

# FAIRMONT CITY COUNCIL AGENDA

## 1. CALL TO ORDER -

- Regular meeting of the Fairmont City Council held on

**MONDAY, APRIL 13, 2015**

at **5:30 p.m.** in the City Hall Council Chambers.

## 2. ROLL CALL -

Mayor Quiring  
Councilors: Anderson  
Askeland  
Clerc  
Peters  
Zarling

## 3. DETERMINATION OF QUORUM -

## 4. PLEDGE OF ALLEGIANCE

## 5. READINGS OF MINUTES -

5.1 Minutes of Regular Meeting, March 23, 2015 (01-02)

## 6. OPEN DISCUSSION -

6.1 Open Discussion (03)

## **7. RECOGNITIONS/PRESENTATIONS -**

- 7.1 Presentation by Pastor Fink (04)
- 7.2 Proclaim April 24, 2015 as Arbor Day & the month of May as Arbor month. (05)
  - 7.2a Proclamation (06)

## **8. SCHEDULED HEARINGS –**

- 8.1 Public Hearing on Amending Rural and Urban Service Districts (07)
  - 8.1a Ordinance 2015-05 (08)

## **9. ADMINISTRATIVE APPEALS -**

## **10. FINANCIAL REPORTS –**

## **11. REPORTS OF BOARDS, COMMITTEES, AND DEPARTMENT HEADS –**

## **12. LICENSES AND PERMITS –**

- 12.1 Permit for 5K Walk/Run/Bike for Suicide Prevention and Awareness (09)
  - 12.1a Permit Application (10)
  - 12.1b Map of Route (11)

## **13. OLD BUSINESS -**

## **14. NEW BUSINESS –**

14.1 Encroachment Easement Agreement with Fairmont Foods, Inc.	(12)
14.1a Encroachment Easement Agreement	(13-23)
14.2 Lake Access Lease	(24)
14.2a Proposed Lake Access for Docks and Lifts Lease Agreement	(25-27)
14.3 Human and Financial Resource Analysis FPD	(28)
14.1a Memo from City Administrator	(29-30)
14.4 Midcontinent Internet Agreement	(31)
14.1a Midcontinent Internet Service Agreement	(32-45)
14.5 Issuance and Sale of \$5,000,000 in Revenue Refunding Notes	(46)
14.5a Resolution 2015-11	(47-50)
14.6 Review preliminary findings of TH 15 intersection studies	(51)

## **15. REGULAR AND LIQUOR DISPENSARY BILLS –**

**\*\*\*\*\*CLOSED SESSION\*\*\*\*\***

## **16. STATUS REPORTS/ORAL**

16.1 CLOSED SESSION	(52)
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## **17. ADJOURNMENT –**

The minutes of the Fairmont City Council meeting held on March 23, 2015 at the City Hall Council Chambers.

Mayor Randy Quiring called the meeting to order at 5:30 p.m.

Council Members Terry Anderson, Chad Askeland, Wes Clerc, Bruce Peters and Jim Zarling were present. Also in attendance: City Administrator Mike Humpal, City Attorney Elizabeth W. Bloomquist, Public Works Director/City Engineer Troy Nemmers, Finance Director Paul Hoyer, City Clerk Patricia Monsen and Detective Eric Tonder.

It was moved by Council Member Clerc, seconded by Council Member Askeland and carried to approve the minutes of the regular City Council meeting of March 9, 2015.

There was no open discussion.

Ashley Aukes from Region Nine gave a presentation on a new social media program being offered by Region Nine to area businesses. Aukes will be working with Linsey Preuss and Margaret Dillard from the Chamber of Commerce Office.

Mayor Quiring opened the public hearing to take citizen input on proposed **Ordinance 2015-03**, amending Article VIII Off Street Parking & Loading, Division 2 Off Street Parking, Section 26-653 Location. There was no citizen input at the hearing. Council Member Askeland made a motion to close the public hearing. Council Member Anderson seconded the motion and the motion carried. Council Member Askeland made a motion to approve **Ordinance 2015-03**. Council Member Anderson seconded the motion. On roll call: Council Members Clerc, Peters, Zarling, Anderson and Askeland all voted aye. No one voted nay. Mayor Quiring declared said motion passed.

Council Member Zarling made a motion to approve a parade permit for Fairmont United Methodist Church Ecumenical "Way of the Cross Prayer Walk" for April 3, 2015. Council Member Anderson seconded the motion and the motion carried.

Council Member Peters made a motion to adopt **Resolution 2015-08**, penalizing the VFW for violating its on-sale liquor license. Council Member Askeland seconded the motion. On roll call: Council Members Askeland, Clerc, Peters, Zarling and Anderson all voted aye. No one voted nay. Mayor Quiring declared said motion passed.

Council Member Peters made a motion to set a public hearing for April 13, 2015 on proposed **Ordinance 2015-05** amending the Rural and Urban Service Districts for the City by placing a 42 acre parcel with property ID number 230371100 owned by Krahmer, Inc. into the Rural Service District. Council Member Askeland seconded the motion and the motion carried.

Council Member Anderson made a motion to adopt **Resolution 2015-09**, setting a public hearing for April 27, 2015 on the request by Terry Maakestad to amend Development District #1 and establish a redevelopment TIF District No. 25. Council Member Clerc seconded the motion. On roll call: Council Members Peters, Zarling, Anderson, Askeland and Clerc all voted aye. No one voted nay. Mayor Quiring declared said motion passed.

William Douglass of Bolton & Menk, Inc. gave a presentation on the Hengen Street/Canyon Drive storm water analysis.

Greg Mitchell of Bolton & Menk, Inc. addressed the Council regarding the Winnebago Sports Complex infield aggregate concerns. Council Member Anderson made a motion to remove all eight inches of the existing aggregate and to replace it with Bryan Rock, the cost not to exceed \$50,000, while the City of Fairmont retains possession of the removed aggregate. Council Member Zarling seconded the motion and the motion passed. Council Member Peters voted nay on the motion.

Council Member Anderson made a motion to pay the bills for the month of March, 2015 in the amount of \$436,650.81. Council Member Peters seconded the motion and the motion carried.

A motion was made by Council Member Anderson, seconded by Council Member Askeland and carried to adjourn the meeting at 7:00 p.m.

ATTEST:

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Randy J. Quiring  
Mayor


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Patricia J. Monsen, City Clerk

**CITY OF FAIRMONT-----AGENDA CONTROL SHEET-----AGENDA ITEM NO. 6.1**

**MEETING DATE:** April 13, 2015

**SUBJECT:** Open Discussion

**REVIEWED BY:** Mike Humpal, CEcD, City Administrator 

**SUBJECT INITIATION BY:**

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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**SUBJECT BACKGROUND:**

**INTRODUCED BY:** Mayor Randy Quiring

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input checked="" type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENED ACTION BY:**

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input checked="" type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Prior to regular business, is there any open discussion?

**MOTION:** None

**VOTE REQUIRED:**

**ATTACHMENTS:**


1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MEETING DATE: April 13, 2015

SUBJECT: Presentation by Pastor Fink

REVIEWED BY: Mike Humpal, CEcD, City Administrator 

SUBJECT INITIATION BY:

<input checked="" type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mike Humpal, CEcD, City Administrator

INTRODUCED BY: Mike Humpal, CEcD, City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input checked="" type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENDED ACTION BY:

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Pastor Fink along with other churches and community groups will be hosting a neighborhood get together for the Veterans Park area neighborhood, but is open to anyone that wants to participate. The event will be held Wednesday, May 20<sup>th</sup> in the evening.

VOTE REQUIRED: N/A

ATTACHMENTS:

1. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF FAIRMONT-----AGENDA CONTROL SHEET-----AGENDA ITEM NO. 7.2**

**MEETING DATE:** April 13, 2015

**SUBJECT:** Proclaim April 24, 2015 as Arbor Day and the month of May as Arbor Month

**REVIEWED BY:** Mike Humpal, CECd, City Administrator

**SUBJECT INITIATION BY:** Park Department

<input checked="" type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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**SUBJECT BACKGROUND:** Mayor Randy J. Quiring

**INTRODUCED BY:** Mayor Randy J. Quiring

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input checked="" type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENED ACTION BY:**

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input checked="" type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Mayor Randy J. Quiring will proclaim April 24, 2015 as Arbor Day and the month of May as Arbor Month in the City of Fairmont

**MOTION:**

**VOTE REQUIRED:**

**ATTACHMENTS:**

1. Proclamation
- 2.
- 3.

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Council Action: \_\_\_\_\_ Date: \_\_\_\_\_



CITY OF FAIRMONT – 100 Downtown Plaza – Fairmont, MN 56031  
www.fairmont.org

Phone (507) 238-9461

Fax (507) 238-9469

## PROCLAMATION

**WHEREAS**, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and;

**WHEREAS**, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and Arbor Day is now observed throughout the nation and the world, and;

**WHEREAS**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and;

**WHEREAS**, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and;

**WHEREAS**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and;

**WHEREAS**, trees, wherever they are planted, are a source of joy and spiritual renewal, and;

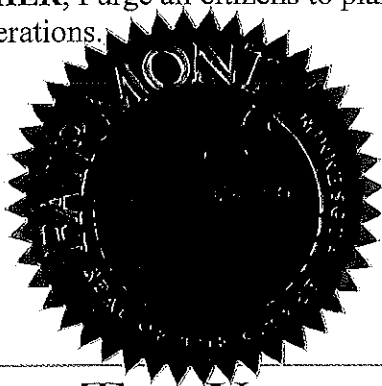
**WHEREAS**, Fairmont has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting practices.

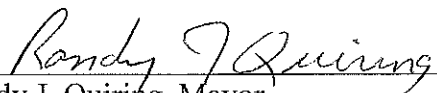
**NOW THEREFORE**, I, Randy J. Quiring, Mayor of the City of Fairmont, Minnesota, do hereby proclaim Friday, April 24, 2015, as:

## ARBOR DAY

and the month of **May, 2015** as **Arbor Month** in the City of Fairmont and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and;

**FURTHER**, I urge all citizens to plant trees to gladden the hearts and promote the well-being of present and future generations.



  
Randy J. Quiring, Mayor

C I T Y O F L A K E S

**CITY OF FAIRMONT----AGENDA CONTROL SHEET----AGENDA ITEM NO. 8.1**

**MEETING DATE:** April 13, 2015

**SUBJECT:** Public Hearing on Amending Rural and Urban Service Districts

**REVIEWED BY:** Mike Humpal, CEcD, City Administrator

**SUBJECT INITIATION BY:**

<input checked="" type="checkbox"/>	Petition		Board	<input checked="" type="checkbox"/>	Staff		Council		Commission		Committee
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**SUBJECT BACKGROUND:** Mike Humpal, CEcD, City Administrator

**INTRODUCED BY:** Mike Humpal, CEcD, City Administrator

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

	Motion (Voice Vote)		Resolution (Roll Call)		Discussion
	Ordinance 1 <sup>st</sup> Reading (Introduction only)		Set Public Hearing (Motion)		Information Only
<input checked="" type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)		Hold Public Hearing (Motion to close)		

**RECOMMENED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff		Board		Commission		Committee
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	Issuance	<input checked="" type="checkbox"/>	Approval		Authorization		No recommendation
	Denial		Rejection		No action needed		

**STATEMENT:** Hold a public hearing to amend the Rural and Urban Service Districts for the City of Fairmont and place a 42 acre parcel with Property ID Number 230371100 owned by Krahmer, Inc. into the Rural Service District.

**MOTION 1:** To close Public Hearing

**VOTE REQUIRED:** Simple majority

**MOTION 2:** To adopt Ordinance 2015-05 amending the Rural and Urban Service District within the municipal limits of the City of Fairmont to include Property ID Number 230371100

**VOTE REQUIRED:** Simple majority – Roll call

**ATTACHMENTS:**

1. Ordinance 2015-05

2. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

**ORDINANCE 2015-05**  
**AN ORDINANCE AMENDING THE RURAL AND URBAN SERVICE DISTRICT WITHIN THE**  
**MUNICIPAL LIMITS OF THE CITY OF FAIRMONT**

WHEREAS, the Martin County Treasurer/Auditor has been maintaining a tax roll of properties in the City of Fairmont, consisting of two separate taxing districts one classified as Rural Service District and the other classified as Urban Service District; and,

WHEREAS, these properties are taxed at different rates due to the different demands on municipal services generated by the parcels in each type of district; and

WHEREAS, Krahmer Inc. own 42 acres of land in Section 30, Township 102N, Range 30W; and,

WHEREAS, Krahmer Inc. is requesting that this 42 acres, Property ID number 230371100, be included in the Rural Service District; and,

WHEREAS, the Fairmont City Council wishes to include Property ID number 230371100 located in Section 30, Township 102N, Range 30W be included in the Rural Service District as this parcel is rural in character, unplatted and not developed for commercial, industrial, or urban residential purposes, contains more than 5 acres and is not benefitted to the same degree as other lands by municipal services financed by general taxation; and,

WHEREAS, the Fairmont City Council wishes to amend Ordinance 2014-03 to include this parcel in the City's Rural Service District.

NOW THEREFORE the City of Fairmont does hereby ordain:

To amend Ordinance No. 2014-03 to include:

<u><b>Tax Identification Number</b></u>	<u><b>Acreage</b></u>	<u><b>Name of Owner</b></u>
230371100	42 Acres	Krahmer Inc.

Motion by:  
Seconded by:  
All in Favor:  
Opposed:  
Abstained:  
Absent:

**PASSED, APPROVED AND ADOPTED, this 13th day of April, 2015.**


\_\_\_\_\_  
Randy Quiring, Mayor

Attest:

\_\_\_\_\_  
Patricia J. Monsen, City Clerk

1<sup>st</sup> Reading: March 23, 2015  
2<sup>nd</sup> Reading: April 13, 2015



**CITY OF FAIRMONT---AGENDA CONTROL SHEET---AGENDA ITEM NO. 12.1****MEETING DATE:** April 13, 2015**SUBJECT:** Permit for 5K Walk/Run/Bike for Suicide Prevention and Awareness**REVIEWED BY:** Mike Humpal, CEcD, City Administrator **SUBJECT INITIATION BY:**

<input checked="" type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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**SUBJECT BACKGROUND:** Mike Humpal, CEcD, City Administrator**INTRODUCED BY:** Mike Humpal, CEcD, City Administrator**COUNCIL LIAISON:****TYPE OF ACTION:**

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENDED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** A 5K Walk/Run/Bike Event for Suicide Prevention & Awareness is planned for July 11, 2015.**MOTION:** To approve a permit for the Suicide Prevention & Awareness Group for the 5K Walk/Run/Bike event on July 11, 2015.**VOTE REQUIRED:** Simple majority.**ATTACHMENTS:**

1. Permit Application
2. Map of Route

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF FAIRMONT**  
**MISCELLANEOUS LICENSE & PERMIT APPLICATION**

Applicant's Name Kathy Frolik

Applicant's Address 312 Park St.

Sherburn, MN

Applicant's Telephone 507-848-1179

Applicant's Signature Kathy Frolik

Date of application March 23, 2015

Type of application: (Include dates, time, location, requests from City, etc.)

Breaking the Silence of Suicide – Live On – July 11, 2015, 8:00 a.m. registration, 9:00 a.m. start.

5K Walk/Run/Bike Suicide Prevention and Awareness. Map attached.

