



**Agenda
Minnetonka City Council
Regular Meeting
Monday, June 27, 2022
6:30 p.m.
Council Chambers**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Schaeppi-Coakley-Kirk-Schack-Wilburn-Calvert-Wiersum
4. Approval of Agenda
5. Approval of Minutes:
 - A. June 13, 2022 regular meeting minutes
6. Special Matters: None.
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None.
10. Consent Agenda - Items Requiring a Majority Vote:
 - A. Ordinance repealing and replacing City Code 805 regarding pools and spas
Recommendation: Adopt the ordinance (4 votes)
 - B. Fence Consortium Joint Powers Agreement
Recommendation: Adopt the resolution (4 votes)
 - C. Agreement with the City of Wayzata to provide environmental health services
Recommendation: Approve the agreement (4 votes)
 - D. Resolution appointing election judges and absentee ballot board for the Aug. 9 Primary State Election

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Recommendation: Adopt the resolution (4 votes)

- E. Items concerning Rayito de Sol at 3520 Williston Road

Recommendation: Adopt the ordinance and resolution (4 votes)

- F. Employment agreement with the new city manager

Recommendation: Approve the agreement (4 votes)

- 11. Consent Agenda - Items Requiring Five Votes: None.

- 12. Introduction of Ordinances:

- A. Ordinance amending City Code 600.030 and 600.035 relating to liquor licenses

Recommendation: Introduce the ordinance (4 votes)

- 13. Public Hearings:

- A. Modification of the Tax Increment Financing District No. 1-2 (Boulevard Gardens)

Recommendation: Adopt the resolution (4 votes)

- 14. Other Business: None.

- 15. Appointments and Reappointments: None.

- 16. Adjournment

**Minutes
Minnetonka City Council
Monday, June 13, 2022**

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:31 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Deb Calvert, Bradley Schaeppi, Kissy Coakley, Brian Kirk, Rebecca Schack, Kimberly Wilburn and Brad Wiersum were present.

4. Approval of Agenda

Calvert moved, Kirk seconded a motion to accept the agenda with addenda for Items 10.A and 10.B. All voted "yes." Motion carried.

5. Approval of Minutes:

A. May 23, 2022 regular meeting minutes

Calvert moved, Kirk seconded a motion to approve the minutes. All voted "yes." Motion carried.

B. May 16, 2022 study session minutes

Calvert moved, Kirk seconded a motion to approve the minutes. All voted "yes." Motion carried.

C. June 2, 2022 special study session minutes

Calvert moved, Kirk seconded a motion to approve the minutes. All voted "yes." Motion carried.

6. Special Matters:

A. Proclamation declaring Sunday, June 19, 2022 as Juneteenth

Wilburn read a proclamation in full for the record declaring Sunday, June 19 to be Juneteenth in the City of Minnetonka.

B. Proclamation declaring June 1-30, 2022 as LGBTQ+ Pride Month

Schack read a proclamation in full for the record declaring June 1 through 30 to be LGBTQ+ Pride month in the City of Minnetonka.

C. Proclamation declaring July 2022 as Monarch and Pollinator Awareness Month

Kirk read a proclamation in full for the record declaring July as monarch and pollinator awareness month in the City of Minnetonka.

D. 2022 Community Survey

Acting City Manager Mike Funk and Peter Leatherman from the Morris Leatherman Company gave the staff report.

Calvert thanked Mr. Leatherman for doing the cross tabulations on the housing questions.

Kirk thanked Mr. Leatherman for his presentation. He expressed concern with the number of residents that listed Purgatory Park as having a problem with off leash dogs. Mr. Leatherman clarified that of the five people that believed there was a problem with off leash dogs in the city, only one person named Purgatory Park.

Schaepfi thanked Mr. Leatherman for all of the helpful data.

Wiersum thanked Mr. Leatherman for detailed report. He indicated he was a marketer by training. He stated his takeaway from the survey was that it has been a challenging few years, but generally the city does not have too many dissatisfied customers.

Calvert moved, Kirk seconded a motion to accept the survey results. All voted "yes." Motion carried.

E. Accept the 2021 annual financial report and related audit report with the City's audit firm of BerganKDV

Acting City Manager Mike Funk, Finance Director Darin Nelson and Andrew Grice with BerganKDV gave the staff report. It was noted the city received a clean or unmodified opinion on the 2021 audit, which was the best opinion the

city could receive. The finance department was thanked for their tremendous efforts on behalf of the City of Minnetonka.

Kirk discussed the funding gap the city had for its sewer and water fund and asked if the gap was larger than it needed to be. Mr. Grice explained the methodology can vary from city to city on how they manage their funding gaps and surpluses.

Calvert commented on how the city's tax rate had went down because the city's tax capacity went up and requested further information on this topic. Mr. Grice commented further on how tax capacity and the city's tax rate was tied to overall property values.

Schaeppi asked if ARPA funds assisted in minimizing the funding gap. Mr. Grice believed this was the case because ARPA dollars could be used as operating funds.

Wiersum thanked staff for the excellence of their reporting and for achieving an AAA bond rating. Nelson thanked Mr. Grice and the city council for their support throughout the entire audit process.

Calvert moved, Schack seconded a motion to accept the reports. All voted "yes."
Motion carried.

7. Reports from City Manager & Council Members

Acting City Manager Mike Funk reported on upcoming city events and council meetings.

Schack reported there was a crisis related to mass shootings and guns. She stated according to the *New York Times* since January 1 there has been 285 mass shootings in the United States. She explained a mass shooting was defined by the *Washington Post* as four or more people shot and injured or killed, not including the shooter. She stated as a city the council was limited by what they can do, but she believed something had to be done. She suggested the council initiate some kind of firearms turn in event, whether this was just for the City of Minnetonka, or for the entire region.

Calvert stated she was going to make a similar comment noting 11 people were killed this past weekend and 45 were injured. She noted she attended a gun violence prevention gathering this past weekend. She explained she comes from a gun owning family and she believes in responsible gun ownership. She commented if you can save one life you can save the world. She encouraged all residents to treat people with kindness, for people to value their families and others and to be exceedingly careful with their firearms.

Wiersum stated the events occurring in the United States everyday were tragic. He agreed something had to be done and he supported the council being proactive on this topic.

Wiersum explained he did some traveling on behalf of the League of Minnesota Cities this past week, noting he visited with 10 different cities in southern Minnesota.

Wiersum reported he would be attending the Optimus Club event for Officer of the Year. He thanked the city's police and fire personnel for all they do for the community.

8. Citizens Wishing to Discuss Matters not on the Agenda: None.

9. Bids and Purchases:

A. Bids for the Burchlane Lift Station Rehabilitation Project

Public Works Director Will Manchester gave the staff report.

Kirk moved, Calvert seconded a motion to award the contract. All voted "yes."
Motion carried.

B. Bids for the Opus Lift Station Rehabilitation Project

Public Works Director Will Manchester gave the staff report.

Calvert moved, Kirk seconded a motion to award the contract. All voted "yes."
Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

Schack requested Item 10.B be pulled from the Consent Agenda for further discussion.

A. Conditional use permit for an accessory dwelling unit at 13426 Excelsior Boulevard

Wilburn moved, Kirk seconded a motion to adopt Resolution 2022-043. All voted "yes."
Motion carried.

B. Resolution approving a preliminary plat for a two-lot subdivision at 2326 Oakland Road

Schack stated in reviewing the planning commission comments and the information within the packet, this was a unique neighborhood. She understood this neighborhood has undergone some significant transitions over the last couple of years and there was concern that this pocket was being left behind from the surrounding progress. She suggested any requests in the future from properties along 2400 Oakland Road be offered consideration because they were last to the table.

Kathy Arthur, 2400 Oakland Road, stated she felt very much represented by this government after living in Minnetonka for the past 46 years. She commented for the past three years she and her husband have asked the city to provide sewer, water and street access to their property, which had been provided to several neighboring developments. She noted the response from the city planner was the Arthur's will get access when the Weber property develops. She indicated this day has arrived. At the time, she was quite disappointed that she did not receive access when the Bird Song cul-de-sac was developed because this was only 99 feet from her property and not 900 feet. She stated this option would have been far less expensive. She explained last week she learned from the developer, because of the city's new tree ordinance, the number of lots that can be included within the Weber property renders the cost of a street and cul-de-sac cost prohibitive. She discussed how the council's decision three years ago has impacted her property because she would not bet getting the street and utility access that she was promised three years ago, which would make the subdivision of her property impossible. She understood there was one last option available to her, which was to grant a variance that would allow for a third house on her driveway easement. She realized the council was not considering a variance tonight, but noted this request would be coming at some point in the future. She asked that the council take the history of her property into consideration when a future request was made for a variance for a third driveway on her property.

Wiersum thanked Ms. Arthur for her comments and stated he believed her request was reasonable.

James McKinnon, 1805 West Lake Street in Minneapolis, stated this was an awfully gracious statement from Ms. Arthur. He noted he had prepared notes to explain why putting a road through the Weber property to the Arthur's property doesn't work. He summarized his statement noting the Golan and Arthur property were not very wide, which meant if a road were to go through, lots could only fit on one side of the road and would therefore reduce the number of lots within the development. In addition, this project would not be approved by the city engineer if a road were installed because there would not be room for ponding. He explained he spent some time and money to try and find a way to put a road in, but this was not feasible. He stated he came up with the plan to take the driveway easement that currently has two houses, to be granted a variance to

allow for three houses. He commented as a neighbor, he would support this variance request. He discussed how the water and sewer were completed along Bird Song.

Schack stated there may be a problem that has worked out a solution and for this reason, she supported the resolution moving forward.

Coakley questioned what the difference was between past properties and this property. Community Development Director Julie Wischnack explained there aren't a lot of similarities between properties. She discussed the requirements that must be met for R-1 residential properties and when variances can be requested. She noted the council has approved variances for subdivisions in the past.

Coakley commented this project was not requesting a variance, but she understood a variance request may be coming to the council in the future. Wischnack reported this particular plat did not require a variance, but noted the Arthur's would be requesting a variance in order to allow three driveways within their driveway easement.

Kirk indicated the city does have a level of obligation to ensure properties are not landlocked, especially those properties that were platted before 1940. He explained there may need to be some level of reconciliation within this neighborhood in order to address the problem that exists.

Schack moved, Kirk seconded a motion to adopt Resolution 2022-044.

Calvert stated this project shows how complicated planning and land use cases can be. She understood this was a very unique neighborhood and she understood this request meets all of the city's requirements but she feared that several exceptional oak trees would be lost in this development. She believed as the city becomes more and more developed there may have to be a certain level of proactivity to get neighbors thinking about things that had not been thought about in order to protect the heavily wooded properties.

All voted "yes." Motion carried.

11. **Consent Agenda – Items requiring Five Votes: None.**
12. **Introduction of Ordinances: None.**
13. **Public Hearings:**
 - A. **Temporary on-sale liquor license for Boom Island Brewing Company LLC, 5959 Baker Road**

Community Development Director Julie Wischnack gave the staff report.

Wiersum opened the public hearing.

There being no comments from the public, Wiersum closed the public hearing.

Kirk moved, Calvert seconded a motion to hold the public hearing and grant the license. All voted "yes." Motion carried.

14. Other Business: None.

15. Appointments and Reappointments:

A. Reappointment to Minnetonka Sustainability Commission

Acting City Manager Mike Funk gave the staff report.

Wiersum moved, Coakley seconded a motion to approve the appointment. All voted "yes." Motion carried.

