

# FAIRMONT CITY COUNCIL AGENDA

Monday, April 10, 2023, 5:30 p.m.

1. **Roll Call/Determination of Quorum**
2. **Pledge of Allegiance**
  - 2.1 Administration of Oath of Office (03)
3. **Approval of Agenda**
4. **Recognition/Presentations**
  - 4.1 Proclamation - Child Abuse and Neglect Prevention Month (04)
  - 4.2 Presentation - One Watershed One Plan (06)
  - 4.3 Public Works Building Report (07)
5. **Public Discussion/Comment** (Individual comments are limited to 3 minutes) (08)
6. **Consent Agenda** (Items removed from consent will be placed at the end of the items under new business)
  - A. **Minutes**
    - 6.A.1 Regular Meeting, March 27, 2023 (09)
  - B. **Check Registers**
  - C. **Other**
    - 6.C.1 Event Permit-Celestial Discs, The Tournament at the End of The Universe (12)
7. **Public Hearings**
8. **Old Business**
9. **New Business**
  - 9.1 Adopt a Drain Program (15)
  - 9.2 2023 Council Liaison Assignments (29)

9.3	Award Improvement Contract 2023-B: 2023 Seal Coat Projects	(30)
9.4	Western Area Power Administration Contract Approval	(32)
9.5	Declaring Public Right of Way	(39)
<b>10.</b>	<b>Council Discussion</b>	
10.1	Hire a New Owners Representative	(43)
<b>11.</b>	<b>Staff/Liaison Reports</b>	
A.	Public Works	
B.	Finance	
C.	City Administrator	
D.	Mayor/Council	
	Hasek – PUC	
	Kawecki – Planning Commission	
	Maynard – FEDA	
	Miller - FEDA	
<b>12.</b>	<b>Adjournment</b>	



Fairmont City Council  
April 10, 2023

Agenda Item: 2.1

**From:** Cathy Reynolds, City Administrator  
**To:** Mayor and City Council

**Subject:** Administration of Oath of Office

**Policy/Action Requested:** City Clerk will administer the Oath of Office to Randy Lubenow, the newly appointed Ward 3 Council Member

**Vote Required:** \_\_\_\_ Simple Majority      \_\_\_\_ Roll Call

**Recommendation:**

**Overview:**

At the March 27, 2023 city council meeting, Randy Lubenow was appointed to fill the position of Ward 3 City Council Seat until the next City General Election, which will be November 5, 2024. Randy Lubenow will be sworn in prior to any business being conducted.

**Budget Impact:** N/A

**Attachments:**

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



Fairmont City Council  
April 10, 2023

Agenda Item: 4.1

**From:** Mayor Lee C. Baarts  
**To:** City Council

**Subject:** Proclamation – Child Abuse and Neglect Prevention Month

**Policy/Action Requested:**

**Vote Required:** \_\_\_ Simple Majority      \_\_\_ Roll Call

**Recommendation:**

**Overview:**

Mayor Lee C. Baarts will proclaim the the month of April 2023 as Child Abuse and Neglect Prevention Month in the City of Fairmont.

**Budget Impact:** N/A

**Attachments:** Proclamation

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



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

Phone (507) 238-9461

Fax (507) 238-9469

## PROCLAMATION

*WHEREAS, children, Minnesota's most precious resource, must be guaranteed their health, wellbeing and protection; and,*

*WHEREAS, thousands of Minnesota children are affected by child abuse and neglect each year, often causing lasting psychological, emotional, and physical effects; and,*

*WHEREAS, all families can benefit from strong support systems and resources in the face of these challenges, and as parents, friends, neighbors, and fellow human beings, keeping our kids safe is among our highest priorities; and,*

*WHEREAS, although intervening in the lives of these children and their families is an important responsibility at all levels of government, preventing abuse and neglect is a share obligation; and,*

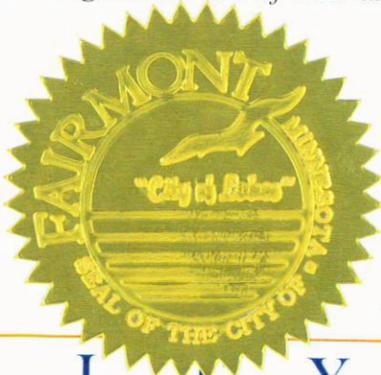
*WHEREAS, effective child abuse prevention activities succeed because of the partnerships created between child welfare professionals, education, health, community and faith based organizations, businesses, law enforcement agencies and families; and,*

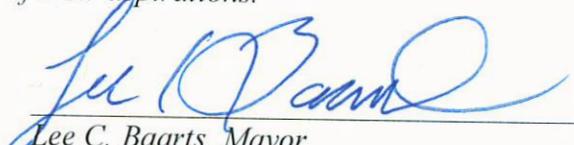
*WHEREAS, our state's enduring commitment to prevent child abuse and neglect demands that individuals and communities partner together to support parents in raising their children in a safe, nurturing society.*

*NOW THEREFORE, I, Lee C. Baarts, Mayor of the City of Fairmont, do hereby proclaim the month of April 2023 as:*

### **CHILD ABUSE AND NEGLECT PREVENTION MONTH**

*in the City of Fairmont, Minnesota, and call upon all individuals and communities to join in the work of uplifting and safeguarding our youngest individuals and ensuring they are limited by nothing but the size of their dreams and the range of their aspirations.*



  
\_\_\_\_\_  
Lee C. Baarts, Mayor



Fairmont City Council  
April 10, 2023

Agenda Item: 4.2

From: Tyler Cowing, Civil Engineer  
To: Mayor and City Council

Subject: One Watershed One Plan Presentation – Martin County SWCD

Policy/Action Requested:

Vote Required: \_\_\_ Simple Majority      \_\_\_ Roll Call

Recommendation:

Overview:

Martin County Soil and Water Conservation District will be providing an update on the Board of Soil and Water Resource’s One Watershed, One Plan implementation for the Blue Earth River Watershed.

Budget Impact: None

Attachments: None

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



Fairmont City Council  
April 10, 2023

Agenda Item: 4.3

**From:** Cathy Reynolds, City Administrator  
**To:** Mayor and City Council

**Subject:** Public Works Building Report

**Policy/Action Requested:**

**Vote Required:** \_\_\_\_ Simple Majority      \_\_\_\_ Roll Call

**Recommendation:**

**Overview:**

Staff has prepared a final presentation on the Public Works Building project and budget that will be presented during the meeting.

**Budget Impact:** N/A

**Attachments:**

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



Fairmont City Council  
April 10, 2023

Agenda Item: 5

**From:** Cathy Reynolds, City Administrator

**To:** Mayor and City Council

**Subject:** Public Discussion/Comment

**INDIVIDUAL COMMENTS ARE LIMITED TO 3 MINUTES**

**Overview:**

Prior to regular business, is there any public discussion/comment?

**Budget Impact:** N/A

**Attachments:** N/A

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



Fairmont City Council  
April 10, 2023

Agenda Item: 6.A.1

From: Patricia J. Monsen, City Clerk  
To: Mayor and City Council

Subject: Council Minutes from Regular Meeting on March 27, 2023

Policy/Action Requested: To Approve City Council Minutes from March 27, 2023

Vote Required:  Simple Majority  Roll Call

Recommendation: Approval

Overview:

Budget Impact: N/A

Attachments: City Council Minutes Regular Meeting, March 27, 2023

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

The minutes of the Fairmont City Council meeting held on Monday, March 27, 2023, at the City Hall Council Chambers.

Mayor Lee Baarts called the meeting to order at 5:30 p.m.

Council Members Wayne Hasek, Britney Kaweck, Jay Maynard and Michele Miller were present. Also in attendance: City Administrator Cathy Reynolds, Finance Director Paul Hoye, City Clerk Patricia Monsen, City Attorneys Robert Scott and David Assaf.

