1. CALL TO ORDER -

   - Regular meeting of the Fairmont City Council held on

MondAY, FEBRUARY 10, 2020

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

2. ROLL CALL -

   Mayor Foster
   Councilors: Cyphers
           Hasek
           Hawkins
           Lubenow
           Peters

3. DETERMINATION OF QUORUM -

4. PLEDGE OF ALLEGIANCE -

5. APPROVAL OF AGENDA -

6. READING OF MINUTES –

   6.1 Minutes of Regular Meeting, January 27, 2020 (01-03)

7. CELEBRATION TIME (04)

8. OPEN DISCUSSION (05)
9. RECOGNITIONS/PRESENTATIONS -

9.1 Proclamation – Kids Against Hunger Day (06)

9.1a Proclamation (07)

10. SCHEDULED HEARINGS –

10.1 Public Hearing – Softened Water Rates Increase (08)

10.1a Hearing Notice (09-10)
10.1b Ordinance 2020-01 (11-12)
10.1c Sample Utility Bill (13)

10.2 Public Hearing – Wastewater Rate Increase (14)

10.2a Hearing Notice (15-18)
10.2b Ordinance 2020-02 (19-21)

10.3 Public Hearing – Adam Garber's Application to Rezone (22)

10.3a Hearing Notice (23)
10.3b Ordinance 2020-03 (24-26)
10.3c Staff Memorandum (27)

10.4 Public Hearing – To Consider Potential Improvement to the Municipal Wastewater System (30)

10.4a Hearing Notice (31)
10.4b Resolution 2020-09 (32)

11. ADMINISTRATIVE APPEALS –

12. FINANCIAL REPORTS –

13. REPORTS OF BOARDS, COMMITTEES, AND DEPARTMENT HEADS –
14. LICENSES AND PERMITS –

14.1 Borderline Cruisers Car Club Event Permit
   14.1a Application

14.2 One Day Temporary On-Sale Liquor License
   14.2a Application

14.3 Interlaken Heritage Days Event Permit
   14.3a Application and attachment

15. OLD BUSINESS –

15.1 City Attorney Search Update

15.2 Lake Avenue Street Project & infrastructure Funding

16. NEW BUSINESS –

16.1 Excess Inventory
   16.1a List of excess property

16.2 Engineering Services at the Municipal Airport
   16.2a Agreement with KLJ

17. REGULAR AND LIQUOR DISPENSARY BILLS –

18. STATUS REPORTS/COUNCIL/STAFF INFORMATION

19. ADJOURNMENT –

ADDITIONAL ATTACHMENTS –
The minutes of the Fairmont City Council meeting held on Monday, January 27, 2020 at the City Hall Council Chambers.

Mayor Deborah J. Foster called the meeting to order at 5:30 p.m.

Council Members Ruth Cyphers, Wayne Hasek, Tom Hawkins, Randy Lubenow and Bruce Peters were present. Also, in attendance: Interim City Administrator Mark Sievert, Public Works Director/City Engineer Troy Nemmers, Finance Director Paul Hoye, City Clerk Patricia J. Monsen, Police Sergeant Chad Sanow and Interim City Attorney Erik Ordahl.

Council Member Lubenow made a motion to approve the agenda with the additions of two old business items: the Soldo Investigation and the City Administrator Search; and the addition of 16.7 PERA Police Officer Declaration. Council Member Hawkins seconded the motion and the motion carried.

Council Member Cyphers made a motion to approve the minutes of the January 13, 2020 City Council meeting. Council Member Hasek seconded the motion and the motion carried.

During Celebration Time, Mayor Foster shared that Economic Development Coordinator Linsey Preuss and the CHS Project was awarded the 2019 Project of the Year given out by the Economic Development Association of Minnesota. This is a great honor to be chosen for this award by her peers. Councilor Lubenow also stated that there was a lot of people in town this past weekend with a Hockey Tournament and a Fishing Contest being held. It was great to see everyone in town.

During open discussion, Jay Maynard of 1831 Oakwood spoke regarding his displeasure with the Council.

Mayor Foster proclaimed February 7-14, 2020 as Congenital Heart Defect Awareness Week in the City of Fairmont. Hailee Greeley spoke regarding congenital heart defects.

Mayor Foster proclaimed January 26-February 1, 2020 as School Choice Week in the City of Fairmont.

Finance Director Paul Hoye presented the December 31, 2019 Investment Report.

Council Member Hawkins made a motion to approve a transient merchant license for TNT Fireworks from Florence, AL to sell fireworks at the Walmart parking lot between June 19, 2020 and July 6, 2020. Council Member Hasek seconded the motion and the motion carried.

Discussion was held regarding legislative services for the proposed local option sales tax. Council Member Peters made a motion to postpone this decision until such time as the Council feels it may be needed. Council Member Lubenow seconded the motion and the motion carried.

Councilor Hawkins requested that Fairmont City Code Chapter 10, Article II be reviewed and amended. After much discussion, Council Member Peters made a motion to instruct the City Administrator and Fire Chief to work with Legal Counsel on proper language to change control of the Fire Department to the City Administrator instead of the City Council. Council Member Hawkins seconded the motion and the motion carried.

Council Member Hawkins made a motion to approve Resolution 2020-06, a deed restriction for Cedar Park Trail Project. Council Member Peters seconded the motion. On roll call: Council Members Cyphers, Hasek, Hawkins, Lubenow and Peters all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Proposed Ordinance 2020-03, rezoning 924 Lake Avenue from 1-2 Heavy Industrial to B-3 General Business was introduced and its first reading was completed.

Council Member Hasek made a motion to approve Resolution 2020-07, a permit from MNDOT for the construction of the trail in the right-of-way along TH 15, near Torgerson Drive. Council Member Peters seconded the motion. On roll call: Council Members Hasek, Hawkins, Lubenow, Peters and Cyphers all voted aye. No one voted nay. Mayor Foster declared said motion passed.

A motion was made by Council Member Peters to direct staff to receive bids on hosting the City’s website. Council Member Hasek seconded the motion and the motion carried.

Council Member Lubenow made a motion to approve Resolution 2020-08 declaring that Luis Figueroa and William Murray meet all the Police and Fire Plan membership requirements. Council Member Peters seconded the motion. On roll call: Council Members Hawkins, Lubenow, Peters, Cyphers and Hasek all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Hasek made a motion to approve the payment of the January 2020 bills in the amount of $780,767.99. Council Member Hawkins seconded the motion and the motion carried.

Council Member Lubenow shared that he was alarmed by the statistics in the paper regarding the increase in crime. Lubenow stated that the City spends almost three million dollars for Law Enforcement. He considers arrests and incarceration as bad services. He is hoping that this money can be spent on good services in the future like a YMCA or CER to get kids out of bad home situations and into something good that will help them become better citizens for the future.

Council Member Hawkins wanted to clarify for the public that comparing column pricing between newspapers is not a good comparison, as the cost and what is being provided is different for each establishment.

Council Member Hawkins also wanted to state that at the January 13th council meeting, Mayor Foster accused Council Member Cyphers and him of violating the open meeting law. Council Member Hawkins stated that after conversations with Brandon Fitzsimmons of Flaherty & Hood, he feels no open meeting law violation occurred. Erik Ordahl of Flaherty & Hood reminded the
Council that any discussion of city business outside of the council meetings could possibly be open meeting law violations and that the Council should refrain from having these conversations.

Mayor Foster stated that Martin County Pheasants Forever held the first annual Ice Fishing Day last Saturday on Hall Lake. The event was a huge success and such a positive, fun event for kids and their families. Thank you to the Martin County Pheasants Forever.

Mayor Foster also advised the public that eight positions on the Charter Commission will be expiring on March 16th. If anyone is interested in serving on the Charter Commission, they should contact the City Clerk and make an application. Applications will be accepted until February 28th. The list of applicants will then be approved by the City Council and sent to the Chief District Court Judge for consideration and appointment.

A motion was made by Council Member Peters, seconded by Council Member Hasek and carried to adjourn the meeting at 6:43 p.m.

ATTEST:

Deborah J. Foster, Mayor

Patricia J. Monsen, City Clerk
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 7.1

MEETING DATE: February 10, 2020

SUBJECT: Celebration Time

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

<table>
<thead>
<tr>
<th>Petition</th>
<th>Board</th>
<th>Staff</th>
<th>Council</th>
<th>Commission</th>
<th>Committee</th>
</tr>
</thead>
</table>

SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mayor Deborah J. Foster

COUNCIL LIAISON:

TYPE OF ACTION:

<table>
<thead>
<tr>
<th>Motion (Voice Vote)</th>
<th>Resolution (Roll Call)</th>
<th>Discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance 1st Reading (Introduction only)</td>
<td>Set Public Hearing (Motion)</td>
<td>X Information Only</td>
</tr>
<tr>
<td>Ordinance 2nd Reading (Roll call)</td>
<td>Hold Public Hearing (Motion to close)</td>
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RECOMMENDED ACTION BY:

<table>
<thead>
<tr>
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<th>Board</th>
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<table>
<thead>
<tr>
<th>Issuance</th>
<th>Approval</th>
<th>Authorization</th>
<th>No recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denial</td>
<td>Rejection</td>
<td>X No action needed</td>
<td></td>
</tr>
</tbody>
</table>

STATEMENT: This is a time to talk about and celebrate good things happening in the community.

MOTION: None

VOTE REQUIRED:

ATTACHMENTS:

1. 
2. 
3. 

**************************************************************************************************************

Council Action: __________________________________________ Date: __________________
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 8.1

MEETING DATE: February 10, 2020

SUBJECT: Open Discussion

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

<table>
<thead>
<tr>
<th>Petition</th>
<th>Board</th>
<th>X</th>
<th>Staff</th>
<th>Council</th>
<th>Commission</th>
<th>Committee</th>
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</table>

SUBJECT BACKGROUND:

INTRODUCED BY: Mayor Deborah J. Foster

COUNCIL LIAISON:

TYPE OF ACTION:

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<tr>
<td>Denial</td>
<td>Rejection</td>
<td>X</td>
<td>No action needed</td>
</tr>
</tbody>
</table>

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

MOTION: None

VOTE REQUIRED:

ATTACHMENTS:

1.
2.
3.

Council Action: ____________________________ Date: ____________________________
STATEMENT: Mayor Deborah J. Foster will proclaim February 15, 2020 as Kids Against Hunger Day in the City of Fairmont.

MOTION: N/A

VOTE REQUIRED: N/A

ATTACHMENTS:
1. Proclamation
2. 
3. 