16. Adjournment

Wilburn moved, Calvert seconded a motion to adjourn the meeting at 8:18 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk



**City Council Agenda Item 10A
Meeting of June 27, 2022**

Title: Ordinance repealing and replacing City Code 805 regarding pools and spas

Report From: Caitlin Ebner, RS, Environmental Health Specialist

Submitted through: Mike Funk, Acting City Manager
Julie Wischnack, AICP, Community Development Director

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

Staff is proposing to repeal and replace City Code 805 regarding pools and spas to reflect updates to the [Minnesota Pool Code, MN Rules 4717](#), as adopted by reference. The amendments remove outdated code language and clarify definitions to match the required language as a delegated enforcement agency of the Minnesota Department of Health (MDH). The revised code language updates permitting procedures for new construction and remodeled facilities to match the Minnesota Building Code for public and private swimming pools and additional MDH construction guidelines for public pools.

Recommended Action

Motion to adopt the ordinance.

Strategic Profile Relatability

- | | |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input checked="" type="checkbox"/> Safe & Healthy Community |
| <input type="checkbox"/> Sustainability & Natural Resources | <input type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management | <input type="checkbox"/> Community Inclusiveness |
| <input type="checkbox"/> N/A | |

Statement: N/A

Financial Consideration

- Is there a financial consideration? No Yes [Enter estimated or exact dollar amount]
- Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: N/A

Background

The city last updated the swimming pool and spa code in 2012. Staff is proposing amendments to the pool and spa ordinance to reflect updates to the [Minnesota Pool Code, MN Rules 4717](#), as adopted by reference.

Staff introduced the ordinance at the May 9, 2022, city council meeting and sent a copy of the draft ordinance to MDH for comments and/or feedback. MDH comments confirmed the proposed language. The language also clarified that plan review for public pools, including new pools and alterations, except routine maintenance work, must be conducted through MDH.

The city council inquired about size of pools and hot tub fencing requirements. The proposed language defines a pool (private) as

“any structure, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational use including special purpose pools and wading pools”

This definition is any body of water intended for use is regulated as a pool. Over the years, size and dimensional requirements have been confusing for residents. The new definition makes it clearer that safety measures are required for these installations. The second question was about hot tubs. Hot tubs previously have required a fence enclosure, no matter what the lot or site circumstances. That regulation has become difficult to enforce, particularly in large lot sizes. Staff has researched other city ordinances and have found that a number of cities have added language to allow a safety latching alternative as a replacement for fencing.

C. Resolution committing Ice Arena special revenue fund revenues

Calvert moved, Wilburn seconded a motion to adopt Resolution 2022-038. All voted “yes.” Motion carried.

D. Fund agreement for Metropolitan Council Local Housing Incentives Account (LHIA) Funds for Homes Within Reach

Wiersum explained after having a discussion with the city attorney, he needed to abstain from voting on this item.

Coakley reported the city would be receiving a grant in the amount of \$180,000 for Homes within Reach and she questioned if the city’s matching funds were previously approved. Community Development Director Julie Wischnack reported the city had previously approved these matching funds.

Calvert moved, Kirk seconded a motion to approve the agreement and sub-recipient agreement. Schack, Wilburn, Calvert, Schaeppi, Coakley and Kirk voted “yes.” Wiersum “abstained”. Motion carried.

11. Consent Agenda – Items requiring Five Votes: None.**12. Introduction of Ordinances:****A. Ordinance amending City Code 805 regarding swimming pools and spas**

Community Development Director Julie Wischnack gave the staff report.

Schaeppi requested further information regarding the fencing requirements for hot tubs. Wischnack discussed the research staff did to see how other communities addressed latching requirements for hot tubs/spas. She reported staff did not support requiring fencing around a self-contained spa.

Wiersum suggested a size or certain square footage be recognized on when fencing would be required for a pool. Wischnack explained staff had went away from the size language and more descriptive language to differentiate between a spa and pool.

Schack moved, Calvert seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

Ordinance No. 2022-

An ordinance amending the city's Pool and Spa regulations; repealing and replacing section 805 of the Minnetonka City Code

The City of Minnetonka Ordains:

Section 1. Section 805 of the Minnetonka City Code, a copy of which is attached as Exhibit A, is repealed.

Section 2. The Minnetonka City Code is updated by adding a new section 805, in the form of the attached Exhibit B.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on June 27, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this ordinance:

Date of introduction: May 9, 2022

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

Certified Copy:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on June 27, 2022.

Becky Koosman, City Clerk

EXHIBIT A

SECTION 805. POOLS AND SPAS

805.005. Short Title.

This ordinance will be known as the swimming pool ordinance of the city of Minnetonka.

805.010. Definitions.

Unless the context clearly indicates otherwise, certain words are defined for the purpose of this section as follows.

1. "Swimming pool" means a permanent structure, basin, chamber, or tank containing an artificial body of water for swimming, diving or recreational bathing, more than 75 square feet in area or over 24 inches in depth.
2. "Public swimming pool" means-a swimming pool other than a private single family residential swimming pool, intended to be used collectively by numbers of people for swimming or bathing, regardless of whether a fee is charged for use. Included in this definition are swimming pools located in or adjacent to apartment buildings, condominiums, townhouses and other multiple dwelling residential complexes, public and private schools, public and private recreational sports facilities, and commercial property unless used only for the purpose of sales or display or both.
3. "Private single family residential swimming pool" means a swimming pool that is located on private property zoned and being used for single family residential use and that is being used for swimming or bathing only by the residents of the property or their invited guests.

805.015. Permit; Plans and Specifications

1. A person must not construct, alter or reconstruct a swimming pool without first obtaining a permit from the city to do so. The application for a permit must be on forms prescribed by the city. The application must be accompanied by the permit fee established in chapter 710, two sets of plans and specifications prepared by a registered architect or engineer, and other supporting data that may be required for proper review of the plans.
2. The plans must be drawn to scale, accompanied by sufficient specifications to permit a comprehensive review of the plans, and must include:
 - a. plan and sectional views with all necessary dimensions of both the pool and surrounding area;

b. a piping diagram showing pertinent elevation data and all appurtenances including treatment facilities in sufficient detail to permit a hydraulic analysis of the system; and

c. details on all treatment equipment, including catalog identification of pumps, chlorinators, and related equipment.

3. A permit is valid only for the work and location specified in the permit. A permit authorizes construction of appurtenances to the pool, with the exception of the electrical and gas piping work, which require additional permits.

4. A person must obtain a permit required by this chapter either before or during the day that work starts, or on the next succeeding business day when work starts on a Saturday, Sunday, or holiday. If the person fails to do so, he/she will be required to pay double the fee specified in chapter 710 and will be subject to the penalty provisions of this code.

5. A permit issued expires upon completion of the work or one year from the date of issuance, whichever is sooner. If a permit has expired, it may be renewed for an additional one-year period as long as no changes have been or will be made to the original plans for the work. The fee for renewal is 50 percent of the original permit fee applicable to the work uncompleted

6. A permit may be revoked or worked stopped following the procedure in the city building code.

805.020. Construction Requirements

1. New and existing outdoor swimming pools must be completely enclosed by a fence or wall. Openings or points of entry into the pool area enclosure must be equipped with gates. The wall or fence and gates must be at least 5 feet in height. A fence must be constructed of at least a number eleven gauge woven wire mesh corrosion-resistant material or other materials approved by the building inspector. Gates must be equipped with self-closing and self-latching devices capable of being locked, placed on top of the gate or another place inaccessible to small children. Fence posts must be decay- or corrosion-resistant and must be set in concrete bases or other suitable material. The opening between the bottom of the fence and the ground or other surface may not be more than three inches.

2. Swimming pools must be located on the premises in compliance with the zoning ordinance requirements.

3. A swimming pool and its appurtenances must be located at least 10 feet from an existing portion of a sewage system. The water supply line for a swimming pool must be at least 15 feet from an existing portion of a sewage system.

4. The pool and related facilities must be built in accordance with plans approved by the city, except as otherwise approved by the city. The pool may not be placed in

operation until city inspections show compliance with the requirements of this section and a license has been issued to its operator under this section if required.

805.025. Inspection

A person who does or causes to be done any of the work covered by this section must notify the city at specific predetermined stages of construction and at the time of completion to permit adequate inspection of the pool and related equipment. The city must be notified before any portion of the work is connected with a building, and must be given reasonable time and opportunity to inspect the work before it progresses to a point where it can no longer be inspected. No work may be covered until it has been inspected and accepted by the city inspector. This includes all underground piping conduits, grounding of electrical materials, grounding of mesh in concrete and grounding of pool structure.

805.030. Public Swimming Pools - Licenses.

1. A person wishing to operate a public swimming pool must first make an application to the city, pay the required fee, and receive approval from the city for a license to operate and from the Minnesota department of health for plan review. A license issued expires on December 31 of each year unless otherwise revoked for cause. A license applicant and licensee must comply with this section and applicable Minnesota department of health rules in order to receive and retain a license. A license is valid only for the person to whom it is issued, and no licensee may transfer or attempt to transfer its license to another person.
2. The fee for a license to operate and maintain a public swimming pool is specified in section 710. No fee is required for the operation of a public swimming pool by the city, schools, YMCA, YWCA or another non-profit organization, except those operating pools at multiple dwelling facilities.
3. A license is subject to the requirements of section 700 of this code, except section 700.015(2).

805.035. Public Swimming Pools - Health and Safety.

1. A person having a communicable disease must not be employed or work at a public swimming pool. A person suspected of having an infectious disease must be excluded from the swimming pool and its immediate area including locker or changing rooms.
2. Appropriate facilities must be provided for the safety of bathers as may be required by the city. These include lifesaving equipment, safety devices, lifebuoys, lifelines, first aid kits, and telephone.
3. A public swimming pool must be under the supervision of the licensee who is responsible for compliance with this section.
4. When the swimming pool is not open for use, access to the pool must be prohibited.

5. No more than the maximum designed bather load may be permitted in a public swimming pool at any time.

805.040. Public Swimming Pools - Operation.

1. The licensee of each public swimming pool must keep a daily record of operational information including disinfectant residuals, pH, maintenance procedures, recirculation, and other data as may be required by the city. This data must be kept on file by the licensee for six months and must be made available for review by the city upon request.

2. The pumps, filter, disinfectant and chemical feeders, and related appurtenances must be kept in operation whenever the public swimming pool is in use and for such additional periods as needed to keep the pool water clear and of satisfactory bacterial quality. For swimming pools having a capacity of 200,000 gallons or more, this equipment must be continually operated during periods of regular use.

3. When any of the following conditions are found, a public swimming pool must be immediately closed when ordered by the city and placarded to indicate that it has been closed:

- a. the proper number of safety equipment units are not provided;
- b. the water clarity is such that a black disc, 6 inches in diameter, is not readily visible when placed on a white field at the deepest point of the pool;
- c. the disinfectant residual is found to be below the acceptable levels established in the Minnesota department of health rules; or
- d. another condition which endangers the health, safety, or welfare of the public.

The pool must remain closed until the conditions are corrected and this has been verified by the city.

805.045. Public Swimming Pools - Inspections.

The city has the right of entry at any reasonable hour to inspect the swimming pool, its related equipment, and the adjacent areas to ensure compliance with all provisions of this section.

805.046. Additional Provisions.

1. The provisions contained in Minn. Stat. section 144.1222, except subdivisions 1 and 1a, and the provisions contained in Minnesota Rules parts 4717.0150 through 4717.3975, including all future revisions of them, are adopted by reference as part of this ordinance.

2. The provisions of Minn. Stat. section 157.20, including all future revisions of them, are adopted by reference as part of this ordinance.