Council Member Hasek made a motion to approve the agenda as presented. Council Member Miller seconded the motion and the motion carried.

Mayor Baarts recognized the following employees for their years of service: Paul Hoye, Finance Director-15 years; and Karla Sauck, Liquor Store employee-10 years.

During Public Comment, Resident Shea Ripley, Owner of Building Blocks Child Care asked the city for assistance in completing the Lakeview child care area to provide 99 additional spaces for child care and to help reduce the child care shortage in Fairmont. Resident Ken Craig spoke urging the city council not to approve the rezoning of the property on Margaret Street. Resident Wayne Kahler thanked the City for their support of the Lion's Club Fly-in Breakfast on June 25, 2023 and urged citizens to come participate. Residents Darlene Lutz and Rich Bradley spoke in support of Terry Riggs for Ward 3. Residents Todd Smith, Vicky Schulte, Alejandro and Non-residents Garth Carlson and Johnathan Melendez spoke in support of Randy Lubenow for Ward 3. Randy Lubenow asked the council for their support in appointing him to Ward 3.

Council Member Miller made a motion to approve the consent agenda. Council Member Maynard seconded the motion and the motion carried. Items on the consent agenda were: Minutes from the March 13, 2023 City Council meeting; March 2023 Accounts Payable; Event Permit for Fairmont Lions Club, Lions Fly-in Breakfast at the Fairmont Airport on June 25, 2023; Authorization to purchase a pickup for the Street Department and Authorization for the purchase of a used 2019 Vermeer SC802 Stump Grinder.

Council Member Kaweck made a motion to approve the appointment of Randy Lubenow to fill the vacant Ward 3 City Council Seat. Council Member Maynard seconded the motion. On roll call: Council Members Kaweck and Maynard voted aye. Council Members Hasek and Miller voted nay. Mayor Baarts voted aye and declared said motion passed.

Discussion was held regarding hiring an Owners Representative for the Community Center project. Council Member Kaweck requested that the discussion be put back on the April 10, 2023 agenda.

At 6:19 p.m., Council Member Maynard made a motion to go into closed session pursuant to Minnesota Statute 13D.05, Subd. 3(b) to discuss the pending litigation, Minnesota Department of Natural Resources vs. City of Fairmont and Troy Menke. Council Member Miller seconded the motion and the motion carried.

Council went into closed session at 6:25 p.m. At 7:02 p.m., Council Member Maynard made a motion to return to Open Meeting. Council Member Hasek seconded the motion and the motion carried.

A motion was made by Council Member Miller, seconded by Council Member Maynard and carried to adjourn the meeting at 7:03 p.m.

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Lee C. Baarts, Mayor

ATTEST:

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Patricia J. Monsen, City Clerk



Fairmont City Council  
April 10, 2023

Agenda Item: 6.C.1

From: Patricia J. Monsen, City Clerk  
To: Mayor and City Council

Subject: Event Permit – Celestial Discs-The Tournament at the End of the Universe, May 20, 2023

Policy/Action Requested: Motion to approve the Event Permit for Celestial Discs to hold a disc golf tournament at Cedar Creek Park on May 20, 2023.

Vote Required:  Simple Majority  Roll Call

Recommendation: Approval

Overview:

Celestial Discs of Estherville, Iowa has made application for an Event Permit to hold a disc golf tournament at Cedar Creek Park on May 20, 2023.

Budget Impact: N/A

Attachments: Event Permit Application

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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: 3/15/2023

Permit Fee: \$15.00

Event: The Tournament at the End of the Universe

Sponsoring entity: Celestial Discs

Address: 14 South 8th Street, Estherville, Iowa 51334

Maximum estimated number of persons expected to attend at any one time: 90

Event coordinator(s): Emily and Eric Mullaly

Contact Info: 712.209.1642 Phone #

celestialdiscs@gmail.com E-mail

Primary contacts (during event):

Name: Emily Mullaly

Name Eric Mullaly

Cell#: 712.209.1642

Cell# 712.209.1592

E-mail: craftyheartsart@gmail.com

E-mail: celestialdiscs@gmail.com

Event Start: Day/Date May 20, 2023 Time: 9:00 am

Event End: Day/Date May 20, 2023 Time: 6:30 pm

Setup: Day/Date May 20, 2023 Start time: 8:00 am End Time: 9:00 am

Teardown: Day/Date May 20, 2023 Start time: 6:30 pm End Time: 7:00 om

- Type and description of the event and a list of all activities to take place at the event.  
Disc golf tournament - setup, checkin, players meeting, disc golfing, announcing winners, picking out items won, cleanup  


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- 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.  
Cedar Creek Disc Golf Course  


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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.  
We will have water available for people to drink to prevent dehydration and will bring garbage bags and takeaway the garbage
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: \_\_\_\_\_
8. Will the event restrict or alter normal parking, vehicular traffic or pedestrian traffic patterns?  Yes;  No We don't think so.  
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 *Eric Mullaly* Title Owner Celestial Discs Date 3/15/2022

If you would like your event published on the City's website/Community Calendar, please indicate:  Yes;  No Please mention sign up is at [discgolfscene.com](http://discgolfscene.com)  
*applicant mailing payment - 3/29/23*

Office Use Only			
<b>\$15.00 Fee Paid</b>	Date: <input checked="" type="checkbox"/> Yes; <input type="checkbox"/> No	Received by:	
<b>Requires Council Approval</b>		Council Meeting Date:	Action:
<b>City Administrator Approval</b>	Yes	<i>April 10, 2023</i>	
		No	Date

- Permit distribution:
- City
  - Applicant
  - Police
  - Parks/Streets
  - Other



Fairmont City Council  
April 10, 2023

Agenda Item: 9.1

**From:** Hannah Neusch, Water Resources Technician

**To:** Mayor and City Council

**Subject:** Adopt-a-Drain Program

**Policy/Action Requested:** Motion to approve the contract with Hamline University for the Adopt-a-Drain program.

**Vote Required:**  Simple Majority  Roll Call

**Recommendation:** Approval

**Overview:**

Adopt-a-drain partners with cities to protect local waters. The program mobilizes residents to take regular, sustained action to prevent localized flooding and reduce runoff pollution by clearing storm drains in their neighborhood. Participants sign up for the program online at Adopt-a-Drain.org to create an account that allows them to adopt and name storm drains and report the amount of debris they collect. It engages residents to adopt storm drains to keep neighborhoods clean and protect waterways. Aligned with best practices in social science, the MS4-compliant program partners with cities to inspire stewardship and behavior change to prevent run-off pollution and reduce localized flooding. In our unique situation it also helps to protect the integrity of our drinking water by removing debris, trash, and sediment that would otherwise be washed down the storm drain, untreated, and into our lakes. An overview of the program is attached.

The total cost for 2023 would be \$2952.50, which includes storm drain GIS integration, basic website customization within the Adopt-a-drain website, and graphic design to integrate us cohesively into the program. These all total \$1,000 and are all one-time fees. Starting in 2024 the Annual fixed cost would be \$934.09, this is calculated a \$0.07 per resident, using the figure of 10,487 residents. Covered by this fee is a year-end summary and evaluation report which will help with regulatory MS4 annual reporting. The only variable costs are population increases/decreases and the cost of providing a new participant with a branded yard sign and welcome packet which totals approximately \$15 per participant.

The Fairmont Lakes Foundation has agreed to partner with the City on this project by contributing \$500 per year towards the costs of this program.

**Budget Impact:**

This program can be paid for utilizing the Stormwater Fund.

**Attachments:**

1. Adopt-a-Drain Overview Handout
2. Contract with Hamline University for the Adopt-a-Drain Program

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

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



## Join a research-based program making significant impacts across the country

### What is the Adopt-a-Drain program?

Adopt-a-Drain engages local residents in water-friendly practices by asking them to claim responsibility for a storm drain in their neighborhood and commit to keeping it clear of debris to protect local waterways. Participants sign up for the program online at [Adopt-a-Drain.org](https://www.adopt-a-drain.org) where they can adopt and name drains, report the amount of debris they collect, and share stories and photos via Facebook, Twitter, and Instagram.