Council Action: ____________________________ Date: ______________

e.
PROCLAMATION

WHEREAS, there is an increasing awareness of hunger in the United States and worldwide; and

WHEREAS, there are more than 821 million people around the world who do not have enough food to eat and one in every 9 people on our planet go to bed hungry every night; and

WHEREAS, 24,000 people die every day from hunger related causes; and every 10 seconds a child dies because of hunger-related causes; and

WHEREAS, 11% of American households struggle to put food on the table; and

WHEREAS, visits to food shelves in Minnesota have reached a record high of 3.4 million each year, and

WHEREAS, hunger becomes a cycle of unhealthy pregnancies, poor nutrition in children, chronic health problems leading to lack of education and inability to work, and

WHEREAS, in the past eleven years, Martin County Kids Against Hunger has packaged over 1.2 million meals and raised over $315,000 to cover the cost of those meals, and

WHEREAS, the "Kids Against Hunger" food packet is a nutritionally fortified meal that can be made by just adding water to feed a family of six for less than $2; and

WHEREAS, Martin County volunteers have organized the twelfth Annual Martin County Kids Against Hunger Pack for Saturday, February 15, 2020, 8:30 am – 4:00 pm, at the Fairmont National Guard Armory with the goal of packing 125,000 meals; and

WHEREAS, volunteers of all ages are encouraged to participate or donate and make a difference in the lives of many children and families in Martin County and around the world.

NOW, THEREFORE, I, Deborah J. Foster, Mayor of the City of Fairmont, County of Martin, Minnesota, do hereby proclaim Saturday, February 15, 2020, as:

Kids Against Hunger Day

and call upon all Fairmont and Martin County citizens to recognize and support the efforts of Martin County Kids Against Hunger in packing life-saving meals for local food shelves and Mission-Haiti.

Deborah J. Foster, Mayor
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 10.1

MEETING DATE: February 10, 2020

SUBJECT: Public Hearing - Softened Water Service Rates Increase

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

- Petition
- Board
- Staff [X]
- Council
- Commission
- Committee

SUBJECT BACKGROUND: Paul Hoye, Finance Director

INTRODUCED BY: Paul Hoye, Finance Director

COUNCIL LIAISON: Paul Hoye, Finance Director

TYPE OF ACTION:

- Motion (Voice Vote)
- Resolution (Roll Call)
- Discussion
- Ordinance 1st Reading (Introduction only)
- Set Public Hearing (Motion)
- Information Only
- Ordinance 2nd Reading (Roll call)
- Hold Public Hearing (Motion to close)

RECOMMENDED ACTION BY:

- City Staff
- Board
- Staff [X]
- Council
- Commission
- Committee

- Issuance
- Approval [X]
- Rejection
- Authorization
- No action needed
- No recommendation

STATEMENT: The Council will take public input on the proposed ordinance for a Softened Water Service Rate Increase.

MOTION #1: To close Public Hearing

VOTE REQUIRED MOTION #1: Simple majority

MOTION #2: To approve Ordinance No. 2020-01, An Ordinance Amending Ordinance 2019-01 of the City of Fairmont, Relating to the Softened Water Service Rates.

VOTE REQUIRED MOTION #2: Roll Call - Simple majority

ATTACHMENTS:
1. Hearing Notice
2. Ordinance 2020-01
3. Sample Utility Bill

Council Action: __________________________ Date: ___________
NOTICE OF HEARING

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the City Council of the City of Fairmont will hold a public hearing to consider proposed Ordinance No. 2020-01.

ORDINANCE NO. 2020-01

AN ORDINANCE AMENDING ORDINANCE NO. 2019-01 OF THE CITY OF FAIRMONT, RELATING TO THE SOFTENED WATER SERVICE RATES.

WHEREAS, the city code requires that municipal utilities be provided to consumers at a rate based upon the amount of water used or consumed, and;

WHEREAS, it will be necessary to amend the current softened water rates to collect the necessary funds to provide for current and future capital expenditures, and;

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Fairmont that Ordinance No. 2019-01 be amended to establish the following rates:

<table>
<thead>
<tr>
<th>Service Type - Residential:</th>
<th>Cost per 100 cubic feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 2,000 cubic feet per month</td>
<td>$5.51</td>
</tr>
<tr>
<td>Excess Consumption - Cubic feet per month</td>
<td>$6.10</td>
</tr>
<tr>
<td>Monthly customer charge (In addition to minimum charge)</td>
<td>$16.98</td>
</tr>
<tr>
<td>Minimum charge per month</td>
<td>$8.55</td>
</tr>
<tr>
<td>Water Infrastructure Charge per month</td>
<td>$4.45</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Service Type - Commercial:</th>
<th>Cost per 100 cubic feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 120,000 - Cubic feet per month</td>
<td>$4.60</td>
</tr>
<tr>
<td>Excess Consumption - Cubic feet per month</td>
<td>$4.73</td>
</tr>
<tr>
<td>Monthly customer charge (In addition to minimum charge)</td>
<td>$32.40</td>
</tr>
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<td>Minimum charge per month</td>
<td>$8.55</td>
</tr>
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<td>$4.45</td>
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</tbody>
</table>
Service Type - Industrial:
( > 250,000 cubic feet per month)

First 1,300,000 - Cubic feet per month $ 3.65
Excess Consumption - Cubic feet per month $ 3.77

Monthly customer charge (In addition to minimum charge) $ 32.40
Minimum charge per month $ 8.55
Infrastructure Charge per month $ 4.45

In addition to the above charges the following will be charged per month:

$1.00 Lake Restoration Charge to fund water quality improvement of Fairmont Lakes.

$2.00 City Wide Cleanup Charge that includes $1.50 for City Wide Clean Up and $0.50 for Tree Dump Maintenance.

Said rates shall be effective March 1, 2020.

You are further notified said hearing will be held in the City Council Chambers of City Hall, 100 Downtown Plaza, Fairmont, Minnesota on Monday, February 10, 2020, at 5:30 p.m.

BY ORDER OF THE CITY OF FAIRMONT

/s/ Patricia J. Monsen
Patricia J. Monsen, City Clerk
ORDINANCE NO. 2020-01

AN ORDINANCE AMENDING ORDINANCE NO. 2019-01 OF THE CITY OF FAIRMONT, RELATING TO THE SOFTENED WATER SERVICE RATES.

WHEREAS, the city code requires that municipal utilities be provided to consumers at a rate based upon the amount of water used or consumed, and;

WHEREAS, it will be necessary to amend the current softened water rates to collect the necessary funds to provide for current and future capital expenditures, and;

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Fairmont that Ordinance No. 2019-01 be amended to establish the following rates:

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<tr>
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<tr>
<td>Excess Consumption - Cubic feet per month</td>
<td>$ 6.10</td>
</tr>
<tr>
<td>Monthly customer charge (In addition to minimum charge)</td>
<td>$ 16.98</td>
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<tr>
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<td>$ 8.55</td>
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<td>Water Infrastructure Charge per month</td>
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Service Type - Commercial:

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Service Type - Industrial:

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In addition to the above charges the following will be charged per month:

$1.00 Lake Restoration Charge to fund water quality improvement of Fairmont Lakes.

$2.00 City Wide Cleanup Charge that includes $1.50 for City Wide Clean Up and $0.50 for Tree Dump Maintenance.

Said rates shall be effective March 1, 2020.

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

PASSED, APPROVED AND ADOPTED this _____ day of February 2020.

Deborah J. Foster, Mayor

Attest:

Patricia J. Monsen, City Clerk

1st Reading: February 10, 2020
2nd Reading: February 24, 2020
Fairmont Public Utilities Commission
Effect of Proposed Rate Increase
Residential Average: 700 kWh and 500 Cubic Feet Water

Source of Electric Average: MUDF and Enerlyte
Source of Water Averages: Utility Billing Rate Code Summaries

<table>
<thead>
<tr>
<th>Current Rate</th>
<th>Sample Proposed 2020</th>
<th>Percent Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ELECTRIC ECA: $ .006675 - NO CHANGE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electric-Energy</td>
<td>$78.47</td>
<td>$78.47</td>
</tr>
<tr>
<td>Electric- Cust Chg</td>
<td>$5.00</td>
<td>$5.00</td>
</tr>
<tr>
<td>Water</td>
<td>$26.25</td>
<td>$27.55</td>
</tr>
<tr>
<td>Water- Cust Chg</td>
<td>$16.17</td>
<td>$16.98</td>
</tr>
<tr>
<td>Sewer- 3/4&quot; meter</td>
<td>$20.93</td>
<td>$21.97</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>$16.74</td>
<td>$17.53</td>
</tr>
<tr>
<td>City Wide Clean Up</td>
<td>$2.00</td>
<td>$2.00</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$165.56</strong></td>
<td><strong>$169.50</strong></td>
</tr>
</tbody>
</table>

Total Increase $$ | $3.94 |
Total Increase % | 2.38%
MEETING DATE: February 10, 2020

SUBJECT: Public Hearing – Wastewater Rate Increase

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

<table>
<thead>
<tr>
<th>Petition</th>
<th>Board</th>
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<th>Committee</th>
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SUBJECT BACKGROUND: Paul Hoye, Finance Director

INTRODUCED BY: Paul Hoye, Finance Director

COUNCIL LIAISON:

TYPE OF ACTION:

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<th>Motion (Voice Vote)</th>
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<tr>
<td>X Ordinance 2nd Reading (Roll call)</td>
<td>X Hold Public Hearing (Motion to close)</td>
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RECOMMENDED ACTION BY:

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<tr>
<td>Denial</td>
<td>Rejection</td>
<td>No action needed</td>
<td>No recommendation</td>
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</tbody>
</table>

STATEMENT: The Council will take public input on the proposed ordinance for Wastewater Rate Increase.

MOTION #1: To close Public Hearing

VOTE REQUIRED MOTION #1: Simple majority

MOTION #2: To approve Ordinance No. 2020-02, An Ordinance Amending Ordinance 2013-03 of the City of Fairmont, Relating to the Public Utility Wastewater Rates.

VOTE REQUIRED MOTION #2: Roll Call - Simple majority

ATTACHMENTS:
1. Hearing Notice
2. Ordinance 2020-02

Council Action: ___________________________ Date: ___________________________
OFFICIAL PUBLICATION

NOTICE OF HEARING

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the City Council of the City of Fairmont will hold a public hearing to consider proposed Ordinance No. 2020-02.

ORDINANCE NO.  2020-02

AN ORDINANCE AMENDING ORDINANCE NO. 2013-03 OF THE CITY OF FAIRMONT RELATING TO PUBLIC UTILITY WASTEWATER RATES.

WHEREAS, the City Code requires that municipal utilities be provided to consumers at a rate based upon the amount of the utility used or consumed, and;

WHEREAS, the City of Fairmont through the Public Utilities Commission has completed an expansion of the existing Wastewater Treatment Facility to facilitate new treatment requirements, and;

WHEREAS, it will be necessary to amend the current sewer service rate to generate sufficient revenues, to operate, maintain, and extend this system, and provide sufficient debt service to cover the plant expansion, in accordance with the recommendation, and;

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Fairmont that Ordinance No. 2013-03 be amended to establish the following fees and guidelines:

1. Residential Fees

   A. The Sewer Service Rate for each residential lot, parcel, building or premises connected to the sanitary sewer collection system shall be as follows based on the water meter size and meter reading for water consumption:

   First 100 cubic feet:  
   - $13.45 - 5/8” x 3/4” meter
   - $37.05 - 1” meter
   - $59.81 - 1 1/4” meter
   - $84.54 - 1 1/2” meter
   - $162.35 - 2” meter
   - $377.15 - 3” meter
   - $628.74 - 4” meter
   - $957.38 - 6” meter
Over 100 cubic feet: $2.13 / 100 cubic feet
Minimum bill: Based on water meter size

B. Wastewater Treatment Infrastructure Charge and Debt Service Charge:
   All residential customers will be charged a monthly fee of $12.08 per month, in addition to the monthly sewer service fee.