805.050. Installer's License Required.

1. A person must not engage in the business of installing, altering, repairing, or extending a swimming pool, whirlpool, hot tub, or similar recreational or health facilities without first obtaining an installer's license from the city and paying the fee required in section 710.
2. Each license application and license is subject to the requirements of section 700 of this code.

805.055. Drainage.

A person who drains, allows or causes the drainage of water from a public or private pool, including an accumulation of precipitation or runoff, must do so only across the person's own property to the edge of the public street pavement immediately adjacent to the property or to the nearest storm sewer inlet, unless otherwise required or approved by the city engineer. The person who drains a pool must regulate the volume and rate of the discharge to prevent damage to public or private property. Swimming pools operated on a year-round basis may be drained to the public sanitary sewer system if approved by the public works director.

805.060. Enforcement.

The community development director and his/her agents are authorized to enforce the provisions of this chapter.

EXHIBIT B

SECTION 805. POOLS AND SPAS

805.005. Short Title.

This ordinance will be known as the pool and spa ordinance of the city of Minnetonka.

805.010. Definitions.

Unless the context clearly indicates otherwise, certain words are defined for the purpose of this section as follows.

1. "Pool" means any structure, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational use including special purpose pools and wading pools
2. "Public pool" means- any pool other than a private residential pool, that is: (1) open to the public generally, whether for a fee or free of charge; (2) open exclusively to members of an organization and their guests; (3) open to residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area; (4) open to patrons of a hotel or lodging or other public accommodation facility; or (5) operated by a person in a park, school, licensed child care facility, group home, motel, camp, resort, club, condominium, manufactured home park, or political subdivision with the exception of swimming pools at family day care homes licensed under section [245A.14, subdivision 11](#), paragraph (a).
3. "'Private residential pool" means a pool connected with a single-family residence or owner-occupied duplex, located on private property under the control of the homeowner, the use of which is limited to family members or the family's invited guests. A private residential pool is not a pool used as part of a business.

805.015. Permit; Plans and Specifications for Private Residential and Public Pools

1. Private residential pools.

a. A person must not construct, alter or reconstruct a private residential pool without first obtaining a permit from the city to do so. The application for a permit must be on forms prescribed by the city. The application must be accompanied by the permit fee established in chapter 710 with plans and other supporting data that may be required for proper review of the plans.

b. The plans must be drawn to scale, accompanied by sufficient specifications to permit a comprehensive review of the plans, and must include:

(1). The construction site plan must be provided on a survey, showing size and location of new pool, existing structures onsite, and distances from lot lines and according to the state building code.

(2). a piping diagram showing pertinent elevation data and all appurtenances including treatment facilities in sufficient detail to permit a hydraulic analysis of the system; and

(3). details on all treatment equipment, including catalog identification of pumps, chlorinators, and related equipment.

c. A permit is valid only for the work and location specified in the permit. A permit authorizes construction of appurtenances to the pool, with the exception of the electrical and gas piping work, which require additional permits.

d. If work for which a permit is required by the code has commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for the work according to the state building code.

e. Any permit issued becomes invalid if the work authorized by the permit is suspended or abandoned for more than 180 days. The 180 days commences the first day the work was suspended or abandoned according to the state building code.

f. A permit may be revoked or worked stopped following the procedure in the state building code.

2. Public Pools.

a. Plans for public pools must be submitted to and approved by the Minnesota Department of Health as specified in Minnesota Rules part 4717.0450 and amendments thereto.

(1) The plans and specifications for public pools must be approved by the Minnetonka zoning and building officials. A survey showing proper setbacks, easements, pool placement, equipment placement, fence location, deck location, impervious surface coverage of the lot, and location of overhead electrical wires;

(2) The proposed equipment types, manufacturers, model numbers, dimensions, performance capabilities and installation specifications; and

(3) Fencing plan including type, material, height, gate location and latching mechanism, as defined in Minnesota Rules 4717.

805.020. Construction Requirements

1. Private residential pools.

a. New and existing outdoor private residential pools, containing water more than 24 inches in depth, must be completely enclosed by a fence or barrier that complies with Section 303.2 of the International Property Maintenance Code.. Openings or points of entry into the pool area enclosure must be equipped with gates. The wall or fence and gates must be at least 5 feet in height. A fence must be constructed of at least a number eleven gauge woven wire mesh corrosion-resistant material or other materials approved by the building inspector. Gates must be equipped with self-closing and self-latching devices capable of being locked, placed on top of the gate or another place inaccessible to small children. Fence posts must be decay- or corrosion-resistant and must be set in concrete bases or other suitable material. The opening between the bottom of the fence and the ground or other surface may not be more than three inches. As an alternative, the building official may approve an alternative latching system for spas, hot tubs, whirlpools, or other covered pools that comply with ASTM Standard F1346 for safety.

b. Pools must be located on the premises in compliance with the zoning ordinance requirements.

c. A pool and its appurtenances must be located at least 10 feet from an existing portion of a sewage system. The water supply line for a pool must be at least 15 feet from an existing portion of a sewage system.

d. The pool and related facilities must be built in accordance with plans approved by the city, except as otherwise approved by the city. The pool may not be placed in operation until city inspections show compliance with the requirements of this section.

805.025. Inspection.

A person who does or causes to be done any of the work covered by this section must notify the city at specific predetermined stages of construction and at the time of completion to permit adequate inspection of the pool and related equipment. The city must be notified before any portion of the work is connected with a building, and must be given reasonable time and opportunity to inspect the work before it progresses to a point where it can no longer be inspected. No work may be covered until it has been inspected and accepted by the city inspector. This includes all underground piping conduits, grounding of electrical materials, grounding of mesh in concrete and grounding of pool structure in addition to any additional requirements listed in the state building code.

805.030. Public Pools - Licenses.

1. A person wishing to operate a public pool must obtain approval from the Minnesota Department of Health for plan review. Submit the license, application, required fee, and receive approval from the city for a license to operate. A license issued expires on December 31 of each year unless otherwise revoked for cause. A license must be applied for annually. A license applicant and licensee must comply with this section and applicable Minnesota Department of Health rules in order to receive and retain a license. A license is valid only for the person or entity to whom it is issued, and no licensee may transfer or attempt to transfer its license to another person or entity.

2. The fee for a license to operate and maintain a public pool is specified in section 710. No fee is required for the operation of a public pool by the city, schools, or non-profit organizations, except those operating pools at multiple dwelling facilities.
3. A license is subject to the requirements of section 700 of this code, except section 700.015(2).
4. A separate license must be obtained for each pool and water recirculation system as defined in Minnesota Rules part 4717.2550 and amendments thereto.

805.040. Public Pools - Operation.

1. When any of the following conditions are found, a public pool must be immediately closed and access restricted:
 - a. closure criteria per Minnesota Rules 7417.3970 or amendments thereto;
 - b. failure to possess a license as required by this section 805; or
 - c. another condition which endangers the health, safety, or welfare of the public, as determined by the health authority.

The pool must remain closed and access restricted until the conditions are corrected and this has been verified by the health authority.

805.045. Public Pools - Inspections.

The city has the right of entry at any reasonable hour to inspect a public pool, its related equipment, and the adjacent areas to ensure compliance with all provisions of this section.

805.046. Additional Provisions.

1. The provisions contained in Minn. Stat. section 144.1222, , and the provisions contained in Minnesota Rules parts 4717.0150 through 4717.3970, except 4717.0450, including all future revisions of them, are adopted by reference as part of this ordinance.
2. The provisions of Minn. Stat. section 157.20, including all future revisions of them, are adopted by reference as part of this ordinance.

805.055. Drainage.

A person who drains, allows or causes the drainage of water from a public or private pool, including an accumulation of precipitation or runoff, must do so only across the

person's own property to the edge of the public street pavement immediately adjacent to the property or to the nearest storm sewer inlet, unless otherwise required or approved by the city engineer. The person who drains a pool must regulate the volume and rate of the discharge to prevent damage to public or private property. Swimming pools operated on a year-round basis may be drained to the public sanitary sewer system if approved by the public works director.

805.060. Enforcement.

The community development director and delegate(s) are authorized to enforce the provisions of this section.



**City Council Agenda Item 10B
Meeting of June 27, 2022**

Title: Fencing Consortium Joint Powers Agreement

Report From: Will Manchester, P.E., Director of Public Works

Submitted through: Mike Funk, Acting City Manager
Corrine Heine, City Attorney
Darin Nelson, Finance Director
Scott Boerboom, Police Chief
Andy Gardner, Police Captain

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement:

The city is part of a joint powers agreement for the Minnesota Statewide Public Works Mutual Aid Agreement, which allows the city, upon request, to share public works personnel and equipment with other agencies within the State of Minnesota. As an additional resource, mutual aid is offering the ability to be part of a Fencing Consortium Joint Powers Agreement to share large quantities of fencing materials upon request.

Recommended Action

Adopt the resolution approving the Fencing Consortium Joint Powers Agreement.

Strategic Profile Relatability

- | | |
|---|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input checked="" type="checkbox"/> Safe & Healthy Community |
| <input type="checkbox"/> Sustainability & Natural Environment | <input type="checkbox"/> Livable & Well-Planned Development |
| <input checked="" type="checkbox"/> Infrastructure & Asset Management | <input type="checkbox"/> Community Inclusiveness |
| <input type="checkbox"/> N/A | |

Statement: The Fencing Consortium provides temporary infrastructure and the ability to use fencing for a number of applications to maintain a safe and healthy community.

Financial Consideration

- Is there a financial consideration? No Yes
- Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

The cost of the city's commitment to this agreement would be paid out of current city operating budgets and is approximately \$6,000 - \$6,500 annually, depending on the final number of cities participating in the agreement.

Background:

On Dec. 17, 2018, the city entered into a joint powers agreement for the Minnesota Statewide Public Works Mutual Aid Agreement. This allows the city, upon request, to share public works personnel and equipment with other agencies within the State of Minnesota. This may be used for a number of applications including storm damage response and cleanup, infrastructure repairs when individual city resources are unable to accommodate, long-term community flooding situations and other critical incidents to name a few.

As an additional resource, mutual aid is offering the ability to be part of a Fencing Consortium Joint Powers Agreement, to share large quantities of fencing materials upon request. In general, the agreement sets up a governing board, provides leasing, storage and deployment of fencing, sets up training on the installation of the fence and determines allowable use of the fence per request.

Public works and police staff have participated in the planning and coordination of the fencing consortium group that included approximately 50 agencies, and find the ability to have access to this fencing beneficial to the city in times of need. The fencing would assist in situations of critical incidents where fencing an area is necessary including public safety purposes, crime scenes, major city events (example: Rock at Ridgedale), infrastructure failure situations, etc. Further, the agreement provides for fence to be onsite within approximately eight hours or less of a request. The agreement has been reviewed by the city attorney.

Schedule

If council decides to move forward with this agreement, fence would be available to participating parties beginning in January of 2023.