Adopt-a-Drain is a project of Hamline University in Minnesota. It has been implemented in over 85 communities of all sizes across the United States.



*There are more than 10,600 adopters in Minnesota helping to keep our water clean!*

### Benefits of joining the Adopt-a-Drain program:

- Membership in a program that helps meet public participation and involvement requirements for stormwater permits.
- We take care of program administration such as managing the website and providing customer and administrative support to partner organizations and participants.
- Access to marketing materials and campaigns.
- Our sophisticated and carefully-designed website can be used to educate resident on stormwater issues as well as how to safely collect and remove trash, leaves, and debris from around storm drains.
- Downloadable lists of residents in your area interested in water issues.
- Customizable print and electronic resources for promoting Adopt-a-Drain to residents.
- Delivery of informational packets and customized yard signs to participants.
- Reduced flood risk and improved water quality in your community through mobilizing residents.

## Research-based engagement

Designed according to best practices in environmental psychology and social marketing, the Adopt-a-Drain program is ten years in the making. Successive pilots, focus groups, and participant surveys honed the program and marketing materials into an effective tool for public outreach and engagement. More than fifty cities and watershed districts participated in the design process to create a system that meets the needs of multiple MS4 partners.

## Bring Adopt-a-Drain to your community

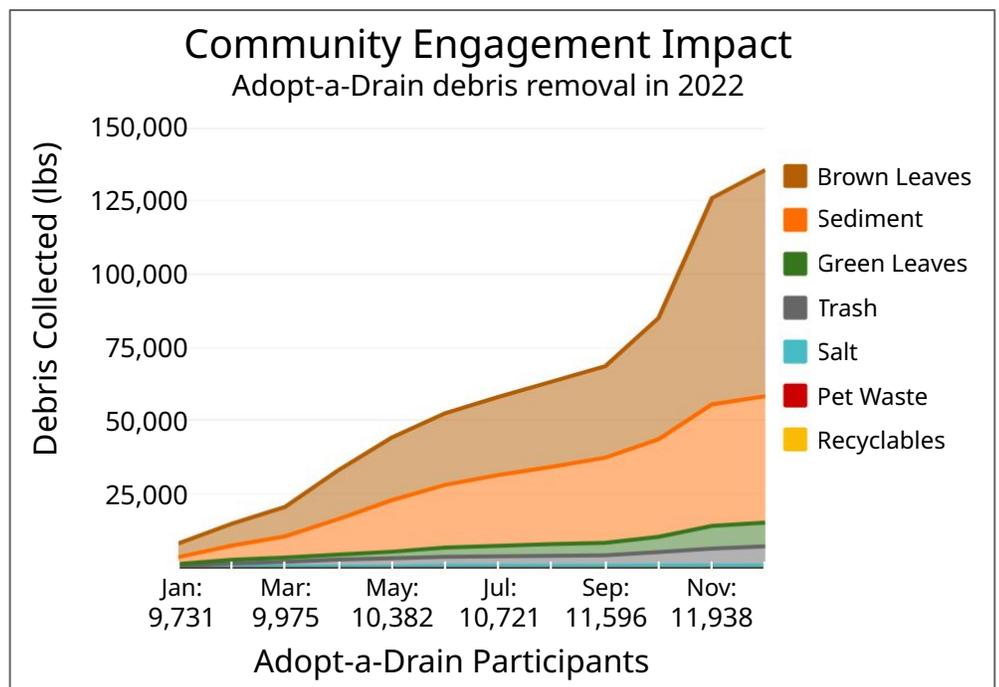
We partner with cities, watershed districts, and community organizations to implement the program in their area to prevent flooding and protect local waterways. Implementing the Adopt-a-Drain program is an affordable and effective tool for reducing localized flooding and water pollution.



## Measurable Impacts

Data collection that allows you to quantify the impact of pollution reduction and citizen engagement is what distinguishes Adopt-a-Drain from other drain adoption programs around the country. We built an effective and easy-to-use web-based tool for MS4s that allows administrators to:

- View participation and impacts over time
- Sort data by geographic region down to the subwatershed level
- Sort debris removed by pollution type
- Convert from gallons to pounds
- Report on behalf of participants and edit reports to correct errors
- Export data for summary and analysis



**AGREEMENT NO. C2023-02-09  
BETWEEN  
HAMLINE UNIVERSITY  
CENTER FOR GLOBAL ENVIRONMENTAL EDUCATION (“CGEE”)  
AND  
CITY OF FAIRMONT  
FOR  
Adopt-a-Drain Program  
Membership Agreement**

THIS AGREEMENT (“**Agreement**”) is made by and between **Hamline University Center for Global Environmental Education (“CGEE”)** and **the City of Fairmont, Minnesota (“Organization” or “City”)**.

**1. PURPOSE OF AGREEMENT.**

This Agreement provides the Organization with membership in the CGEE Adopt-a-Drain program. The Adopt-a-Drain program provides tools to residents mobilized by the Organization (herein such mobilized residents are referred to as “Participants”). The Participants work within a targeted geographic area established by the Organization to take regular and sustained actions to manage localized flooding risks and reduce runoff pollution by clearing debris obstructing storm drains in the catch basin related to the Participants’ geographic area. The Organization’s Participants are volunteers of the Organization permitted to sign up for the Adopt-a-Drain program online at [Adopt-a-Drain.org](https://www.adopt-a-drain.org) and provide services to the City in the context of the City’s program. Participants are permitted to create an Adopt-a-Drain program account that allows them to adopt and un-adopt drains, report the amount of debris they collect, and share their Adopt-a-Drain program experiences and photos via social media, e.g., Facebook, Twitter, and Instagram.

**2. TERM OF AGREEMENT.**

The term of this Agreement shall begin when fully executed by the Parties and shall terminate on **December 31, 2023** (“Termination Date”), unless amended by written agreement of the Parties or terminated earlier pursuant to the provisions hereof.

**3. MEMBERSHIP BENEFITS AND OBLIGATIONS.**

**3.1 Membership Benefits**

1. Inclusion of catch basin geographic information system (“GIS”) data submitted by the Organization on the Adopt-a-Drain.org website.
2. Access to an administrative portal with data regarding Participants and Participants’ reported pollution that allows the Organization’s authorized admins, not to exceed five (5), to view participation impacts over time; sort data by geographic region; sort data according to pollution type; convert data from gallons to pounds; create reports of pollution on behalf of Participants; edit reports to correct mistakes; export reports to .csv to summarize and analyze Participants’ submitted data.
3. Access by the Organization to a downloadable list of Participants who sign up for the Adopt-a-Drain program related to Organization.
4. Access for the Organization to online design files for creating branded, customizable marketing materials and educational resources to promote the Adopt-a-Drain program to Participants and catch basin area residents and sustain the Organization’s participation in the Adopt-a-Drain program.

5. Access for the Organization to online design files for creating a safety "tip card" that outlines basic safety and best-practices for clearing drains and sorting and disposing of waste.
6. Access for the Organization to customizable social media posts.
7. Ability for the Organization to purchase customized materials such as yard signs, window clings and other materials.
8. Access for the Organization to the Adopt-a-Drain program's member photo resources.

### **3.2 Membership Obligations**

1. Adherence to this Agreement.
2. Adherence to the Terms of Use set forth online at [Adopt-a-Drain.org](http://Adopt-a-Drain.org) including, but not limited to, the use of the Adopt-a-Drain program materials and logo.
3. Facilitate or provide the Organization's catch basin GIS data, and data updates, in the Adopt-a-Drain program requested format for inclusion on the site.
4. Payment of annual membership dues as invoiced.
5. Payment for signs and print materials, as invoiced, according to the pricing sheet attached hereto as Exhibit C.
6. Payment for requested services, on an hourly basis, as invoiced, according to the pricing sheet attached hereto as Exhibit C.