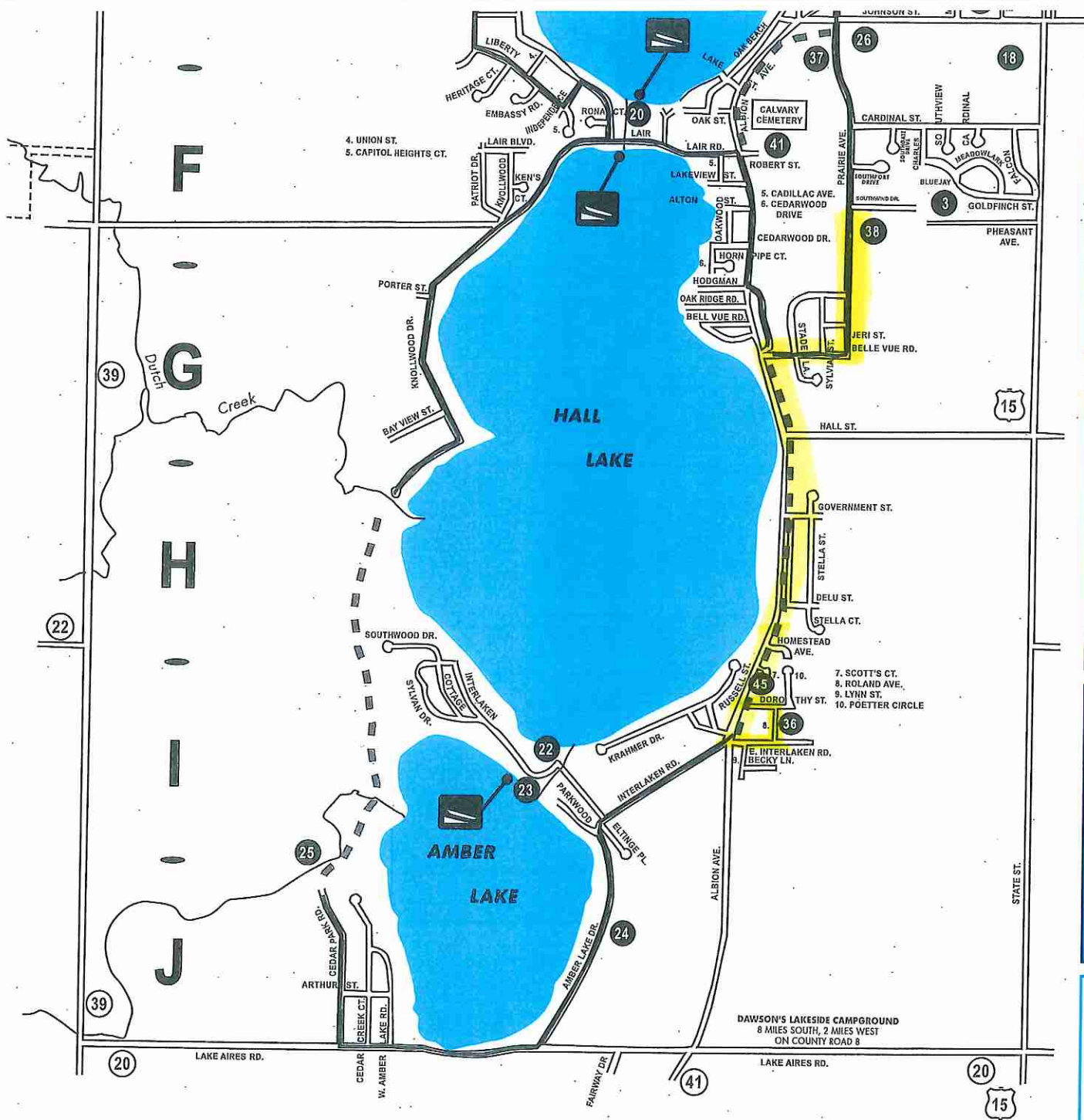
Fee (if applicable) \$15.00 *credit card 3/30/15*

*CITY USE ONLY*

Application approved by \_\_\_\_\_ Date \_\_\_\_\_

Instructions/Comments \_\_\_\_\_

Application Distribution: City \_\_\_\_\_ Applicant \_\_\_\_\_ Police \_\_\_\_\_ Other \_\_\_\_\_



.....A,B,C-3  
 .....E-3  
 .....A-5  
 .....A-4  
 .....A-2,3,4  
 .....D-1  
 .....D-1  
 K LN. ....F-4  
 TER DR. ....E-4  
 .....A,B-3  
 ( DRIVE.....A-4  
 .....E-3  
 R.....E-3  
 ). ....G-3  
 E.....F-3  
 .....A,B,C,D-4  
 .....C,D-3  
 .....A,B,C,D-3  
 L. ....I-2  
 .....F-2  
 E. ....F-4

PINE ST. ....A-4  
 PIONEER DR. ....B-2  
 POETTER CR. ....H-3  
 PRAIRIE AVE. ....A,B,C,D,E, F, G-3  
 REDWOOD DR. ....D-3  
 REIMAN CT. ....C-1  
 ROBERT ST. ....F-3  
 ROLAND AVE. ....I-3  
 RONA CT. ....E-2  
 RUNYAN PL. ....D-2  
 RUSSELL ST. ....H-3  
 SCHOOL ST. ....D-4,5  
 SCOTTS CT. ....H-3  
 SHOREACRES DR. ....D,E-2  
 SIOUX AVE. ....A-4  
 SISSETON DR. ....D-2  
 SISSETON LN. ....D-2  
 SOUTH CREEK DRIVE.....A-4  
 SOUTHGATE DR. ....F-3  
 SOUTHPORT DR. ....F-3  
 SOUTHVIEW CT. ....F-4

SOUTHWIND DR. ....F-3  
 SOUTHWOOD DR. ....H-1  
 SPRUCE ST. ....D-4,5  
 STADE LN. ....G-3  
 STATE ST. ....A,B,C,D-4,E-3  
 STELLA ST. ....H-3  
 STELLA CT. ....H-3  
 SUMMIT DR. ....D,E-1  
 SYLVAN DR. ....H-1  
 SYLVIA ST. ....F-3  
 TEETER ST. ....A-4  
 TILDEN ST. ....C-3,4,5  
 TIMBER LAKE DR. ....IND. PARK  
 TORGERSOON DR. ....A-4  
 UNION ST. ....E-2  
 VALLEYVIEW CT. ....C,D-1  
 VICTORIA ST. ....D-3,4  
 WALNUT ST. ....D-2  
 WARD ST. ....D-3,4  
 WATER ST. ....D,E-3,4  
 WEBSTER ST. ....C-3,4,5

W. AMBER LAKE DR. ....J-1  
 WASHINGTON AVE.....D-4  
 WILL-NETT PL. ....B-2  
 WILLOW ST. ....C-3,4  
 WINNEBAGO AVE. ....A-3,4  
 WOODLAND AVE. ....D-2,3  
 T.H. 15 .....A-4,J-3  
 CSAH 26 .....B-1,2,C-3,4,5  
 FIRST ST. ....C-3,4  
 SECOND ST. ....C-2,3,4  
 THIRD ST. ....B-2,3,4  
 FOURTH ST. ....B-2,3,4  
 FIFTH ST. ....B-2,3  
 SIXTH ST. ....B-3,4  
 SEVENTH ST. ....B-1,2,3,4  
 EIGHTH ST. ....B-2,3  
 NINTH ST. ....B-2,3,4  
 TENTH ST. ....A-2,3,4,5  
 ELEVENTH ST. ....A-2,3,4  
 TWELFTH ST. ....A-2,4  
 THIRTEENTH ST. ....A-3



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 Arts, and r

800-657-32




Michael J. Foley,  
 CPL. ARJ. PLT  
 Owner

1-800-657-32

619 E. BLUE EART  
 FAIRMONT, MN 56

MEETING DATE: April 13, 2015

SUBJECT: Encroachment Easement Agreement with Fairmont Foods, Inc.

REVIEWED BY: Mike Humpal, CEcD, City Administrator 

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mike Humpal, CEcD, City Administrator

INTRODUCED BY: Mike Humpal, CEcD, City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** As part of the due diligence involved in the transfer of Fairmont Foods to Downs Foods, there arose a question regarding the status of the industrial sanitary sewer that runs from the plant to the waste water treatment pond. Downs Foods' attorney is requesting that the City agree to an encroachment easement that allows the industrial sanitary sewer to continue existing within the City's right of way.

**MOTION:** To approve the Encroachment Easement Agreement with Fairmont Foods.

**VOTE REQUIRED:** Simple majority

**ATTACHMENTS:**

1. Encroachment Easement Agreement

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

[Space Above this Line for Recording Office Use Only]

## ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (this "Agreement") is made effective as of \_\_\_\_\_, 2015 by the CITY OF FAIRMONT, a Minnesota municipal corporation (the "City") in favor of FAIRMONT FOODS, INC., a Minnesota corporation (the "Fairmont Foods").

### RECITALS

- A. The City is the fee owner of the streets and public right of ways depicted on Exhibit A attached hereto (the "City Property").
- B. Fairmont Foods is the fee owner of the real property legally described on attached Exhibit B (the "Fairmont Foods Property").
- C. An underground industrial sanitary sewer pipeline and related improvements owned by Fairmont Foods are located in portions of the City Property (the "Encroachments").
- D. The City desires to grant an easement to Fairmont Foods over that portion of the City Property where the Encroachments are located (the "Easement Areas") permitting the Encroachments to continue as described in this Agreement.

### PROVISIONS

IN CONSIDERATION of the mutual covenants of the parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees as follows:

1. Grant of Easement. The City hereby grants to Fairmont Foods a non-exclusive, perpetual easement over, under and across the Easement Areas for the purpose of allowing the Encroachments. The City agrees that the Encroachments may remain on the City Property subject to the terms of this Agreement.

2. Rights of Access. The easements granted herein include non-exclusive rights of access over and across such portions of the City Property as may be reasonably necessary to maintain, repair, replace and remove the industrial sanitary sewer pipeline and related improvements located in the Easement Areas.

3. Easements and Covenants Running with Land. The easements and the covenants contained herein shall run with the land, and shall inure to the benefit of, and be binding upon, the property owners, their respective successors and assigns, and persons claiming under them.

4. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

**IN WITNESS**, the undersigned has caused this Encroachment Easement Agreement to be executed as of the date set forth above.

**CITY OF FAIRMONT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF MARTIN    )

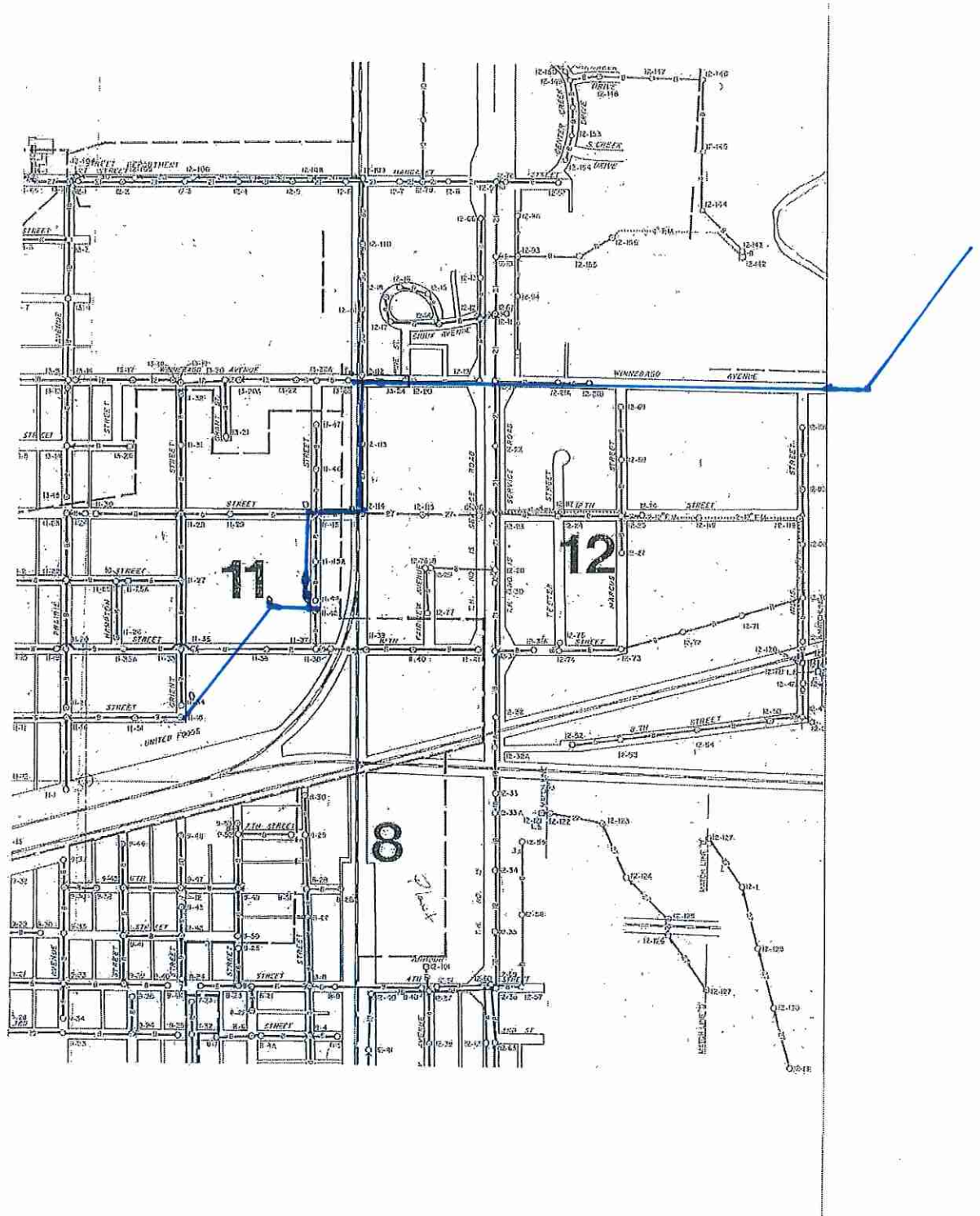
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by \_\_\_\_\_, and \_\_\_\_\_ the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the City of Fairmont, a Minnesota municipal corporation, on behalf of the corporation.

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

DRAFTED BY:  
Lindquist & Vennum LLP (LLK)  
80 South 8<sup>th</sup> Street, Suite 4200  
Minneapolis, MN 55402  
(612) 371-3211

## EXHIBIT A

### Depiction of City Property



C-1

## EXHIBIT B

### Legal Description of Fairmont Foods Property

#### 440 EAST 9TH STREET

##### Parcel 1:

Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 1, Taylor and Johnson's Third Addition to the City of Fairmont, according to the recorded plat thereof, Martin County, Minnesota.

Also the West 40.15 feet of Lot 2 of Block 7, Taylor and Johnson's Second Addition to the Village (now City) of Fairmont, according to the recorded plat thereof and described more particularly as follows: Commencing at the Northwest corner of said Lot 2, thence East on North line of said Lot 2, 40.15 feet; thence South parallel with the west line of Lot 2 to the south line of said Lot 2; thence Southwesterly on said south line to the southwest corner of said Lot 2; thence North on the west line of said Lot 2 to the point of beginning, according to the recorded plat thereof, Martin County, Minnesota.

A tract of land in Lot Two (2) of Block Seven (7) in Taylor and Johnson's Second Addition to the Village, now City, of Fairmont, bounded and described as follows, to-wit: Commencing at a point on the North line of said Lot Two (2) 149.25 feet West of the Northeast corner of said lot, running thence Southerly and parallel to the East line of said Lot Two (2) to the Northerly line of the Iowa, Minnesota and Northwestern Railway Company and its successors right of way, running thence Southwesterly along the Northerly line of said right of way 104 feet, running thence Northerly and parallel with the East line of said Lot Two (2) to the North line of said lot, running thence East along the North line of said lot 101 feet to the place of beginning, according to the recorded plat thereof, Martin County, Minnesota.

EXCEPTING from the above described real estate the following tract of land, to-wit:

A tract of land situated partially in Taylor and Johnson's 2nd Addition to the Village (now City) of Fairmont and partially in Taylor and Johnson's 3rd Addition to the Village (now City) of Fairmont, according to the recorded plats thereof, and described more particularly as follows:

Beginning at the SW corner of Block 1, Taylor and Johnson's 3rd Addition to the Village (now City) of Fairmont; thence North 84.85' to an iron stake on West line of Block 1, Taylor and Johnson's 3rd Addition; thence East 253.02' to an iron stake; thence S 0° 21' E 20.53' to an iron stake on the northerly right of way line of the Iowa, Minnesota, and Northwestern Railway; thence S 75° 44' W 261.10' on said right of way line to the point of beginning;

##### Parcel 2:

A tract of land situated partially in Taylor and Johnson's 2nd Addition to the Village (now City) of Fairmont and partially in Taylor and Johnson's 3rd Addition to the Village (now City) of Fairmont, and described more particularly as follows:

Beginning at the SW corner of Block 1, Taylor and Johnson's 3rd Addition to the Village (now City) of Fairmont; thence North 84.85 feet to an iron stake on the west line of Block 1, Taylor and Johnson's 3rd Addition; thence East 253.02 feet to an iron stake; thence S 0 degrees 21 minutes E 20.53' to an iron stake on the northerly right of way line of the Iowa, Minnesota, and North Western Railway; thence S 75 degrees 44 minutes West 261.10 feet to said right of way line to the point of beginning, according to the recorded plat thereof, Martin County, Minnesota.