Resolution No. 2022-XXX

Resolution adopting the Fencing Consortium Joint Powers Agreement

Be It Resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. The governmental units in the state have experienced an increase in incidences of civil unrest with violent and destructive actors who pose a threat to the public, public personnel, buildings, and critical infrastructure.
- 1.02. The First Amendment of the United States Constitution protects the freedom of speech, the press, and the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
- 1.03. Recent experience has shown that the use of anti-scale fencing has greatly de-escalated tension between law enforcement and protesters.
- 1.04. By de-escalating the tension, the anti-scale fencing helps to reduce the trauma on the community, improve the safety for all, minimize the impact on neighboring properties, and reduce the community resources that have to be committed to such events.
- 1.05. Governmental units have recognized the need to have ready access to anti-scalable fencing as a tool for de-escalation and community safety while protecting against violent and destructive actors.
- 1.06. The best means for a governmental unit to access such fencing in a timely and cost-effective manner is to work cooperatively with other governmental units.
- 1.07. The Fencing Consortium Joint Powers Agreement (“Fencing JPA”), which is incorporated herein by reference, establishes a joint board to obtain and make available to members anti-scalable fencing in response to critical incidences, sets out the powers of the joint board, requires members to pay their share of the fencing costs and operational costs of the Fencing Consortium, requires members to provide staffing to assemble and disassemble the fencing as part of the Public Works Mutual Aid Pact, and otherwise provides for the operation of the Fencing Consortium as a joint powers entity.
- 1.08. The governmental unit is a member of the Public Works Mutual Aid Pact and is otherwise eligible to adopt the Fencing JPA.
- 1.09. It is in the best interests of the community to become a member and participate in the Fencing Consortium.

Section 2. Council Action.

- 2.01. The Fencing JPA is hereby approved and adopted.
- 2.02. The City Manager is authorized and directed to make nominations and to cast votes on persons to be elected to the Fencing Consortium Board of Directors.

2.03. Staff are authorized and directed to do each of the following:

Submit a fully executed copy of this Resolution as directed in the Fencing JPA to indicate membership in the Fencing Consortium;

Designate a primary and secondary point of contact for the Fencing Consortium for administrative purposes.

Coordinate with the other Fencing Consortium members and the Board on the selection of staff from the public works department to serve on the fencing deployment team; and

To take such other actions as may be needed to carry out the intent of this Resolution and as may be required under the terms of the Fencing JPA.

Adopted by the City Council of the City of Minnetonka, Minnesota, on June 27, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on This Resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on June 27, 2022.

Becky Koosman, City Clerk

FENCING CONSORTIUM JOINT POWERS AGREEMENT

THIS FENCING CONSORTIUM JOINT POWERS AGREEMENT (“**Agreement**”) is made and entered into by and among the Governmental Units identified in the attached Exhibit A (each a “**Member**” or collectively the “**Members**”).

RECITALS

- A. The civil unrest and resulting negative impacts on mental health, damage to buildings, and a reduction in overall safety experienced in the Seven County Metropolitan Area in recent years has given rise to a need for communities to have ready access to anti-scalable fencing. The anti-scale fencing can be set up to protect public buildings, critical infrastructure, and other key locations to de-escalate tensions between law enforcement and protestors as well as reduce the need to rely on crowd control measures to protect such locations from violent and destructive actors.
- B. Appropriate fencing to serve this purpose is produced by few vendors, currently all of which are located outside of the state.
- C. This type of fencing is expensive and the delays associated with attempting to identify and secure the delivery of fencing during the response to a critical incident may result in unnecessary risks to personnel and public property.
- D. By pooling resources and working cooperatively, communities can access high quality fencing, trained personnel, and related resources to assemble it in as efficient manner as possible to support de-escalation measures with protestors and protect facilities from violent and destructive actors.

AGREEMENT

In consideration of the mutual agreements and understandings, and intending to be legally bound, the Members hereby agree as follows:

ARTICLE I DEFINITIONS AND PURPOSE

- 1.1. **Definition of Terms.** For the purposes of this Agreement, the following terms shall have the meaning given them in this section.
 - (a) Additional Member. “Additional Member” means a Governmental Unit that submits a Membership Resolution after the Effective Date and that the Board votes to accept as a Member of the Fencing Consortium.
 - (b) Agreement. “Agreement” means this Fencing Consortium Joint Powers Agreement.

- (c) Board. “Board” means the Fencing Consortium Joint Board established by this Agreement.
- (d) Call Out. “Call Out” means a request by a Requesting Member to the Board requesting the deployment of the Fencing.
- (e) Critical Incident. “Critical Incident” means an event or occurrence that occurs within a Governmental Unit that is reasonably anticipated to result in, or that does result in, civil unrest focused against one or more public buildings, infrastructure, or other critical site with the Governmental Unit.
- (f) Deployment Site. “Deployment Site” means the specific location at which the Fence is to be assembled.
- (g) Deployment Team. “Deployment Team” means the public works personnel or others assigned by each Member who are responsible for responding to requests by Members to assemble and disassemble the Fencing at a Member’s Deployment Site in accordance with its Fencing Preplan.
- (h) Deployment Team Manager. “Deployment Team Manager” is the member of the Deployment Team designated as supervisor and who has operational control over the deployment and demobilization of the Fencing.
- (i) Effective Date. “Effective Date” means the date this Agreement goes into effect and the date by which Original Members must adopt the Membership Resolution. The Effective Date is July 1, 2022.
- (j) Extended Membership Area. “Extended Membership Area” means the area established by the Board outside of the Seven County Metropolitan Area in which Governmental Units are eligible to request membership in the Fencing Consortium.
- (k) Fencing. “Fencing” means the non-scalable, portable, free-standing fence secured by the Board and made available to Members under this Agreement.
- (l) Fencing Preplan. “Fencing Preplan” means a plan developed by a Governmental Unit showing the general location and length of the Fencing needed and the type and location of gates within the Fencing.
- (m) Governmental Unit. “Governmental Unit” means a local government or other political subdivision of the State that is authorized under Minnesota Statutes, section 471.59 to enter into a joint powers agreement. The term also includes state agencies and joint powers entities that own a public building.
- (n) Lease. “Lease” means the lease agreement between the Board and the Vendor to secure the Fencing for the Fencing Consortium and that sets out the terms for the

storage, delivery, and maintenance of the Fencing. The Lease may also establish the use charge the Requesting Member is required to pay the Vendor for the actual use of the Fencing.

- (o) Member. “Member” means an Original Member or an Additional Member. The term is used generally in this Agreement to refer to an individual current member Governmental Unit or, in its plural form, to all current member Governmental Units. A Governmental Unit must remain in good standing under this Agreement to remain a Member of the Fencing Consortium.
- (p) Member Assessment. “Member Assessment” means the amount determined annually by the Board to pay the costs of the Fencing Consortium and which is invoiced to each Member.
- (q) Membership Resolution. “Membership Resolution” means the resolution form a Governmental Unit adopts to join the Fencing Consortium. Any resolution that is not substantively the same in all respects as the form resolution developed for membership shall not constitute a Membership Resolution.
- (r) Notification System. “Notification System” means the communications or alert system, or systems, selected by the Board to issue a Call Out for the deployment of the Deployment Team and Fencing to a Requesting Member’s Governmental Unit.
- (s) Original Member. “Original Member” means a Governmental Unit that completed all requirements to enter into this Agreement prior to the Effective Date.
- (t) Public Works Mutual Aid Pact. “Public Works Mutual Aid Pact” means the Public Works Joint Powers Mutual Aid Agreement, which was originally effective as of July 1, 2018 and is incorporated herein by reference.
- (u) Requesting Member. “Requesting Member” means a Member who makes a request to the Board for the deployment of the Fencing in its Governmental Unit.
- (v) Seven County Metropolitan Area. “Seven County Metropolitan Area” means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.
- (w) Staging Area. “Staging Area” means the location identified for the Deployment Team to gather at in response to a Call Out before convoying to the Deployment Site.
- (x) Surcharge. “Surcharge” means the amount an Additional Member is required to pay to join the Fencing Consortium as determined by the Board. The Surcharge is in addition to the amount the Additional Member is required to pay based on the length of its Fencing needs as shown in its Fencing Preplan. The Surcharge

includes the amount the Member is to pay for the Member Assessment for the year in which the Governmental Unit becomes a Member and any buy-in costs as determined by the Board.

- (y) Vendor. “Vendor” means the fencing company selected to provide the Fencing to the Fencing Consortium.

1.2. **Purpose.** It is the general purpose of this Agreement to:

- (a) To establish the Fencing Consortium, the responsibilities of the Members toward the Fencing Consortium, and to establish the “Fencing Consortium Joint Board” to govern the Fencing Consortium and its operations;
- (b) To authorize the Board to obtain and provide for the storage and deployment of Fencing in response to a Critical Incident and for other purposes as provided in this Agreement and as determined by the Board;
- (c) To authorize the Board to negotiate and enter into an agreement with a Vendor to obtain the Fencing and provide for its storage, delivery to, and return from a Requesting Member’s Governmental Unit;
- (d) To authorize the Board to establish policies and procedures for the deployment of the Fencing, the training and deployment of the Deployment Team, and on other matters as needed to achieve the purposes of this Agreement;
- (e) To authorize the Board to determine the Governmental Units eligible for membership in the Fencing Consortium, including expanding the eligible territory as it determines is appropriate; and
- (f) To authorize the Board, upon deliberation and continued communication with the Members, to revise the initial structure of the Fencing Consortium over time as it may determine is in the best interests of the Members to do things such as moving from a leasing arrangement to purchasing the Fencing and to provide for its storage, maintenance, and transportation.

ARTICLE II FENCING CONSORTIUM ESTABLISHED

2.1. **Established.** There is hereby established, by the execution of this Agreement, the “Fencing Consortium” as a joint powers entity formed pursuant to Minnesota Statutes, section 471.59, which is to be managed and operated by the Board pursuant to the terms of this Agreement.

2.2. **Scope.** This Agreement applies to those Governmental Units that are Members of the Fencing Consortium and provides for the operation of the Fencing Consortium by a Board of Directors elected as provided herein.

ARTICLE III MEMBERSHIP

3.1. **Original Members.** A Governmental Unit that adopts and submits the Membership Resolution to join the Fencing Consortium before the Effective Date shall be considered an Original Member under this Agreement. A Governmental Unit is eligible to be an Original Member of the Fencing Consortium if it satisfies all of the following:

- (a) Is a member of the Public Works Mutual Aid Pact;
- (b) Is within the Seven County Metropolitan Area;
- (c) Has submitted a Fencing Preplan prior to the Effective Date; and
- (d) Has properly adopted and submitted a Membership Resolution prior to the Effective Date.

The Governmental Unit shall submit its Membership Resolution to the Chief of Police in the City of Crystal. The Membership Resolutions shall be transferred to the Board once it is formed. Membership Resolutions adopted after the Effective Date shall be sent to the Board.

3.2. **Additional Members.** After the Effective Date, a Governmental Unit may request to become an Additional Member of the Fencing Consortium if it satisfies the following:

- (a) Is a member of the Public Works Mutual Aid Pact;
- (b) Is located within the Seven County Metropolitan Area or within the Extended Membership Area as determined by the Board;
- (c) Submits a Fencing Preplan;
- (d) Submits the fully adopted Membership Resolution; and
- (e) The Board votes to accept the Governmental Unit as an Additional Member.

Additional Members are required to pay a Surcharge to the Fencing Consortium in the amount determined by the Board, and to comply with such additional requirements as may reasonably be imposed by the Board.

3.3. **Exception.** The membership requirement to be a member of the Public Works Mutual Aid Pact is to establish a mechanism through which local public works staff can be utilized to assist in the mobilization and demobilization of the Fencing within the Governmental Unit. However, there are entities that do not have their own public works staff, desire to become a Member of the Fencing Consortium, and for which local support

can be provided through another Governmental Unit. Therefore, a Governmental Unit that does not have a public works department or public works employees is not required to be a member of the Public Works Mutual Aid Pact to be eligible to become a Member of the Fencing Consortium, provided the following are complied with to the extent applicable:

- (a) If the Governmental Unit is a joint undertaking among other Governmental Units, the community in which any of the Governmental Unit’s buildings are located and to which its Fencing Preplan applies must be a member of the Public Works Mutual Aid Pact; or
- (b) If the Government Unit relies on the county sheriff’s department as the primary source of law enforcement services, that county must be a member of the Public Works Mutual Aid Pact.