## **4. DATA.**

### **4.1 Definitions**

**"Authorized Persons"** means an individual or individuals with an authorized business need to access Data under this Agreement to perform the obligations as set forth herein.

**"Data"** means all information provided by the Organization, including but not limited to Participants, under this Agreement and information which CGEE creates or collects in the performance of this Agreement.

**"Personally Identifiable Data"** ("PID") means information that (a) identifies an individual or that may be used to track, locate or identify an individual or (b) is related to an identified or identifiable individual.

### **4.2 Data Ownership**

All Data will be jointly owned by the Organization and CGEE. The Parties agree that no warranty of any kind is given by either Party with respect to the Data.

### **4.3 Data Use**

The Parties shall only use, transmit, distribute, modify, reproduce, display, and store Data for the purposes set forth in this Agreement. The Parties shall not use Data or derivative information for the benefit of the Parties or other third parties, and will not share, publish, sublicense, resell or disclose to third parties or publicly set forth in this Agreement or as required by law.

### **4.4 Data Security**

The Parties must be and remain in compliance in all respects with all applicable federal, state, local or industry laws, rules and regulations relating to data privacy and security, and agree to remain in compliance with such laws in all jurisdictions in which CGEE presently or will be doing business under this Agreement.

CGEE shall maintain and enforce appropriate physical, technical, policy and administrative safeguards, precautions and measures (including on CGEE's computer

systems and networks) where Data is, or can be, accessed, stored or transmitted, to protect the Data from loss, misuse, alteration, corruption, unauthorized access, or unauthorized acquisition whether at rest or in-transit.

**5. PAYMENT.**

Organization shall pay annual membership dues to CGEE as set forth in the pricing sheet attached hereto as Exhibit A. In addition, in the event that Organization requests goods and services from CGEE under this Agreement, including, but not limited to, the goods and services described in section 3 of this Agreement, CGEE will be compensated and/or reimbursed based on the fees and costs outlined in the pricing sheet attached hereto as Exhibit A. The Parties agree that this Agreement is not to exceed **\$3,200**, unless otherwise agreed to by the Parties in a written amendment.

**5.1 Payment Procedures.**

CGEE may submit invoices to the Organization as frequently as once per month including, but not limited to, work in progress, for partial payment for work completed to date. Payment shall be made by the Organization to CGEE within thirty (30) calendar days of the Organization’s receipt of CGEE’s invoice.

**Deliver all invoices and invoice/billing notices under this Agreement to:**

<b>If to Organization:</b>	<b>If to CGEE:</b>
Hannah Neusch City of Fairmont 100 Downtown Plaza Fairmont, MN 56031 (507) 238-3953 <a href="mailto:hneusch@fairmont.org">hneusch@fairmont.org</a>	Brinkley Prescott Hamline University 1536 Hewitt Ave, MS-A1760 St. Paul, MN 55104 (651) 523-2591 <a href="mailto:bprescott01@hamline.edu">bprescott01@hamline.edu</a>

**5.2 Addresses for Notices and Deliverables**

All notices, requests, and other communications under this Agreement shall be in writing and delivered to the following addresses (or such other addresses as that Party may designate in writing)

<b>If to Organization:</b>	<b>If to CGEE:</b>
Hannah Neusch City of Fairmont 100 Downtown Plaza Fairmont, MN 56031 (507) 238-3953 <a href="mailto:hneusch@fairmont.org">hneusch@fairmont.org</a>	Tracy Fredin Hamline University 1536 Hewitt Avenue Saint Paul, MN 55104 (651) 523-3105 tfredin@hamline.edu  Brinkley Prescott Hamline University 1536 Hewitt Ave, MS-A1760 St. Paul, MN 55104 (651) 523-2591 <a href="mailto:Bprescott01@hamline.edu">Bprescott01@hamline.edu</a>

**6. NO JOINT UNDERTAKING.**

The relationship of the Parties shall be that of independent Parties. Nothing in this Agreement shall be construed to make or render the Parties hereto partners, joint ventures, or participants in any joint undertaking whatsoever.

**7. NO THIRD-PARTY BENEFICIARIES.**

This Agreement is entered into solely for the mutual benefit of the Parties hereto. This Agreement is not entered into with the intent that it shall benefit either Party's agents, assigns, consultants or contractors, and no such other person or entity shall be a third-party beneficiary of this Agreement. Without in any way limiting the foregoing, Participants are not beneficiaries to this Agreement.

**8. INDEMNIFICATION.**

Each Party shall, to the fullest extent permitted by law, defend, hold harmless and indemnify the other Party and its affiliates, trustees, directors, officers, members, partners, principals, employees, volunteers, participants, and agents against any and all claims, demands, causes of action or damages, including attorneys' fees and costs (collectively, "Claims"), caused by the performance of the obligations undertaken in connection with this Agreement, including but not limited to (i) any breach of this Agreement; and (ii) any actual or alleged injury or death to a person and/or loss of or damage to property caused directly or indirectly, wholly or in part by a Party, its officers, directors, trustees, agents, contractors, employees, representatives, and Participants. This indemnity does not apply to any Claims arising from the negligence or intentional misconduct of the Indemnified Party. Nothing in this Agreement shall be construed to waive any immunities or limitations to which the City is entitled under Minn. Stat. Chapter 466 or otherwise.

**9. INSURANCE.**

CGEE maintains general liability, workers' compensation coverage as required in the State of Minnesota for Hamline University employees, and commercial automobile liability insurance coverages. CGEE shall at CGEE's expense maintain in effect bodily injury liability insurance and property damage insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04 or the amount stated in CGEE's insurance certificate, whichever is greater. The City shall be named as an additional insured. CGEE shall provide a certificate of insurance indicating this coverage and listing the Organization as additionally insured commensurate with execution of this Agreement.

**10. TERMINATION.**

Either Party may unilaterally terminate this Agreement at its sole discretion upon seven (7) calendar days written notice.

**11. ASSIGNMENT.**

This Agreement shall not be assigned in whole or in part by any Party without the prior written approval of the other Party.

**12. COMPLIANCE WITH LAW.**

The Parties to this Agreement shall comply with all federal, state, and local laws and ordinances.

**13. SEVERABILITY.**

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

**14. APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. The jurisdiction and venue of any action brought hereunder shall be in the District Court of Martin County.

**15. AUDIT.**

Throughout the term of this Agreement, and for a period of no less than three years from the Termination Date, each Party will keep and make available for each other's inspection and audit all records pertaining to any payments by the Organization and Participants to the Adopt-a-Drain program, including accounting records. The Parties shall furnish to each other copies of these records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the State Auditor's Office.

**16. AMENDMENT.**

This Agreement shall not be amended or modified except by mutual agreement of the Parties, in writing, and signed by the Parties hereto.

**17. ENTIRE AGREEMENT.**

This Agreement and any written attachments or Amendments hereto, constitutes the complete contractual agreement of the Parties and any oral representations or understandings not incorporated herein are excluded.

**18. TERMINATION OR END OF TERM.**

Upon termination of this Agreement, the Organization shall have thirty (30) calendar days to request, in writing, that CGEE provide the Organization with the most current Data, provided by the Organization, in its system, including any Participant information relevant to the Organization. Upon the Organization's written request, CGEE shall destroy or de-identify all remaining PID Data relevant to the Organization's Data in its possession.

**19. LIABILITY.**

Under no circumstances shall CGEE or the Adopt-a-Drain program herein be considered or construed as assuming or conveying any actual, operational, or physical control over or responsibility for any aspect of any infrastructure related to the Organization's or Participants' activities under this Agreement. CGEE or Hamline University shall have no liability for any damages sustained to any infrastructure related to any act or omission by the Organization or Participants related to this Agreement.