Parcel 3:

Commencing at a point on the North line of Lot Two (2) of Block Seven (7) in Taylor and Johnson's Second Addition to the Village (now City) of Fairmont, 149 1/4 feet west of the north east corner of said Lot Two (2); thence southeasterly and parallel to the east line of said Lot Two (2) to the North line of the Chicago, North Western Railway right of way, thence Northeasterly along said North line of said right of way to the south east corner of said Lot Two (2), thence northerly along the east line of said Lot Two (2) to the north east corner thereof, and thence west along the North line of said Lot Two (2) 149 1/4 feet to the point of beginning, according to the recorded plat thereof, Martin County, Minnesota.

Parcel 4:

Lot 1, Block 7, Taylor and Johnson's Second Addition to the Village (now City) of Fairmont, together with all of vacated Orient Street lying between the South line of 9th Street and the South line of said plat. According to the plat thereof on file or of record in the office of the County Recorder, Martin County, Minnesota.

Parcel 5:

That part of Lots 7, 8 and 9, Block 2; all of Block 3, Taylor and Johnson's Second Addition to the Village, now City, of Fairmont; together with all of Ninth Street, vacated, which accrued thereto upon the vacation thereof, according to the plat thereof on file or of record in the office of the County Recorder, Martin County, Minnesota, lying southerly of the following described parcel:

Beginning at the northwest corner of Lot Seven (7), Block Two (2), Taylor and Johnson's Second Addition to the City of Fairmont, running thence southerly along the east line of Orient Street, a distance of Sixteen and three tenths (16.3) feet to the place of beginning, thence running easterly parallel to the north line of said Lot Seven (7) a distance of six hundred forty-three and nine hundredths (643.09) feet to the east line of said Lot Seven (7), thence running southerly along the east line of said Lot Seven (7) a distance of sixty-six and one hundredth (66.01) feet; thence running westerly parallel to the north line of said Lot Seven (7) a distance of six hundred forty-one and twelve hundredths (641.12) feet to the west line of said Lot Seven (7), thence running northerly along the east line of Orient Street a distance of sixty-six (66) feet the point of beginning.

Parcel 6:

A tract of land in the Southwest Quarter of the Southeast Quarter of Section 5, Township 102 North, Range 30 West, City of Fairmont, Martin County, Minnesota said tract being described as follows:

Commencing at the intersection of the South line of Tenth Street and the east line of Orient Street as platted in said City of Fairmont: thence South 00 degrees 34 minutes 09 seconds East along the East line of said Orient Street a distance of 433.87 feet to the point of beginning of the tract to be described; thence continuing South 00 degrees 34 minutes 09 second East a distance of 16.00 feet to the intersection of the East line of said Orient Street and the South line of Ninth Street as platted in said City of Fairmont; thence South 89 degrees 59 minutes 21 seconds West along the South line of said Ninth Street a distance of 20.00 feet; thence North 00 degrees 34 minutes 09 seconds West a distance of 16.00 feet; thence North 89 degrees 59 minutes 21 seconds East a distance of 20.00 feet to the point of beginning.

Parcel 7:

That part of the South West Quarter of the South East Quarter of Section Five (5), and a part of the North West Quarter of the North East Quarter of Section Eight (8), Township One Hundred Two (102) North, Range Thirty (30) West of the Fifth Principal Meridian, bounded and described as follows, to-wit: Commencing at a point, fifty-three and eight tenths (53.8) feet west and forty-two and eight-tenths feet north of the south east corner of the South West Quarter of the South East Quarter of said Section Five (5) said point lying in the Northerly line of the right of way of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and being the southeasterly corner of that certain tract or parcel of land conveyed by Augustus A. Taylor, et al, to the Iowa, Minnesota and North Western Railway Company (now Chicago and North Western Railway Company) by Warranty Deed dated October 14, 1899, and recorded December 2, 1899 in Book 84 of Deeds on page 143, in the office of the Register of Deeds in and for Martin County; thence north one degree, nine minutes east, three hundred ninety-three and six-tenths (393.6) feet along the easterly line of the land so conveyed to the Northeasterly corner thereof, being also the point of beginning of the land herein to be conveyed; thence west parallel to the east and west quarter line of said Section Five (5) and along the northerly line of the land so conveyed by said deed of October 14, 1899, a distance of two hundred ninety-three and seven tenths (293.7) feet to the northwesterly corner thereof; thence south no degrees, thirty-four minutes east, one hundred fifty-five and seven-tenths (155.7) feet along a line of the land so conveyed by said deed of October 14, 1899, to a point, distant, three hundred (300) feet northerly, at right angles from the northerly right of way line of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence south seventy-five degrees, fifty-four minutes west along the northwesterly line of the land so conveyed by said deed of October 14, 1899, a distance of eight hundred sixty-five (865) feet, more or less to the northeasterly corner of the land conveyed by said Chicago and North Western Railway Company, to Fred W. Freese by Quit Claim Deed dated November 18, 1945; thence southeasterly along the northeasterly line of the land so conveyed by said deed of November 18, 1945, a distance of one hundred forty (140) feet to the south east corner thereof; thence northeasterly parallel with the center line of the interchange track of said railway company, eleven hundred ninety (1190) feet, more or less, to said line which bears north one degree, nine minutes east of the point of commencement; thence north one degree, nine minutes east, to the point of beginning, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 8:

Three tracts of land in the City of Fairmont, and lying within the South West Quarter of the South East Quarter (SW1/4 of SE1/4) of Section Five and the North West Quarter of the North East Quarter (NW 1/4 of NE 1/4) of Section Eight (8), all in Township One Hundred Two (102) North of Range Thirty (30) West of the Fifth Principal Meridian, according to the United States Government Survey thereof, Martin County, Minnesota, and bounded and described as follows to-wit:

Tract No. 1: Beginning at an iron stake on the easterly line of Prairie Avenue said stake being 300 feet northwesterly, measured at right angles from the northerly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railway Company; thence North 75 degrees 44 minutes East 140 feet to an iron stake, the point of beginning of the tract to be described; thence continuing north 75 degrees 44 minutes east 110 feet to an iron stake; thence south 14 degrees 16 minutes east 140 feet to an iron stake; thence south 75 degrees 44 minutes west 110 feet to an iron stake; thence north 14 degrees 16 minutes west 140 feet to the point of beginning.

Tract No. 2: Beginning at an iron stake on the easterly line of Prairie Avenue, said stake being 300 feet northwesterly, measured at right angles from the northerly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railway Company; thence North 75 degrees 44 minutes east 140 feet to an iron stake thence south 14 degrees 16 minutes east 35.65 feet to an iron stake; thence west 144.5 feet to the point of beginning.

Tract No. 3: That part of the North West Quarter of the North East Quarter (NW 1/4 of NE 1/4) of Section Eight (8), Township One Hundred Two (102) North, Range Thirty (30) West of the Fifth Principal Meridian, described as follows to-wit:

Commencing at a point in the east line of Prairie Avenue as now located and established, in the City of Fairmont, distant three hundred (300) feet northerly as measured perpendicularly from the northerly line of the Chicago, Milwaukee, and Saint Paul Railway Company's Right of Way; thence north seventy-five degrees fifty four minutes east, a distance of two hundred fifty (250) feet; thence southeasterly along a line drawn perpendicularly to the last described line a distance of one hundred forty (140) feet, more or less, to a point in the northerly right of way line of Chicago, and North Western Railway Company (formerly the Iowa, Minnesota and North Western Railway Company), said point being the point of beginning of the land herein to be described; thence southwesterly along said northerly right of way line of the Chicago and North Western Railway Company a distance of One Hundred Ten (110) feet; thence southeasterly along a line drawn perpendicular to the last described line a distance of ten (10) feet; thence northeasterly along a line drawn perpendicular to the last described line a distance of two hundred (200) feet; northwesterly along a line drawn perpendicular to the last described line a distance of ten (10) feet, more or less, to a point in said northerly right of way line of the Chicago and Northwestern Railway Company; thence southwesterly along said northerly right of way line to the point of beginning.

(Tracts 1 and 2 are part of Lot 145 Auditor's Plat of Fairmont.)

Parcel 9:

That part of the South Half of the South East Quarter of Section 5, and the North West Quarter of the North East Quarter of Section 8, Township 102 North, Range 30 West of the Fifth Principal Meridian, bounded and described as follows: Commencing at a point on the east line of Prairie Avenue distant 300 feet northwesterly measured at right angles from the northwesterly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence northeasterly parallel with said northwesterly right of way line a distance of 250 feet; thence southeasterly at right angles to the last described course a distance 140 feet to a point hereinafter designated Point "A"; thence southwesterly parallel with said northwesterly right of way line a distance of 110 feet; thence southeasterly at right angles to the last described course a distance of 10 feet to the point of beginning of the parcel of land herein described; thence northeasterly parallel with said northwesterly right of way line a distance of 200 feet; thence northwesterly at right angles to the last described course a distance of 10 feet, more or less, to a point on a line drawn parallel with the center line of Chicago and North Western Transportation Company Interchange Track I.C.C. No. 24, which connects the main track of said transportation company and the main track of the former Chicago, St. Paul, Minneapolis and Omaha Railway Company, as said interchange track is now located, and said parallel line passing through said Point "A"; thence northeasterly parallel with said interchange track center line a distance of 950 feet, more or less, to a point distant 10 feet northwesterly, measured radially, from the center line of Chicago and North Western Transportation Company Industry Spur Track I.C.C.No. 57, as said Spur Track is now located; thence northeasterly parallel with said spur track center line a distance of 160 feet, more or less, to a point distant 12.5 feet northwesterly, measured radially, from the center line of said interchange track; thence southwesterly parallel with said interchange track center line a distance of 1,320 feet, more or less, to a point on a line drawn at right angles to the northwesterly right of way line of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company through the point of beginning; thence northwesterly along said last described right angle line a distance of 27.5 feet, more or less, to the point of beginning, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 10:

That part of the Southwest Quarter of the Southeast Quarter of Section 5, Township 102 North, Range 30 West of the Fifth Principal Meridian, bounded as follows: On the Northwesterly side by a line drawn parallel with and distant 50 feet Northwesterly, measured radially, from the center line of the Interchange track connecting the main tracks of the Chicago and North Western Railway Company and the Chicago, Saint Paul, Minneapolis and Omaha Railway Company, known as Chicago and North Westerly Railway Company I.C.C. Track #24, as said interchange track center line was originally located and established, on the southerly side by a line drawn parallel with and distant 10 feet Northerly, measured radially from the center line of a Chicago and North Western Railway Company spur track, known as I.C.C. Track #57, as the same is now located and established; and on the Easterly side by the following described line: Beginning at a point 53.8 feet West, and 42.8 feet North of the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 5; thence North 1 degree, 09 minutes East a distance of 393.6 feet and there terminating, said last described line being the East line of that certain tract or parcel of land conveyed by Augustus A. Taylor, et al, to the Iowa, Minnesota and Northwestern Railway Co. (Now Chicago and North Western Railway Company) by Warranty Deed dated October 14, 1899, and recorded December 2, 1899 in Book of Deeds, on page 143, in the office of the Register of Deeds in and for Martin County.

#### **905 EAST 4TH STREET**

Parcel 11:

Lot 1, Block 1, Stokely-Van Camp Addition to the City of Fairmont according to the plat thereof on file or of record in the office of the county recorder, Martin County, Minnesota.

Parcel 12:

The South fifteen (15) acres of that part of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section Eight (8) Township One Hundred Two (102) Range Thirty (30) West lying East of and adjoining the right-of-way of the Chicago, St. Paul, Minneapolis and Omaha Railway Company except that part thereof conveyed by Deed filed August 3, 1970 in Book 290 page 540 and except that part thereof conveyed by Deed filed December 24, 1981 as Document No. 265324 and except any part platted as Stokely-Van Camp Addition, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 13:

North ten (10) acres of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section Eight (8) Township One Hundred Two (102) North, Range Thirty (30) west of the Fifth (5th) P.M., lying East of and adjoining the right-of-way of the Chicago, St. Paul, Minneapolis and Omaha Railway Company except that part thereof platted as Stokely-Van Camp Addition, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 14:

Lot 1, Block 1, Armour's Addition, according to the recorded plat thereof, Martin County, Minnesota.

Parcel 15:

Lot 1, Block 2, Fairview Addition, according to the recorded plat thereof, Martin County, Minnesota.

Parcel 16:

A tract of land in the NE 1/4 of NE 1/4 of Section 8, Township 102 North, Range 30 West of the Fifth Principal Meridian in the City of Fairmont, Martin County, Minnesota, more particularly described as follows:

Commencing at the SE corner of said NE 1/4 NE 1/4, thence West 33 feet along the South line of said NE 1/4 NE 1/4 to the point of beginning; thence continuing West 697.50 feet along the South line of said NE 1/4 NE 1/4 to a point on the East right-of-way line of the Chicago, St. Paul, Minneapolis and Omaha Railroad; thence North 26 feet on said right-of-way line to the North line of Fourth Street; thence West 76.45 feet along the North line of said Fourth Street to a point 8.5 feet East of the centerline of spur track I.C.C. No. 18 of said railroad; thence North 394.00 feet parallel to the East right-of-way line of said railroad; thence East 76.45 feet perpendicular to said East right-of-way line to a point on said East right-of-way line; thence South 39.49 feet along said East right-of-way line to a point 381.00 feet North of the South line of said NE 1/4 NE 1/4; thence East 14.42 feet parallel to the South line of said NE 1/4 of NE 1/4; thence North 249.60 feet parallel to the East line of said Section 8, thence East 355.00 feet parallel to the South line of said NE 1/4 NE 1/4; thence South 189.00 feet parallel to the East line of said Section 8; thence East 328.00 feet parallel to the South line of said NE 1/4 NE 1/4 to a point on the West right-of-way line of Minnesota Trunk Highway No. 15 said point being 33 feet West of the East line of said Section 8; thence South 315.6 feet along said highway right-of-way line and parallel to the East line of said Section 8 to a point 126 feet North of the South line of said NE 1/4 NE 1/4; thence southwesterly 141.41 feet to a point 26 feet North of the South line of said NE 1/4 NE 1/4 and 133 feet West of the East line of said Section 8; thence East 100 feet parallel to the South line of said NE 1/4 NE 1/4 to a point 33 feet West of the East line of said Section 8; thence South 26 feet parallel to the East line of said Section 8 to the point of beginning.

#### **WASTE WATER TREATMENT AND SPRAY FIELDS**

Parcel 17:

The West Half of the Northwest Quarter (W 1/2 NW 1/4) of Section Three (3) and the Northeast Quarter (NE 1/4) of Section Four (4), Township One Hundred Two (102), Range Thirty (30) West, excepting therefrom the right of way of the Chicago, Milwaukee and St. Paul Railway Company;

Further excepting the following, to-wit:

Beginning at the South one-sixteenth (1/16) corner of the Northwest Quarter (NW 1/4) of Section Three (3), Township One Hundred Two (102), Range Thirty (30) West; thence North No Degrees One Minute Forty Seconds (0° 1' 40") East Nine Hundred Ninety-seven and Fifty-six Hundredths (997.56) feet on the East line of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of said Section Three (3) to the South right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence South Fifty-six Degrees Nine Minutes Forty Seconds (56° 9' 40") West Seventy-nine and Forty-nine Hundredths (79.49) feet on the said right-of-way line; thence South No Degrees One Minute Forty Seconds (0° 1' 40") West Nine Hundred Fifty-three and Seven-tenths (953.7) feet to the East and West Quarter line of said Section Three (3); thence Easterly on the East and West Quarter line Sixty-six (66) feet to the point of beginning.