3.4. **Requirement of Good Standing.** Continued membership in the Fencing Consortium shall be contingent upon: paying the annual Member Assessment and any additional charges as determined by the Board as provided herein; making public works staff available to participate as members of the Deployment Team; and on-going compliance with the other requirements, terms, and conditions of this Agreement and the policies and procedures adopted by the Board.

3.5. **Withdrawing from Membership.** A Member may withdraw from the Fencing Consortium as provided in Article XI of this Agreement.

ARTICLE IV FENCING CONSORTIUM JOINT BOARD

4.1. **Established.** There is hereby established the “Fencing Consortium Joint Board.” The Board shall consist of five Directors elected by the Members in accordance with this Article. Directors shall serve without compensation from the Fencing Consortium. The Director positions shall be assigned as follows:

- (a) Two Directors representing law enforcement;
- (b) One Director representing fire;
- (c) One Director representing public works; and
- (d) One Director representing emergency managers.

4.2. **Initial Directors.** The Board shall initially be comprised of the following Directors (“**Initial Board**”):

- (a) Ryan Murphy, Commander, Special Operations Unit, Saint Paul Police Department and Ryan Seibert, Chief of Police, City of Chaska, representing law enforcement;
- (b) Ward Parker, Assistant Chief Operations, City of Eden Prairie, representing fire;
- (c) Daniel Ruiz, Director of Operations & Maintenance, City of Brooklyn Park, representing public works; and
- (d) Doug Berglund, Director, Emergency Management, Washington County Sheriff's Office, representing emergency managers.

The Initial Board shall be responsible for Organizing the Board and the Fence Consortium. The Initial Board shall conduct an election in 2022 for Members to elect three Directors to the Board. An election will then be held in 2023 for Members to elect the remaining two Directors to the Board. Those elected in 2022 shall assume their positions effective on January 1, 2023 and those elected in 2023 shall assume their positions on January 1, 2024. The Initial Board shall determine which positions are up for election in 2022 and 2023, except the two law enforcement Director positions shall be elected in separate years.

- 4.3. **Director Eligibility.** To be eligible to be elected to the Board a person must be currently employed by a Member and actively serving in the profession the person is proposed to represent on the Board. If a Director loses eligibility to continue serving on the Board, the position shall be deemed vacant and the vacancy filled as provided herein.
- 4.4. **Term.** Each Director serves a two-year term commencing on January 1. The terms shall be staggered to minimize the number of Directors up for election in the same year. The Initial Board shall determine the terms and the staggering of the positions as part of adopting the bylaws. A vacancy in the office of Director shall be filled by appointment of the Board until the next election, at which time the position shall be up for election for the remainder of the term.
- 4.5. **Election of Directors.** The annual election of Directors shall occur in accordance with this Agreement and the bylaws established by the Board. This process is not subject to federal, state, or local election laws or procedures. Instead, the intent is to provide a reasonable means for Members to nominate candidates and to select those whom they wish to serve on the Board. Each Member in good standing when the nomination process begins has an opportunity to nominate people from its Governmental Unit for any or all the open positions on the Board. All persons nominated to a position must be eligible to represent that position on the Board. The Board shall collect the nominations and prepare a ballot to be distributed among the Members for a vote. Each Member in good standing shall have one vote on each open position. A Member must determine for itself who is authorized to submit nominations and cast the vote on its behalf. The name of the Member submitting the ballot must be on the ballot. The Board shall tabulate the votes and provide the Members a list of the persons elected to the Board. The conducting of

the nomination and election process shall occur early enough in a year to allow the newly elected Directors to take their positions on the Board as of January 1.

- 4.6. **Director Duties.** Directors are responsible for carrying out the duties of the Board under this Agreement in a diligent and timely manner. If a Director fails to attend three consecutive Board meetings without reasonable cause, the Board may declare the office vacant and fill the position by appointment. The position will then be up for election at the next election for the remainder of the term.
- 4.7. **Board Officers.** Each year at its annual meeting the Board shall elect from among its Directors a Chair and a Vice-Chair. The Board shall also appoint a Secretary/Treasurer, which is not required to be selected from among the Directors. If the Secretary/Treasurer is not a Director, the person shall not have a vote. The Chair shall act as the presiding officer at Board meetings and the Vice-Chair shall act as the presiding officer in the absence of the Chair. The Secretary/Treasurer shall take the minutes of Board meetings and shall serve as the finance manager for the Fencing Consortium. The Board shall adopt by-laws to establish its own procedures, provided such procedures are consistent with the purposes of this Agreement.
- 4.8. **Board Meetings.** The Board shall hold regular meetings on the schedule as established in its bylaws. The Board may also hold special meetings as needed upon the call of the Chair or upon the written request of two Directors given to the Secretary/Treasurer. Meetings of the Board are subject to the Minnesota Open Meeting Law (Minnesota Statutes, chapter 13D). The Secretary/Treasurer shall inform all Directors of special meetings, maintain a schedule of the Board's regular meetings, and shall post notice of any special meetings on the bulletin board designated by the Board for such notices or, if a bulletin board is not designated, upon the outside door of the building in which the Board meets. The Board may hold emergency meetings and such other meetings as allowed by law. The Board shall hold an annual meeting in January or in such other month as designated by the Board. The annual meeting may be held together with a regular meeting.
- 4.9. **Voting.** A majority of the Directors (three) shall constitute a quorum of the Board to meet and conduct the business of the Board. Each Director shall have an equal, non-weighted, vote. Unless specifically indicated otherwise herein, a majority vote of the Directors present at a meeting, if at least a quorum is present, shall be required for the Board to take action on any issue that comes before it. A Director must be present at a meeting to vote and shall not vote by proxy. A Director may be considered present and vote from a remote location to the extent allowed under Minnesota Statutes, chapter 13D.
- 4.10. **Powers of the Board.**
 - (a) To take all actions necessary and convenient to discharge its duty to lease Fencing and to make it available to Members pursuant to the terms of this Agreement.

- (b) Establish policies and procedures for requesting, deploying, using, demobilizing, and returning the Fencing, and on such other operational matters as the Board may determine is appropriate. This power includes, but is not limited to, further refining the definition of Critical Incident as may be needed and otherwise identifying situations in which deployment of the Fencing is automatic and when it is discretionary with the Board.
- (c) Authorize one or more of its Directors to receive request from a Requesting Member and to issue a Call Out of the Fencing to a Critical Incident in accordance with established policies and procedures.
- (d) Obtain the Fencing initially by lease, or purchase with State appropriation, and then determine over time whether to purchase part or all of the Fencing provided under this Agreement. If the Fencing is purchased, to provide for its storage and deployment.
- (e) Select the notification system for the Call Out.
- (f) To adopt bylaws and rules or policies consistent with this Agreement as required to effectively exercise the powers, or accomplish the purposes, of the Fencing Consortium;
- (g) To interpret and apply the provisions of this Agreement in a manner that furthers its purpose and intent including, but not limited to, determining the eligibility of a Governmental Unit to become a Member;
- (h) To adopt an annual operating and capital budget, including a statement of sources of funding and allocation of costs to Members;
- (i) To establish a system to communicate budget and other information of interest to Members;
- (j) To enter into contracts in its own name;
- (k) Contract with an auditing firm to perform financial audits of the Fencing Consortium as the Board determines is appropriate;
- (l) To purchase any insurance and indemnity or surety bonds as necessary to carry out the purposes of this Agreement;
- (m) To seek, apply for, and accept appropriations (including legislative appropriations), grants, gifts, loans of money or other assistance as permitted by law from any person or entity, whether public or private;
- (n) To sue;

- (o) To annually charge and collect from Members a Member Assessment as needed to pay the on-going costs of the Fencing Consortium;
- (p) To determine and require the payment of a Surcharge by Additional Members joining the Fencing Consortium; and
- (q) To exercise all other powers necessary and incidental to carry out the purposes of this Agreement provided such powers are consistent with the purposes of the Agreement and are exercised in accordance with the applicable statutory powers of the Members.

4.11. **Powers Not Delegated.** The Members expressly reserve for themselves the following powers, which shall not be deemed delegated to, and may not be exercised by, the Board:

- (a) Hire employees;
- (b) Purchase real property;
- (c) Issue bonds; or
- (d) Undertake or otherwise perform any functions exceeding the general scope and purpose of this Agreement.

4.12. **Specific Duties of the Board.** The Board shall exercise the powers provided it under this Agreement to perform, in addition to the other duties provided for in this Agreement, the following specific duties:

- (a) Lease Fence. The Board shall enter into a Lease with the Vendor to obtain the Fencing and trailer(s) for transporting the Fencing. The Board shall ensure it secures and maintains a sufficient length of Fencing to cover the Member with the longest Fencing lengths as shown on the Fencing Preplans, rounded up to the nearest 500 feet. Initially, the Board shall base the amount of Fencing on the Fencing Preplans submitted by the Original Members. As Additional Members join the Fencing Consortium, the Board shall consider the Fencing needs and may secure additional Fencing as it determines is needed.
- (b) Fence Storage and Transport. The Lease shall require the Vendor to store the Fencing at a location agreeable to the Board, deliver the Fencing to the identified Staging Area upon the Board's request within the response timeframe identified in the Lease, and to address other transportation needs as specified in the Lease.
- (c) Select Notification System. The Board shall select a Notification Systems that will be used by Directors to Call Out the Deployment Team to a Requesting Member's Governmental Unit.

- (d) **Reports.** The Board shall prepare and distribute such reports to the Members as the Board determines are necessary to keep them informed of the Fencing Consortium's activities. The Board shall determine the best method for distributing such reports.
- 4.13. **Office.** The initial office of the Fencing Consortium shall be selected by the Board. The Board may change the location of the office as it determines is appropriate. The Board will hold its meetings at the designated office, but may also meet at such other locations as it determines appropriate to carry out its duties.
- 4.14. **Disbursements.** Except as otherwise provided, all unbudgeted disbursements and expenditures of the Fencing Consortium shall be approved by the Board. All checks issued by the Fencing Consortium from its funds shall be co-signed by two Directors designated by the Board.
- 4.15. **Fiscal Agent.** The Board may appoint, and enter into agreements with, a fiscal agent for the Fencing Consortium and may change the fiscal agent from time to time as it deems necessary. The fiscal agent may be a Member Governmental Unit. The Board may delegate authority to the fiscal agent to act on its behalf as the Board deems appropriate and in accordance with applicable laws.

ARTICLE V DEPLOYMENT OF THE FENCING

- 5.1. **Automatic Deployment.** The Fencing shall be made available for automatic deployment upon the occurrence of a Critical Incident in a Member's Governmental Unit. The Requesting Member shall notify a Director of a Critical Incident and a Director shall utilize the designated Notification System to Call Out the Deployment Team for deployment of the Fencing. The Deployment Team shall then respond to the Requesting Member to unload and assemble the Fencing at the Deployment Site. The process to request deployment and demobilization of the Fencing shall occur in accordance with this Agreement and the policies and procedures adopted by the Board. The Deployment Team Manager shall be responsible for coordinating the deployment and demobilization of the Fencing.
- 5.2. **Requesting Member Obligations.** A Requesting Member requesting deployment of the Fencing for a Critical Incident occurring in the Member's jurisdiction shall be responsible for the following:
 - (a) Providing security for the Deployment Team while it is conducting its work at the Deployment Site;
 - (b) Provide any equipment that may be needed to deploy or demobilize the Fencing that is not provided by the Vendor;

- (c) Pay the Vendor charges for the actual use of the Fencing. Such payments are to be made directly to the Vendor unless directed otherwise by the Board;
- (d) Providing food, water, first aid, and similar support to the Deployment Team as may reasonably be needed;
- (e) Contacting the Board or the Board's designee if there are any issues with the Fencing once it is in place; and
- (f) Complying with Board policies and procedures applicable to a Requesting Member, including avoiding any activities that may unreasonably damage the Fencing or expose the Deployment Team to an unreasonable risk.