**20. FORCE MAJURE.**

Neither Party shall be held responsible for performance under this Agreement where such performance is prevented by acts or events beyond the party's reasonable control including, but not limited to, war, terrorism, cyberattacks, epidemics, pandemics, natural disasters, severe weather and storms, strikes, and other labor unrest, electrical supply disruptions, nuclear or other civil military emergencies, or acts of legislative, judicial, executive branches.

**21. SURVIVAL.**

Any provisions of this Agreement relating to Indemnification shall survive the termination or expiration of this Agreement. Section 4, Data, shall survive and remain in effect at all times Organization Data remains in CGEE's possession. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

## **22. GENERAL TERMS.**

- a. **RECITALS.** The recitals to this Agreement are made a part hereof and incorporated herein by reference.
- b. **VOLUNTARY AND KNOWING ACTION.** The Parties hereto, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- c. **AUTHORIZED SIGNATORIES.** The Parties hereto each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each Party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- d. **NOTICES.** All communications, demands, notices, or objections permitted or required to be given or served under this Agreement shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and addressed to the other party to this Agreement, to the address set forth in this Agreement, or if to a party not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the 10th day after the giving of such notice, such newly designated address shall be such address for the purpose of all communications, demands, notices, or objections permitted or required to be given or served under this License Agreement.
- e. **CUMULATIVE RIGHTS.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the Licensor or the Licensee is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.
- f. **DATA PRACTICES.** Notwithstanding any provision of this Agreement, the Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

- g. NO WAIVER. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- h. HEADINGS AND CAPTIONS. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- i. SURVIVABILITY. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of Licensor and Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

*[Remainder of page left intentionally blank]*

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having they representatives affix their signatures below.

**HAMLIN UNIVERSITY CENTER FOR  
GLOBAL ENVIRONMENTAL EDUCATION  
(CGEE)**

**CITY OF FAIRMONT**

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Exhibits:**

- Exhibit A: Scope of Work
- Exhibit B: Schedule
- Exhibit C: Budget

## **Exhibit A: Scope of Work**

Partnership will adhere to the use of the Adopt-a-Drain program materials and logo as laid out in the *Adopt-a-Drain Brand Standards and Marketing Guide*.

### **Task 1: Program Set Up**

- Import GIS data provided by the City to the Adopt-a-Drain website portal.
- Customize the website for the region.
- Do graphic design modifications for the region for integration into the program. This includes auditing print materials and customizing the messaging to meet the needs of the region.
- Set up customized electronic welcome on website.
- Provide the City with administrative access to the website.

### **Task 2: Program Management and Implementation**

- The Annual Site License Membership includes the technical application, access by the City to reports and data and to Adopt-a-Drain branded outreach materials, and the participant support noted under Task 4.
- Prepare and provide a summary evaluation and report at the end of the year.

### **Task 3: Marketing/Outreach**

- Consult, if requested, on tasks to manage and grow social media presence, for an additional hourly charge.
- Do additional marketing and outreach consultation, if requested, for an additional hourly charge.

### **Task 4: Direct Participant Support**

- Purchase/print and store signs, sign stakes, welcome letters, tip cards and envelopes for welcome packets.
- Regularly pull new participant data for welcome packets.
- Assemble and mail welcome packets to new participants in the Partnership service area.
- *As part of Annual Membership in Task 2:* Send reporting reminders to and answer questions from participants.
- Purchase additional welcome packet materials and assemble and mail additional packets, if requested, at the rates listed in Exhibit C: Budget.

## **Exhibit B: Schedule**

### **Calendar 2023**

*Contract Execution through December 31, 2023*

#### Program Set Up:

- City sends GIS data.
- Import GIS data provided by the City to the Adopt-a-Drain website portal.
- Customize website for the region.
- City sends white and color versions of eps logo.
- Set up customized electronic welcome on website.
- Make graphic design modifications for the City, for integration into the program; includes auditing print materials and customizing messaging to meet the needs of the region (i.e. modify road salt, organic pollution, water body and city names, safety instructions while maintaining Adopt-a-Drain brand standards.)
- Design signs for City that align with Adopt-a-Drain brand standards and reflect local character and geography.
- Give City administrative access to the website.

#### Program Management and Implementation:

- Once Contract Signed: Send invoice for site license annual membership
- June 2023: Send invoice for packet materials and shipping and handling
- December 2023: Send invoice for packet materials and shipping and handling
- December 2023/January 2024: Create and send end of year report.

#### Marketing/Outreach:

- Do marketing and outreach consultation, if requested, for an additional hourly charge.

#### Direct Participant Support:

- Purchase/print and store signs, sign stakes, welcome letters, tip cards and envelopes for welcome packets as needed.
- Regularly pull new participant data for welcome packets.
- Assemble and mail welcome packets to new participants in the City service area.
- Send reporting reminders to and answer questions from participants.

**Exhibit C: Budget****CALENDAR 2023**

Contract Execution through December 31, 2023

<b>FIXED-COST: ONE-TIME</b>	<b>Qty</b>	<b>Unit</b>	<b>Amt</b>	<b>COST</b>	
<b>Program Set Up</b>					
Set-up Fee: GIS data	4	Hours	\$100.00	\$400.00	Add \$100/ hr for special work (if needed).
Set-up Fee: Website Customization	3	Hours	\$100.00	\$300.00	Basic setup in the application.
Set-up Fee: Graphic Design	3	Hours	\$100.00	\$300.00	Basic design modifications for integration into the program.
Customized Electronic Welcome	1		NC	\$0.00	Included (no charge).
<b>FIXED-COST: ONE-TIME Subtotal</b>				<b>\$1,000.00</b>	

<b>FIXED-COST: ANNUAL</b>					
<b>Program Management and Implementation</b>					
Site License: Annual Membership	10,487	People	\$0.07	\$734.09	
Year-end Summary Evaluation & Report	4	Hours	\$50.00	\$200.00	
<b>Program Management and Implementation Subtotal</b>				<b>\$934.09</b>	
<b>Marketing/Outreach</b>					
Collaboration with CGEE Social Media	0	Hours	\$50.00	\$0.00	Social media outreach.
Consulting with CGEE Team	0	Hours	\$80.00	\$0.00	Addl outreach assistance.
<b>Marketing/Outreach Subtotal</b>				<b>\$0.00</b>	
<b>FIXED-COST: ANNUAL Subtotal</b>				<b>\$934.09</b>	

<b>PER-PARTICIPANT COST</b>					
<b>Direct Participant Support</b>					
Coroplast Signs	50	Pieces	\$2.50	\$125.00	Least expensive sign option. Includes stakes.
Welcome Packet Printed Materials	50	Sets	\$1.50	\$75.00	Envelope, welcome letter, tip card.
Welcome Packet/ Sign Distribution	50	Packets	\$11.00	\$550.00	Postage and handling.
<b>PER-PARTICIPANT COST Subtotal</b>				<b>\$750.00</b>	

<b>TOTAL</b>				<b>\$2,684.09</b>	
Indirect fee 10%				\$268.41	
<b>Grand Total</b>				<b>\$2,952.50</b>	



Fairmont City Council
April 10, 2023

Agenda Item: 9.2

From: Cathy Reynolds, City Administrator
To: Mayor and City Council

Subject: 2023 Council Liaison Assignments

Policy/Action Requested: Motion to approve the updated 2023 Council Liaison Assignments

Vote Required: X Simple Majority Roll Call

Recommendation: Approval

Overview:

The 2023 council liaison assignments were approved at the January 9, 2023 council meeting. With the resignation of Deb Foster and the appointment of Randy Lubenow to fill the Ward 3 vacancy the appointments need to be updated. The liaisons for the park board, HRA, Visit Fairmont, and the Board of Equalization are recommended for update by the Mayor due to the vacancy. The following appointments are recommended.

