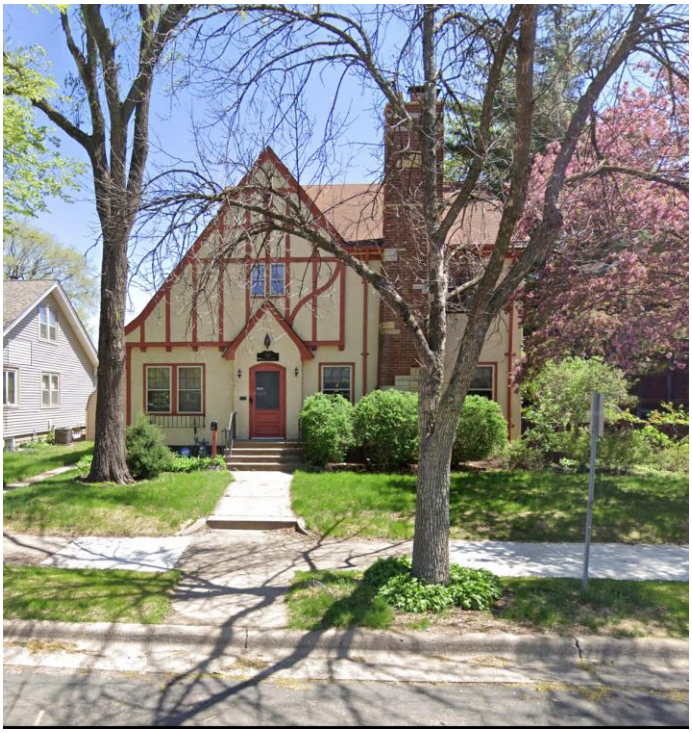
- A few older neighborhoods were platted with lots that are 50 feet wide. It is also common for people to create 50-foot lots by doing lot splits and combinations.

-

## 60-FOOT-WIDE LOTS

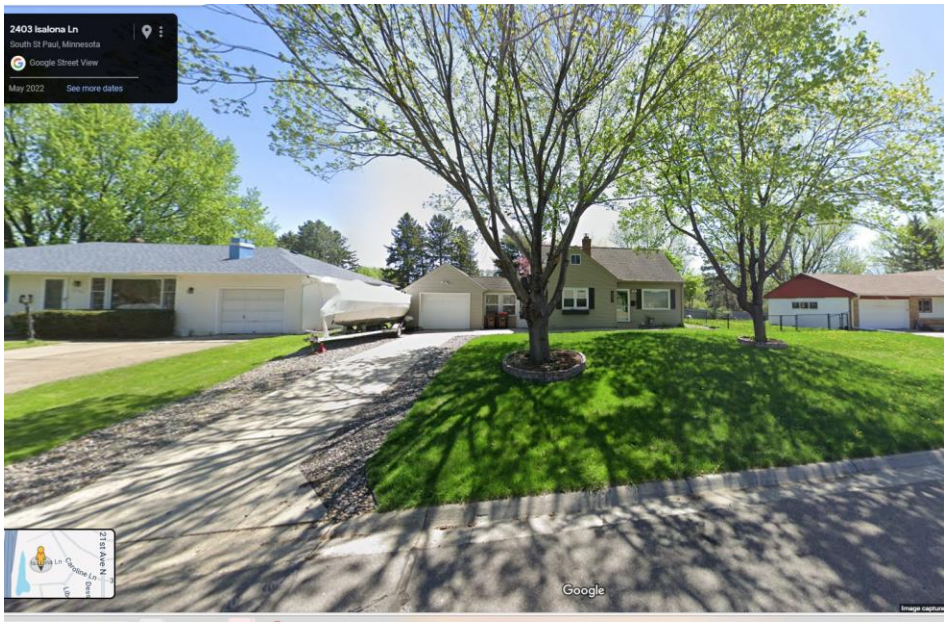
- Most of the neighborhoods created in the 1950's and 1960's were platted with 60-foot-wide lots including the R-2 neighborhoods near Fleming Field Municipal Airport.

- 60-foot-wide single-family-home parcels can also be found all over SSP because it is very common for the owners of 40-foot-wide lots to purchase a vacant 40-foot-wide lot that sits between their properties and split it in half to share. The house shown below sits on a 60-foot-wide parcel in an R-2 neighborhood that consists of mostly 40-foot wide lots.