- 5.3. **Discretionary Deployment.** A Member may make a request to the Board for the deployment of the Fencing in the Member's Governmental Unit for an event or occurrence other than a Critical Incident. The deployment of the Fencing for something other than a Critical Incident is left to the sole discretion of the Board. The Board shall consider all such requests at a meeting and determine whether to approve the Member's request. The Board shall adopt criteria or standards for determining when to allow the discretionary deployment of the Fencing and the requesting Member's obligations if the request is approved. The Board may delegate the authority to one or more Directors to determine whether to allow the discretionary deployment of the Fencing based on the criteria established by the Board.
- 5.4. **Non-Member Deployment.** The Board shall adopt standards and requirements for determining whether to allow the deployment of the Fencing in response to a Critical Incident that occurred in a non-member Governmental Unit. Nothing in this Agreement obligates the Fencing Consortium to deploy the Fencing to a non-member Governmental Unit.
- 5.5. **No Guarantee.** The Members understand and agree the deployment of the Fencing by the Deployment Team is a cooperative undertaking and that the Fencing Consortium cannot guarantee a certain response time or make any representations or warranties regarding response times, the Fencing, its assembly, or effectiveness. The Deployment Team will endeavor to respond as quickly as possible to a Critical Incident and to place the Fencing as shown in the Requesting Member's Fencing Preplan as provided in this Agreement and in accordance with Board policies and procedures.
- 5.6. **Demobilization.** The Member who receives the Fencing in response to a Critical Incident shall work with the Fencing Consortium to determine when to initiate the demobilization of the Fencing from the Deployment Site. For a discretionary deployment of the fence, the demobilization date shall be determined prior to the deployment. The Deployment Team shall be responsible for disassembling the Fencing as part of the demobilization. The Board shall establish such procedures and policies as may be needed to address the demobilization of the Fencing. The Board has the authority to recall the Fencing from a Member if it determines there is a more critical need for the Fencing in

another Governmental Unit that cannot be fulfilled by the remaining Fencing held by the Fencing Consortium.

ARTICLE VI MEMBERSHIP COSTS AND ASSESSMENTS

- 6.1. **Original Member Costs.** Each Original Member shall be responsible for paying a share of the Fencing costs based on the length of fence indicated in its Fencing Preplan as a percentage of the total amount of initial Fencing to be leased by the Board. The Board shall determine the amount each Original Member is required to pay and provide each an invoice together with a sheet showing the division of costs. Invoice shall be paid within 45 days of receipt.
- 6.2. **Additional Member Costs.** Each Additional Member shall be required to pay their share of the Fencing costs calculated as if they were an Original Member. Each Additional Member shall also be required to pay a Surcharge in the amount determined by the Board. The Surcharge is to pay the Additional Member's portion of the Member Assessment, any buy-in costs to cover a share of the Fencing and related costs, and to partially reimburse the costs paid by the existing Members. The Board shall apply the buy-in amounts collected to reduce the future charges to the existing Members.
- 6.3. **Member Assessments.** In addition to the initial Fencing costs each Member is required to pay, Members shall also be assessed for the on-going costs to operate and maintain the Fencing Consortium. These operational costs will be divided based on the Fencing costs formula and paid by each Member as a Member Assessment. The formula shall take into account the total length of Fencing held by the Fencing Consortium and then divided by the length of each Member's Fencing needs as indicated in the Fencing Preplan. The Board shall, as part of the annual budget, determine the total amount of the Member Assessments and the specific amount to be assessed each Member to pay the anticipated Fencing Consortium costs in the upcoming year.
- 6.4. **Payment of Member Assessments.** The Fencing Consortium shall invoice Members for their Member Assessment amount for the upcoming year. Invoices are to be sent no later than January 15th in the year for which the assessment is being imposed. Members shall pay their invoices in full within 45 days from the date of the invoice.
- 6.5. **Default.** Any Member who breaches or otherwise fails to comply with the terms and conditions of this Agreement including, but not limited to, failure to pay its Member Assessment in full by the due date, shall be considered in default of this Agreement. Any dispute regarding whether a Member is in default shall be determined by a vote of the Board. A Member shall not be considered in default until it has been notified in writing by the Board of the condition placing it in default. The notice of default shall indicate the Member is not in good standing and may be expelled if the default is not cured within 90 days. If a Member fails to fully cure a default within 90 days of the notice of default, the Board may issue a written notice of expulsion from the Fencing Consortium. Upon such notice, the Governmental Unit is no longer a Member of the Fencing Consortium as if the

Governmental Unit voluntarily elected to terminate its membership in the Fencing Consortium as provided herein.

ARTICLE VII MEMBER STAFFING REQUIREMENTS

- 7.1. **Public Works Staff.** Each Member is expected to assign member(s) of its public works staff to serve on the Deployment Team to train with the Fencing and to participate in the unloading, assembly, and demobilization of the Fencing at a Deployment Site. The providing of public works staff is through the Public Works Mutual Aid Pact and is at each Member's own cost.
- 7.2. **Training.** The Deployment Team shall train with the Fencing at least three times a year to familiarize the Deployment Team with the Fencing and to help ensure its rapid assembly at a Deployment Site in response to a Call Out. The Board shall work with the Deployment Team to determine a reasonable training schedule that does not negatively impact their regular duties.
- 7.3. **Employees.** The members of the Deployment Team are not employees of the Fencing Consortium. The assigned members shall remain employees of their Governmental Unit for all purposes including, but not limited to, workers' compensation coverage.
- 7.4. **Equipment.** Any damage to or loss of Member equipment utilized by the Deployment Team shall be addressed as provided in the Public Works Mutual Aid Pact.
- 7.5. **Liability.** Liability for the acts of the Deployment Team when responding to a Call Out shall be addressed in accordance with the terms of the Public Works Mutual Aid Pact. For the purposes of the Public Works Mutual Aid Pact, the Requesting Member shall be the "Requesting Party" and each of the Members assigning personnel to the Deployment Team shall be a "Sending Party."

ARTICLE VIII BUDGETING AND FINANCIAL REPORTING

- 8.1. **Fiscal Year.** The fiscal year of the Fencing Consortium is the calendar year.
- 8.2. **Annual Budget.** The Board shall prepare and adopt an annual budget as provided in this section.
 - (a) **Proposed Budget.** The Board shall prepare and approve a proposed budget for the upcoming fiscal year. The proposed budget shall account for all anticipated costs in

the upcoming year and indicate the amounts proposed to be assessed to the Members.

- (b) Notice to Members. The Board shall adopt a proposed budget and distribute it to the Members by no later than June 1st each year. Members may submit written comments to the Board regarding the proposed budget by no later than July 1st.
- (c) Final Budget. The Board shall consider the comments received from Members and shall act to adopt a final budget by no later than August 31st. The Board shall distribute a copy of the adopted annual budget to the Members. To reduce administrative costs given the potential number of Members, the Board may send notices and otherwise communicate with Members using email messages in lieu of mailing.

ARTICLE IX INSURANCE AND INDEMNIFICATION

- 9.1 **Insurance.** The Fencing Consortium shall purchase and maintain such insurance policies as the Board determines is necessary and appropriate to cover the Fencing Consortium, the Board, its operations, and, if required, the Fencing. By purchasing insurance the Members, the Fencing Consortium, and the Board do not waive, and shall not be construed as having waived, any exemptions, immunities, or limitations on liability provided by any applicable Minnesota Law, including Minnesota Statutes, Chapter 466 and section 471.59, subdivision 1a. Any uninsured liabilities incurred by the Fencing Consortium shall be paid by the Members in the same percentage as their Member Assessments as set out in this Agreement.
- 9.2 **Director Indemnification.** The Fencing Consortium shall defend and indemnify its Directors from any claim or damages levied against a Director arising out of the Director's lawful acts or omissions made or occurring in the good faith performance of their duties on the Board. The Fencing Consortium is not required to indemnify a Director for any act or omission for which the Director is guilty of malfeasance, willful neglect of duty, or bad faith.
- 9.3 **Member Indemnification.** The Fencing Consortium shall hold the Members harmless, individually and collectively, and will defend and indemnify the Members for any claims, suits, demands or causes of action for any damages or injuries based on allegations of negligence or omissions by the Fencing Consortium. The Fencing Consortium's duty to indemnify does not constitute, and shall not be construed as, a waiver by either the Fencing Consortium or any or all Members of any exemptions, immunities, or limitations on liability provided by law or of being treated as a single governmental unit as provided in Minnesota Statutes, section 471.59, subdivision 1a.
- 9.4 **Liability.** To the fullest extent permitted by law, this Agreement and the activities carried out hereunder thereof are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Members that they, together with the Board, shall be

deemed a “single governmental unit” for the purposes of liability, all as set forth in Minnesota Statutes, section 471.59, subdivision 1a. For purposes of the statute, each Member to this Agreement expressly declines responsibility for the acts or omissions of the other Members.

SECTION X DISPUTE RESOLUTION

- 10.1 **Dispute Resolution Process.** The Members agree to engage in good faith to attempt to resolve any disputes that may arise over the establishment, operation, or maintenance of the Fencing Consortium. If a dispute is not resolved informally, the Members agree to use the following process to attempt to resolve any dispute they may have related to the Fencing Consortium.
- (a) Written Notice of Dispute. Any Member with a dispute regarding the Fencing Consortium or the Board may submit a written explanation of its dispute to the Fencing Consortium and to each Member. The Board shall make the email list of Members available for the purpose of providing this notice. The explanation of the dispute must be detailed, not repetitive of a dispute already addressed by the Board regarding the same Member, relate directly to a matter within the scope of the Fencing Consortium or of the Board’s powers, and must suggest a solution.
 - (b) Review and Response by Board. Upon the Fencing Consortium’s receipt of a written dispute it shall be placed on the agenda of the Board’s next scheduled regular meeting for consideration. The Board shall respond in writing to all properly submitted disputes within three months and shall provide each Member a copy of its response.
 - (c) Mediation. If the Member with the dispute is not satisfied with the Board’s response, it may file a written request with the Board for mediation. If the Member and the Board are not able to mutually agree on a mediator, the Member and the Board shall each select a mediator and the two mediators shall select a third. Each party to the mediation shall be responsible for the cost of the mediator it selected and shall share equally in the costs of the mediation and of the third mediator.
 - (d) Binding Arbitration. If the dispute is not resolved in mediation, the aggrieved Member and the Board may agree to submit to a binding arbitration process. The arbitration shall be conducted in accordance with Minnesota Statutes, chapter 572B following the Commercial Arbitration Rules of the American Arbitration Association, unless the Board and the Member agree to follow different rules. The Members and the Board agree the decision of the arbitrator shall be binding on the Fencing Consortium and its Members.