Table with 4 columns: Board/Commission, Council Liaison, Council Liaison, Council Liaison. Rows include Park Board (1), HRA (1), Visit Fairmont (1), and Board of Equalization (3) \*.

\*Liaisons for the Board of Equalization are required to attend training. All other council members are eligible to sit on the Board but do not need to attend the training.

Budget Impact: N/A

Attachments:

\*\*\*\*\*

Council Action: Date:



Fairmont City Council  
April 10, 2023

Agenda Item: 9.3

**From:** Tyler Cowing, Civil Engineer  
**To:** Mayor and City Council

**Subject:** Award Improvement Contract 2023-B: 2023 Seal Coat Projects

**Policy/Action Requested:** Approve Resolution 2023-16

**Vote Required:**   X   Simple Majority      \_\_\_\_\_ Roll Call

**Recommendation:** Approval

**Overview:**

A bid opening for the 2023 Sealcoat Projects was held on Monday, April 3, 2023 at 10:00 a.m. The city received three bids with Pearson Bros, Inc. being the low bidder at \$139,908.61. The engineer’s estimate was \$170,056.05. Staff is recommending awarding the bid to Pearson Bros, Inc.

**Budget Impact:** This project was budgeted as part of the 2023 improvement program. The engineer’s estimate was \$170,056.05 and the low bid received was \$139,908.61.

**Attachments:** Resolution 2023-16

\*\*\*\*\*

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

**RESOLUTION 2023-16**

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

**RESOLUTION ACCEPTING BID**

**2023 SEAL COAT PROJECTS – IMPROVEMENT CONTRACT 2023-B  
CITY OF FAIRMONT, MINNESOTA**

WHEREAS, pursuant to an advertisement for bids for the 2023 Seal Coat Projects, bids were received, opened, and tabulated according to law, and the following bids were received complying with the advertisement:

<b><u>BIDDER</u></b>	<b><u>AMOUNT OF BID</u></b>
Pearson Bros, Inc: Hanover, MN	\$139,908.61
Asphalt Surface Technologies: St. Cloud, MN	\$150,749.49
Allied Blacktop Company: Maple Grove, MN	Bid arrived after opening time

WHEREAS, it appears that Pearson Bros, Inc. of Hanover, Minnesota is the lowest responsible bidder.

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

1. The Mayor and Clerk are hereby authorized and directed to enter into the contract for the 2023 Seal Coat Projects – Improvement Contract 2023-B with Pearson Bros, Inc. of Hanover, Minnesota in the name of the City of Fairmont, for the improvements according to the plans and specifications therefore approved by the City Council and on file in the office of the City Clerk at a cost of \$139,908.61.
2. The City Clerk is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next lowest bidder shall be retained until a contract has been signed

ADOPTED by the City Council this 10<sup>th</sup> day of April 2023.

\_\_\_\_\_  
Lee. C. Baarts, Mayor

ATTEST:

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



Fairmont City Council
April 10, 2023

Agenda Item: 9.4

From: Cathy Reynolds, City Administrator
To: Mayor and City Council

Subject: Western Area Power Administration Contract Approval

Policy/Action Requested: Motion to approve Exhibit B & C to the Western Area Power Administration Contract.

Vote Required: [X] Simple Majority [ ] Roll Call

Recommendation: Staff recommends approval

Overview:

The city receives a portion of our electricity from the Western Area Power Administration (WAPA) and has had a contract with them for delivery of the electricity to the city since at least the 1990's. In 2013 the City approved an updated contract with WAPA which provided for the City to continue to receive power from WAPA from 2021 – 2050. The contract contains Exhibit B, Operating Agreement Including Quantitative Determinations, and Exhibit C, Transmission Path and Delivery and Measurement Conditions. These Exhibits were not changed with the 2013 contract but now WAPA is requesting to update them.

In 2015 WAPA joined the Southwest Power Pool, Inc (SPP) this prompted WAPA to work on amending the contracts to incorporate this relationship into the documents.

The PUC has reviewed the proposed Exhibits and recommends approval.

Budget Impact: None

Attachments:

- 1. Exhibit B (Operating Agreement Including Quantitative Determinations)
2. Exhibit C (Transmission Path and Delivery Measurement Conditions)

\*\*\*\*\*

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

## EXHIBIT B

### (Operating Agreement Including Quantitative Determinations)

1. This Exhibit B made on \_\_\_\_\_, effective under and as a part of Contract No. 13-UGPR-1014, dated May 3, 2013, hereinafter called the Contract, shall become effective on the first day of the full billing period after the date of its execution. Upon such effective date, this Exhibit B shall terminate and supersede Exhibit B dated May 3, 2013, and shall remain in effect until superseded by another Exhibit B or termination of the Contract.

#### 2. FAIRMONT'S FIRM ELECTRIC SERVICE ARRANGEMENTS:

2.1 The System Definitions and Billing Determinations set forth in this Operating Agreement are based upon the understanding of the Parties that Fairmont's firm electric service arrangements are such that its system load requirements are normally supplied from the following sources:

2.1.1 Firm electric service from Western.

2.1.2 Firm electric service from Southern Minnesota Municipal Power Agency, (SMMPA).

2.2 Western reserves the right to unilaterally require the substitution of a new Exhibit B, in the event that Fairmont's firm electric service arrangements are altered so that this Exhibit does not correctly identify those arrangements.

3. REPORTING REQUIREMENTS: Fairmont shall keep such records as are necessary for the purposes of this Exhibit B and will furnish the Contracting Officer with such information or reports necessary for the determinations called for herein.

#### 4. SYSTEM DEFINITIONS:

4.1 Fairmont's System Demand for any billing period shall be the sum of the highest 30-minute integrated demands established from meter readings taken at the Point of Measurement (POM), as may be adjusted and defined in Exhibit C.

4.2 Fairmont's System Energy Requirements for any billing period shall be the total energy delivered during the billing period at the POM, as may be adjusted and defined in Exhibit C.

#### 5. FIRM POWER AND ENERGY OBLIGATION OF WESTERN:

5.1 Notwithstanding the provisions of Subsection 6.3 of the Contract, the Parties, by mutual agreement, have established, for each month of the year, values for the Maximum Rate of Firm Power Obligation and Maximum Energy Obligation of Western

to Fairmont as shown below. The table was calculated based upon the November 2001 through October 2002 reference year chosen by Fairmont.

Summer Season	kW	MWh	Winter Season	kW	MWh
May	569	252	November	885	356
June	578	232	December	856	306
July	578	246	January	784	286
August	546	261	February <u>1/</u>	785	287
September	556	239	March	782	342
October	578	253	April	774	358

1/ Energy amount for leap year will be 297 MWh.

5.2 The Maximum Rate of Firm Power Obligation and Maximum Energy Obligation of Western in any billing period shall each be, for the billing period involved, apportioned among the Point of Delivery identified in Exhibit C using the ratio of the obligation of Western, as noted above, to Fairmont's respective System Demand and System Energy Requirements for that same period as determined pursuant to Section 4 above.

5.3 In the event that Fairmont's System Demand and/or Fairmont's System Energy Requirements in a billing period are less than the values in Subsection 5.1 above for that billing period, then Fairmont's actual System Demand and/or System Energy Requirements shall be Western's Maximum Rate of Firm Power Obligation and Maximum Energy Obligation for that billing period.

5.4 Either Party hereto shall have the right to resume determination of Western's firm power and energy obligations to Fairmont pursuant to Subsection 6.3 of the Contract upon five years' advance written notice to the other Party or upon a period of less than five years if mutually agreed to. In the event of such notice, obligation determinations pursuant to Subsection 6.3 of the Contract shall begin upon the effective date of a revised Exhibit B providing for such determinations.