C. Residential sewer rate for the months of October through May will be averaged to be used as a cap for determining the sewer charge for the months of June through September. If the customer used less water than the corresponding average sewer rate, the sewer charge to the customer will be based on actual usage.

2. Commercial Fees

A. The Sewer Service Fee for each commercial lot, parcel, building, or premises connected to the sanitary sewer collection system shall be as follows based on meter reading for water consumption:

   All Consumption $3.34 / 100 cubic feet
   Minimum bill: $13.45

B. Wastewater Treatment Infrastructure Charge and Debt Service Charge:
   All commercial customers will be charged a monthly fee of $12.08 per month, in addition to the monthly sewer service fee.

C. In lieu of a sewer service fee based on water consumption, the user may, at the user’s expense, install and maintain an appropriate recording device to measure and record sewage outflow into the City’s system. The recording device must be formally approved by the Public Utilities Commission. Under these conditions, the same fees shall apply as for water consumption. In instances where it can be determined by the City that no portion of the metered water consumption enters the City’s sewage works, the installation of such a device may be waived by the City Council.

3. Industrial Fees

A. Sewage shall be considered industrial if the concentration of one or more of the following constituents is at or above the following in parts per million (ppm):
B. If a waste is considered industrial, fees shall be assessed individually for each of the specified pollutants discharged to the City's facility on a per pound basis. Industrial fees shall be at the following rates:

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>FEE $ / lb</th>
</tr>
</thead>
<tbody>
<tr>
<td>TSS</td>
<td>$ 0.8437</td>
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<td>PHOS</td>
<td>$ 7.5683</td>
</tr>
<tr>
<td>FOG</td>
<td>$ 1.3846</td>
</tr>
</tbody>
</table>

C. Wastewater Treatment Infrastructure Charge and Debt Service Charge:
All industrial customers will be charged a monthly fee of $12.08 per month, in addition to the monthly sewer service fee.

D. If the calculated fee for industrial waste is less than the same volume of waste based on commercial fees, then the commercial fee shall be used as the basis of payment.

E. Users with industrial sewage will be required to install and maintain devices to measure the sewage strength and flow at no expense to the City. The City will have access to flow metering and sampling equipment.

4. **Industrial Pretreatment Agreement Criteria**

A. A customer discharging industrial sewage may be required to enter into an industrial pretreatment agreement with the City before discharging industrial sewage to the City's system. If one or more of the following criteria are exceeded or expected to be exceeded for the industrial discharge on a monthly average basis, an industrial pretreatment agreement will be required.

   i) A BOD mass loading of 500 pounds per day and concentration above 1000 ppm.
   ii) A TSS mass loading of 500 pounds per day and concentration above 1000 ppm.
   iii) A TKN mass loading of 50 pounds per day.
   iv) A P mass loading of 25 pounds per day.
   v) A FOG concentration above 100 parts per million.
vi) A pH outside the range of 5.5 to 9.5 standard units.

B. A pretreatment agreement will be required if the flows and loads vary widely throughout the day.

C. A pretreatment agreement will be required if an industrial user discharges sewage that creates interference at the City’s wastewater treatment plant.

The above rates shall become effective March 1, 2020.

You are further notified said hearing will be held in the City Council Chambers of City Hall, 100 Downtown Plaza, Fairmont, Minnesota on Monday, February 10, 2020, at 5:30 p.m.

BY ORDER OF THE CITY OF FAIRMONT

/s/ Patricia J. Monsen
Patricia J. Monsen, City Clerk
AN ORDINANCE AMENDING ORDINANCE NO. 2013-03 OF THE CITY OF FAIRMONT RELATING TO PUBLIC UTILITY WASTEWATER RATES.

WHEREAS, the City Code requires that municipal utilities be provided to consumers at a rate based upon the amount of the utility used or consumed, and;

WHEREAS, the City of Fairmont through the Public Utilities Commission has completed an expansion of the existing Wastewater Treatment Facility to facilitate new treatment requirements, and;

WHEREAS, it will be necessary to amend the current sewer service rate to generate sufficient revenues, to operate, maintain, and extend this system, and provide sufficient debt service to cover the plant expansion, in accordance with the recommendation, and;

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Fairmont that Ordinance No. 2013-03 be amended to establish the following fees and guidelines:

1. Residential Fees

   A. The Sewer Service Rate for each residential lot, parcel, building or premises connected to the sanitary sewer collection system shall be as follows based on the water meter size and meter reading for water consumption:

      First 100 cubic feet:  
      $ 13.45 - 5/8" x ¾" meter  
      $ 37.05 - 1" meter  
      $ 59.81 - 1 1/4" meter  
      $ 84.54 - 1 1/2" meter  
      $ 162.35 - 2" meter  
      $ 377.15 - 3" meter  
      $ 628.74 - 4" meter  
      $ 957.38 - 6" meter  

      Over 100 cubic feet:  
      Minimum bill:  
      $ 2.13 / 100 cubic feet  
      Based on water meter size

   B. Wastewater Treatment Infrastructure Charge and Debt Service Charge: All residential customers will be charged a monthly fee of $12.08 per month, in addition to the monthly sewer service fee.

   C. Residential sewer rate for the months of October through May will be averaged to be used as a cap for determining the sewer charge for the months of June through September. If the customer used less water that the corresponding average sewer rate, the sewer charge to the customer will be based on actual usage.
2. **Commercial Fees**

A. The Sewer Service Fee for each commercial lot, parcel, building, or premises connected to the sanitary sewer collection system shall be as follows based on meter reading for water consumption:

All Consumption $ 3.34 / 100 cubic feet

Minimum bill: $13.45

B. Wastewater Treatment Infrastructure Charge and Debt Service Charge:
All commercial customers will be charged a monthly fee of $12.08 per month, in addition to the monthly sewer service fee.

C. In lieu of a sewer service fee based on water consumption, the user may, at the user’s expense, install and maintain an appropriate recording device to measure and record sewage outflow into the City’s system. The recording device must be formally approved by the Public Utilities Commission. Under these conditions, the same fees shall apply as for water consumption. In instances where it can be determined by the City that no portion of the metered water consumption enters the City’s sewage works, the installation of such a device may be waived by the City Council.

3. **Industrial Fees**

A. Sewage shall be considered industrial if the concentration of one or more of the following constituents is at or above the following in parts per million (ppm):

(i) Total suspended solids (TSS) 250 ppm
(ii) Biological oxygen demand (BOD) 250 ppm
(iii) Total Kjedahl nitrogen (TKN) 40 ppm
(iv) Phosphorus (Phos) of 5 ppm
(v) Fat, oil, and grease (FOG) 100 ppm

B. If a waste is considered industrial, fees shall be assessed individually for each of the specified pollutants discharged to the City’s facility on a per pound basis. Industrial fees shall be at the following rates:

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C. Wastewater Treatment Infrastructure Charge and Debt Service Charge:
All industrial customers will be charged a monthly fee of $12.08 per month, in addition to the monthly sewer service fee.
D. If the calculated fee for industrial waste is less than the same volume of waste based on commercial fees, then the commercial fee shall be used as the basis of payment.

E. Users with industrial sewage will be required to install and maintain devices to measure the sewage strength and flow at no expense to the City. The City will have access to flow metering and sampling equipment.

4. Industrial Pretreatment Agreement Criteria

A. A customer discharging industrial sewage may be required to enter into an industrial pretreatment agreement with the City before discharging industrial sewage to the City’s system. If one or more of the following criteria are exceeded or expected to be exceeded for the industrial discharge on a monthly average basis, an industrial pretreatment agreement will be required.

   i) A BOD mass loading of 500 pounds per day and concentration above 1000 ppm.
   ii) A TSS mass loading of 500 pounds per day and concentration above 1000 ppm.
   iii) A TKN mass loading of 50 pounds per day.
   iv) A P mass loading of 25 pounds per day.
   v) A FOG concentration above 100 parts per million.
   vi) A pH outside the range of 5.5 to 9.5 standard units.

B. A pretreatment agreement will be required if the flows and loads vary widely throughout the day.

C. A pretreatment agreement will be required if an industrial user discharges sewage that creates interference at the City’s wastewater treatment plant.

The above rates shall become effective March 1, 2020.

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

PASSED, APPROVED AND ADOPTED this ____ day of February 2020.

ATTEST:  

Patricia J. Monsen, City Clerk  

Deborah J. Foster, Mayor  

1st Reading: February 20, 2020  
2nd Reading: February 24, 2020
MEETING DATE: February 10, 2020

SUBJECT: Public Hearing – Adam Garber’s Application to Rezone

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY: Petition Board x Staff Council Commission Committee

SUBJECT BACKGROUND: Peter Bode, Planner/Code Enforcement Technician

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON: Council Member Tom Hawkins

TYPE OF ACTION:

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</tr>
<tr>
<td>x Ordinance 2nd Reading (Roll call)</td>
<td>x Hold Public Hearing (Motion to close)</td>
<td></td>
</tr>
</tbody>
</table>

RECOMMENDED ACTION BY: City Staff x Board Commission Committee

| Issuance | x Approval | Authorization | No recommendation |
| Denial | Rejection | No action needed |

STATEMENT: The Council will take public input on the proposed ordinance for rezoning property at 924 Lake Avenue from Heavy Industrial (I-2) to General Business (B-3) to accommodate general office space.

MOTION #1: To close Public Hearing

VOTE REQUIRED MOTION #1: Simple majority

MOTION #2: To approve Ordinance No. 2020-03, An Ordinance amending City of Fairmont Zoning Map: Rezoning Parcels of land at 924 Lake Avenue in the City of Fairmont, Martin County, Minnesota from I-2 Heavy Industrial to B-3 General Business.

VOTE REQUIRED MOTION #2: Roll Call - Simple majority

ATTACHMENTS:
1. Hearing Notice
2. Ordinance 2020-03
3. Staff Memorandum

Council Action: ___________________________ Date: ____________
CITY OF FAIRMONT
NOTICE OF PUBLIC HEARING

Notice is hereby given that the Fairmont City Council will meet at the City Hall Council Chambers, 100 Downtown Plaza, Fairmont, MN 56031 at 5:30 p.m. on Monday, February 10, 2020 to conduct a Public Hearing to review the following item:

Micky, Kimberly, and Adam Garbers
924 Lake Avenue (Parcel IDs 230390650, 230390700, 230390750)
Rezoning property from Heavy Industrial (I-2) to General Business (B-3)

Persons who desire to be heard in reference to the above will be heard at this meeting. Written comments can also be submitted to Fairmont City Hall, attention Patricia Monsen, 100 Downtown Plaza, Fairmont, MN 56031.