Further Excepting the following to-wit:

Beginning at the intersection of the North right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad and the East line of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section Three (3), Township One Hundred Two (102), Range Thirty (30) West, said point of beginning being One Thousand One Hundred Eighteen and Four Hundredths (1,118.04) feet North of the South One

Sixteenth (1/16) corner of said Northwest Quarter (NW 1/4); thence continuing North No Degrees One Minute Forty Seconds (0° 1' 40") East One Thousand Four Hundred Sixty One and Fifty Six Hundredths (1,461.56) feet to the North One Sixteenth (1/16) corner of said Northwest Quarter (NW 1/4) of Section Three (3); thence West Nine Hundred Sixty Four and Eight Tenths (964.8) feet on the Section line; thence South Seven Hundred Forty Nine and Two Tenths (749.2) feet; thence South Forty Degrees Twenty Six Minutes Forty Seconds (40° 26' 40") East Six Hundred Seventy Two and Three Tenths (672.3) feet; thence South Eighty Nine Degrees, Fifty Eight Minutes Twenty Seconds (89° 58' 20") East Four Hundred Sixty Two (462.0) feet; thence South No Degrees One Minute Forty Seconds (0° 1' 40") West Two Hundred Forty Six and Twenty Four Hundredths (246.24) feet to the North right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence North Fifty-Six Degrees Nine Minutes Forty-Seconds (56° 9' 40") East Seventy Nine and Forty Nine Hundredths (79.49) feet on said North right-of-way line to the point of beginning.

Further excepting:

That certain tract of land, taken in eminent domain proceedings for trunk highway purposes as recited in Document No. 253414, dated August 15, 1978, recorded September 21, 1978.

Parcel 18:

Beginning at a point on the Quarter Section line Five Hundred Sixty (560.0) feet North of the center of Section Four (4), Township One Hundred Two (102)., Range Thirty (30) West; thence West Five Hundred Twenty-five and sixty-three hundredths (525.63) feet; north One Hundred Seventy-six and Sixty-Four Hundredths (176.64) feet; west Three Hundred Twenty-two and Eighty-one Hundredths (322.81) feet; north Four Hundred Thirty-nine and Fifty-five Hundredths (439.55) feet; north Fifty Degrees Twenty-eight Minutes Ten Seconds (50° 28' 10") East Four Hundred Ninety (490) feet; north Sixty-one Degrees No minutes Thirty-four Seconds (61° 0' 34") east Two Hundred Eighty-four and Fifty-two Hundredths (284.52) feet; north Five Hundred Eighty-seven and Six-tenths (587.6) feet; north Thirty-six Degrees Fifty-seven Minutes Six Seconds (36° 57' 6") west Four Hundred Forty-eight and Eighty-nine Hundredths (448.89) feet and south Eighty-nine Degrees Fourteen Minutes Thirty-six Seconds (89° 14' 36") east Four Hundred Eighty-nine and Ninety-three Hundredths (489.93) feet to the north quarter corner of said section; thence south on the quarter section line Two Thousand Five and Nine-tenths (2,005.9) feet to the point of beginning, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 19:

That part of the East 1/2 of the Southeast 1/4 of Section Four (4), Township 102 North, Range Thirty (30) West, lying North of the Chicago, Milwaukee, St. Paul and Pacific Railroad right of way.

Parcel 20:

A tract of land in the West Half (W 1/2) of the Southeast Quarter (SW 1/4) of Section Four (4); Township One Hundred Two (102) North, of Range Thirty (30) West of the Fifth Principal Meridian described as follows:

Beginning at a point, marked by a stone monument, the center of said Section Four (4); thence South 0 degrees 15 minutes 35 seconds East 2530.8 feet, crossing the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railroad to a point on the northerly right-of-way line of Chicago and Northwestern Railway, said point being marked by a stone monument; thence South 87 degrees 32 minutes 45 seconds East 1311.3 feet on the northerly right-of-way line of said Chicago and Northwestern Railway to a point on a north and south fence line, one (1) foot, west of the north and south one-sixteenth line of the

Southeast Quarter (SE 1/4) of Section Four (4); thence North 0 degrees 17 minutes 55 seconds West 2561.42 feet following the fence line and crossing the right-of-way of Chicago, Milwaukee, St. Paul and Pacific Railway to a point on the East and West Quarter line of said Section Four (4), said point being 22.4 feet West of the North one-sixteenth corner of the Southeast Quarter (SE 1/4) of Section Four (4); thence North 88 degrees 49 minutes 35 seconds West 1308.45 feet to the point of beginning; excepting from the tract described the right-of-way area of the Chicago, Milwaukee, St. Paul and Pacific Railway, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 21: (Gap between parcels 20, 19 and 24)

The West Half (W 1/2) of the Southeast Quarter (SE 1/4) of Section Four (4), Township One Hundred and Two (102) North, of Range Thirty (30), West of the Fifth Principal Meridian lying northerly of northerly right of way line of the Chicago and Northwestern Railway, described as follows:


Beginning at the North one-sixteen (1/16) corner of the Southeast Quarter (SE 1/4) of said Section Four (4); thence North 88° 49' 35" West 22.4 feet to a point opposite a fence in place; thence South 0° 17' 55" East thirty-three (33) feet to the South right of way of the township road and the beginning of said fence; thence continuing South 0° 17' 55" East 634.52 feet along said fence to the Northerly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad, thence continuing South 0° 17' 55" East 120.09 feet to the southerly right of way line of said railroad; thence continuing South 0° 17' 55" East 1773.81 feet along said fence to the Northerly right of way line of the Chicago and Northwestern Railway; thence South 87° 32' 45" East 1.0 feet along the Northerly right of way line of the Chicago and Northwestern Railway to the intersection of the North-South one-sixteenth (1/16) line and said right of way line; thence North 0° 8' 15" East 1784.03 feet to the Southerly right of way line of the Chicago, Milwaukee, St. Paul, and Pacific Railway; thence continuing North 0° 8' 15" East 120.1 feet to the Northerly right of way line of said railroad; thence continuing North 0° 8' 15" East 657.59 feet to the point of beginning, according to the United States Government Survey thereof, Martin County, Minnesota.

Parcel 24:

All that part of the following described premises that lies northerly of the Chicago and North Western Railway right of way: the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4), Section Four (4), Township 102 North, Range Thirty (30) except that part of said Northeast Quarter (NE 1/4) of Southeast Quarter SE (1/4) Section Four (4) lying North of the Southerly line of the Chicago, Milwaukee, St. Paul and Pacific Railroad right of way, according to the United States Government Survey thereof, Martin County, Minnesota.

MEETING DATE: April 13, 2015

SUBJECT: Lake Access Lease

REVIEWED BY: Mike Humpal, CEcD, City Administrator 

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mike Humpal, CEcD, City Administrator

INTRODUCED BY: Mike Humpal, CEcD, City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** City staff is proposing the attached Lake Access for Docks and Lifts Lease Agreement for City Council approval. In addition staff is requesting that the Council delegate to the City Administrator, the authority to enter into the leases on behalf of the City.

**MOTION:** To approve the Lake Access for Docks and Lifts Lease Agreement and authorize the City Administrator to enter into the Lease Agreements on behalf of the City.

VOTE REQUIRED: Simple majority

ATTACHMENTS:

1. Proposed Lake Access for Docks and Lifts Lease Agreement

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

## City of Fairmont Lake Access for Docks & Lifts Lease Agreement

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the City of Fairmont, Minnesota, a municipal corporation (hereinafter referred to as the Lessor) at 100 Downtown Plaza, Fairmont, MN 56031

AND

Name(s) \_\_\_\_\_

Address(es): \_\_\_\_\_

Hereinafter referred to as the Lessee.

Lessor and Lessee hereby acknowledge:

- A. Lessor owns real property known as \_\_\_\_\_ Park which includes lake access. Lessee owns real property that abuts \_\_\_\_\_ Park.
- B. Lessor established a program to allow abutting property owners to lease lake access for the sole purpose of installing no more than one (1) dock and two (2) boat lifts.
- C. Lessee desires to lease lake access under this lake access program.
- D. Lessee specifically acknowledges that this lease is limited to the property necessary for lake access and the installation of a dock and boat lift; and does not include any park property for any other purposes.

NOW THEREFORE, in consideration of the mutual promises set forth herein and with intent to be legally bound, the parties agree as follows:

- 1. **Agreement:** Lessor agrees to lease to Lessee lake access described as and defined by Post # \_\_\_\_\_ plus fifteen (15) feet to either side along the lakeshore, upon the terms and conditions set forth herein.
- 2. **Term of Lease:** The term of the lease shall be for five (5) years, with an option for an additional five (5) year period at an adjusted rental rates as approved by the Fairmont City Council. The extension must be applied for by April 15<sup>th</sup> of \_\_\_\_\_ or the property may be offered to a different property owner.
- 3. **Cost of Lake Access Lease:** The lake access rental for one (1) dock and not more than two (2) lifts shall be \$500.00 per lift.
- 4. **Maintenance:** Docks and lifts must be maintained in good working order. Maintenance is the sole responsibility of the Lessee.
- 5. **Subleasing:** Not allowed. Watercraft stored at the dock and lift for more than five (5) days must be licensed to the property owner.

6. **Conditions for Use and Enjoyment of Dock Space:**

- a. Loud music, excessive noise or boisterous behavior is prohibited before 7:00 a.m. and after 11:00 p.m.
  - b. Area must be kept clean of all trash and debris. Lessee shall trim and mow grass within five (5) feet of dock, stairs or other structures placed on leased property.
  - c. Dock, lift and all equipment must be removed from the lake and the leased area by October 15<sup>th</sup>. No personal property shall be stored on city-owned property after October 15<sup>th</sup> or before April 1<sup>st</sup>.
  - d. No dock, stairs or lift shall be permitted which are hazardous, unsightly, a nuisance, improperly maintained or poorly constructed. Lessee is prohibited from creating any condition upon or within the leased lake access and/or \_\_\_\_\_ Lake which affects the health, safety and general welfare of the public in its enjoyment of \_\_\_\_\_ Park or \_\_\_\_\_ Lake. Stairs, if needed, shall be constructed in a workmanlike manner, shall be maintained in good repair and shall be in compliance with standards set out in the Uniform Building Code as best as practicable.
  - e. Minnesota DNR Rules apply to all leases. Information provided by the DNR is attached and made a part of the terms and conditions of this lease.
  - f. The rules established in City Code Section 18-31 through 18-56 and Section 5-1 through 5-6, regarding park use, are attached hereto and shall apply to the area leased and the surrounding park land.
7. **Insurance:** Lessee agrees to provide appropriate insurance to cover any and all potential losses or injuries resulting from the use of the leased premises. Lessee acknowledges that the Lessor's insurance coverage will not cover losses or injuries at the leased premises.
8. **Lessor Held Harmless:** Lessee agrees to indemnify and save harmless the City of Fairmont, its officers, agents and employees from and against any and all claims, demands, causes of action, loss or expense including attorney fees, arising out of injuries or damages resulting from acts or omissions of Lessee, its agents, friends, family, invitees or guests.
9. **Security Protection:** Lessee understands and agrees that the Lessor has no obligation to provide security services for the docks, lifts and personal property placed on city property. Lessee hereby releases and forever discharges Lessor from and against any and all claims, demands or causes of action whatsoever arising out of the theft, damage or disturbances of docks, lifts, personal property or other items in or about the area leased.

10. **Termination:** Upon Lessee's failure to comply with any term, condition or provision of this agreement, the Lessor may terminate this agreement upon 15-days written notice to Lessee. In addition, the Lessor may exercise any other right or remedy for such breach of

this lease agreement as allowed by law. In the event of a termination of the lease, Lessee shall remove all personal property from City property within 10 days of said termination.

IN WITNESS WHEREOF, the parties have caused this lease to be executed as of this day and year first above written.

Lessee: \_\_\_\_\_

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

Lessee: \_\_\_\_\_

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


City of Fairmont: \_\_\_\_\_

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

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

MEETING DATE: April 13, 2015

SUBJECT: Human and Financial Resource Analysis FPD

REVIEWED BY: Mike Humpal, CEcD, City Administrator 

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mike Humpal, CEcD, City Administrator

INTRODUCED BY: Mike Humpal, CEcD, City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENDED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** There has been a great deal of debate over the past years as to the adequate number of police officers to efficiently and effectively maintain public safety. City staff is asking council approval to contract for an outside analysis based on the attached memo. The analysis will provide additional data to help us allocate the appropriate financial resources to Fairmont's Public Safety efforts and budget.

VOTE REQUIRED: Simple majority

ATTACHMENTS:

1. Memo from City Administrator

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_




Phone (507) 238-9461

CITY OF FAIRMONT – 100 Downtown Plaza – Fairmont, MN 56031  
www.fairmont.org

Fax (507) 238-9469

MEMO

**DATE:** March 27, 2015  
**TO:** Mayor and City Council  
**FROM:** Mike Humpal, CECD   
City Administrator  
**RE:** Human and Financial Resources Analysis of the Fairmont Police Department

Over the past several months, I have been trying to analyze and determine staffing needs within the Fairmont Police Department. Several factors have influenced the need for such an analysis. The amount of unused vacation by officers, amount of overtime, case back log, more demand for additional code enforcement, the increase in meth related crimes, the inability to staff the School Resource Officer position, (even if the School District paid its share), two officers having been injured on the job in the past twelve months requiring extended time off, which caused scheduling difficulty, etc.; coupled with the fact that we have reduced staffing from 18 sworn officers in 1999 down to 15 in 2015. In addition, it has become more difficult to fill vacant shifts with part time officers. I am concerned that the downsizing has decreased the City's effectiveness as a police department and that staffing levels may be putting citizens and police officers at risk.

I have worked with the Minnesota City/County Managers Association and Sharon Klump with Springsted Public Sector Advisors, to solicit proposals for a professional analysis of the Fairmont Police Department's Human and Financial Resources allocations. I will be asking for your approval to move forward with this analysis at the April 13<sup>th</sup> City Council meeting. Having the analysis begin in April will allow it to be completed and presented to all of you in July. The outside analysis and information will help us to have an in-depth discussion on how to allocate the financial resources to Fairmont's Public Safety efforts and budget.

The analysis that I am proposing would be completed by a collaborative effort of the Upper Midwest Community Policing Institute (UMCPI), a regional center for policing innovation, and Springsted-Public Sector Advisors.

C I T Y O F L A K E S

I have asked the consultants to focus on collection and analysis of data related to the Police Department including: financial and staffing considerations; community demographics; Police Officer activity; crime; and quality of life issues. The study of the Fairmont Police Department would proceed as follows:

- A. The consultants will tour and meet individually with command staff and others.
- B. Develop a four year trend of data to be used in a comparative analysis of Fairmont's trends with peer cities. The data and trends will include:
  - Community Demographics:
    - Ethnic diversity
    - Socio economics
    - Population/Age;
  - Calls for Service - type, time of day, day of week;
  - Workload per officer, including investigations;
  - Part 1 & 2 Crimes - arrest rates, clearance rates.
  - Schedule and staffing patterns in relation to Calls for Service.
  - Budgets
  - Education and Training
  - Technology needs
- C. The peer cities to be included in the comparison are: Albert Lea, Hutchinson, New Ulm, Worthington, Marshall, North Mankato, Waseca, Owatonna, Wilmar, Alexandria and St. Peter.
- D. The study will take approximately 3.5 months to complete.
- E. The cost is \$15,000.00.

The knowledge, data and specific information provided in the analysis will enable me to provide the City Council the most informed budget recommendation possible for Fairmont's Police Department.

Please contact me with any questions regarding the Police Department analysis proposal.

MEETING DATE: April 13, 2015

SUBJECT: Midcontinent Internet Agreement

REVIEWED BY: Mike Humpal, CECD, City Administrator 

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Paul Hoyer, Finance Director

INTRODUCED BY: Paul Hoyer, Finance Director

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENDED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** The City's current internet service agreement with Frontier will be expiring on 9/30/2015. The City received bids from Midcontinent, BevComm and Frontier. Staff is recommending approval of the agreement with Midcontinent, who provided the low bid.