5.5 Western reserves the right to appropriately modify the above power and energy values in the event that the Contract Rate(s) of Delivery or energy deliveries are modified as provided elsewhere in the Contract.

## 6. BILLING DETERMINATIONS:

6.1 The billed demand for firm power provided by Western to Fairmont in any billing period shall be, for that billing period, the Maximum Rate of Firm Power Obligation as established pursuant to Section 5 above.

6.2 The billed energy provided by Western to Fairmont in any billing period shall be, for that billing period, the Maximum Energy Obligation as established pursuant to Section 5 above.

7. USE OF DIGITAL SIGNATURES: The Parties agree that this Exhibit B may be signed and executed by digital signature in accordance with Western's policy. A digital signature is the same as a handwritten signature and shall be considered valid and acceptable.

8. EXECUTION IN COUNTERPARTS: This Exhibit B may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Exhibit B may be detached by any counterpart of this Exhibit B without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Exhibit B identical in form hereto, by having attached to it one or more signature pages.

WESTERN AREA POWER ADMINISTRATION

By \_\_\_\_\_

Title Vice President of Power Marketing

for Upper Great Plains Region

Address P.O. Box 35800

Billings, MT 59107-5800

(SEAL)

CITY OF FAIRMONT, MINNESOTA

By \_\_\_\_\_

Title \_\_\_\_\_

Attest:

By \_\_\_\_\_

Address 100 Downtown Plaza

Title \_\_\_\_\_

Fairmont, MN 56031

EXHIBIT C

(Transmission Path and Delivery and Measurement Conditions)

1. This Exhibit C made on \_\_\_\_\_, effective under and as a part of Contract No. 13-UGPR-1014, dated May 3, 2013, hereinafter called the Contract, shall become effective on the first day of the first full billing period after the date of its execution. Upon such effective date, this Exhibit C shall terminate and supersede Exhibit C dated May 3, 2013, and shall remain in effect until superseded by another Exhibit C or termination of the Contract.

2. TRANSMISSION PATH: On October 1, 2015, Western joined Southwest Power Pool, Inc. (SPP) and placed certain qualifying facilities into SPP Zone 19 1/ which allows Western to deliver Federal power and energy within SPP Zone 19 2/. The facilities of Fairmont are not directly interconnected with SPP Zone 19. Deliveries of Federal power and energy sold under this Contract are therefore made over Western's facilities within SPP Zone 19, then into the transmission systems of Northern States Power Company dba Xcel Energy, ITC Midwest LLC (ITC), and Southern Minnesota Municipal Power Agency (SMMPA) and that power and energy is then delivered to Fairmont. Fairmont's facilities are directly interconnected with the facilities of SMMPA. Fairmont is responsible for and has made the necessary transmission arrangements for delivery of Federal power and energy, including losses, from the edge of SPP Zone 19 to the Point of Delivery (POD) identified in Section 3 below. Should Western no longer have qualifying transmission facilities in SPP Zone 19 or the transmission arrangements change, Fairmont is responsible for all transmission arrangements from the edge of Western's system to the POD in Section 3 below. If needed, the Parties agree in good faith to revise this Exhibit C to reflect new conditions.

1/ SPP Zone 19 may consist of multiple transmission owners with qualified transmission facilities in SPP Zone 19.

2/ Western has made separate arrangements for delivery of Federal power and energy in SPP Zone 19.

3. DELIVERY CONDITIONS: The POD for electric power and energy delivered to Fairmont is defined as the point where the 69,000-volt circuit of SMMPA connects to the 69,000-volt circuit of Fairmont, in the vicinity of Fairmont, MN.

4. MEASUREMENT CONDITIONS:

4.1 The Point of Measurement (POM) for electric power and energy delivered to Fairmont is at Fairmont's 69/12.47-volt substation and such electric power and energy is measured at 12,470 volts.

4.2 Meter readings at the POM will be increased to account for transformer and transmission losses between the POD and the POM. These losses are the responsibility of Fairmont. The percentage of losses to be furnished and the associated meter reading loss adjustments may change from time to time and shall be revised as agreed to between the Authorized Representatives of Western and Fairmont. The total losses between the POD and the POM as of the date of this Exhibit C were determined to be 4.5 percent.

5. USE OF DIGITAL SIGNATURES: The Parties agree that this Exhibit C may be signed and executed by digital signature in accordance with Western's policy. A digital signature is the same as a handwritten signature and shall be considered valid and acceptable.

6. EXECUTION IN COUNTERPARTS: This Exhibit C may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Exhibit C may be detached by any counterpart of this Exhibit C without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Exhibit C identical in form hereto, by having attached to it one or more signature pages.

WESTERN AREA POWER ADMINISTRATION

By \_\_\_\_\_  
Title Vice President of Power Marketing  
for Upper Great Plains Region  
Address P.O. Box 35800  
Billings, MT 59107-5800

(SEAL)

CITY OF FAIRMONT, MINNESOTA

Attest:

By \_\_\_\_\_  
\_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Address 100 Downtown Plaza  
Fairmont, MN 56031



Fairmont City Council  
April 10, 2023

Agenda Item: 9.5

**From:** Cathy Reynolds, City Administrator  
**To:** Mayor and City Council

**Subject:** Declaring Public Right of Way

**Policy/Action Requested:** Motion to approve Resolution 2023-17 declaring a public right of way.

**Vote Required:**  Simple Majority  Roll Call

**Recommendation:** Staff recommends approval

**Overview:**

Staff was contacted by Bolton and Menk regarding property that the city owns at the intersection of Highway 15, Torgerson Drive, and the service road. While completing survey work in the area it was realized that the city had purchased land in 1995 that has been utilized for the service road, but that the land was never dedicated as a public right of way. The land in question is shown in the area circled in red on the attached Beacon map. As you can see by the attached map, the land in question is fully utilized as part of the intersection of the service road and Highway 15.

As the land in question is not part of a plat which would show the land that is dedicated as a public right of way, the city should formally dedicate the land. The attached resolution will dedicate the land as a public right of way to continue as such until formally vacated by the city.

Staff recommends that council approve the resolution and declare the land described therein as public right of way.