Patricia Monsen
City Clerk
(Published in Fairmont Photo Press on January 29, 2020)
ORDINANCE NO. 2020-03

STATE OF MINNESOTA
COUNTY OF MARTIN ) ss
CITY OF FAIRMONT )

ORDINANCE AMENDING CITY OF FAIRMONT ZONING MAP: REZONING PARCELS OF LAND AT 924 LAKE AVENUE IN THE CITY OF FAIRMONT, MARTIN COUNTY, MINNESOTA, FROM I-2 HEAVY INDUSTRIAL TO B-3 GENERAL BUSINESS

THE CITY OF FAIRMONT DOES ORDAIN:

SECTION 1. Upon the recommendation of the Fairmont Planning Commission and pursuant to Fairmont City Code, Chapter 26, Division 2, the real property located at 924 Lake Avenue in the City of Fairmont, County of Martin, State of Minnesota, and legally described in Exhibit A, which is attached hereto and incorporated herein by reference, is hereby rezoned from I-2 Heavy Industrial to B-3 General Business.

SECTION 2. The official zoning map of the City of Fairmont, as set forth by authority of Fairmont City Code, Chapter 26, Division 2, shall be amended accordingly.

SECTION 3. This Ordinance shall take effect immediately after its publication.

Passed by the City Council of the City of Fairmont, Minnesota, this ____ day of February 2020.

Motion by:
Seconded by:
All in Favor:
Opposed:
Abstained:
Absent:
Deborah J. Foster, Mayor

ATTEST:

Patricia Monsen, City Clerk

1st Reading: January 27, 2020
2nd Reading: February 10, 2020

DRAFTED BY:

Peter M. Bode
Planner/Code Enforcement Technician
City of Fairmont
100 Downtown Plaza
Fairmont, MN 56031
507-238-3940
EXHIBIT A

LEGAL DESCRIPTION

A tract of land in Government Lot 14 of Section 6, Township 102 North, Range 30 West in the City of Fairmont, Martin County, Minnesota described as follows:

Commencing at the Southeast corner of Government Lot 14 of Section 6, Township 102 North, Range 30 West in the City of Fairmont, Martin County, Minnesota; thence North 89 degrees 55 minutes 47 seconds West (assumed bearing) along the South line of Government Lot 14 a distance of 253.00 feet; thence North 0 degrees 32 minutes 44 seconds East parallel with the East line of Government Lot 14 a distance of 45.96 feet to the northerly right-of-way line of Lake Avenue (formerly Trunk Highway No. 16) and point of beginning; thence continuing North 0 degrees 32 minutes 44 seconds East parallel with the East line of Government Lot 14 a distance of 286.00 feet to the southerly railroad right-of-way line of the former Chicago, Milwaukee, St. Paul and Pacific Railway and nonparallel circular curve having a radius of 8086.94 feet and a center bearing of South 21 degrees 39 minutes 38 seconds West; thence southwesterly along said circular curve and southerly railroad right-of-way line through a central angle of 2 degrees 16 minutes 46 seconds an arc length of 310.36 feet to a line lying parallel with and 551.00 feet West of the East line of Government Lot 14; thence South 0 degrees 32 minutes 44 seconds East parallel with the East line of Government Lot 14 a distance of 377.77 feet to the northerly right-of-way line of Lake Avenue; thence South 89 degrees 55 minutes 21 seconds East along said northerly right-of-way line a distance of 238.00 feet to the point of beginning.

HISTORICALLY DESCRIBED AS:

Tract I

All that part of Government Lot Fourteen (14), of Section Six (6), in Township One Hundred Two (102) North, Range Thirty (30) West of the Fifth Principal Meridian, bounded by lines as follows:

Beginning at an iron stake 46 feet North and 253 feet West of the Southeast corner of said Lot 14; thence West 100 feet, along the North boundary line of Trunk Highway No. 16; thence North 303 feet, parallel to the Quarter line, to the South boundary of the Chicago, Milwaukee & St. Paul right-of-way; thence Southwesterly 107 1/2 feet, along said boundary to an iron stake; thence South 284 1/2 feet, parallel to the Quarter line, to the place of beginning

AND, ALSO,

Tract II

Beginning Forty-six (46) feet North and 427 feet West of the said Southeast corner of said Lot Fourteen (14); thence North 350 1/2 feet, parallel to the said Quarter line, to the said railway right-of-way line; thence Northwesterly 78.81 feet, along said boundary; thence South 357 and 1/4 feet to an iron stake on the North boundary of the State Road; thence East 74 feet to the place of beginning

AND, ALSO,

Tract III

Beginning 46 feet North and 353 feet West of the Southeast corner of said Lot Fourteen (14); thence North 303 feet; parallel to said Quarter line, to the said railway right-of-way; thence Northwesterly, along said boundary line 79 1/2 feet; thence South 331 1/2 feet, parallel to said Quarter line, to an iron stake; thence East 74 feet to the place of beginning

Tract IV

The Easterly fifty (50) feet of the following described property: All that part of Government Lot Fourteen (14), in Section Six (6) of Township One Hundred Two (102) North, of Range Thirty (30) West of the Fifth Principal Meridian, bounded and described as follows, to-wit:

Beginning at a point 501 feet West of the Southeast corner of said Government Lot 14, running thence North a distance of 402.4 feet to an iron stake in the South boundary line of the railroad right-of-way, running thence Westerly and Northwesterly along the South boundary line of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railway Company, a distance of 255.8 feet to an iron stake, running thence South a distance of 486.67 feet, more or less, to the section line on the South boundary line of said Section 6, running thence East on the section line a distance of 240.8 feet to the place of beginning, EXCEPTING THEREFROM, the land taken for trunk highway purposes for Minnesota Trunk Highway No. 16.
MEMORANDUM

TO: City Council
FROM: Peter Bode, Planner/Code Enforcement Technician
DATE: January 22, 2020
RE: Rezoning 924 Lake Avenue

Adam and Kim Garbers, owners of Fairmont National Insurance, submitted an application for the rezoning of what is known as 924 Lake Avenue. This address services one conforming and two nonconforming abutting parcels that together make up the property. The Garbers application is to rezone the property from its current heavy industrial (I-2) classification to general business (B-3).

The Planning Commission held a public hearing on the rezoning on January 7, 2020. There were no public comments. Staff did reach out to a neighboring property owner to the west of the site. That property owner indicated support for rezoning the proposed site.

Staff’s findings for the Planning Commission were that the proposal was consistent with the comprehensive planning process and would not negatively impact the welfare, safety, property values, or traffic conditions of the surrounding land, surrounding occupants, or general public. Staff assessed that the Lake Avenue corridor has the potential to support general business and light industrial applications as a mixed use employment center.

The Planning Commission voted to approve the application and recommend rezoning to City Council.

Currently, City Code requires that both the Planning Commission and City Council hold public hearings for rezoning. The City Charter requires that ordinances are given two readings at two separate City Council meetings. A first reading of the ordinance is scheduled for the January 27 City Council meeting. A public hearing will then be noticed for February 10, as well as a second reading of the ordinance.

Peter M. Bode, Planner/Code Enforcement Technician
DRAFT MINUTES OF THE FAIRMONT PLANNING COMMISSION

Regular Meeting
January 7, 2020 at 5:30 p.m.
City Hall Council Chambers

Members present: Tom Lytle, Adam Smith, Liz Wheeler, Council Liaison Tom Hawkins
Members absent: Jon Omvig, Scott Unke
Staff present: Interim City Administrator Mark Sievert, Planner/Code Enforcement Technician Peter Bode

Acting Chair Lytle called the meeting to order at 5:30 p.m.

Approval of Agenda: Motion by Smith and second by Wheeler to approve the January 7, 2020 meeting agenda as presented. Motion carried.

Approval of Minutes: Bode presented minutes from December 3, 2019. Motion by Wheeler and second by Smith to approve the December 3, 2019 meeting minutes as presented. Motion carried.

New Business

Public Hearing – Rezoning – 924 Lake Ave: Acting Chair Lytle opened the public hearing. Bode presented an application by Adam Garbers for the rezoning of 924 Lake Avenue from a heavy industrial (I-2) classification to a general business (B-3) classification.

Bode stated that no public comments had been received. Bode stated that staff did contact a property owner to the west of the site, Warren Nasby, and that Nasby indicated support for the rezoning because he would like to see the site being used.

There were no additional public comments.

Motion by Wheeler and second by Smith to close the public hearing. Motion carried.

Motion by Smith and second by Wheeler to approve the application and recommend to City Council to rezone 924 Lake Avenue from heavy industrial (I-2) to general business (B-3). Motion carried.

Old Business

None.

Planning Updates: Bode stated that the Planning Commission is scheduled to do an annual review of conditional use and home occupation permits at its February meeting. Bode stated that he will be sending an update on the Comprehensive Plan process this week. Bode stated that two new Planning Commission members would likely be seated by February.
Adjournment: Motion by Wheeler and second by Smith to adjourn the meeting at 5:50 p.m. Motion carried.

Respectfully submitted,

Peter Bode
Planner/Code Enforcement Technician
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 10.4

MEETING DATE: February 10, 2020

SUBJECT: Public Hearing – To approve a Facility Plan for the Municipal Wastewater System

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY: 
- Petition
- Board
- Staff [X]
- Council
- Commission
- Committee

SUBJECT BACKGROUND: Troy Nemmers, Public Works Director/City Engineer

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON: Councilor Hasek

TYPE OF ACTION:
- Motion (Voice Vote) [X]
- Resolution (Roll Call)
- Discussion

<table>
<thead>
<tr>
<th>Type of Action</th>
<th>City Staff</th>
<th>Board</th>
<th>X</th>
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</table>

RECOMMENDED ACTION BY:
- Issuance | X | Approval | Authorization | No recommendation |
- Denial | | Rejection | | No action needed |

STATEMENT: The Public Utilities Commission (PUC) and staff have been working with Bolton & Menk to complete a Facility Plan at the wastewater treatment plant. This document evaluates the condition of existing facilities and makes recommendations for future improvements/additions to the plant. An updated Facility Plan is required by the MPCA to make future improvements eligible for Clean Water funds through the MN Public Facilities Authority. The Council will take public input on the proposed resolution to accept the facility plan and authorize submittal of the plan to the MPCA. Bolton & Menk staff will present the plan to the Council. The PUC has reviewed and is recommending approval of the Facility Plan.

MOTION #1: To close Public Hearing

VOTE REQUIRED MOTION #1: Simple majority

MOTION #2: To approve Resolution 2020-09

VOTE REQUIRED MOTION #2: Roll Call - Simple majority

ATTACHMENTS:
1. Hearing Notice
2. Resolution 2020-09

Council Action: ____________________________ Date: ________
To Whom It May Concern:

Please take notice that the City Council of Fairmont, MN will meet in the council chambers located at 100 Downtown Plaza on the 10th day of February 2020 at 5:30 pm, to consider potential improvements to the municipal wastewater system. Planning for improvement options that are being considered include three phases of potential needs over 20+ years including Phase 1 bio-solids improvements, Phase 2 liquid treatment improvements, and Phase 3 potential future regulation improvements. Such persons as desire to be heard with reference to the proposed improvements will be heard at this meeting.