**MOTION:** To approve the Internet Service Agreement with Midcontinent.**VOTE REQUIRED:** Simple majority**ATTACHMENTS:**

1. Midcontinent Internet Service Agreement

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_



## MASTER SERVICE AGREEMENT

### General Terms and Conditions

These General Terms and Conditions along with any Exhibits, Attachments and Service Orders and Addendums together constitute the "Master Service Agreement" ("Agreement") is made by and between Midcontinent Communications, a South Dakota General Partnership ("Midcontinent"), with a principal place of business at 3901 N Louise Ave Sioux Falls SD 57107, and City of Fairmont, with a principal place of business at 100 Downtown Plaza, Fairmont, MN 55031 on behalf of itself and its affiliates ("Customer"); each a "Party" and, collectively, the "Parties."

#### TERMS AND CONDITIONS APPLICABLE TO ALL SERVICES

1. **Service.** Subject to the terms and conditions contained herein, Tariffs on file in each state and Federal Communications Commission (FCC), and the applicable usage policies as posted on [www.midcocomm.com](http://www.midcocomm.com), Midcontinent agrees to provide to Customer the service or services identified in the accepted Business Solutions Service Order(s) (collectively, the "Service"). Except as required by law, Service is for end-use only and may not be resold by Customer. Customer is responsible for security and all usage of Service.

2. **Service Order.** Customer may purchase Services during the Term of this Agreement by completing a Service Order. Customer shall contact Midcontinent to determine the availability of Service. As part of the Service Order, Customer may be asked to identify the location of Service, term of Service, type of Service requested, desired installation date, and any other information reasonably requested by Midcontinent to determine the availability of Service. Upon receipt of Customer's properly completed Service Order, Midcontinent will review and respond to Customer within a commercially reasonable amount of time of Midcontinent's receipt of a Service Order and either accept such proposed Service in writing or email, or respond to Customer declining to provide the requested Service. By executing a Service Order, Customer represents and warrants that Customer: (a) either owns the Service Location or has received permission from the legal owner and/or any other necessary party of the Service Location to make any changes to the interior and/or exterior necessary to install Midcontinent Equipment (as defined in Section 17); (b) is legally authorized to purchase and receive the Service and Midcontinent Equipment (if applicable) and fulfill its obligations under this Agreement; and (c) affirms that the information Customer supplies to Midcontinent is correct, accurate and complete. Upon acceptance by Midcontinent, the executed Service Order shall be incorporated into and subject to the terms of this Agreement. (For purposes of clarification, throughout the remainder of this Agreement, references to Service Order shall mean a Service Order that has been accepted by Midcontinent.)

3. **Service Upgrade.** At Customer's election and subject to Midcontinent's approval and acceptance thereof, the Parties may amend this Agreement by executing a Service Order for additional quantities of or functionality enhanced versions of Service. The Service Order shall specifically reference, in addition to any other information required to be set forth in a Service Order, the additional quantities and/or functionality enhanced versions of Service desired by Customer to be provided by Midcontinent thereunder.

4. **Engineering Review.** Each Service Order submitted by Customer shall be subject to an Engineering Review by Midcontinent. Midcontinent will provide Customer written notification in the event Service installation at any Service Location will require any additional fees. Customer will have five (5) business days from receipt of such notice to reject the new fees and terminate, without further liability, the Service Order with respect to the affected Service Location.

5. **Installation Schedule.** Midcontinent shall provide Customer with an estimated availability date for each Service and Service Order. Midcontinent shall use commercially reasonable efforts to provide the Service on or before the estimated availability date; provided, however,

that Midcontinent's failure to provide the Service by said date shall not constitute a breach of this Agreement. Requests to expedite the installation schedule and availability date will be reviewed and accepted at Midcontinent's discretion and may be subject to additional fees. Expedite requests will also be subject to any and all fees billed to Midcontinent by other vendors in the support of the expedite request. Midcontinent shall use commercially reasonable efforts to fulfill the expedite request, but does not warrant or represent that Service expedites requests will actually expedite delivery of Service. Customer shall be subject to any and all expedite fees regardless of the outcome of the expedite request.

6. **Additional Service Location.** The location(s) where Service is to be initially provided will be identified in a Service Order ("Service Location"). Additional locations may be added by submitting a Service Order for the new Service Location. The new Service Location will be subject to the terms of this Agreement upon Midcontinent's acceptance and approval of the Service Order.

7. **Replacement Service.** The installation and Customer's use of the Service is location-specific to the Service Location indicated in this Agreement and any Service Order. Customer may terminate Service at an existing Service Location without incurring Termination Fees provided that Customer orders and Midcontinent accepts the order for a Replacement Service. The Replacement Service (a) must have a Term equal to or greater than the remaining Term of the existing Service; and (b) must have monthly recurring charges equal to or greater than the monthly recurring charges for the existing Service. In addition, Customer must (a) submit a Service Order to Midcontinent for the Replacement Service at least ninety (90) days prior to terminating the existing Service; (b) reimburse Midcontinent for any and all installation charges that were waived with respect to the existing Service; and (c) pay the actual costs incurred by Midcontinent in installing and provisioning the Replacement Service.

8. **Service Commencement Date.** Midcontinent shall inform Customer when Service is available and performing to the specifications in the Service Order ("Availability Notification"). The term for Service shall commence and charges for Service shall begin to accrue as of the Service Commencement Date. The Service Commencement Date shall be the earliest of: (a) the date on which Customer confirms receipt of and concurrence with the Availability Notification; (b) five (5) business days following the date of the Availability Notification, if Customer fails to notify Midcontinent that the Service does not comply materially with the specifications set forth in the Service Order; or (c) the date on which Customer first uses the Service. The Service Commencement Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service. However, if Customer has an account balance that is more than sixty (60) days past due, Midcontinent at its sole discretion may postpone Service activation until payment is received. A single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

9. **Term.** This Agreement shall be effective upon the signature of the Parties and Midcontinent's acceptance of this Agreement. This Master Service Agreement shall remain in effect until the expiration or termination of the Term (initial or any renewal) of the last Service



# MASTER SERVICE AGREEMENT

## General Terms and Conditions

Order executed pursuant to this Agreement. The Term for Service shall be specified in the Service Order and will commence upon the Service Commencement Date. If multiple Service Orders are executed for different Services at one Service Location, the Term for Service will commence upon the Service Commencement and shall remain in effect until the expiration of any Service at that Service Location. The Term of Service at one Service Location does not affect the Term of Service at any other Service Location.

**10. Service Order Renewal.** Upon expiration, all Service Orders shall automatically renew for successive one (1) year terms and the price of Service will be adjusted to the then current one year rate for Service or its then current equivalent. Provided however, either Party may notify the other in writing of the Party's intent to cancel Service at least thirty (30) days prior to the expiration of any then existing term. An automatic renewal of any Service at a Service Location will automatically renew all Services at that Service Location for matching term lengths.

### 11. Charges & Payments.

a. Customer shall pay the monthly recurring charges (MRC) associated with Service as specified in the Service Order in advance of the month in which Service is provided. Any applicable surcharge, federal, state, local use, excise, franchise fee, or sales tax or similar levy, chargeable to or against Midcontinent because of the Service provided to Customer, shall be charged to and paid by Customer in addition to the Service charge and other charges under this Agreement. Except as otherwise indicated herein or in the applicable Service Order, the MRC for Service will not increase during the Service Term. Provided, however, if Customer is receiving Service under a promotion, after the promotional period ends, regular charges for the Service will apply. In addition, charges may increase with or without notice in those cases where a third party vendor of resold services raises rates to Midcontinent, or the change in price is related to a change in governmental or quasi-governmental taxes, fees, or assessments. Customer may also incur charges for usage based services and from third party service providers that are separate and apart from the amounts charged by Midcontinent for Service. These charges may be billed monthly in arrears. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility.

b. Customer is responsible for payment for all charges within thirty (30) days of the invoice date. Any charges not paid within such period will be considered past due. Customer's first invoice will include all non-recurring charges (NRC) and the MRC and may include prorated charges for use since the Service Commencement Date. Midcontinent does not waive its right to collect the full amount due if Customer's payment is late or remits a partial payment; even if Customer's payment includes the words "Paid in Full" or similar words on any correspondence or check. Midcontinent will determine how to apply any partial payment to the outstanding charges. Customer shall be subject to a late fee of five dollars (\$5.00) for any bill not paid within thirty (30) days of the invoice date and interest at the rate of one-and-a-half percent (1.5%) per month will accrue upon any unpaid amount commencing thirty (30) days after invoice date. The minimum late fee charge per month is five dollars (\$5.00), unless prescribed by law, in which event at the highest rate allowed by law. If Midcontinent utilizes a collection agency or attorney to collect any amount owed by Customer or any unreturned Midcontinent Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Midcontinent under the Agreement or at law or in equity. Midcontinent reserves the right to back-bill up to

and including the date service was initially available, to correct any billing errors.

c. E-Rate. Customers applying for or receiving Schools and Libraries or Rural Health Care subsidies, or funds from any other subsidy or reimbursement program, remain responsible for the entire account balance. Customer must timely submit all information requested by and comply with all rules imposed by the program sponsor; for example, USAC. Notwithstanding Section 11b, Customer must pay its anticipated portion of any invoice within sixty (60) days of the invoice date to avoid incurring any late payment charges.

d. This provisioning of Service to Customer is predicated on Customer's credit verification and approval by Midcontinent. Customer authorizes Midcontinent to receive information about Customer's credit history from others and enter that into Midcontinent's records. Midcontinent may, in its sole discretion, deny Service to Customer, or, at its sole discretion, require a deposit or some other form of security to ensure payment for Service.

**12. Disputed Charges.** In the event Customer disputes any portion of a Midcontinent invoice, Customer shall pay the undisputed portion of the invoice by the due date, and shall submit to Midcontinent a written claim for the disputed amount, which claim shall set forth with specificity Customer's grounds for such dispute. All disputes must be raised and claims submitted to Midcontinent within sixty (60) days of the date of the invoice such claims shall be deemed waived and invoices shall be deemed correct. In the event the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced and calculated in accordance with Section 11b. If the Parties are unable to resolve any dispute timely brought by Customer, either Party may pursue legal or equitable remedies available.

**13. Credits.** Any credits granted to Customer for any reason will be applied towards the account balance. If the credit exceeds the current account balance, the credit will be carried over to apply to the next invoice(s) until the credit is fully applied. Under no circumstances (except for end of service credits) will Midcontinent issue a check to Customer for payment on any type of credit.

**14. Termination; Termination Fee.** If Customer cancels any Service (other than as a result of Midcontinent's default under Section 15) or if Midcontinent terminates any Service pursuant to this Section, Section 15 or Section 25, then Customer shall pay Midcontinent a Termination Fee in the amount of (a) the lesser of (i) twelve (12) months of service charges or (ii) the service charges payable during the remainder of the term plus (b) construction and other actual expenses incurred by Midcontinent to enable the delivery of Service, any installation charges waived, and any discounts or credits issued under this Agreement. If Customer is subject to early termination fees and has multiple Service Locations, the early termination fee is applicable only to the Service Location(s) discontinuing Service(s). Either Party may cancel this Agreement without liability if Midcontinent is prohibited from furnishing Service, or if any material rate or term contained herein is substantially changed by final order of a court, administrative agency, or other tribunal of competent jurisdiction. Customer is responsible for all fees that Midcontinent incurs from third party vendors as a part of the termination of Service. The Parties agree that the Termination Fee is not a penalty, but rather the Parties' best estimate of the actual losses to be incurred by Midcontinent as a result of such early termination. A WAIVER BY MIDCONTINENT OF ANY PART OF AN EARLY TERMINATION FEE SHALL NOT BE CONSIDERED AS A

WAIVER OF ANY OTHER TERMINATION FEE ASSESSED AT A LATER DATE.

### 15. Suspension or Termination.

a. Midcontinent may immediately suspend or terminate Service if: (i) Customer fails to pay all delinquent charges within seven (7) days after written notice thereof is given by Midcontinent, or (ii) Customer fails to pay any sum due to Midcontinent for more than thirty (30) days, or (iii) Customer fails, within thirty (30) days after written notice, to comply with this Agreement or any applicable tariff, or (iv) a violation of any regulation, rule or law of any governmental authority has occurred or is occurring, or (v) Midcontinent suspects fraudulent usage, or (vi) Customer is in default under any other agreement with or obligation to Midcontinent and has not cured such default within any applicable cure period. Customer may terminate Service if Midcontinent fails, within thirty (30) days after written notice is received by Midcontinent, to comply with any material provision of this Agreement. In addition, either Party may terminate Service or this Agreement if the other Party (a) files a voluntary petition for bankruptcy, (b) an involuntary petition for bankruptcy is filed against it and not dismissed within sixty (60) days, or (c) makes an assignment for the benefit of creditors.

b. Midcontinent reserves the right to delete Customer's voicemail, call detail, data, email, files or any other information of Customer on the Midcontinent servers or systems thirty (30) days after Customer no longer receives Service from Midcontinent.

c. The rights and remedies granted to a nondefaulting party pursuant to this Section 15 shall be in addition to all other rights and remedies such nondefaulting party may have at law or in equity. Failure or delay by a party in exercising a right or remedy shall not preclude the later exercise thereof. The defaulting party shall be responsible for the reasonable legal fees and expenses incurred by the nondefaulting party in exercising its rights and remedies.

**16. Customer Equipment.** Midcontinent Technical Support is not responsible for end-user support of issues not directly related to Service. This includes, but is not limited to, Customer operating systems, Customer provided equipment or Customer application support. Equipment and services on Customer's side of the Demarcation Point are the responsibility of Customer. Midcontinent shall not be responsible for the operation, support or maintenance of any Customer provided equipment, nor shall Midcontinent have any liability whatsoever for the configuration, management, or performance of Customer provided equipment. All Customer provided equipment and wiring that Customer used in connection with the Service must be fully compatible with the Service. If changes in technology occur that make Service obsolete without Customer upgrading its equipment and/or wiring, and Customer is unable for any reason to upgrade, Midcontinent has the right, but not the obligation, to terminate this Agreement and/or any affected Service Order upon sixty (60) days notice.

**17. Midcontinent Equipment.** Midcontinent Equipment is defined as any equipment that is owned by Midcontinent or by a third party which has been provisioned by Midcontinent to Customer. This equipment includes all transmission equipment, wiring and lines installed by Midcontinent (or its contractor) and located on the Property of Customer. Midcontinent Equipment shall not become a fixture of the property or part of the premises. Customer shall not, and shall not permit others, without the prior written consent of Midcontinent, to (a) rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Midcontinent Equipment, (b) use any Midcontinent Equipment for any purpose other than that for which Midcontinent provides them,

or (c) take any action that causes the imposition of any lien or encumbrance on the Midcontinent Equipment. In no event shall Midcontinent be liable to Customer or any other person for interruption of Service or any other loss, cost or damage caused by or related to improper use or maintenance of the Midcontinent Equipment by Customer or third parties provided access to the Midcontinent Equipment by Customer in violation of this Section. Customer shall be responsible for any damage to Midcontinent Equipment to the extent arising from the improper use or maintenance thereof by Customer or third parties provided access to Midcontinent Equipment by Customer. Customer agrees to allow Midcontinent to remove the Midcontinent Equipment from Customer's premises after termination, expiration or cancellation of the Service in connection with which the Midcontinent Equipment was used, and for maintenance, repair, replacement or otherwise as Midcontinent may determine is necessary or desirable from time to time. If Customer fails to permit such retrieval or if the retrieved Midcontinent Equipment has been damaged and/or destroyed other than by Midcontinent or its agents, normal wear and tear excepted, Midcontinent may invoice Customer for the replenishment cost of the relevant Midcontinent Equipment, or in the event of minor damage to the retrieved Midcontinent Equipment, the cost of repair, which amounts shall be immediately due and payable. Midcontinent retains the right to remove the Midcontinent Equipment for a period of three (3) months following Midcontinent's discontinuance of Service to the Service Location.

**18. Facilities.** Customer shall allow Midcontinent access to the Service Location to the extent reasonably necessary for the Service. Customer shall provide and maintain facilities at the Service Location suitable for the provisioning of the Service. Proper facilities shall include, but may not be limited to, adequate space, sufficient electrical power and proper operating environment, including heating, cooling, and air quality, for the necessary equipment. Customer will ensure Midcontinent has the right and, with reasonable notice, ability to access the facility space, building conduits and wiring for installation, inspection, maintenance, operation and removal of all Midcontinent Equipment related to the Service. Customer shall also ensure the Service Location is secure and safe from hazards to the facilities, Midcontinent Equipment and to Midcontinent's employees, agents and contractors. Midcontinent shall be responsible for any damage to the Service Location to the extent arising from the improper use of the facilities by Midcontinent or third party agents or contractors acting on Midcontinent's behalf during such installation, inspection or maintenance activities.