**Budget Impact:** None

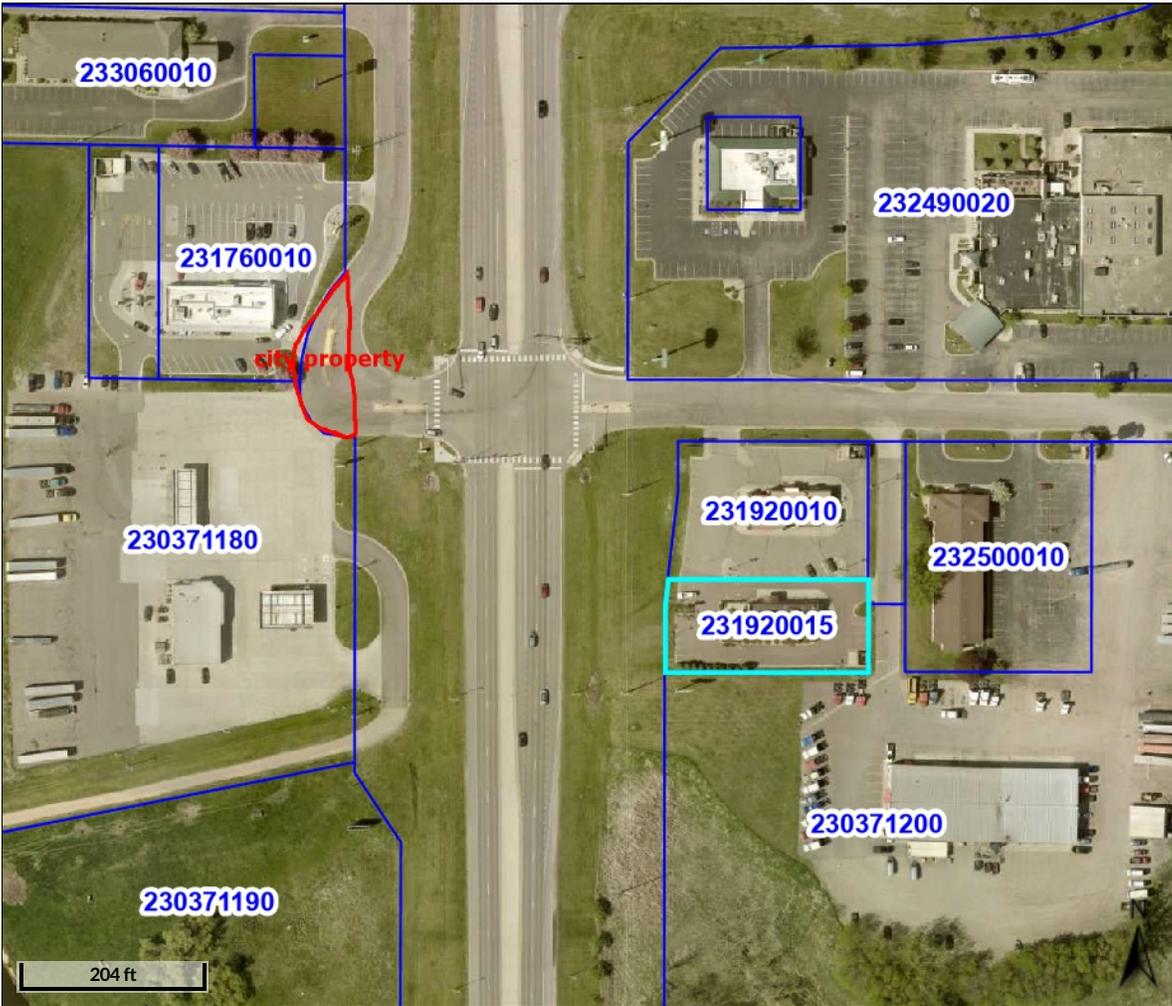
**Attachments:**

- 1. Beacon map showing the city land
- 2. Resolution 2023-17

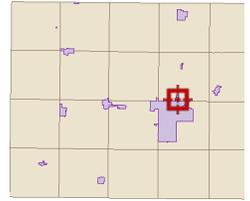
\*\*\*\*\*

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

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



**Overview**



**Legend**

- Parcels
- Corporate Limits

<b>Parcel ID</b>	231920015	<b>Alternate ID</b>	n/a	<b>Owner Address</b>	MOELLER INVESTMENTS LLC
<b>Sec/Twp/Rng</b>	010300-022752-	<b>Class</b>	233 - 3A COMMERCIAL LAND AND BUILDING	<b>Note</b>	2070 135TH ST FAIRMONT, MN 56031
<b>Property Address</b>	1140 TORGERSON DR FAIRMONT	<b>Acreage</b>	0.4995		n/a
<b>District</b>	(2301) FAIRMONT CTY-454				
<b>Brief Tax Description</b>	PARK PLAZA 1ST STHLY 27.2' LOT 1 BLK 1 & ADJ ON S SIDE A 72.8' X 217.97' TRACT SW1/4SW1/4 SEC 33 103 30 (TRACTS B & C PER SURVEY)				
	(Note: Not to be used on legal documents)				

Date created: 4/5/2023  
Last Data Uploaded: 4/5/2023 8:11:54 AM

Developed by **Schneider**  
GEOSPATIAL

CITY OF FAIRMONT, MINNESOTA  
CITY COUNCIL RESOLUTION 2023-17

A RESOLUTION DECLARING EXISTENCE OF PUBLIC RIGHT-OF-WAY

- WHEREAS, the City of Fairmont owns certain real property legally described in Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”); and
- WHEREAS, the city acquired the Property in 1995 pursuant to a warranty deed; and
- WHEREAS, the Property is utilized for a public right of way for the service road located at TH15 and Torgerson Drive; and
- WHEREAS, the Property is not part of an approved plat depicting the Property as public right of way; and
- WHEREAS, the City has never designated the property to be a public right of way; and
- WHEREAS, this matter has come to light by survey work being completed in the area; and
- WHEREAS, the City has been requested to designate the property as a public right of way to support ongoing public access to the businesses located on the service road; and
- WHEREAS, Minnesota Statutes 160.05 provides a basis for the City to declare the property a public right of way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FAIRMONT that the city designates the property described in Exhibit A as a public right- of-way to be used as such until lawfully vacated.

PASSED by the City Council of the City of Fairmont this 10<sup>th</sup> day of April, 2023.

\_\_\_\_\_  
Lee C. Baarts, Mayor

ATTEST:

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

## EXHIBIT A

### Legal Description of Property

Tract 1:

A tract of land in the Southeast Quarter of the Southeast Quarter of Section 32, Township 103 North, Range 30 West in Martin County, Minnesota described as follows: Commencing at the Southeast corner of the Southeast Quarter of Section 32, Township 103 North, Range 30 West in Martin County, Minnesota; thence North 0 degrees 45 minutes 17 seconds West (assumed bearing) along the East line of the Southeast Quarter a distance of 746.29 feet; thence South 77 degrees 44 minutes 49 seconds West a distance of 58.23 feet to the southeast corner of a tract of land deeded to Harland and Marcella G. McGregor and recorded and described in the Office of the Martin County Recorder in Book 316 of Deeds, Page 691; thence continuing South 77 degrees 44 minutes 49 seconds West along the southerly line of said McGregor tract a distance of 102.00 feet to the westerly highway right-of-way line of Minnesota Trunk Highway No. 15 as recorded and described in the Office of the Martin County Recorder in Book 36 of Miscellaneous Records, Page 18; thence North 0 degrees 21 minutes 16 seconds West along said westerly highway right-of-way line a distance of 291.09 feet to the point of beginning; thence continuing North 0 degrees 21 minutes 16 seconds West along said westerly highway right-of-way line a distance of 65.13 feet to the southeast corner of McDonald's Addition, according to the plat on file and of record in the Office of the Martin County Recorder; thence North 89 degrees 05 minutes 35 seconds west along the south line McDonald's Addition a distance of 56.15 feet; thence South 0 degrees 21 minutes 16 seconds East a distance of 27.50 feet; thence South 38 degrees 44 minutes 35 seconds East a distance of 48.86 feet; thence South 89 degrees 05 minutes 35 seconds East a distance of 25.80 feet to the point of beginning. Said tract contains 0.0708 acres.

Tract 2:

A tract of land in Lot 1 of Block One of McDonald's Addition 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: Beginning at the southeast corner of McDonald's Addition, according to the plat on file and of record in the Office of the Martin County Recorder; thence South 90 degrees 00 minutes 00 seconds West along the south line of McDonald's Addition a distance of 56.15 feet to a non-tangential circular curve, concave easterly, having a radius of 160.67 feet and a center of radius which bears North 87 degrees 30 minutes 00 seconds East; thence northeasterly along said circular curve through a central angle of 50 degrees 38 minutes 19 seconds an arc length of 142.00 feet to the east line of McDonald's Addition; thence South 1 degree 17 minutes 23 seconds East along the east line of McDonald's Addition a distance of 126.70 feet to the point of beginning. Said tract contains 0.1144 acres.



**Council Member Agenda Request  
April 10, 2023**

**Agenda Item: 10.1**

**From:** Britney Kawecki, Ward 2 Councilor

**Subject:** Owners Representative

**Staff Action Requested:** Hire a new Owners Representative

**Overview:**

Tegra was hired to be our owner’s rep and to date none of the contractor’s contracts hired include owner’s rep services - therefore the question is who is acting as the owner’s rep? This has been stated by council, community center advisory board, and foundation that an Owner’s rep is needed.

**Attachments:**

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