A complete copy of the Wastewater Plant Facility Plan may be viewed at the City Engineer’s office.

By Order of the City of Fairmont

/s/ Patricia J. Monsen
Patricia J. Monsen, City Clerk
RESOLUTION NO. 2020-09

RESOLUTION RECEIVING AND ACCEPTING THE FACILITY PLAN

STATE OF MINNESOTA )
MARTIN COUNTY ) SS
CITY OF FAIRMONT )

WHEREAS, a Facility Plan meeting the requirements of MN Administrative Rules 7077.0272 FACILITIES PLAN FOR WASTEWATER TREATMENT SYSTEMS has been prepared by Bolton & Menk, Inc., and;

WHEREAS, the Facility Plan includes potential improvements to the municipal wastewater system consisting of three phases of potential needs over 20+ years including:

Phase 1 - Biosolids improvements,
Phase 2 - Liquid treatment improvements, and
Phase 3 - Potential future regulation improvements, and;

WHEREAS, Such persons as desire to be heard with reference to the potential improvements will be heard at this meeting, and;

WHEREAS, this report was received by the council on February 10, 2020.

NOW THEREFORE, BE IT RESOLVED that the Fairmont City Council accepts the Facility Plan and directs its submittal to the MN Pollution Control Agency.

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

PASSED, APPROVED AND ADOPTED, this 10th day of February 2020.

Deborah J. Foster, Mayor

ATTEST:

Patricia J. Monsen, City Clerk
CITY OF FAIRMONT---AGENDA CONTROL SHEET---AGENDA ITEM NO. 14.1

MEETING DATE: February 10, 2020

SUBJECT: Borderline Cruisers Car Club Event Permit

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

Petition
Board
Staff
Council
Commission
Committee

SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

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<td>Approval</td>
<td>Authorization</td>
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<tr>
<td>Denial</td>
<td></td>
<td>Rejection</td>
<td>No action needed</td>
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STATEMENT: The Borderline Cruisers Car Club is requesting approval to barricade several downtown streets for their annual car show to be held on June 13, 2020.

MOTION: To approve the Event Permit for Borderline Cruisers Car Club to barricade several downtown streets for their car show on Saturday, June 13, 2020.

VOTE REQUIRED: Simple majority

ATTACHMENTS:
1. Application
2. 
3. 

Council Action: ___________________________ Date: ________________
EVENT APPLICATION/PERMIT

This form must be filed with the City at least thirty (30) days in advance of the event. The City will review the application in accordance with the permitting process outlined in the City Code, Chapter 18. Attach additional sheets, maps, etc. if necessary. For events which include overnight camping a separate addendum must be included with the event application.

Date: 1/25/2020
Permit Fee: $15.00

Event: Borderline Cruisers Car Club Downtown Car Show

Sponsoring entity: Borderline Cruisers Car Club

Address: PO Box

Maximum estimated number of persons expected to attend at any one time: 2

Event coordinator(s):
Ray Miller/Butch Olson/Amy Miller

Contact Info:
Ray Miller
Phone # 507-399-1019
modela1928@hotmail.com

Primary contacts (during event):
Name: Ray Miller
Cell#: 507-399-1019
E-mail: modela1928@hotmail.com

Name: Amy Miller
Cell#: 507-399-1556
E-mail: modela1928@hotmail.com

Event Start: Saturday, June 13, 2020
Time: 6:00 am - 4:00 pm

Event End: Time: 4 pm
Setup: Start time: 6:00 am End Time: 4 pm
Teardown: Start time: 3:30 pm End Time: 4:00 pm

1. Type and description of the event and a list of all activities to take place at the event.
   Car Show/ Music/Giveaways/ Registration/ Trophy/Awards

2. Proposed location of event, including a site plan or diagram of the proposed area to be used showing the location of any barricades, perimeter/security fencing, fire extinguishers, safety or first aid stations, entertainment, stages, restrooms or portable toilets, parking areas, ingress and egress routes, signs, special lighting, trash containers and any other items related to the event.
   Downtown Plaza - Registration in the city parking
   Parking all of downtown + side streets - Blue Earth Ave to 4th St.
3. Will outside drinking water or waste collection systems be supplied?  

   Yes;  No

   If yes, supply public health plans, including the number of toilet facilities that will be available.

4. Will the event be providing: fire prevention, emergency medical service, security and severe weather shelter?  

   Yes;  No

   If yes, provide the written plans.

5. Will organizers allow outside food wagon/vendors at the event?  

   Yes;  No

   If yes, all food wagons/vendors must complete a Food Wagon/Vendor Permit and submit payment.

6. Will camping or temporary overnight lodging be included for the event? (allowed only at Cedar Creek Park and Winnebago Sports Complex)  

   Yes;  No

   If yes, event coordinator must complete temporary overnight camping permit and submit payment.

7. Will the event be using any sound amplification, public address system or will there be any live performances of any music or musical instruments?  

   Yes;  No

   If yes, please describe:

    One man hand PA systems, DJ services

8. Will the event restrict or alter normal parking, vehicular traffic or pedestrian traffic patterns?  

   Yes;  No

   If yes, provide a detailed description of all public rights of way and private streets for which the applicant requests the city to restrict or alter traffic flow. (Please attach a detailed map).

   Same as previous years

9. Will you be providing shuttle service?  

   Yes;  No

   If yes, provide offsite parking locations, shuttle routes, types of vehicles that will be used for shuttling passengers, hours of operation and frequency of shuttle service.

I affirm that I am authorized to execute this application on behalf of the applicant and that the statements contained therein are true and correct to the best of my knowledge. If the special event requires special services provided by the City of Fairmont, the applicant agrees to indemnify, defend and hold the City of Fairmont, its officials, employees, and agents harmless from any claim that arises in whole or in part out of the special event, except any claims arising solely out of the negligent acts or omissions of the City of Fairmont, its officials, employees and agents. The applicant agrees to pay all fees and meet all City Code requirements.

Signature:  Amy Miller  Title:  Secretary of Car Club  Date:  1/25/2020

If you would like your event published on the City's website/Community Calendar, please indicate:  Yes;  No

Office Use Only

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Permit distribution:

   City
   Applicant
   Police
   Parks/Streets
   Other
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 14.2

MEETING DATE: February 10, 2020

SUBJECT: One Day Temporary On-Sale Liquor Licenses

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

- Petition Board
- Staff
- Council
- Commission
- Committee

SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

- Motion (Voice Vote)
- Ordinance 1st Reading (Introduction only)
- Ordinance 2nd Reading (Roll call)
- Resolution (Roll Call)
- Set Public Hearing (Motion)
- Hold Public Hearing (Motion to close)
- Information Only
- Discussion
- Authorization
- No action needed
- No recommendation

RECOMMENDED ACTION BY:

- City Staff
- Board
- Commission
- Committee

STATEMENT: Martin County Chapter Pheasants Forever has made application for a One Day Temporary On-Sale Liquor License to serve alcohol at an event scheduled for April 18, 2020 at the Martin County Fairgrounds Arena. Martin County Chapter Pheasants Forever has paid the license fee and has provided liquor liability insurance coverage for the event.

MOTION: To approve the One Day Temporary Liquor Licenses for Martin County Chapter Pheasants Forever for April 18, 2020.

VOTE REQUIRED: Simple majority

ATTACHMENTS:
1. Application
2.

Council Action: ___________________________ Date: ____________
APPLICATION AND PERMIT FOR A 1 DAY TO 4 DAY TEMPORARY ON-SALE LIQUOR LICENSE

Name of organization: Martin County Chapter, Pheasants Forever
Date organized: 1986
Tax exempt number: 48.746.46

Address: 310 S. Dewey St., Fairmont, Minnesota 56031

Name of person making application: Troy Sunken
Business phone: 507-236-9182

Date(s) of event: April 18-4, 2020

Type of organization: Charitable

Organization officer's name: Troy Sunken
City: Fairmont
State: Minnesota
Zip: 56031

Location where permit will be used: Martin County Fairgrounds Arena

If the applicant will contract for intoxicating liquor service give the name and address of the liquor license providing the service.

If the applicant will carry liquor liability insurance please provide the carrier's name and amount of coverage.

Travelers Insurance $1 million per incident with $1 million aggregate

APPROVAL
APPLICATION MUST BE APPROVED BY CITY OR COUNTY BEFORE SUBMITTING TO ALCOHOL AND GAMBLING ENFORCEMENT

Fairmont
City/County
$2500
City Fee Amount
1-31-20
Date Fee Paid

Date Approved
Permit Date
City/County E-mail Address

Signature: City Clerk or County Official
Approved Director Alcohol and Gambling Enforcement

CLERKS NOTICE: Submit this form to Alcohol and Gambling Enforcement Division 30 days prior to event.

PLEASE PROVIDE A VALID E-MAIL ADDRESS FOR THE CITY/COUNTY AS ALL TEMPORARY PERMIT APPROVALS WILL BE SENT BACK VIA E-MAIL. E-MAIL THE APPLICATION SIGNED BY CITY/COUNTY TO AGE.TEMPORARYAPPLICATION@STATE.MN.US
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 14.3

MEETING DATE: February 10, 2020

SUBJECT: Interlaken Heritage Days Event Permit

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

- Petition
- Board
- Staff
- Council
- Commission
- Committee

SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

- Motion (Voice Vote)
- Ordinance 1st Reading (Introduction only)
- Ordinance 2nd Reading (Roll call)
- Resolution (Roll Call)
- Set Public Hearing (Motion)
- Hold Public Hearing (Motion to close)
- Discussion
- Information Only

RECOMMENDED ACTION BY:

- City Staff
- Board
- Commission
- Committee

Issuance
- Approval
- Authorization
- No action needed

Denial
- Rejection
- No recommendation

STATEMENT: The Interlaken Heritage Days Committee has applied for an Event Permit for events to be held June 12 – 14, 2020. All events are outlined on the event application and attachments.

MOTION: To approve the event permit for Interlaken Heritage Days to be held June 12 – 14, 2020.

VOTE REQUIRED: Simple majority

ATTACHMENTS:
1. Application and attachment

Council Action: ___________________________ Date: ___________________________
EVENT APPLICATION/PERMIT

This form must be filed with the City at least thirty (30) days in advance of the event. The City will review the application in accordance with the permitting process outlined in the City Code, Chapter 18. Attach additional sheets, maps, etc. if necessary. For events which include overnight camping a separate addendum must be included with the event application.