**19. Disruption of Service.** Midcontinent does not warrant that the Service or Midcontinent Equipment will be uninterrupted, error-free, or free of latency or delay, or that the Service or Midcontinent Equipment will meet Customer's requirements. The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.

### 20. Limit of Liability.

a. Midcontinent shall not be liable for and credit shall not be given for any failure or interruption of Service caused by acts of God, strikes, emergencies, mechanical failure, cable cut, regulatory or other governmental action, action or inactions by Customer, its employees, agents, invitees, a breach of this Agreement by Customer or any other cause beyond Midcontinent's control.

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b. IN NO EVENT SHALL MIDCONTINENT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. MIDCONTINENT HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPLICIT OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LIABILITY OF MIDCONTINENT UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT ACTUALLY PAID TO MIDCONTINENT BY CUSTOMER FOR SERVICES HEREUNDER AT A SPECIFIC LOCATION DURING THE PRECEDING TWELVE (12) MONTHS.

c. IN NO EVENT SHALL MIDCONTINENT, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICE WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM AN ATTEMPT TO REMOVE IT.

**21. Indemnification.**

a. Customer agrees, at its own expense, to indemnify, defend and hold harmless Midcontinent and its directors, employees, representatives, officers and agents, (the "Midcontinent Indemnified Parties") against any and all third party claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses, including but not limited to, reasonable attorneys' fees and court costs, (collectively, "Claims") incurred by and/or brought against Midcontinent Indemnified Parties, to the full extent that such Claims arise from: (i) Customer's noncompliance with the terms of this Agreement and/or any or all Service Orders; (ii) Customer's or their users failure to comply with applicable laws or violation or infringement upon the rights of any other party, including, without limitation, contractual rights, intellectual property rights, publicity and privacy rights and the rights against libel, defamation and slander; (iii) Customer's use or misuse of the Service, including claims resulting from use/misuse of the Service by Customer's users and/or the content of any communications transmitted via the Service; (iv) Customer's willful misconduct; and/or (v) physical damage to personal or real property or bodily injury, including death, caused by the negligent or willful misconduct of Customer or Customer's users, its employees or contractors, at the Service Location during the installation or maintenance of equipment in connection with Service. Customer shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without Midcontinent's advance written consent in which a full and final release of such Claim in favor of Midcontinent Indemnified Parties is not obtained as a result of the settlement, or any admission or affirmative obligation is required or placed upon Midcontinent Indemnified Parties.

b. Midcontinent agrees, at its own expense, to indemnify, defend and hold harmless Customer, its directors, officers, employees, agents and/or representatives ("Customer Indemnified Parties") from and against any and all third party Claims incurred by and/or brought against Customer Indemnified Parties to the full extent that such Claims arise from: (i) physical damage to personal or real property or bodily injury, including death, caused by the negligent or willful misconduct of Midcontinent, its employees or contractors, at the Service Location as a direct result from Midcontinent's installation, removal or maintenance

at the Service Location of the Midcontinent Equipment; and/or (ii) Midcontinent's failure to comply with applicable laws; and/or (iii) Midcontinent's willful misconduct. Midcontinent shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without Customer's advance written consent in which a full and final release of such Claim in favor of Customer Indemnified Parties is not obtained as a result of the settlement, or any admission or affirmative obligation is required or placed upon Customer Indemnified Parties.

22. **Content.** Midcontinent does not operate or control the content transported over the Service. Midcontinent shall have no liability or responsibility for Customer created content or any communication transmitted via the Service hereunder. Customer shall defend, indemnify and hold harmless Midcontinent from any and all third party claims (including claims by governmental entities seeking to impose penal sanctions) related to such content, and from any and all third party claims relating to Customer's use of Service hereunder. Customer shall make no claim against Midcontinent regarding said content, or respecting any information, product, service, software or other item(s) ordered through or provided by virtue of the Service.

23. **Public Performance of Copyrighted Works.** Midcontinent has no authority to grant any license for the public performance of copyrighted works. If Customer intends to play publicly any audio or visual content provided via the Service, Customer is advised that additional fees may be owed to copyright holders or public performance licensing organization such as ASCAP or BMI in certain situations.

24. **Legal Application.** This Agreement will be governed by the laws of the state of South Dakota and any claims hereunder shall be brought in the state or federal courts located in Minnehaha County, South Dakota. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. This document, Exhibits, Attachments, Service Orders, and Midcontinent's Acceptable Use Policy (as presented on [www.midco.net](http://www.midco.net)) represent the entire Agreement between the Parties and supersedes all prior conversations, representations, promises, and warranties (expressed or implied) made prior to or at the time of the signing of this document. This Agreement may be amended only in writing signed by an authorized representative of each Party. If any action at law or equity is necessary to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses, in addition to any other relief to which it may be entitled. Each of Midcontinent's rights and remedies under this Agreement shall be cumulative and additional to any other or further rights or remedies provided in law or equity or otherwise.

25. **Assignment.** This Agreement is binding upon the heirs, devisees, successors, and assigns of each Party. Provided, however, Customer shall not assign or transfer its rights or obligations under this Agreement without prior written consent of Midcontinent, which consent shall not be unreasonably withheld, and further provided that any assignment or transfer without such consent shall entitle Midcontinent to terminate the Service at its option upon ten (10) days prior written notice. In the event Customer changes ownership, if the remaining term of this Agreement is not assumed by the new owner, or if a new Agreement is not signed with Midcontinent for like services by the new owner, Customer will be held accountable for any applicable Termination Fees as defined in Section 14 of this Agreement. Midcontinent may assign this Agreement without consent to any affiliated entity or to any successor in interest

## General Terms and Conditions

whether by merger, reorganization or transfer of all or substantially all of its assets or otherwise.

**26. Confidential Information.** "Confidential Information" includes but is not limited to any and all business, technical, or third party information (including but not limited to rate information, discounts, network information, trade secrets, marketing plans, financial data, specifications, drawings, and documentation) provided, disclosed, or made available to one party (the "Disclosing Party") to the other (the "Receiving Party") under this Agreement that is either identified as, or reasonably understood to be, confidential or proprietary. The Receiving Party will: (a) not use Confidential Information of the Disclosing Party for any purpose other than the fulfillment of its obligations under this Agreement; and (b) protect and treat all Confidential Information of the Disclosing Party with the same degree of care as it uses to protect its own Confidential Information of like importance, but in no event with less than reasonable care. In the event the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, the Receiving Party will notify the Disclosing Party of the required disclosure, if permitted, with sufficient time for the Disclosing Party to seek relief, will cooperate with the Disclosing Party in taking appropriate protective measures, and will make any such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure. Confidential Information also includes the terms and conditions of this Agreement. Confidential Information does not include information that the Receiving Party can clearly establish by written evidence: (a) is or becomes known to the Receiving Party from a third party without an obligation to maintain its confidentiality; or (b) is or becomes generally known to the public through no act or omission of the Receiving Party; or (c) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party.

**27. No Third Party Beneficiaries.** This Agreement shall be binding upon, enforceable by, and inure solely to the benefit of each Party hereto as well as their successors and assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit, or remedy of any nature under or by reason of this Agreement.

**28. Notice.** Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective upon the earlier of receipt or five (5) days after deposit with the respective courier or United States Postal Service, and (c) delivered by one of the following means: (i) by prepaid, nationally recognized, overnight package delivery or courier service; or (ii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid. In addition to actual receipt by a Party, the following shall constitute receipt: (a) a Party's rejection or other refusal to accept notice, and (b) the inability to deliver notice to a Party because of a changed address of which no notice has been provided in accordance with this Section and received by the other Party. All notices given under the Agreement shall be addressed to the following addresses of the Parties: with respect to Customer, to the address set forth in a Service Order, or with respect to Midcontinent, to: Midcontinent Communications, Attn: Vice President of Business Solutions, 3901 North Louise Avenue, Sioux Falls, SD 57107. Each Party may change its respective address(es) for legal notice by providing notice to the other Party.

**29. Authority.** Each signatory to this Agreement does hereby represent and warrant that he/she has the authority to execute this Agreement on behalf of the Party to this Agreement for whom he/she is executing this Agreement.

**30. Customer Representatives.** Following the Service Commencement Date, someone seeking support of, or desiring to make non-material changes to Service on behalf of Customer will be qualified by Midcontinent. If the individual can meet cursory qualification criteria, or if the person is listed as an authorized user or authorized vendor on the Service Order, Midcontinent may assume the individual is an authorized user on the account and will follow that individual's direction. Alternately, Customer may provide to Midcontinent a list of authorized users. Customer will be responsible for the maintenance of this list. Someone desiring to make a material change to Service must be noted on Customer's account as an authorized user. Midcontinent will not be held liable for following the direction of qualified or authorized users.

**31. Electronic Signature.** This Agreement may be executed by the Parties by electronic signature. The Parties agree that an electronic signature is the legal equivalent of a manual printed signature on the Agreement; thus, an electronic signature is also a valid consent to be legally bound by this Agreement's terms and conditions. The Parties also agree that no certification authority or other third party verification is necessary to validate an electronic signature and that the lack of such certification or third party verification will not in any way affect the enforceability of an electronic signature or any resulting Agreement between the parties.

**32. Survival.** The provisions of Sections 11, 12, 14, 15, 17, 21, 24 and 27, together with any provisions of this Agreement that by their nature are meant to survive, shall survive the termination or expiration of this Agreement.

**33. Severability.** Any provision of this Agreement held or determined by a court (or other legal authority) of competent jurisdiction to be illegal, invalid or unenforceable in any jurisdiction shall be deemed separate, distinct and independent, and shall be ineffective only to the extent of such holding or determination without (a) invalidating the remaining provisions of the Agreement in that jurisdiction or (b) affecting the legality, validity or enforceability of such provision in any other jurisdiction.

**34. Relationship of Parties.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the Parties hereto. Neither Party has or shall have any authority to bind, assume any obligation for or incur any debt on behalf of the other Party in any respect whatsoever.

**35. General Terms.** Customer's use of Midcontinent's Services is specifically subject to this Agreement, and Customer's agreement to: (a) the Midcontinent Acceptable Use Policy, Privacy Policy, and General Terms and Conditions found at [www.midco.net](http://www.midco.net) (the "General Terms"), which may be modified by Midcontinent from time to time in accordance with the General Terms and applicable law, and which are incorporated herein by reference and made part of this Agreement; and (b) applicable Midcontinent tariffs on file with the appropriate regulatory body.

**36. Order of Precedence.** In the event of a conflict or inconsistency between any Service Order and the remaining terms and conditions of this Agreement, the following is the order of precedence: 1) the applicable Service Order; 2) the General Terms and Conditions; and 3) any applicable and executed Exhibits or Attachments. To the extent that this Agreement is inconsistent with the terms of Midcontinent's tariffs, the terms of the tariffs shall prevail.



## MASTER SERVICE AGREEMENT

### General Terms and Conditions

#### TERMS AND CONDITIONS APPLICABLE TO TELEPHONE SERVICE

**37.a. Directory Listings.** In the event there is an error or omission in Customer's directory listing, Midcontinent will provide Customer's correct name and telephone number to a calling party either upon request to or, where available, intercept messaging by Midcontinent. Midcontinent's liability for any errors or omission in any directory listings is limited to the charges paid by Customer for the listing itself. Midcontinent is not liable to Customer or any third party for any incidental, indirect, special or consequential damages of any kind, including loss of use, loss of business, or loss of profit, arising from errors or omissions in directory listings.

**37.b. Transferring Number(s).** If Customer is switching to Midcontinent from another service provider, Customer may transfer existing phone number(s) to Midcontinent, provided that: (a) Customer requests the phone number transfer when placing the order for Service; (b) Customer agrees not to contact the other phone service provider during the transfer period (which may take up to 30 days) in order to allow Midcontinent the time to complete the phone number transfer; contacting the other service provider can delay the phone number transfer; (c) Customer's current service provider releases the existing phone number, at Midcontinent's request, without delay or charge; and (d) transfer of Customer's existing phone to Midcontinent would not, in Midcontinent's view, violate applicable law or Midcontinent procedures.

**37.c. Call Usage.** Customer agrees not to use the Service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with normal calling patterns. If Midcontinent determines, in its sole discretion, that the Service is being used for any of the aforementioned activities or in the event of an excessive number of calls during a fixed period, heavy usage during business hours, or heavy usage concentrated over consecutive dates, Midcontinent reserves the right to terminate the Service immediately without notice or to assess additional charges for each month in which excessive usage occurred.

**37.d. Charges & Payments.** In addition to the charges specified in the Agreement or Service Order, Customer may also incur usage based service and third party service provider charges that are separate and apart from the amounts charged by Midcontinent for Service. These charges may be billed monthly in arrears and may include, without limitation, calls to parties who charge for their telephone-based services, per-call charges (e.g., operator services) and measured call charges (e.g., international calls). Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility.

**37.e. Dialing & Routing.** Telephone Service may require 10-digit dialing for local calling in certain markets. Telephone Service may not be used to terminate traffic as a local call when the originating portion of the call occurred from the Public Switched Telephone Network ("PSTN") as a local call and occurred outside the local calling area associated with the Telephone Service.

**37.f. Third Party Services.** If Customer orders a Service that requires or Midcontinent elects to obtain from a third party ("Third Party Provider") on behalf of Customer, Midcontinent shall procure the required Services subject to the following: (a) the Services will function and perform in accordance with the service level obligations provided by the Third Party Provider to Midcontinent, (b) any rights, remedies or

other service-specific terms that Customer may have or be entitled to under Service are limited to the same terms that Midcontinent has in place with the Third Party Provider; (c) the costs for the Third Party Service will be incorporated into the MRC and NRC set forth in the applicable Service Order, and (d) if Customer cancels or terminates any Service which includes a Third party Service prior to the conclusion of the applicable Term, then Customer will pay any and all termination charges applicable under this Agreement plus any and all cancellation and/or early termination charges incurred by Midcontinent.

**37.g. E911 Service.** (a) Midcontinent Telephone Service provides access to police, fire and rescue services through E911. The E911 service automatically provides the address Customer registers with Midcontinent to the local E911 dispatcher when calls are made to 911 and permits the local dispatcher to call back if necessary. Midcontinent has engineered its service to comply with the telephone industry standards for reliability and access to E911. This includes backup power for Midcontinent's telephone network and monitoring to provide additional backup for longer outages. As with any other phone service provider, Midcontinent Telephone Service, including 911 calls and E911 service, will be unavailable if the lines between Customer's Service Location and the network switch are disabled due to a catastrophic condition, such as a storm, or other event outside Midcontinent's control and E911 service may also be unavailable due to problems at the government's call center that are outside Midcontinent's control. Customer's telephone modem includes a battery backup that is designed to ensure the unit will continue to work during a power outage, in accordance with telephone industry standards. As long as this battery backup unit is charged and functioning, Midcontinent Telephone Service will continue to work, but customers may not be able to make calls, including 911 calls, if there is a power outage for an extended period of time. (b) The telephone modem for Midcontinent Telephone Service is set up to provide service to the address Customer provided at the time of service initiation, and will not work if it is moved outside the local Midcontinent Telephone network. The equipment may not be moved to another location unless Customer first contacts Midcontinent Customer Service at 800-888-1300, or via email to [mccomm@midco.net](mailto:mccomm@midco.net), so that Midcontinent can change the address to reflect the new location and ensure that the right information is provided for any call to 911. Changes in location information will not be available to E911 operators immediately because of limitations in the process for updating that information. If the telephone modem is moved prior to informing Midcontinent, it may be possible to call 911 but E911 service will not work properly. It will be considered a material violation of this Agreement if Customer moves the telephone modem to another location without first notifying Midcontinent.

**37.h. Ownership of Telephone Numbers.** Customer acknowledges that use of Service does not give it any ownership or other rights in any telephone number provided.