**SECTION XI
WITHDRAWAL OF A MEMBER**

- 11.1 **Process.** A Member may withdraw from the Fencing Consortium by providing written notice to the Board of its intent to withdraw. To avoid a withdrawal from interrupting the on-going payments for the costs of the Fencing, the effective date of the withdrawal will depend on its timing with respect to the Board's work to set the budget for the upcoming year. If the Board receives the withdrawal notice prior to May 1st in a year, the effective date of the withdrawal will be December 31st of the same year. If the Board receives the notice after May 1st, the withdrawal will be effective December 31st of the following year.
- 11.2 **Effect of Withdrawal.** The withdrawing Member shall be responsible for paying its full Member Assessment for the full year in which the withdrawal is effective. Recognizing the Fencing Consortium is an ongoing concern, the Members agree the withdrawing Member shall not receive any reimbursement of the amounts it has paid and is not entitled to any share in the assets of the Fencing Consortium. Upon the effective date of the withdrawal, the former Member shall no longer be considered a Member under this Agreement.

**SECTION XII
DISSOLUTION OF FENCING CONSORTIUM**

- 12.1 **Dissolution Process.** The Fencing Consortium may only be dissolved by a joint resolution approved by four-fifths of the then current Members or by a unanimous vote of the entire Board on a dissolution resolution. Dissolution shall not be effective for at least six months from the adoption the resolution unless an earlier dissolution date is approved as part of the resolution. Prior to the effective date of the dissolution, the Board shall use the Fencing Consortium's assets to pay its outstanding obligations. If the assets on hand are not sufficient to pay all outstanding obligations, the Board shall impose a Member Assessment to collect sufficient funds to pay the outstanding amounts. The Board shall divide the amount needing to be collected by a Member Assessment using the same formula for other Member Assessments. The Fencing Consortium shall not be finally dissolved until its outstanding obligations are paid in full.
- 12.2 **Distribution of Assets and Property.** Upon dissolution, the Board shall distribute any remaining assets to the Members in proportion to the Member Assessment of each Member in effect as of the date of dissolution. The Board shall have the power to determine the best method for distributing the assets and to decide any disputes that may arise among the Members concerning such distribution.

**SECTION XIII
MISCELLANEOUS PROVISIONS**

- 13.1 **Official Copy.** This Agreement is being entered into through the adoption by each Member and the Membership Resolution. The Board shall maintain the official copy of this Agreement and maintain a list of the Original Members and the Additional Members.

The official copy shall constitute the Agreement, which shall be binding on all of the Members.

- 13.2 **Data Practices.** The Fencing Consortium shall comply with the requirements of Minnesota Statutes, chapter 13, the Minnesota Government Data Practices Act (“Act”). The Vendor shall be required to comply with the Act as provided in Minnesota Statutes, section 13.05. The Vendor shall be required to notify the Board if it receives a data request and to work with the Fencing Consortium to respond to it.
- 13.3 **Notices.** Any notice required or permitted to be given to the Fencing Consortium under this Agreement shall be given in writing, and shall be sent by first class mail to its current address. Notice to each Member shall be given in writing by first class mail or email to the Member’s chief of police or other designated contact person.
- 13.4 **Waiver.** The delay or failure of any party of this Agreement at any time to require performance or compliance by any other party of any of its obligations under this Agreement shall in no way be deemed a waiver of those rights to require such performance or compliance.
- 13.5 **Governing Law.** The respective rights, obligations and remedies of the parties under this Agreement and the interpretation thereof shall be governed by the laws of the State of Minnesota which pertain to agreements made and to be performed in the State of Minnesota.
- 13.6 **Headings and Captions.** The headings and captions of these paragraphs and sections of this Agreement are included for convenience or reference only and shall not constitute a part hereof.
- 13.7 **No Third-Party Rights.** This Agreement is entered into for the sole benefit of the Members and no other parties are intended to be direct or incidental beneficiaries of this Agreement, and no third party shall have any right in, under, or to this Agreement.
- 13.8 **Good Faith.** Each Member shall act in good faith. In exercising its rights and fulfilling its obligations under this Agreement, each party acknowledges that this Agreement contemplates cooperation between and among the parties.
- 13.9 **Entire Agreement.** This Agreement, including the recitals and all of the Membership Resolutions, contains the entire understanding between the Members concerning the subject matter hereof.
- 13.10 **Amendments.** Amendments to this Agreement may be proposed by the Board or by at least 10% of the Members submitting a proposed amendment to the Board. The Board shall forward proposed amendments to the Members in the form of an amendment resolution. The Board will only forward amendments proposed by Members if it determines the proposed amendments are lawful and not contrary to the primary purposes of this Agreement. Members adopting the amendment resolution shall return a copy of

the executed resolution to the Board. A proposed amendment shall be considered approved if the amendment resolution is adopted by at least 90% of the then current Members.

- 13.11 **Examination of Books.** Pursuant to Minnesota Statutes, section 16C.05, Subd. 5, the books, records, documents and accounting procedures and practices of the Fencing Consortium and the Vendor are subject to examination by the State. Members may examine the financial records of the Fencing Consortium upon reasonable request.
- 13.12 **Recitals and Exhibits Incorporated.** The recitals contained herein, and the Membership Resolutions, are incorporated in and made part of this Agreement.

IN WITNESS WHEREOF, the Members have, by adoption and execution of the Membership Resolution, entered into this Agreement as of the Effective Date or, if an Additional Member, as of the date of acceptance by the Board of the Membership Resolution.

[A list of all Members is maintained by the Fencing Consortium.]



**City Council Agenda Item 10C
Meeting of June 27, 2022**

Title: Agreement with the City of Wayzata to provide environmental health services

Report From: Julie Wischnack, AICP, Community Development Director

Submitted through: Mike Funk, Acting City Manager

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

The City of Minnetonka has provided environmental health services to the City of Wayzata since the original agreement was approved on Aug. 6, 2007. The agreement was last updated on [Feb 10, 2020](#), to increase the hourly rate from \$77 to \$95. The new agreement increases the new rate to \$100 per hour.

Recommended Action

Approve the agreement.

Strategic Profile Relatability

- | | |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input checked="" type="checkbox"/> Safe & Healthy Community |
| <input type="checkbox"/> Sustainability & Natural Resources | <input type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management | <input type="checkbox"/> Community Inclusiveness |
| <input type="checkbox"/> N/A | |

Statement: N/A

Financial Consideration

Is there a financial consideration? No Yes [Enter estimated or exact dollar amount]
Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: N/A

Background

The City of Minnetonka has provided environmental health services to the City of Wayzata since the original agreement was approved on Aug. 6, 2007. During Minnetonka's 2020 budget discussions, staff raised the possibility of discontinuing this relationship due to more time-consuming requirements of an updated Minnesota Food Code and internal personnel changes. An alternative was to work collaboratively with Wayzata to maintain the relationship while more fairly compensating Minnetonka for its services.

Staff reached a consensus with Wayzata to continue the collaboration and updated the agreement between the two cities to ensure that it is consistent with other city agreements. At the Feb. 10, 2020, meeting, the rate was increased from \$77 to \$95.

Gas prices and staffing costs are two main drivers for cost increases this year. Many businesses are faced with increased costs for transportation. Because inspection services rely on driving to sites, those costs are increasing. Under the updated agreement, the hourly reimbursement would increase from \$95 to \$100 per hour.

Staff recommends approving the agreement with the City of Wayzata to provide environmental health services.

AGREEMENT FOR ENVIRONMENTAL HEALTH SERVICES

This agreement is made by the City of Wayzata ("Wayzata") and the City of Minnetonka ("Minnetonka"), both of which are Minnesota municipal corporations.

Wayzata has requested that Minnetonka conduct on its behalf certain environmental health services that are authorized for local municipalities. Minnetonka agrees to conduct these services based on certain conditions. This agreement is authorized by Minn. Stat. Sec. 471.59, subd. 1. Wayzata and Minnetonka previously entered into an agreement regarding this matter, which agreement is rescinded and replaced by this agreement.

Accordingly, the parties agree that Minnetonka will provide certain environmental health services for Wayzata subject to the following conditions:

1. **Definition of Code.** For purposes of this agreement, the "Code" administered and enforced under this agreement means the Minnesota rules governing food, lodging, and pools, Minnesota Rules Chapters 4625, 4626, and 4717, and related state statutes, as they may be amended from time to time.
2. **Adoption of Code.** Wayzata agrees to adopt by ordinance the Code as defined above, and to keep the ordinances current as state amendments are adopted. Minnetonka will inform Wayzata whenever the ordinances must be revised to include amendments.
3. **Environmental Health Services.** The services to be provided by Minnetonka include pre-construction plan review and on-site construction inspections for all food, beverage, and lodging establishments licensed by the Wayzata, as required for enforcement and administration of the Code. Additionally, Minnetonka will provide on-site construction inspections for all new and remodeled commercial pools (plan review is completed by Minnesota Department of Health on commercial pools). These services will be performed by the Minnetonka environmental health supervisor or by a qualified environmental health employee working under the environmental health supervisor's direct supervision ("Environmental Health Staff"). Wayzata may identify one of the Environmental Health Staff as one of their staff members, but the person will remain an employee of Minnetonka for all salary, benefit, and other employment-related matters as provided in paragraph 8 below.
4. **Responsibilities.** Each party will have the responsibilities noted below.
 - A) Wayzata will:
 1. administer and process all licenses for food, beverage, and lodging establishments, and public swimming pools;

2. coordinate all permit approval and issuance of the certificate of occupancies for construction of new or remodeled food, beverage, and lodging establishments, which are licensed by Wayzata;
3. issue all permits and collect environmental health plan review fees for construction of new or remodeled food, beverage, and lodging establishments, which are licensed by Wayzata;
4. maintain permanent licensing records and update Minnetonka when new licenses are issued; and
5. prosecute all violations.

B) Minnetonka will:

1. perform all environmental health pre-construction plan reviews;
2. perform all environmental health construction and routine/follow-up inspections required for Code enforcement;
3. maintain inspections reports and other information for the permanent records and provide copies for Wayzata;
4. assist Wayzata in all Code violation prosecutions with the environmental health staff time, records, and expert information. Inspection services provided under paragraph 12(C) below will be compensated separately as provided;
5. assist Wayzata in providing general environmental health information to citizens as requested; and
6. subject to 12(C) below, provide other inspection services or technical recommendations related to Code matters as may from time to time be requested by Wayzata.

5. ***Procedure for Code Administration***

- A) Wayzata will process all plans, collect plan review fees, and review all architectural drawings, specifications and site plans and certify to the Minnetonka environmental health supervisor that these are in compliance with applicable zoning and land use ordinances.
- B) The Minnetonka Environmental Health Staff will review the establishment construction plans for conformance with the Code and approve or disapprove them, indicating reasons for any disapproval, and advise Wayzata of their decision.