Date: 1/21/20

Event: Interlaken Heritage Days

Sponsoring entity:

Address: P.O. Box 322, Fairmont MN 56031

Maximum estimated number of persons expected to attend at any one time: 500

Event coordinators:

Marlys Brummond, Corey Walter, Rachel Greeley, Veinna School, Jodi Martin, Laura Dunker

Contact Info:

Phone # interlakenheritagedays@gmail.com

Primary contacts (during event):

Name: Rachel Greeley
Name: Marlys Brummond
Cell#: 231-2953
Cell#: 231-3841
E-mail: greeleyril1@gmail.com
E-mail: marlysbrummond@hotmail.com

Event Start: Day/Date Friday, June 12, 2020 Time: 5:00pm
Event End: Day/Date Saturday, June 13 or Sunday, June 14 Time:
Setup: Day/Date Friday, Sat, Sun Start time: Various End Time: Various
Teardown: Day/Date Fri, Sat, Sun Start time: Various End Time: Various

1. Type and description of the event and a list of all activities to take place at the event.

   Friday - Free community meal, crowning of Miss & Mister, music.
   Saturday - Pedal pull, inflatables, kids activities, flea market & artisan show, food vendors, kiddie parade, main parade and street dance.
   Sunday - to be determined

2. Proposed location of event, including a site plan or diagram of the proposed area to be used showing the location of any barricades, perimeter/security fencing, fire extinguishers, safety or first aid stations, entertainment, stages, restrooms or portable toilets, parking areas, ingress and egress routes, signs, special lighting, trash containers and any other items related to the event.

   Friday + Saturday - Heritage Acres
   Saturday's Kiddie parade through Downtown Plaza
   Saturday main parade - attached route, if there is road construction this will need to be changed. Street dance between City Hall and the Blazer Bar. Sunday - Gomsrud Park (TBD)
3. Will outside drinking water or waste collection systems be supplied?  ____ Yes;  ____ No
   If yes, supply public health plans, including the number of toilet facilities that will be available.
   Four portable toilets - two at parade line-up, two at street dance location.
4. Will the event be providing: fire prevention, emergency medical service, security and severe weather shelter?  ____ Yes;  ____ No
   If yes, provide the written plans.
5. Will organizers allow outside food wagon/vendors at the event?  ____ Yes;  ____ No
   If yes, all food wagons/vendors must complete a Food Wagon/Vendor Permit and submit payment.
6. Will camping or temporary overnight lodging be included for the event? (allowed only at Cedar Creek Park and Winnebago Sports Complex):  ____ Yes;  ____ No
   If yes, event coordinator must complete temporary overnight camping permit and submit payment.
7. Will the event be using any sound amplification, public address system or will there be any live performances of any music or musical instruments?  ____ Yes;  ____ No
   If yes, please describe: Music at Heritage Acres, possibly Gomsrud, live band at street dance.
8. Will the event restrict or alter normal parking, vehicular traffic or pedestrian traffic patterns?  ____ Yes;  ____ No
   If yes, provide a detailed description of all public rights of way and private streets for which the applicant requests the city to restrict or alter traffic flow. (Please attach a detailed map).
9. Will you be providing shuttle service?  ____ Yes;  ____ No
   If yes, provide offsite parking locations, shuttle routes, types of vehicles that will be used for shuttling passengers, hours of operation and frequency of shuttle service.

I affirm that I am authorized to execute this application on behalf of the applicant and that the statements contained therein are true and correct to the best of my knowledge. If the special event requires special services provided by the City of Fairmont, the applicant agrees to indemnify, defend and hold the City of Fairmont, its officials, employees, and agents harmless from any claim that arises in whole or in part out of the special event, except any claims arising solely out of the negligent acts or omissions of the City of Fairmont, its officials, employees and agents. The applicant agrees to pay all fees and meet all City Code requirements.

Signature: __________________________ Title: Secretary/Treasurer Date: 1/21/20

If you would like your event published on the City's website/Community Calendar, please indicate:  ____ Yes;  ____ No

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Office Use Only

$15.00 Fee Paid

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Permit distribution:
- City
- Applicant
- Police
- Parks/Streets
- Other
Tenative route unless there is road construction.
STATEMENT: RFPs were sent following the January 13th City Council meeting to all Fairmont firms and 47 firms identified within the Fairmont region. The three firms who previously returned proposals were contacted. All three firms who previously submitted proposals asked to remain in consideration. One new proposal has been received and one is pending from the other firms. Six have replied that they will not be submitting. The deadline for submission is February 24th.

Please discuss and advise staff as to how you would like to proceed with review and selection.

MOTION:

VOTE REQUIRED:

ATTACHMENTS:

1.

--------------------------------------------------------------

Council Action: ___________________________ Date: ____________

43.
MEETING DATE: February 10, 2020

SUBJECT: Lake Avenue Street Project and Infrastructure Funding (infrastructure charge and gas franchise fee)

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

- Petition
- Board
- Staff X
- Council
- Commission
- Committee

SUBJECT BACKGROUND: Randy Lubenow, Council Member

INTRODUCED BY: Randy Lubenow, Council Member

COUNCIL LIAISON:

CITY OF FAIRMONT

TYPE OF ACTION:

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<td>Ordinance 2nd Reading (Roll call)</td>
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<td>Denial</td>
<td>Rejection</td>
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STATEMENT: Council Member Lebunow asked that the Lake Avenue Street Project and infrastructure funding be placed on the agenda for discussion.

MOTION:

VOTE REQUIRED:

ATTACHMENTS:
1.

Council Action: ___________________________ Date: ____________
MEETING DATE: February 10, 2020

SUBJECT: Excess Inventory

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

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SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

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STATEMENT: Attached is a list of excess/obsolete property. The City will sell the excess property on the State of Minnesota's minnbid.org website or use an on-site auction service.

MOTION: To declare the inventory reported as excess property.

VOTE REQUIRED: Simple majority

ATTACHMENTS:
1. List of excess property.
2. 
3. 

Council Action: ____________________________ Date: ____________________________
MEMO TO: Troy Nemmers
MEMO FROM: Nick Lardy
DATE: 01/29/2020
SUBJECT: Excess/Unused Inventory

Troy,
Following is a list of items/equipment I would like to have the council declare excess inventory so I may sell it on minbid.org:

PARK DEPARTMENT
- Unit 52 - 1995 Jeep Wrangler with Western Snow Plow VIN 1J4FY19P5SP265378

BUILDING INSPECTION
- Unit 5 - 2002 Chevrolet Malibu VIN 1G1ND52J02M647029

PUC LINE DEPARTMENT
- PUC23 – 1995 Chevrolet K3500 pickup with utility box VIN 1GBHK34K3SZ1944575

STREET DEPARTMENT
- Unit 104 – 1998 Dodge Ram 1500 4x4 VIN 1B7HF16Y2WS654693

All vehicles have exceeded their useful life and are being, or have been replaced.

Please contact me if you have any questions.

Nick Lardy
CITY OF FAIRMONT—AGENDA CONTROL SHEET—AGENDA ITEM NO. 16.2

MEETING DATE: February 10, 2020

SUBJECT: Engineering Services at the Municipal Airport

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

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SUBJECT BACKGROUND: Troy Nemmers, PE, Public Works Director/City Engineer

INTRODUCED BY: Troy Nemmers, PE, Public Works Director/City Engineer

COUNCIL LIAISON: Councilor Cyphers

TYPE OF ACTION:

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STATEMENT: The FAA provides guidance on soliciting for professional services and recommends that a selection process be completed at least every 5 years. The Airport Advisory Board recently completed a request for qualifications and review of three consultants to perform engineering services at the airport. The Board scored KLJ the highest of the three and is recommending approval of a 5-year master agreement with KLJ for engineering services at the municipal airport. KLJ has been the airport consultant since 2014.

MOTION: To authorize the Mayor to sign the agreement with KLJ for engineering services at the municipal airport.

VOTE REQUIRED: Simple majority

ATTACHMENTS:
1. Agreement with KLJ (pages 1-19 of 61) agreement exhibits can viewed at City Hall
2. 

Council Action: ___________________________ Date: ___________________________
THIS IS AN AGREEMENT effective as of February 10, 2020 ("Effective Date of the Agreement") between
City of Fairmont, 100 Downtown Plaza, Fairmont, MN 56031 ("Owner") and
Kadrmas, Lee & Jackson, Inc., 4585 Coleman Street, Bismarck ND 58503 ("Engineer").

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.

B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.

C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer’s services, time for performance, Engineer’s compensation, and all other appropriate matters.

1.02 Task Order Procedure

A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer’s services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, “Engineer’s Services for Task Order,” prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, “Engineer’s Services for Task Order,” as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.

B. Engineer will commence performance as set forth in the Task Order.

C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.
ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.

B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer's services, the Work, the performance of any Constructor, or in Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 Term

A. This Agreement shall be effective and applicable to Task Orders issued hereunder for 5 years from the Effective Date of the Agreement.

B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 Times for Rendering Services

A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.

B. Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, then:

1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

D. Sales or Use Taxes: If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.
ARTICLE 5 — OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.03 Opinions of Total Project Costs

A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 — GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. Consultants: Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Compliance with Laws and Regulations, and Policies and Procedures

1. Engineer and Owner shall comply with applicable Laws and Regulations.
2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner’s responsibilities or to Engineer’s scope of services, times of performance, or compensation:
   a. changes after the Effective Date of the Task Order to Laws and Regulations;
   b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
   c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.

G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.

H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to such Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work in accordance with the Construction Contract Documents.

J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.

L. Engineer’s services do not include providing legal advice or representation.

M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or
the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising
Owner, or any municipal entity or other person or entity, regarding municipal financial products or the
issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar
matters concerning such products or issuances.

N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the
applicable requirements of Contractor’s and Owner’s safety programs of which Engineer has been informed
in writing.

6.02 Design Without Construction Phase Services

A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase
services that have been expressly required of Engineer in the authorizing Task Order. With the exception of
such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations
during construction, and Owner assumes all responsibility for the application and interpretation of the
Construction Contract Documents, review and response to Contractor claims, Construction Contract
administration, processing of Change Orders and submittals, revisions to the Construction Contract
Documents during construction, construction observation and review, review of Contractor’s payment
applications, and all other necessary Construction Phase administrative, engineering, and professional
services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase
administrative, engineering, or professional services except for those services that are expressly required of
Engineer in the authorizing Task Order.

6.03 Use of Documents

A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest
therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the
Specific Project is completed.

B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then
Engineer shall deliver to Owner at least one original printed record version of such Drawings and
Specifications, signed and sealed according to applicable Laws and Regulations.

C. Owner may make and retain copies of Documents for information and reference in connection with the use
of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on
the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt
by Engineer of full payment due and owing for all services relating to preparation of the Documents, and
subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or
represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse
by Owner or others on extensions of the Specific Project, on any other project, or for any other use or
purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any
modification of the Documents, without written verification, completion, or adaptation by Engineer, as
appropriate for the specific purpose intended, will be at Owner’s sole risk and without liability or legal
exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants;
(3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents,
employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys’ fees,
arising out of or resulting from any use, reuse, or modification of the Documents without written verification,
completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in
third parties.
D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Electronic Transmittals

A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.

B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.

B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.

C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.

E. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.06 Suspension and Termination

A. Suspension

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer. Engineer shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, Owner shall compensate Engineer for expenses incurred as a result of the suspension and resumption of its services, and Engineer's schedule and fees for the remainder of the Project shall be equitably adjusted.

2. By Engineer: Engineer may suspend services under a Task Order: (i) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or is in material breach of this Agreement; or (ii) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4. Engineer shall have no liability to Owner, and Owner agrees to make no claim for delay or damage as a result of such suspension caused by any breach of this Agreement by Owner. Upon receipt of payment in full of all outstanding sums due from Owner, or curing of such other breach which caused Engineer to suspend services, Engineer shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. Termination for Cause—Task Order: The obligation to provide further services under a specific Task Order may be terminated for cause:

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.