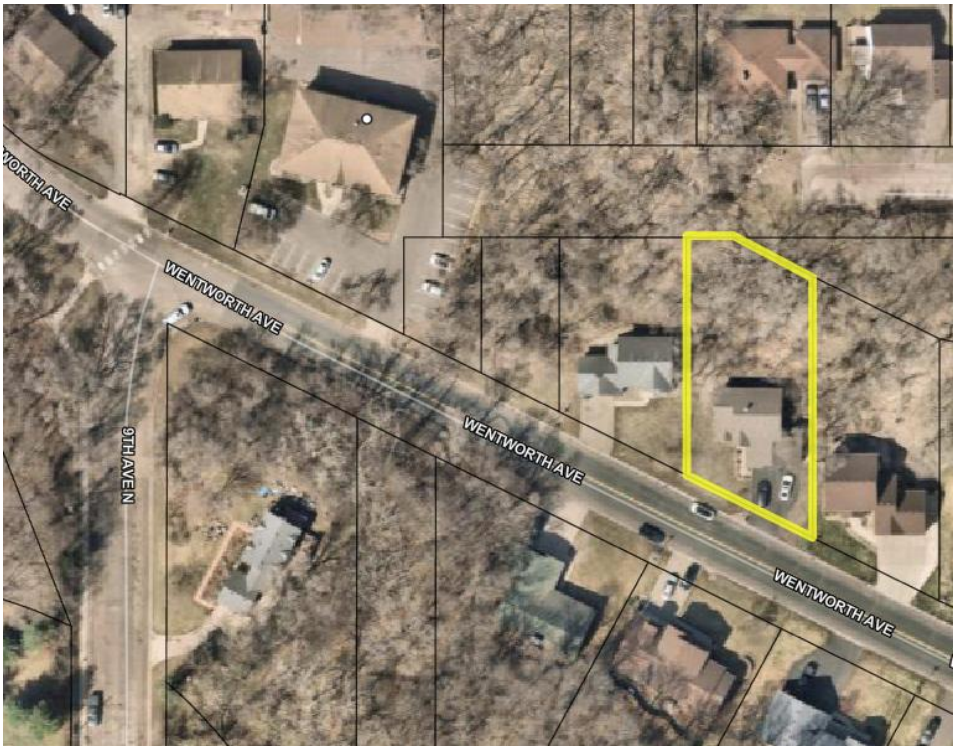
## 70-FOOT-WIDE LOTS

- The Oak Park neighborhood on the west side of town was platted with a variety of lot widths but most of the original platted lots are around 70 feet in width.