**37.i. Customer Proprietary Network Information (CPNI).** In the course of providing Service to Customer, Midcontinent collects information concerning the use of the Service. This information is known as "Customer Proprietary Network Information" or "CPNI." CPNI includes any information on the quantity, technical configuration, type, destination, location and amount of use of Service that Midcontinent obtains as the telephone carrier. It does not include names and telephone numbers published in telephone directories or information Midcontinent obtains as a result of providing video or Internet Service. Midcontinent uses CPNI to monitor the quality of the Service provided and to prepare billing statements. Midcontinent also uses CPNI to market services and equipment to customers, including

## General Terms and Conditions

telephone service and Internet access, as well as to provide Customer with Service related notifications. Midcontinent shares CPNI with companies that provide billing and other services that Midcontinent utilizes to offer telephone Service, and with companies that are affiliated with Midcontinent. Companies not affiliated with Midcontinent are required to enter into agreements to protect the confidentiality of Customer information. Customer has a right, and Midcontinent has a duty, under federal law to protect the confidentiality of CPNI. Midcontinent has the right under federal law to use Customer's CPNI to provide telephone Service, generate billing statements, market other services related to the Services Customer is already receiving, protect Midcontinent facilities and property and in response to lawful demands from law enforcement agencies. Customer has the right to disapprove of Midcontinent's use of CPNI for marketing services other than those that are related to Services Customer is already receiving from Midcontinent and to withdraw access to CPNI at any time. Withdrawing access to CPNI will not affect Midcontinent's ability to provide telephone Service to Customer, or the quality of the service provided. However, if access to CPNI is withdrawn, it may be more difficult for Midcontinent to assist Customer in purchasing the most cost-effective Service package. If Customer does not wish to allow us to use Customer's CPNI for marketing services other than those that are related to Services already provided, Customer can send a written notice at any time to the following address: Attn: CPNI Opt Out, Midcontinent Communications, P.O. Box 5010, Sioux Falls, South Dakota, 57117. The request must state that Customer wants to deny access to CPNI, and include account number, list of all telephone numbers to be covered with the request and be signed by an authorized party on the account. In accordance with Federal Communications Commission (FCC) rules, if Customer does not make a request to limit or disallow use of Customer's CPNI within thirty (30) days of this notice, Midcontinent will assume that Customer wishes to allow Midcontinent to use Customer's CPNI until Customer provides notice otherwise. Additional CPNI information can be found and may be updated from time to time on Midcontinent's website at [www.midcocomm.com](http://www.midcocomm.com). In the event of a conflict or inconsistency between the CPNI information in this Agreement and the CPNI information published on Midcontinent's website, the terms posted on Midcontinent's website shall control.

**37.j. Access to Call Records.** The FCC has established regulations governing the records Midcontinent retains about the telephone calls Customer makes on Midcontinent's network. These regulations specify when Midcontinent can have discussions with customers regarding their call records. Midcontinent is required to ensure that the communication is with the account holder or a person authorized to receive information regarding the account before Midcontinent can release call record data. A call record is any information regarding a telephone call made to another party. Call records include specific information regarding telephone usage, such as: telephone numbers called, city and/or state, call duration, and date and time. If an authorized account user can provide the call detail, Midcontinent can continue with the conversation as long as the caller has been authenticated. Midcontinent can discuss only calls for which details have been provided. Midcontinent cannot discuss or bring up any other call records during the conversation. If call detail cannot be provided, Midcontinent is required to: arrange a time to call Customer or authorized account user, at the telephone number on the account; mail information to the address on the account; or provide the information to Customer if Customer can produce a photo ID at a Customer Service Center. Additional CPNI and privacy policy information can be found and may be updated to from time to time at [www.midcocomm.com](http://www.midcocomm.com). In the event of a conflict or inconsistency between the Call Record information in this Agreement

and the Call Record information published on Midcontinent's website, the terms posted on Midcontinent's website shall control.

**37.k. Unauthorized Access and Use.** Midcontinent shall not be liable for any damages, including charges for Service under this Agreement that Customer may incur as a result of unauthorized use or misuse of the Service by Customer's employees, customers, contractors, agents, other third parties, or the public. Customer is responsible for all charges incurred on or through Service, including but not limited to charges incurred due to fraud, abuse, or misuse of services, whether known or unknown, and whether or not Midcontinent takes any actions to stop or block the activity. Customer is responsible for the access to and security of any Customer Equipment related to Service. Midcontinent does not warrant or guarantee that it can prevent unauthorized use or misuse.

**37.l. Non-Supported Equipment.** Certain equipment, particularly analog data devices, may not function properly when used in conjunction with the Telephone Service. Verification of compatibility may be required prior to the commencement of Service.

**TERMS AND CONDITIONS APPLICABLE TO ALL DATA SERVICES**

**38.a. Services Warranty.** Each level of Service has limits on the maximum throughput rate at which Customer may send and receive data at any time.

**38.b. Acceptance Testing.** Upon completion of installation, testing and activation of each Service, Midcontinent shall notify Customer that such Service is installed and functioning properly for Customer's use. Customer may, in its discretion, conduct any reasonable tests of the Service within five (5) business days after receipt of such notice (except as another timeframe is agreed to by the Parties under the applicable Service Order) to confirm that the Service has been installed and is functioning properly. Unless Customer transmits written notice to Midcontinent within such five (5) business day period (or such other time period in the applicable Service Order) that the Service is not installed and functioning properly, Customer shall be deemed to have accepted the Services as of the end of such five (5) business day period. In the event Customer notifies Midcontinent within the time period stated above that the Service is not installed and functioning properly, then Midcontinent shall, within five (5) business days after receipt of such notice, (a) commence efforts to correct any deficiencies to ensure that the Service is installed and functioning properly and deliver a new Service activation notice to Customer, or (b) confirm that the Service is correctly installed and functioning properly (along with supporting documentation). The procedure described above shall be repeated until the Customer expressly accepts such Services or is deemed to have accepted such Services as described herein. In the event Midcontinent confirms proper installation and functionality of the Service in accordance with this Section, then the Service will be deemed accepted as of the fifth day following Midcontinent's original installation notice and any further failure or refusal on the part of Customer to be ready to receive the Services shall neither relieve Customer of its obligation to pay the applicable Charges and fees, nor constitute a breach or default under this Agreement by Midcontinent. Acceptance of the Service by Customer pursuant to this Section shall not be deemed a waiver of any rights Customer may have with respect to the availability, serviceability, performance, operation or other attributes of the Service that are described elsewhere within this Agreement or the associated Service Order. Rates and charges for Service shall be set forth in the

## General Terms and Conditions

respective Service Order. Charges for additional services required for installation or use of such Services shall also be set forth on the applicable Service Order as agreed by the Parties. Billing to Customer for recurring charges with respect to Service will commence on the date on which Customer accepts or is deemed to have accepted such Services in accordance with this Section, or as otherwise stated in the Service Order. Non-recurring charges may be billed at the times designated by Midcontinent.

**38.c. Demarcation Point.** The Demarcation Point shall be the point of interconnection between the Service and Customer's provided equipment located at a Service Location. In some cases the Demarcation Point shall be the User to Network Interface (UNI) port on Midcontinent Equipment at a Service Location.

**38.d. User Responsibility.** In order to utilize the Service provided by Midcontinent, the Customer will need certain computer network equipment. It will be the responsibility of Customer to provide, operate, and maintain, all at Customer's expense, all such necessary computer network equipment. The Customer shall also be responsible for security related to the Customer's use of and access to the Service. No user access security will be provided by Midcontinent. Midcontinent shall not be liable in any manner to the Customer for Midcontinent's failure or inability to detect or identify security breaches. Customer agrees to comply with Midcontinent's Acceptable Use Policy; as such policy may be modified from time to time. The Midcontinent Acceptable Use Policy can be accessed through the Midcontinent website at [www.midco.net](http://www.midco.net). Customer shall not use the Service to provide access to online services that Customer hosts on Customer's computer system or to provide electronic services of any nature to any third party.

**38.e. Charges & Payments.** In addition to the charges specified in the Agreement or Service Order, Customer may also incur charges for usage based services and from third party service providers that are separate and apart from the amounts charged by Midcontinent for Service. These charges may be billed monthly in arrears and may include, without limitation, purchasing or subscribing to other offerings via the Internet. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

**38.f. Unauthorized Use.** Midcontinent does not warrant or guarantee that it can prevent unauthorized use or misuse. Midcontinent shall not be liable for any damages, including charges for Service under this Agreement that Customer may incur as a result of unauthorized use or misuse of the Service by Customer's employees, customers, contractors, agents, other third parties, or the public. Customer will remain responsible for all charges.

**38.g. Network Integrity.** If Midcontinent determines in its sole discretion that action is necessary to protect its network and/or resources, Midcontinent may take actions it determines appropriate, including: circuit blocking, port blocking, email virus scanning, denying email access or transmission, and putting limits on bandwidth and email usage. The Parties further agree that none of their respective obligations to one another under the Agreement will be affected by any such action and no Party will have any obligation to the other Party for any claim, judgment or liability resulting from such action. Unless the circuit block was prompted and necessary due to Customer's action or inaction, Customer will be relieved of all obligations to make payments for charges relating to Business Data Service for the period of the circuit blockage.

**38.h. Equipment Network Addresses.** In order to use the Service, Midcontinent will provide to the Customer a non-portable TCP/IP network address(es). IP address space is a finite resource that is an essential requirement for all Internet access services. Midcontinent may provide Customer with routable IP addresses. Customer may be required to provide documented justification to receive any routable IP addresses. Any pre-existing Customer network address(es) may not be routable on the Midcontinent network due to Midcontinent network configuration.

**TERMS AND CONDITIONS APPLICABLE TO BUSINESS DATA SERVICE**

**39.a. Services Warranty.** The throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation: the number of users and/or computer stations using a single connection; computer, router and firewall configurations; Internet network congestion; time of day; and the accessed website servers. Customer also understands that the general reliability of the Internet, connections to and from the Internet and connections to and from the Midcontinent Internet server ("Host") may be controlled by factors beyond the control of Midcontinent. As a result, Midcontinent makes no representation regarding the speed of the Business Data Service as actual speeds may vary and are not guaranteed. Midcontinent cannot guarantee that the provision of the Business Data Service will be uninterrupted, the Customer will be able to properly access and use the Business Data Service, or the Business Data Service will be provided without error. Once Midcontinent has been informed that the Business Data Service has been interrupted, or the Customer has not been able to access or use the Business Data Service, or there is an error in the Business Data Service, then Midcontinent warrants that it will take reasonable efforts to correct such problem or error as soon as possible. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**39.b. Email Accounts.** Midcontinent may provide email accounts as part of the ordered Service. Any email account that is inactive for six (6) consecutive months will be deleted. Any email within an inactive email account will be deleted without inspection along with the email account. Once deleted, the email address associated with the email account will become available for assignment to other customers. An email account is inactive if it has not been checked in six (6) months, does not have an email forward associated with it and is not the primary login. Midcontinent is not responsible for any loss of any kind because of the deletion of email accounts or email messages.

**39.c. Internet Domain Names.** The Service described in the Service Order may include certain Internet domain name registration and maintenance services. Customer acknowledges that such services do not include any research or determination of any sort regarding whether Customer's selection of a domain name will infringe, dilute, or otherwise violate the scope of any third party's rights in a trademark, any other type of mark, trade name, or personal or legal entity name. Customer agrees to assume any and all risks associated with Customer's selection of an Internet domain name. Customer may wish to consult an attorney familiar with copyright law, trademark law and the Internet domain name registration process prior to selecting an Internet domain name.



## MASTER SERVICE AGREEMENT

### General Terms and Conditions

#### TERMS AND CONDITIONS APPLICABLE TO FIBER DATA SERVICE

**40.a. Services Warranty.** Each level of Service has limits on the maximum throughput rate at which Customer may send and receive data at any time. Customer's access to the Internet is not shared with other users and will be delivered to the Demarcation Point at the rate specified by the Service. However, once packet traffic passes the Demarcation Point out to the Internet, the throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation: the number of users and/or computer stations using a single connection; computer, router and firewall configurations; Internet network congestion; time of day; and the accessed website servers. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**40.b. Off-Net Services.** Off-Net Services may be provided to a Service Location under this Agreement that is outside of Midcontinent's service area and/or a Service Location that is within Midcontinent's service area but that is not readily accessible by Midcontinent's network facilities. Customer understands and agrees that Midcontinent, upon entering into a Service Order with Customer may, at Midcontinent's discretion, utilize Off-Net Services to deliver the Service. All Off-Net Services are provided by third party service providers and may be subject to additional terms and conditions. For Off-Net Services, the length of Term for Service at a particular Service Location will match the term Midcontinent is able to secure with the Off-Net service provider. Fees for Off-Net services will include the cost of the Service, any fees imposed by the Off-Net provider, taxes, fees as well as any administrative or overhead expenses. Fees and expenses for Off-Net Services may change without notice. Maintenance of Off-Net Services is outside of Midcontinent's control and maintenance outages may occur without notice. In the event Customer terminates Off-Net Services following Midcontinent's acceptance of the applicable Service Order but prior to the end of the applicable Term, Customer shall pay termination fees equal to one hundred percent (100%) of the monthly recurring charges remaining through the end of the term plus one hundred percent (100%) of any remaining, unpaid installation fees. Customer shall also pay any third party service provider ancillary fees incurred by Midcontinent due to the early termination of Service by Customer.

**40.c. Internet Domain Names.** The Service described in the Service Order may include certain Internet domain name registration and maintenance services. Customer acknowledges that such services do not include any research or determination of any sort regarding whether Customer's selection of a domain name will infringe, dilute, or otherwise violate the scope of any third party's rights in a trademark, any other type of mark, trade name, or personal or legal entity name. Customer agrees to assume any and all risks associated with Customer's selection of an Internet domain name. Customer may wish to consult an attorney familiar with copyright law, trademark law and the Internet domain name registration process prior to selecting an Internet domain name.

#### TERMS AND CONDITIONS APPLICABLE TO ETHERNET VIRTUAL CONNECTION SERVICE

**41.a. Services Warranty.** Midcontinent guarantees Service performance to the Demarcation Point. Equipment installed on Customer's side of the Demarcation Point can and may affect performance of the Service. Midcontinent makes no representation regarding the performance of Service on Customer's side of the network. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**41.b. Off-Net Services.** Off-Net Services may be provided to a Service Location under this Agreement that is outside of Midcontinent's service area and/or a Service Location that is within Midcontinent's service area but that is not readily accessible by Midcontinent's network facilities. Customer understands and agrees that Midcontinent, upon entering into a Service Order with Customer may, at Midcontinent's discretion, utilize Off-Net Services to deliver the Service. All Off-Net Services are provided by third party service providers and may be subject to additional terms and conditions. For Off-Net Services, the length of Term for Service at a particular Service Location will match the term Midcontinent is able to secure with the Off-Net service provider. Fees for Off-Net services will include the cost of the Service, any fees imposed by the Off-Net provider, taxes, fees as well as any administrative or overhead expenses. Fees and expenses for Off-Net Services may change without notice. Maintenance of Off-Net Services is outside of Midcontinent's control and maintenance outages may occur without notice. In the event Customer terminates Service at a Service Location where Off-Net Services are being provided following Midcontinent's acceptance of the applicable Service Order but prior to the end of the applicable Term, Customer shall pay termination fees equal to one hundred percent (100%) of the monthly recurring charges remaining through the end of the term plus one hundred percent (100%) of any remaining, unpaid installation fees. Customer shall also pay any third party service provider ancillary fees incurred by Midcontinent due to the early termination of Service by Customer.

**41.c. Online Reporting.** Midcontinent may provide Customer with a password-protected web portal to access online real time performance data regarding the circuit and reports containing historical network traffic information. Reports may vary based upon the Service.

*[The remainder of this page was intentionally left blank.]*



## MASTER SERVICE AGREEMENT

### General Terms and Conditions

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly respective authorized representatives as of the Effective Date.

\_\_\_\_\_  
CUSTOMER AUTHORIZED SIGNATURE

\_\_\_\_\_  
NAME (PLEASE PRINT)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
MIDCONTINENT COMMUNICATIONS AUTHORIZED SIGNATURE

STEVEN L. JOHNSON  
\_\_\_\_\_  
NAME (PLEASE PRINT)

REGIONAL SALES MANAGER  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

Midcontinent Communications is an Equal Opportunity/Affirmative Action employer. M/F/D/V

Midcontinent Internal Use: MSA # 201503-290

41.