2. By Engineer:

   a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

   b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days, consecutive or in the aggregate by Owner; or as the result
of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.

c. Engineer shall have no liability to Owner on account of such termination.

d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

C. Termination for Cause—Agreement: In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer’s services under all Task Orders.

D. Termination for Convenience by Owner: Owner may terminate a Task Order or this Agreement for Owner’s convenience, effective upon Engineer’s receipt of notice from Owner.

E. Effective Date of Termination: The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

F. Payments Upon Termination:

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner’s sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer’s Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 Controlling Law

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Specific Project is located.
6.08  Successors, Assigns, and Beneficiaries

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 Dispute Resolution

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement or exercising their rights at law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 Environmental Condition of Site

A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):

1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner’s knowledge no Constituents of Concern other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

3. It is acknowledged by both parties that Engineer’s scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party
encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.

5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer’s services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer’s activities under a specific Task Order or this Agreement.

6.11 Indemnification and Mutual Waiver

A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner’s officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants’ and attorneys’ fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer’s officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, “Limitations of Liability.”

B. Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.

C. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants’ and attorneys’ fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence or willful misconduct.
D. **No Defense Obligation:** The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

E. **Percentage Share of Negligence:** To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

F. **Mutual Waiver:** To the fullest extent permitted by law, Owner and Engineer waive against each other and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

6.12 **Records Retention**

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer’s services or pertinent to Engineer’s performance under the Task Order. Upon Owner’s request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 **Miscellaneous Provisions**

A. **Notices:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, by facsimile or other electronic transmission, or by a commercial courier service. All notices shall be effective upon the date of receipt. Notices and correspondence sent by electronic transmission, including the signature of a Party delivered by facsimile or by a “pdf.” format document sent electronically, will constitute original copies thereof and will be binding on the parties. Upon request, the receiving party may request an original of any document sent by electronic transmission.

B. **Survival:** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. **Waiver:** A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. **Accrual of Claims:** To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.

F. **Applicability to Task Orders:** The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order.
provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

**ARTICLE 7 — DEFINITIONS**

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:

1. **Addenda**—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. **Additional Services**—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.

3. **Agreement**—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.

4. **Application for Payment**—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. **Basic Services**—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).

6. **Change Order**—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. **Change Proposal**—A written request by a Contractor/ duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. **Constituent of Concern**—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous
9. **Construction Contract**—The entire and integrated written contract between Owner and Contractor concerning the Work.

10. **Construction Contract Documents**—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.

11. **Construction Contract Price**—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. **Construction Contract Times**—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.

13. **Construction Cost**—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. **Contractor**—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers and truckers, and their employees, agents, and representatives.

15. **Consultants**—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.

16. **Contractor**—The entity or individual with which Owner enters into a Construction Contract.

17. **Documents**—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. **Drawings**—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. **Effective Date of the Agreement**—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. **Effective Date of the Task Order**—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.

21. **Engineer**—The individual or entity named as such in this Agreement.

22. **Field Order**—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

23. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. **Notice**—Wherever used in this Agreement, the term "days" shall mean consecutive calendar days of twenty-four (24) hours each, or a fraction thereof.

25. **Owner**—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.

26. **Record Drawings**—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

27. **Resident Project Representative**—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.

28. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. **Site**—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

Specific Project—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.

Subcontractor—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.

Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

Task Order—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.

Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.

Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.

Work Change Directive—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

Day: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
ARTICLE 8 — EXHIBITS AND SPECIAL PROVISIONS

8.01 Suggested Form of Task Order

A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.02 Exhibits Included:

A. Exhibit A, Engineer’s Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order.

B. Exhibit B, Owner’s Responsibilities. This Exhibit applies to all Task Orders.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, “Payments to Engineer,” of the specific Task Order.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.

E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer’s scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice. Not Used.

F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, “Services of Engineer,” and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, “Services of Engineer,” of the specific Task Order. Not Used.

G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.

H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.

I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.

J. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.

K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.03 Total Agreement

A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.04 Designated Representatives

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.05 Engineer's Certifications

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.06 Affirmative Action: Owner and Engineer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER: City of Fairmont

By: 
Print Name: Deborah J. Foster
Title: Mayor
Date Signed: 

ENGINEER: Kadmas, Lee & Jackson, Inc.

By: Mark Anderson
Print Name: Mark Anderson, PE
Title: Vice President, EPW
Date Signed: 2/4/2020

Engineer License or Firm’s Certificate No. (if required): 
State of: 

Address for Owner’s receipt of notices:
City of Fairmont
100 Downtown Plaza
Fairmont, MN 56031

Legal Notices to: tnemmers@fairmont.org

DESIGNATED REPRESENTATIVE (Paragraph 8.04):
Troy Nemmers, PE
Title: Director of Public Works/City Engineer
Phone Number: 507-238-3942
Address: 100 Downtown Plaza
Fairmont, MN 56031
E-Mail Address: tnemmers@fairmont.org

Address for Engineer’s receipt of notices:
Kadrmas, Lee & Jackson, Inc
4585 Coleman Street
Bismarck, ND 58503

Legal Notices to: klj.legal@kljeng.com

DESIGNATED REPRESENTATIVE (Paragraph 8.04):
Jake Braunagel, PE
Title: Project Manager
Phone Number: 605-271-4414
Address: 5110 East 57th Street
Sioux Falls, SD 57108
E-Mail Address: jake.braunagel@kljeng.com

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STATEMENT: Construction of the Margaret Street trail extension out to Torgerson Drive is scheduled to begin construction this year. The preferred alignment travels across private property owned by TLC Properties (Lamar Advertising). City staff has been working with them to obtain a permanent and a temporary construction easement for this project. Lamar has agreed to grant the easement at no cost to the City for this trail extension.

MOTION: To authorize the Mayor to sign the permanent and temporary construction easement for the Margaret Street trail extension.

VOTE REQUIRED: Simple majority

ATTACHMENTS:
1. Easement document
2. 
3. 

Council Action: ___________________________ Date: ___________________________
PERMANENT PUBLIC TRAIL EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT

This Agreement is made this 7th day of February, 2020, by and between TLC Properties, Inc., a corporation under the laws of the State of Louisiana, 730 Center Ave., Suite 202, Moorhead, Minnesota 56560, referred to hereinafter as “Grantor,” and the City of Fairmont, Minnesota, a municipal corporation organized under the laws of the State of Minnesota, 100 Downtown Plaza, Fairmont, Minnesota 56031, referred to hereinafter as “Grantee”; (collectively referred to herein as the “parties”).

AGREEMENT

That for and in consideration of the sum of One ($1.00) Dollars and other good and valuable consideration, paid this date by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

1. The undersigned Grantor hereby grants and conveys to the Grantee a Permanent Easement for public trail purposes (the “Permanent Easement”), over, under and across that part of the tract of land legally described on Exhibit A, which is attached hereto and incorporated herewith by reference, in the City of Fairmont, Martin County, Minnesota, as legally described on Exhibit B, which is attached hereto and incorporated by reference (the “Permanent Easement Area”).

2. The undersigned Grantor hereby grants and conveys to the Grantee a Temporary Easement for construction purposes (the “Temporary Easement”) over, under and across that part of the tract of land legally described on Exhibit A, in the City of Fairmont, Martin County, Minnesota, as legally described on Exhibit C, which is attached hereto and incorporated by reference (the “Temporary Easement Area”).

The Temporary Easement shall expire no later than the earlier of (a) two years following the date on which the contractor hired by the City to complete the Grantee work first conducts work within the Permanent Easement Area or Temporary Easement Area, or (b) three (3) years from the date of this Agreement.
3. The Permanent Easement Area and Temporary Easement Area described above are depicted together on the certificate of survey, Exhibit D, which is attached hereto and incorporated herein by reference.

4. The Grantor states and hereby covenants that the Grantor is the lawful owner of the above-described real property, is lawfully seized and possessed of said real property, and that the Grantor has good and lawful right to grant the Permanent Easement and Temporary Easement described herein.

5. The Grantee shall have the right to construct, excavate, grade, inspect, install, remove, demolish, operate, maintain, place, replace, reconstruct, improve, enlarge and repair, as it may find reasonably necessary public trail facilities and improvements, and such other improvements appurtenant thereto, in the Permanent Easement Area described herein.

6. The Grantee and its employees, agents, permitees and licensees shall have the right of ingress and egress to and from the Permanent Easement and Temporary Easement areas at all times and without notice to Grantor by such route, in the judgment of the Grantee, as shall occasion the least practical damage and inconvenience to the Grantor.

7. The Grantee shall have the right to trim, remove and keep the Permanent Easement Area clear of all buildings, structures, roots, shrubbery, trees, bushes, undergrowth and all other obstructions that may interfere with or endanger the Grantee's exercise of any of the rights pursuant to this Permanent Easement.

8. The Grantor shall not erect, construct or locate in the Permanent Easement Area any new structure or object that was not in existence on the date of this Permanent Easement, which would prevent the Grantee's reasonable access to the Permanent Easement and Temporary Easement areas or prevent the public's full enjoyment of the rights granted hereunder, without the written consent of the Grantee.

9. The Grantee shall restore any and all disturbed areas within the Permanent and Temporary Easement areas back to as close to original condition as, in Grantee's judgment, is reasonably practicable given the rights granted hereunder.

10. The respective parties hereto, and all covenants shall apply to and run with the land.

11. This Permanent Easement shall be recorded as soon as practicable following its execution with the understanding that the Grantee has complete and absolute sole ownership, use and control of the public trail facilities and improvements constructed in the Permanent Easement Area in accordance with the grant of rights conveyed herein.

12. Grantor and Grantee agree to correct any legal descriptions contained herein if there is a mistake discovered, including any mistakes or discrepancies revealed by an accurate survey of the property identified herein.
IN WITNESS WHEREOF, the parties have hereunto executed this document the day and year first above written.

GRANTOR:

TLC PROPERTIES, INC.

By:  

Brent McCoy, Its President

Mark D. DeVore Vice-President

STATE OF  

COUNTY OF  

The foregoing instrument was acknowledged before me this __th day of __, 2020, by Brent McCoy, as President of TLC Properties, Inc., a corporation under the laws of the State of Louisiana, Grantor.

Mark D. DeVore

Notary Public
GRANTEE:

CITY OF FAIRMONT, MINNESOTA

By:

Deborah Foster, Its Mayor

ATTEST:

By:

Patty Monsen, Its City Clerk

STATE OF MINNESOTA )
) ss.
COUNTY OF MARTIN )

The foregoing instrument was acknowledged before me this ___ day of ___________, 2020, by Deborah Foster, as Mayor, and Patty Monsen, as City Clerk, on behalf of the City of Fairmont, a municipal corporation under the laws of the State of Minnesota, Grantee.