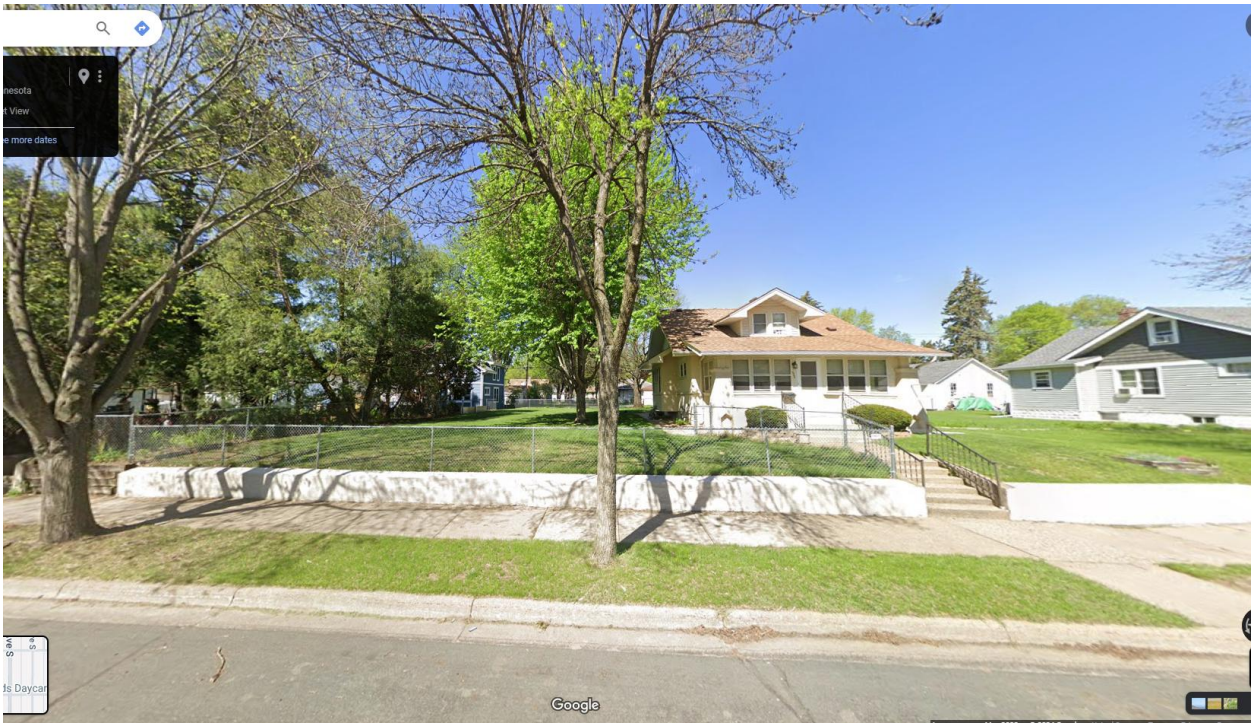


# 75 FOOT-WIDE LOTS AND OTHER LARGE LOTS

78-Foot-Wide Lot Platted in 2009 in the “Thompson Heights” Subdivision




89-Foot-Wide Lot Platted in 2000 in the “Wentworth Hollow” Subdivision



80-Foot-Wide “Double Lot” Created by Combining Two 40-Foot-Wide Lots From The Ravenscroft Park Subdivision which was Platted in 1887.

**City of South St. Paul**
**Dakota County, Minnesota**

**Ordinance No. 14XX**

**AN ORDINANCE AMENDMENT UPDATING ZONING REQUIREMENTS IN THE R-2 SINGLE AND TWO FAMILY RESIDENCE DISTRICT**

The City Council of the City of South St. Paul does ordain:

**SECTION 1. AMENDMENT**. South St. Paul City Code Section 118-122 is hereby amended as follows:

**Sec. 118-122. R-2, single- and two-family residence district.**

(a) *Permitted uses.* Within the R-2 district, no structure or land shall be used except for one or more of the following uses, except as otherwise permitted by this chapter:

(1) Principal and accessory uses permitted in the R-1 district;

(2) Duplex or twin home ~~(see subsection (c) of this section)~~; and

(3) A PWS antenna located entirely inside a building or structure.

(b) *Uses by conditional use permit.* Within the R-2 district, the following uses shall be by conditional use permit only:

(1) All uses allowed by a conditional use permit in the R-1 district.

~~(c) *Building height, width, area, and architectural requirements.* Within the R-2 district, building height, width, area, and architecture for residential dwellings shall be as regulated in the R-1 district.~~

(c) *Building height, width, area, and architectural requirements.* Within the R-2 district, residential buildings must comply with the following:

(1) Shall not exceed a height of three stories, or 28 feet above grade as defined in the Minnesota State Building Code;

(2) Shall be a minimum of 24 feet wide; and

(3) Shall have a minimum area footprint of 800 square feet.

(4) Shall comply with the architectural requirements for residential structures contained in section 118-9.

(5) For two-family dwellings, exterior stairs that provide access to a dwelling unit above the ground floor shall be enclosed or shall be located in the rear yard or a side yard.

(d) *Lot requirements.* Within the R-2 district, the following lot requirements shall apply:

(1) Each single-family dwelling, together with its accessory buildings, shall be located on a lot having an area of not less than 6,000 square feet, width of not less than 50 feet, and depth of not less than 120 feet, except in the following circumstances:

a. A single-family dwelling may be erected on a lot platted prior to May 1, 1967 or a buildable lot of record that was lawfully established, having less than the foregoing area, width, and depth but having no less than 4,000 square feet of lot area. A lot platted prior to May 1, 1967 which has been combined with other lots may be restored to its original dimensions, subject to the provisions of section 114-5.

b. When an improved alley is provided along the rear or side property line, a new buildable lot may be created with an area of not less than 4,800 square feet, a width of not less than 40 feet, and a depth of not less than 120 feet.

(2) Each two-family dwelling, together with its accessory buildings, shall be located on a lot having an area of not less than 6,000 square feet, width of not less than 50 feet, and depth of not less than 120 feet, except in the following circumstances:

a. When an improved alley is provided along the rear or side property line, a two-family dwelling is allowed on any lot that is considered a buildable lot for a single-family dwelling.

(e) *Building Requirements.* Within the R-2 district, the following building requirements shall apply:

(1) *Ingress and egress.* All lots shall front on a public street or have adequate ingress and egress to a public street.

(2) *Percent of land use.* All dwellings and accessory buildings on any lot shall not cover more than 35 percent of the area of the lot.

(3) *Front yard.* No building shall be erected, reconstructed, altered or moved nearer to the front lot line than the average setback observed by residential buildings on the same side of the street and fronting thereon within the same block. Further, no part of the structure shall be closer than 25 feet to the street line on which it faces, except when the average setback is less than 25 feet.