## SERVICE ORDER

ACCOUNT #:

MSA #: 201503-290 DATE: 4-6-2015

### CUSTOMER INFORMATION

COMPANY NAME: CITY OF FAIRMONT

SERVICE ADDRESS: 100 DOWNTOWN PLAZA

MULTIPLE LOCATIONS NO

CITY: FAIRMONT

STATE: MN

ZIP: 56031

COMPANY PHONE # 507 238 3934

COMPANY FAX #

COMPANY CONTACT: PAUL HOYE

CONTACT E-MAIL ADDRESS: PHOYE@FAIRMONT.ORG

ADDITIONAL AUTHORIZED INDIVIDUAL(S): MIKE HUMPAL

### CUSTOMER BILLING INFORMATION

BILLING CONTACT NAME: DARLA GURITZ

BILLING ADDRESS: : 100 DOWNTOWN PLAZA

CITY: FAIRMONT

STATE: MN

ZIP: 56031

BILLING PHONE # 507 238 3924

BILLING FAX #

BILLING E-MAIL ADDRESS: DGURITZ@FAIRMONT.ORG

TAX EXEMPT: YES -- TAX EXEMPT FORM REQUIRED

### TECHNICAL CONTACT INFORMATION

CUSTOMER'S TECHNICAL CONTACT:

PHONE #

VENDOR'S COMPANY NAME:

PHONE #

VENDOR'S CONTACT NAME:

PHONE #

### ORDER SUMMARY

CONTRACT TYPE: NEW INSTALL

CONTRACT TERM: 60 MONTHS NOT TO START INVOICING PRIOR TO 9-1-2015



## SERVICE ORDER

ACCOUNT #:

MSA #: 201503-290 DATE: 4-6-2015

### BUSINESS DATA SERVICE

SERVICE	MONTHLY CHARGE	INSTALLATION CHARGE
<input type="checkbox"/> SMALL OFFICE / HOME OFFICE PACKAGE		
<input type="checkbox"/> NETWORK PACKAGE		
<input type="checkbox"/> ADVANCED PACKAGE		
<input type="checkbox"/> OTHER:		
<input type="checkbox"/> DOMAIN NAME / EMAIL HOSTING		

STATIC PUBLIC IP ADDRESSES: Choose an item.

EMAIL ADDRESSES : Choose an item. IF YES, HOW MANY:

IF YES, LIST REQUESTED EMAIL ADDRESSES AND PASSWORDS

EMAIL ADDRESS	PASSWORD
1.	
2.	
3.	
4.	



## SERVICE ORDER

ACCOUNT #:

MSA #: 201503-290 DATE: 4-6-2015

### FIBER DATA & ETHERNET VIRTUAL CONNECTION SERVICES

FIBER INTERNET	QUANTITY	BANDWIDTH (Mbps)	MONTHLY CHARGE	INSTALLATION CHARGE
<input checked="" type="checkbox"/> INTERNET CONNECTION	1	25 Mbps	\$338.00	\$250.00

STATIC PUBLIC IP ADDRESSES: YES REQUESTING AT LEAST 4

FIBER ETHERNET (EVC)	QUANTITY	BANDWIDTH (Mbps)	MONTHLY CHARGE	INSTALLATION CHARGE
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION				
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION				
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION				
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION				
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION				

ETHERNET OVER DOCSIS	QUANTITY	BANDWIDTH (Mbps)	MONTHLY CHARGE	INSTALLATION CHARGE
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION		Choose an item.		
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION		Choose an item.		
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION		Choose an item.		
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION		Choose an item.		
<input type="checkbox"/> ETHERNET VIRTUAL CONNECTION		Choose an item.		

THE EQUIPMENT PROVIDED TO DELIVER A FIBER OR ETHERNET SOLUTION IS THE PROPERTY OF MIDCONTINENT COMMUNICATIONS.

### DESIGN LAYOUT RECORD

The Design Layout Record (DLR) contains technical information related to Service that is to be delivered by Midcontinent to Customer pursuant to a properly completed and executed Service Order. The DLR is an abstract of Service and is intended to be a reference for engineering, construction, installation, performance and ongoing support and maintenance.



## SERVICE ORDER

ACCOUNT #:

MSA #: 201503-290 DATE: 4-6-2015

### ADDITIONAL SERVICE LOCATIONS

LOCATION NAME:

ACCOUNT #:

STREET ADDRESS:

CITY: STATE: ZIP:

TELEPHONE SERVICE: NUMBER OF LINES/SESSIONS:

DATA SERVICE:

OTHER SERVICE:

NOTES:

### ADDITIONAL INFORMATION

NOTES:

Midcontinent Business Solutions will provide 25Mbps Internet service to 100 DOWNTOWN PLAZA, FAIRMONT MN. Services will be delivered by fiber terminating into Midcontinent owned and operated equipment which will serve as our demarcation point. All devices beyond Midcontinent equipment, including power, are the responsibility of the customer.

### ACCEPTANCE

THIS SERVICE ORDER IS A SUPPLEMENT TO AND IS SUBJECT TO THE TERMS AND CONDITIONS PROVIDED IN THE MASTER SERVICE AGREEMENT EXECUTED BY THE PARTIES INCLUDING ANY OTHER APPLICABLE ADDENDUM, ATTACHMENTS, EXHIBITS OR SERVICE ORDERS. THIS SERVICE ORDER IS ALSO SUBJECT TO THE TERMS PUBLISHED IN MIDCONTINENT'S ANNUAL NOTICE, WHICH CAN BE FOUND AT [WWW.MIDCO.COM/LEGAL](http://WWW.MIDCO.COM/LEGAL).

CUSTOMER AUTHORIZED SIGNATURE

MIDCONTINENT COMMUNICATIONS AUTHORIZED SIGNATURE

NAME (PLEASE PRINT)

Steven L Johnson

NAME (PLEASE PRINT)

TITLE

Regional Sales Manager

TITLE

DATE

DATE

Midcontinent is an Equal Opportunity/Affirmative Action Employer M/F/D/V

MEETING DATE: April 13, 2015

SUBJECT: Issuance and Sale of \$5,000,000 in Revenue Refunding Notes

REVIEWED BY: Mike Humpal, CEcD, City Administrator 

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mike Humpal, CEcD, City Administrator

INTRODUCED BY: Mike Humpal, CEcD, City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input type="checkbox"/>	Motion (Voice Vote)	<input checked="" type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** The City has received a request from Goldfinch Estates to issue \$5,000,000 in conduit revenue notes under MN Stat. 462C that will be used to refund existing debt. This issue has been reviewed by the City's Bond Counsel and it will not be an obligation of the City.

**MOTION:** To adopt Resolution 2015-11**VOTE REQUIRED:** Simple Majority – Roll Call**ATTACHMENTS:**

1. Resolution 2015-11

2. \_\_\_\_\_

3. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

**Extract of Minutes of Meeting of the City Council**  
**of the**  
**City of Fairmont, Minnesota**

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Fairmont, Minnesota (the "Issuer"), was duly held at City Hall in the Council Chambers, 100 Downtown Plaza in the City of Fairmont on Monday, April 13, 2015, at 5:30 o'clock p.m.

The following members of the City Council were present:

and the following were absent:

\*\*\*\*\*

Council Member \_\_\_\_\_ introduced the following written resolution, the reading of which was waived by unanimous consent of the Council, and moved its adoption:

RESOLUTION GIVING PRELIMINARY APPROVAL TO THE PROPOSED  
ISSUANCE OF REVENUE REFUNDING NOTES FOR VISTA PRAIRIE AT GOLDFINCH  
ESTATES, LLC PROJECT UNDER MINNESOTA STATUTES, CHAPTER 462C AND  
CALLING FOR A PUBLIC HEARING WITH RESPECT THERETO

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

and the following abstained from voting on the same:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

RESOLUTION GIVING PRELIMINARY APPROVAL TO THE PROPOSED  
ISSUANCE OF REVENUE REFUNDING NOTES FOR VISTA PRAIRIE AT GOLDFINCH  
ESTATES, LLC PROJECT UNDER MINNESOTA STATUTES, CHAPTER 462C AND  
CALLING FOR A PUBLIC HEARING WITH RESPECT THERETO

WHEREAS the City of Fairmont, Minnesota, a home rule charter city and a political subdivision of the State of Minnesota (the "Issuer"), is duly organized and existing under the Constitution and laws of the State of Minnesota (the "State"); and

WHEREAS, the Issuer is authorized and empowered by Minnesota Statutes, Chapter 462C, as amended (the "Act"), to issue revenue notes and loan the proceeds from the sale of said notes to one or more parties to be used to defray all or a portion of the cost of acquiring, constructing, improving and equipping multifamily housing developments, as that term is defined in the Act, including the discharge of liens and related rehabilitation in connection with such multifamily developments; and

WHEREAS, a proposal has been made to the Issuer by Vista Prairie at Goldfinch Estates, LLC (the "Borrower"), a Minnesota limited liability company, the sole member of which is Governmental and Educational Assistance Corporation d/b/a Vista Prairie Communities, an Arkansas nonprofit corporation and 501(c)(3) organization, that the Issuer authorize the issuance of its housing revenue notes, in one or more series, for the purpose of refinancing one or more multifamily housing developments pursuant to the Act; and

WHEREAS, the Borrower proposes to use the proceeds of the revenue notes for the: (i) refinancing of the acquisition, construction and equipping of, and improvements to, an existing 133-unit assisted living and memory care facility (the "Project") and (ii) paying certain costs of issuing the revenue notes. The Project includes 92 units of assisted-living housing for rental to elderly residents and 41 units for residents with Alzheimer's disease or other memory disorder. The addresses of the facilities are 850 Goldfinch Street, Fairmont, Minnesota, and 1640 Blue Jay Boulevard, Fairmont, Minnesota; and

WHEREAS, the funds to provide refinancing for the Project would be obtained through the issuance by the Issuer of its Housing Facilities Revenue Refunding Notes, in a tax-exempt series in an aggregate principal amount of \$5,000,000 and a taxable series in an aggregate principal amount of not to exceed \$750,000 (collectively, the "Notes"), which Notes are to be repaid solely and only through payments to be made by the Borrower pursuant to a loan or similar agreement to be entered into between the Issuer, the Borrower and Bank Midwest, as lender; and

WHEREAS, a Housing Program related to the original financing of the Project, developed pursuant to the Act, was previously adopted by the Issuer in accordance with the Act; and

WHEREAS, the Notes (if issued) shall be a limited obligation of the Issuer, and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit

or taxing powers, and the principal of, interest and premium, if any, on the Notes shall be payable solely out of the revenues derived from the loan agreement and security provided therefor; and

WHEREAS, Bond Counsel has advised that, pursuant to Section 147(f) of the Internal Revenue Code, as a condition to the issuance of the Notes, it is necessary to conduct a public hearing on the issuance of the Notes and to publish notice of said public hearing not less than 15 days prior to the date fixed for the hearing; and

WHEREAS, the Issuer has been advised that the City of Sherburn, Minnesota will undertake a program to assist in financing the Project through the issuance of revenue refunding notes (the "Sherburn Notes") pursuant to the Act; and

WHEREAS, the Issuer has been advised that Issuer consent to the Sherburn Notes is required under Minnesota Statutes, Chapter 471.656 because the real property to be refinanced is located within the corporate boundaries of the Issuer.

BE IT RESOLVED by the City Council of the City of Fairmont, Minnesota as follows:

1. A public hearing shall be conducted by the City Council on the issuance of said Notes, such hearing to be held at a meeting of the City Council on May 11, 2015, beginning at 5:30 o'clock p.m. in the Council Chambers at City Hall, at which hearing all parties who appear shall be given an opportunity to express their views with respect to the issuance of the Notes.

2. Notice of such public hearing, in substantially the form attached hereto as Exhibit A, shall be published at least once not less than 15 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the City of Fairmont.

3. The City Council consents to the issuance of the Sherburn Notes.

4. Nothing herein shall constitute a commitment by the Issuer to issue the Notes, which shall in all cases be subject to the sole and absolute discretion of the City Council.

5. Any prior resolutions or orders adopted by the City Council, or parts thereof, in conflict herewith are to the extent of such conflict, hereby repealed, and this Resolution shall be in full force and effect immediately upon its adoption.

Adopted on April \_\_\_, 2015 by the Fairmont City Council.

By: \_\_\_\_\_  
Its Mayor

Attest:

By: \_\_\_\_\_  
City Clerk

## **EXHIBIT A**

### **NOTICE OF PUBLIC HEARING**


NOTICE IS HEREBY GIVEN that a public hearing shall be conducted by the City Council of the City of Fairmont, Minnesota (the "Issuer"), on a proposal that it issue its Housing Facilities Revenue Refunding Notes, in a tax-exempt series in an aggregate principal amount of \$5,000,000 and a taxable series in an aggregate principal amount of not to exceed \$750,000 (collectively, the "Notes") pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"), all at the request of Vista Prairie at Goldfinch Estates, LLC (the "Borrower"), a Minnesota limited liability company, the sole member of which is Governmental and Educational Assistance Corporation d/b/a Vista Prairie Communities, an Arkansas nonprofit corporation. The hearing will be held at City Hall, located at 100 Downtown Plaza, Fairmont, Minnesota, at a meeting of the City Council to be held on Monday, May 11, 2015, beginning at 5:30 o'clock p.m. The proposed project to be refinanced by the Notes consists of the refinancing of the acquisition, construction and equipping of, and improvements to, an existing 133-unit assisted living and memory care facility (the "Project"). The Project includes 92 units of assisted-living rental housing for elderly residents and 41 units for rental to residents with Alzheimer's disease or other memory disorders. The addresses of the facilities to be refinanced by the Notes are 850 Goldfinch Street, Fairmont, Minnesota, and 1640 Blue Jay Boulevard, Fairmont, Minnesota. All of the facilities included in the Project are owned and operated by the Borrower. The proceeds of the Notes will be loaned by the Issuer to the Borrower to provide refinancing for the Project, and the Borrower will agree to repay the loan at times and in amounts sufficient to provide for payment in full of the Notes when due. At said time and place the City Council shall give all parties who appear an opportunity to express their views with respect to the proposed issuance of the Notes. Written comments will be accepted at City Hall until the time of hearing.

Date: April \_\_, 2015.

**BY ORDER OF THE CITY COUNCIL**

---

City Clerk

**MEETING DATE:** April 13, 2015**SUBJECT:** Review preliminary findings of TH 15 intersection studies**REVIEWED BY:** Mike Humpal, CEcD, City Administrator **SUBJECT INITIATION BY:**

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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**SUBJECT BACKGROUND:** Troy Nemmers, PE, Director of Public Works/City Engineer**INTRODUCED BY:** Troy Nemmers, PE, Director of Public Works/City Engineer**COUNCIL LIAISON:****TYPE OF ACTION:**

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENDED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Bolton & Menk has completed the preliminary findings for the Intersection Control Evaluations (ICE) studies along TH 15 at Margaret and Johnson Street. Bolton & Menk staff will be present to discuss the findings and make recommendation of how to proceed. The current recommendation is to finalize the ICE study at the TH 15/Johnson Street intersection only.

MNDOT is requesting to have some direction from the City by May 1, 2015, so they can finalize the scope of their project. If the Council provides positive direction and finalizes an ICE study, then MNDOT will review and evaluate whether they will participate and whether or not they have any additional funds available. MNDOT will not consider any cost participation without the ICE study being completed for either of the locations.

**MOTION:** To approve moving forward with additional analysis at the intersection of TH 15 and Johnson Street.

**VOTE REQUIRED:** Simple Majority**ATTACHMENTS:**


1.

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MEETING DATE: April 13, 2015

SUBJECT: CLOSED SESSION

REVIEWED BY: Mike Humpal, CEcD, City Administrator 

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input type="checkbox"/>	Staff	<input checked="" type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: City Council

INTRODUCED BY: Mike Humpal, CEcD, City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input checked="" type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Based on Minnesota Statute 13D.05, Subd. 3(b), the Council will go into Closed Session to discuss pending litigation, which is expressly authorized by the attorney-client privilege.

MOTION: N/A

VOTE REQUIRED:

ATTACHMENTS:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_