________________________
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.,
525 Park Street, Suite 470
St. Paul, MN 55103
(651) 225-8840
EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

The real property referenced in this Permanent Easement is legally described as follows:

That part of the Southeast Quarter of the Southeast Quarter of Section 32, Township 103 North, Range 30 West and the Northeast Quarter of the Northeast Quarter of Section 5, Township 102 North, Range 30 West, Martin County, Minnesota, described as follows:

Commencing at the Southeast corner of said Section 32, thence on an assumed bearing of North 89 degrees 21 minutes 45 seconds West, along the south line of said Section 32, a distance of 112.02 feet to the intersection with the westerly line of a State of Minnesota Tract as recorded in Book 298 of Deeds, Page 86-88, said intersection being the point of beginning of the tract to be described; thence South 0 degrees 21 minutes 16 seconds East, along said westerly line, a distance of 101.64 feet to an iron monument; thence North 89 degrees 29 minutes 45 seconds West a distance of 715.78 feet to an iron monument located on the east right-of-way line of the now abandoned Chicago and Northwestern railroad; thence North 0 degrees 19 minutes 49 seconds West, along said east right-of-way line, a distance of 613.00 feet to an iron monument; thence North 78 degrees 09 minutes 36 seconds East, a distance of 679.04 feet to an iron monument located on the westerly line of said State of Minnesota Tract; thence South 0 degrees 21 minutes 16 seconds East, along said westerly line, a distance of 11.00 feet, thence South 34 degrees 02 minutes 40 seconds East, along said westerly line, a distance of 90.14 feet; thence North 0 degrees 21 minutes 16 seconds East, along said westerly line, a distance of 355.00 feet; thence South 89 degrees 38 minutes 44 seconds West, along said westerly line, a distance of 123.50 feet; thence northwesterly, along said westerly line on a tangential curve, concave to the northeast, having a radius of 60.00 feet, a central angle of 66 degrees 1 1 minutes, an arc distance of 69.31 feet; thence North 24 degrees 10 minutes 16 seconds West, tangent with said curve, along said westerly line, a distance of 35.99 feet; thence South 24 degrees 10 minutes 16 seconds East, along said westerly line, a distance of 80.00 feet; thence South 24 degrees 10 minutes 16 seconds East, along said westerly line, a distance of 35.99 feet; thence southeasterly, along said westerly line, on a tangential curve, concave to the northeast, having a radius of 140.00 feet, a central angle of 66 degrees 11 minutes, an arc distance of 161.72 feet; thence North 89 degrees 38 minutes 44 seconds East, tangent with said last described curve, along said westerly line, a distance of 123.50 feet; thence South 0 degrees 21 minutes 16 seconds East, along said westerly line, a distance of 136.29 feet to the point of beginning, containing 10.87 acres, subject to easements now of record in said county and state.
EXHIBIT B

LEGAL DESCRIPTION OF PERMANENT EASEMENT

A tract of land in the Southeast Quarter of the Southeast Quarter of Section 32, Township 103 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota described as follows:

Commencing at the Southeast Corner of said Section 32; thence North 89 degrees 19 minutes 35 seconds West, along the south line of the Southeast Quarter of said Section 32, a distance of 827.79 feet to the east right-of-way line of the now abandoned Chicago and Northwestern railroad; thence North 00 degrees 18 minutes 12 seconds West, along said abandoned east right-of-way line, a distance of 195.06 feet to the point of beginning; thence North 39 degrees 22 minutes 53 seconds East, a distance of 33.44 feet; thence North 57 degrees 04 minutes 48 seconds East, a distance of 241.93 feet; thence North 32 degrees 12 minutes 42 seconds East, a distance of 217.36 feet; thence North 75 degrees 58 minutes 49 seconds East, a distance of 345.11 feet to the westerly line of a State of Minnesota Tract as recorded in Book 298 of Deeds, Pages 86-88; thence North 34 degrees 01 minutes 50 seconds West, along the westerly line of said State of Minnesota Tract, a distance of 21.34 feet; thence North 00 degrees 20 minutes 25 seconds West, along said westerly line, a distance of 11.00 feet to the north line of a tract of land deeded to TLC Properties, Inc. and recorded and described in the Office of the County Recorder in Document No. 2004R-373524; thence South 78 degrees 11 minutes 15 seconds West, along said north line, a distance of 435.67 feet; thence South 32 degrees 12 minutes 42 seconds West, a distance of 183.41 feet; thence South 57 degrees 04 minutes 48 seconds West, a distance of 166.07 feet to said abandoned east right-of-way line; thence South 00 degrees 18 minutes 12 seconds East, along said abandoned east right-of-way line, a distance of 118.92 feet to the point of beginning.
EXHIBIT C

LEGAL DESCRIPTION OF TEMPORARY EASEMENT

A tract of land in the Southeast Quarter of the Southeast Quarter of Section 32, Township 103 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota described as follows: Commencing at the Southeast Corner of said Section 32; thence North 89 degrees 19 minutes 35 seconds West, along the south line of the Southeast Quarter of said Section 32, a distance of 827.79 feet to the east right-of-way line of the now abandoned Chicago and Northwestern railroad; thence North 00 degrees 18 minutes 12 seconds West, along said abandoned east right-of-way line, a distance of 195.06 feet; thence North 39 degrees 22 minutes 53 seconds East, a distance of 33.44 feet; thence North 57 degrees 04 minutes 48 seconds East, a distance of 241.93 feet; thence North 32 degrees 12 minutes 42 seconds East, a distance of 174.00 feet to the point of beginning; thence continuing North 32 degrees 12 minutes 42 seconds East, a distance of 43.36 feet; thence North 75 degrees 58 minutes 49 seconds East, a distance of 345.11 feet to the westerly line of a State of Minnesota Tract as recorded in Book 298 of Deeds, Pages 86-88; thence South 34 degrees 01 minutes 50 seconds East, along the westerly line of said State of Minnesota Tract, a distance of 31.93 feet; thence South 75 degrees 58 minutes 49 seconds West, a distance of 387.35 feet to the point of beginning.
EXHIBIT D

DEPICTION OF PERMANENT AND TEMPORARY EASEMENTS
PERMANENT EASEMENT DESCRIPTION
A tract of land in the Southeast Quarter of the Southeast Quarter of Section 32, Township 101 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota, described as follows:

Comencing at the southwest corner of said Section 32, thence North 90 degrees 10 minutes 15 seconds West, along the south line of the Southeast Quarter of said Section 32, a distance of 625.79 feet to the east right-of-way line of the new abandoned Chicago and North Western Railroad, thence North 90 degrees 10 minutes 15 seconds West, along and described by the west line of said abandoned railroad, a distance of 358.54 feet to the point of beginning, thence North 90 degrees 10 minutes 15 seconds East, along the north line of said abandoned railroad, a distance of 358.54 feet to the point of commencement.

Temporal Construction Easement Description:
A tract of land in the Southeast Quarter of the Southeast Quarter of Section 32, Township 101 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota, described as follows:

Comencing at the southwest corner of said Section 32, thence North 90 degrees 10 minutes 15 seconds West, along the south line of the Southeast Quarter of said Section 32, a distance of 625.79 feet to the east right-of-way line of the new abandoned Chicago and North Western Railroad, thence North 90 degrees 10 minutes 15 seconds West, along and described by the west line of said abandoned railroad, a distance of 358.54 feet to the point of beginning, thence North 90 degrees 10 minutes 30 seconds East, a distance of 203.78 feet to the point of beginning.
STATEMENT: On February 3, 2020, the City Council attended a work session entitled Good Governance Tips and Open Meeting Law Refresher presented by Pamela Whitmore, a Collaboration and Mediation Manager from the League of Minnesota Cities. During the work session, it was agreed upon that the Council needs to exercise rules of process. As a result of that meeting, James R. Maynard III, sent the Mayor a letter addressing that subject. Attached is the letter for discussion.

In addition, the Council was open to continuing their discussions with Pam Whitmore. The first available time Ms. Whitmore has on her schedule would be May 18, 2020. Council should determine if this date works and if so, what time.

MOTION:

VOTE REQUIRED:

ATTACHMENTS:
1. Letter dated February 7, 2020 addressed to Mayor Deb Foster from James R. Maynard III
Dear Mayor Foster:

After viewing the recording of the City Council workshop of Monday, February 3, it seems to me that it would be useful to explain to you what the rules of order that the City has adopted call for from the Councilmembers and yourself at meetings. This is the same thing that Pamela Whitmore, from the Minnesota League of Cities, called "rules of process".

This discussion is based on the 11th edition of Robert's Rules of Order Newly Revised, referred to as RONR 11, and the city charter.

Before I begin, I should note that I have been serving organizations large and small as parliamentarian for over forty years, and that I earned a Professional Registered Parliamentarian certificate from the National Association of Parliamentarians. This requires an extensive examination, with 300 questions out of a pool of 1200, as well as a two-day qualification course dedicated to the practical aspects of serving as a parliamentarian.

Debate (which, in parliamentary parlance, simply means discussion of a question) is governed by a short set of rules designed to keep discussions on track and emotions from running high. Those rules can be found in section 43 of RONR 11, beginning at the bottom of page 391. Stated briefly, they are:

- Do not speak until recognized by the chair. One should especially never interrupt another member except in very narrow circumstances.
- Those speaking need to stick the subject of the current discussion.
- The measure being discussed, not the member doing the discussing, is the subject of debate. Personalities must never be brought into the discussion, and another's motives must not be called into question.
- Similarly, talk about a member's statement or action, not the member themselves. There's a world of difference between "you're wrong" and "your statement is incorrect".
• Do not speak adversely of an action taken in the past unless that action is being discussed in the context of a motion that would change or revoke it if adopted.
• All comments should be addressed through the chair.
• As much as possible, using another councilmember's name should be avoided.

In practice, especially in a small board such as the Council, these rules are often relaxed. When there is no controversy, there is no need for the formality that is designed to avoid it. When things get testy, though, the rules should be more strictly followed to ensure that disagreements do not turn personal.

Council is bound by these rules by its adoption of Robert's Rules of Order. As Ms. Whitmore said, though, it would be a good idea for the Council to explicitly agree together to follow them so that all may count on a common basic level of courtesy.

It is both the chair's (in the case of the Fairmont City Council, the Mayor's) power and duty to keep debate during meetings orderly. If a member breaks the rules, the mayor should interrupt and remind them of it, and if they do not stop, take other measures as may be permitted by law to restore order.

One other concern that was raised at the meeting is that RONR 11 is too complex for the purposes of a city council. It is certainly a large work, but the good news is that the vast majority of it does not apply to the Council. The Council does not need to worry about how to merge with another society or how to organize an annual convention of a national body. The book is so large precisely because it does cover every conceivable parliamentary need.

I would recommend a companion volume, Robert's Rules of Order Newly Revised IN BRIEF. It covers the topics that most commonly arise in regular groups, and is a much more approachable work, of comparable length to other works that have been suggested to the council. The title is almost longer than the book!

In short, the council has already adopted rules that will serve well to tamp down the acrimony that has been a problem in the past. The only real change is that the members should follow the rules and be called on it if they don't.

If you have any questions, I'll be happy to discuss them with you or any of the Council members.

Sincerely,

James R. Maynard III