(4) *Side yard.* There shall be a side yard of not less than five feet along each side of each building located on an interior lot. There shall be a side yard of not less than nine feet on the street side of any structure constructed on a corner lot. No attached garage shall be placed within ten feet of any dwelling unit on an adjacent lot. When an alley runs parallel to a side property line, a garage with an entrance facing said alley must be set back at least eight feet from the alley right-of-way line.

(5) *Rear yard.* Each lot shall have a rear yard of not less than 25 feet in depth.

(6) *Access to units.* Each unit of a two-family dwelling shall have a separate access to the outside of the dwelling or to a common hallway or entryway. Any exterior stairs to an above-ground floor shall comply with Section 118-122 (c)(5).

(7) *Separate bathroom, kitchen, sleeping area.* Each dwelling unit in a two-family dwelling must have a separate bathroom, kitchen, and sleeping area.

(8) *Conditional use permit requirements.* All uses by conditional use permit shall provide such setback in front, side, and rear yards as the city council shall determine, taking into account the proposed use, the character of the surrounding area, the density of the area, and other relevant factors.

~~(d) *Lot requirements; single-family dwellings.* Each one or two family dwelling, together with its accessory buildings, shall be located on a lot having an area of not less than 6,000 square feet, width of not less than 50 feet, and depth of not less than 120 feet, except in the following circumstances:~~

~~(1) A dwelling may be erected on a lot platted prior to May 1, 1967 or a buildable lot of record that was lawfully established, having less than the foregoing area, width, and depth but having no less than 4,000 square feet of lot area. A lot platted prior to May 1, 1967 which has been combined with other lots may be restored to its original dimensions, subject to the provisions of section 114-5.~~

~~(2) When an improved alley is provided along the rear or side property line, a new buildable lot may be created with an area of not less than 4,800 square feet, a width of not less than 40 feet, and a depth of not less than 120 feet.~~

~~(e) *Lot requirements; two-family dwellings.* The following minimum lot and building requirements shall apply to all two-family dwellings in the R-2 district whether the two-family homes are newly constructed or are newly created by remodeling an existing structure which was previously not a two-family dwelling:~~

~~(1) *Lot area, width, and depth.* No two-family dwelling shall be erected on a lot having less than 60 feet of frontage, and 7,200 square feet of area.~~

~~(2) *Percent of land use.* The two-family dwelling and accessory buildings on any lot shall not cover more than 35 percent of the area of the lot.~~

~~(3) *Access to unit.* Each unit of the two-family dwelling shall have a separate access to the outside of the dwelling or to a common hallway or entryway.~~

~~(4) *Inspection and license.* Each rental unit within a two-family dwelling shall be inspected in accordance with article VII of chapter 106 of this Code prior to occupancy.~~

~~(5) *Separate bathroom, kitchen, sleeping area.* Each dwelling unit must have a separate bathroom, kitchen and sleeping area.~~

~~(6) *Miscellaneous.* The requirements of sections 118-121(d)(2) and (d)(4)—(6) shall apply to two-family dwellings.~~

(f) *Off-street parking, loading and unloading berths.* Within the R-2 district, the provisions of article VII of this chapter shall apply. A single-family home may not be converted to a duplex without fully satisfying the applicable minimum off-street parking requirement for a duplex.

(g) *Prohibited uses.* The following uses are prohibited because they are not compatible with the purposes of the R-2 residence district: PWS towers and antennas, except as permitted under subsections (a) and (b) of this section and small wireless facilities located outside of the right-of-way.

**SECTION 3. AMENDMENT**. South St. Paul City Code Section 118-123 is hereby amended as follows:

**Sec. 118-123. R-3, general residence district.**

(e) *Off-street parking and loading.* Off-street parking and loading within the R-3 zoning district shall be as required and regulated in article VII of this chapter. No additional dwelling units may be added to an existing residential building without the entire building being brought into compliance with applicable minimum parking requirements.

**SECTION 4. AMENDMENT**. South St. Paul City Code Section 118-124 is hereby amended as follows:

**Sec. 118-124. R-4, multifamily residential district.**

(e) *Off-street parking and loading.* Within the R-4 district, off-street parking and loading shall be as required and regulated in article VII of this chapter. No additional dwelling units may be added to an existing residential building without the entire building being brought into compliance with applicable minimum parking requirements.

**SECTION 5. SUMMARY PUBLICATION**. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

> The ordinance updates the zoning rules for two-family dwellings in the R-2 Single-and-two family zoning district. It also establishes clearer code criteria regarding minimum parking requirements when additional dwelling units are being added to an existing building.

**SECTION 6. EFFECTIVE DATE**. This ordinance shall become effective upon publication.

Approved: _____

Published: _____

_____

Deanna Werner, City Clerk