- C) After plan approval, Wayzata will issue the building permit, collect the plan review fee and the local and regional fees, and notify Minnetonka of the permit date, number and other pertinent information.
 - D) The Environmental Health Staff will perform required inspections and notify Wayzata of the progress, any violations, and final completion.
 - E) After final approval and compliance with all other local requirements, Wayzata will issue the certificate of occupancy.
6. **Inspection Administration.** The daily administration of the environmental health inspection services rendered pursuant to this agreement will be under the sole direction of Minnetonka, but the Environmental Health Staff will consult with Wayzata regarding policy and guidelines. Minnetonka agrees that it will incorporate the Wayzata workload into its daily Minnetonka workload and will provide services to Wayzata that are equal in quality to the services provided in Minnetonka. Minnetonka further agrees that in an environmental health emergency arising in both cities, Minnetonka will allocate staff and provide an appropriate response based on the level of risk, not on political boundaries. The services will generally be performed at the city offices of Minnetonka, except for required on-site inspections and as otherwise appropriate or agreed between the parties. Minnetonka will submit to Wayzata a monthly report of services rendered and charges due, in such form and detail as Wayzata may reasonably require.
 7. **Authority of Inspection Personnel.** Wayzata specifically grants the Minnetonka Environmental Health Staff the authority to administer and enforce the Code as provided by this agreement.
 8. **Employees of Minnetonka.** The Environmental Health Staff will be employees of Minnetonka, and Minnetonka assumes all obligations arising out of that employment relationship.
 9. **Equipment and Supplies.** Minnetonka will provide the necessary supplies, equipment and vehicles to the Environmental Health Staff, except that Wayzata will provide any necessary supplies that must be specially printed for Wayzata, such as inspection forms, etc.
 10. **Exchange of Data.** The parties will provide all information, data, and reports necessary for the environmental health services to each other without charge. The parties will cooperate with each other in every way possible to assist in the provision of these services.
 11. **Confidentiality.** Minnetonka will maintain the confidentiality and privacy of documents Wayzata provides, in accordance with the Minnesota Data Practices Act.

12. **Fees.** For the services described above, Wayzata will pay Minnetonka within 35 days after receiving a written invoice as follows:

A) Environmental Health Inspection Services

Wayzata will pay Minnetonka ~~\$95~~100.00 per hour for environmental health inspections.

B) Plan Review Services

Wayzata will pay Minnetonka ~~\$95~~100.00 per hour for its plan review services. This fee will be paid by Wayzata only when Minnetonka reviews plans to meet the requirements of the Code (plan review is completed by Minnesota Department of Health on commercial pools).

C) Other Inspection Services

Upon request by Wayzata, the Environmental Health Staff will assist Wayzata in other inspection services, such as garbage houses, housing code enforcement, and compliance inspections, which services will be paid on the hourly basis noted above.

13. **Indemnification.** Minnetonka agrees to defend, indemnify, and hold harmless Wayzata against any and all claims, liability, loss, damage, or expense arising under the provisions of this agreement and caused by or resulting from negligent acts or omissions of Minnetonka, its employees or agents. Wayzata agrees to defend, indemnify, and hold harmless Minnetonka against any and all claims, liability, loss, damage, or expense arising under the provisions of this agreement and caused by or resulting from negligent acts or omissions of Wayzata, its employees or agents. The parties to this agreement recognize that liability for any claims arising under this agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466. In the event of any claims or actions filed against either party, nothing in this agreement may be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. Under no circumstances may a party be required to pay on behalf of itself and the other party any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for both parties may not be added together to determine the maximum amount of liability for either party. The intent of this paragraph is to impose on each party a limited duty to defend and indemnify each other subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the parties and to permit liability claims against both parties from a single occurrence to be defended by a single attorney.

14. **Insurance.** During the entire term of this agreement, each party will maintain comprehensive general liability insurance in amounts sufficient to cover the

maximum liability limits provided by state law which arises directly or indirectly from the provision of services pursuant to this agreement. This insurance must include coverage of the indemnification obligation in paragraph 13 above.

15. **Term.** Notwithstanding the date of execution, this agreement will begin ~~January 1, 2020~~ _____, and will continue in effect until terminated as provided below.
16. **Termination.** Either party may terminate this agreement if the other fails to perform the services or pay the fees provided for in this agreement by giving 30 days advance written notice of termination to the other party. Either party may terminate this agreement without cause by giving 90 days advance written notice of termination to the other party. Wayzata must pay for all services rendered after the termination date that might be necessarily incurred to complete work begun before the termination date.
17. **Renegotiation.** After June 1 of each year the parties will analyze the fees to determine if they accurately reflect the costs incurred by Minnetonka in providing the services to Wayzata. The parties agree to negotiate in good faith a revision in the fee structure when appropriate.
18. **Amendment.** This agreement may be amended only in writing signed by both parties.
19. **Notices.** All notices required or permitted in this agreement and required to be in writing must be given by first class mail addressed to the relevant City at its City Hall.

CITY OF MINNETONKA

By _____

Its Mayor Date

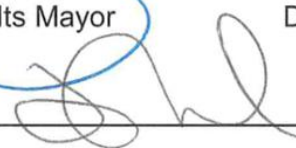
And _____

Its Acting City Manager Date

CITY OF WAYZATA

By _____  6/16/22

Its Mayor Date

And _____  6.9.22

Its City Manager Date



**City Council Agenda Item 10D
Meeting of June 27, 2022**

Title: Resolution appointing election judges and absentee ballot board for the Aug. 9 Primary State Election

Report From: Becky Koosman, City Clerk

Submitted through: Mike Funk, Acting City Manager
Moranda Dammann, Acting Assistant City Manager

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

Appointing election judges and absentee ballot board for the Aug. 9 election.

Recommended Action

Adopt the resolution appointing the election judges for the Aug. 9, 2022 Primary State Election.

Strategic Profile Relatability

Financial Strength & Operational Excellence Safe & Healthy Community
 Sustainability & Natural Resources Livable & Well-Planned Development
 Infrastructure & Asset Management Community Inclusiveness
 N/A

Statement: The appointment of election and ballot board judges is aligned with operational excellence.

Financial Consideration

Is there a financial consideration? No Yes [Enter estimated or exact dollar amount]
Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: The 2022 Primary State Election, including election judge salaries, is included in the 2022 operational budget.

Background

Subject: Resolution appointing election judges and absentee ballot board for the Aug. 9 Primary State Election

The city council is being asked to consider a resolution appointing election judges and the absentee ballot board for the Aug. 9, 2022 Primary State Election.

Council is asked to approve the eligible election judges listed in the resolution. From this list, staff will make assignments to ensure the required party balance. These election judges will be used to staff polling places, assist with absentee voting and help with the absentee ballot board. Most polling places will be staffed with 5-6 election judges. The resolution also gives the city clerk authority to appoint emergency election judges to fill vacancies that may occur at the last minute.

Resolution No. 2022-

Resolution appointing election judges for the Aug. 9, 2022 Primary State Election

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. The Primary State Election will be held on Aug. 9, 2022. The City Council is required by law to appoint election judges to serve at the polling places on Election Day.
- 1.02. Voting will occur at all 21 precincts in the city. Election judges will serve at the polling places and assist with absentee ballot processing.

Section 2. Council Action.

- 2.01. The City Council hereby authorizes the city clerk to select from the attached list of individuals to serve as election judges for the Aug. 9, 2022 Primary State Election and as the city's absentee ballot board.
- 2.02. The City Council also appoints all members appointed to the Hennepin County Absentee Ballot Board as authorized under M.S. 204B.21, subd 2 under the direction of the county election manager to serve as members of the Minnetonka Absentee Ballot Board.
- 2.03. The City Council also authorizes the city clerk to make emergency appointments of election judges to fill last-minute vacancies.

Adopted by the City Council of the City of Minnetonka, Minnesota, on June 27, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on June 27, 2022.

Becky Koosman, City Clerk

Poll Worker Report, 2022 Primary Statewide Election

Primary Election, Tuesday, August 9, 2022

Absentee

Absentee, 14600 Minnetonka Blvd, Minnetonka, MN 55345

Diane Anderson, Absentee Judge

Shari Anderson, Absentee Judge

Joy A Baker, Absentee Judge

Sally E Berg, Absentee Judge

Lynn Alison Cerra, Absentee Judge

Jeffry A Dickhut, Absentee Judge

Kathryn Dickhut, Absentee Judge

Linda M Eliason, Absentee Judge

Steve W Eliason, Absentee Judge

Clifford G Giese, Absentee Judge

Catherine L Goset, Absentee Judge

Margaret Hancock, Absentee Judge

Linda A Jacobs, Absentee Judge

Teresa L Landberg, Absentee Judge

Kay C Midura, Absentee Judge

Danna Heilicher Mirviss, Absentee Judge

Jean A Rabens, Absentee Judge

Steven J Rabens, Absentee Judge

Teri L Wold, Absentee Judge

Last Name	First	Precinct
Allan	Hugh David	Minnetonka W-1 P-B
Allen	David P	Minnetonka W-2 P-C
Amsden	Mary E	Minnetonka W-4 P-A
Anderson	Diane	Minnetonka W-1 P-A
Anderson	Jean C	Minnetonka W-2 P-A
Anderson	Mary Margaret	Minnetonka W-2 P-E
Anderson	Shari	Minnetonka W-2 P-D
Arens	Kelsey	Minnetonka W-3 P-C
Baker	Joy A	Minnetonka W-1 P-C
Barber	Elaine E Clyborne	Minnetonka W-3 P-C
Belisle	Julie	Minnetonka W-1 P-E
Belkin	Neil M	Minnetonka W-2 P-D
Benjamin	Diana Lynn	Minnetonka W-4 P-C
Berg	Ronald E	Minnetonka W-1 P-A
Berg	Sally E	Minnetonka W-1 P-F
Biesboer	David Dean	Minnetonka W-3 P-E
Blackman	Sandra J	Minnetonka W-3 P-E
Blackstad	Rita C	Minnetonka W-3 P-B
Bonshire	Reid	Minnetonka W-1 P-B
Bosley	Kevin	Minnetonka W-2 P-D
Bressler	Sally A	Minnetonka W-1 P-D
Brill	Mary Ruth	Minnetonka W-1 P-D
Burleson	Camille Rose	Minnetonka W-3 P-C
Burton	Bonnie Mae	Minnetonka W-1 P-E
Cady	Jean	Minnetonka W-3 P-E
Cady	Mark	Minnetonka W-3 P-D
Campbell	William	Minnetonka W-1 P-A
Carlson	Christopher J	Minnetonka W-4 P-C
Carlson	Peggy Sue-Nordseth	Minnetonka W-3 P-C
Carver	Lori	Minnetonka W-2 P-C
Cerra	Lynn Alison	Minnetonka W-2 P-B
Chowhan	Maryna P	Minnetonka W-2 P-B
Clouse	Kathleen J	Minnetonka W-2 P-D
Denzer	Ernest James	Minnetonka W-2 P-E
Devine	Bernard G	Minnetonka W-1 P-F
Dickhut	Jeffry A	Minnetonka W-3 P-C
Dickhut	Kathryn	Minnetonka W-1 P-A
Dillon	Mark Glen	Minnetonka W-3 P-B
Dionne	Pamela Jean	Minnetonka W-2 P-B
Dixon	Kathleen A	Minnetonka W-4 P-E
Dreon	Gayle Jean	Minnetonka W-2 P-B
Dwain	Hillis	Minnetonka W-4 P-B
Eeman	Marcus	Minnetonka W-4 P-C
Eliason	Linda M	Ward Captain
Eliason	Steve W	Ward Captain
Espino	Elaina	Minnetonka W-1 P-B

Fahnhorst	James	Minnetonka W-4 P-A
Fallen	Kathy	Minnetonka W-1 P-E
Fallen	Robert	Minnetonka W-3 P-C
Fitzgerald	Patricia	Minnetonka W-3 P-A
Franklin	Kyle	Minnetonka W-1 P-B
Franklin	Michael	Minnetonka W-2 P-B
Franson	Alan	Minnetonka W-2 P-C
Friedlieb	Helen R	Minnetonka W-4 P-C
Fuller	Steven R	Minnetonka W-1 P-E
Garner	Annquanette	Minnetonka W-2 P-A
Garnett	Susan Rae	Minnetonka W-2 P-E
Gaston	Jackie	Minnetonka W-1 P-B
Geis	Kendall	Minnetonka W-1 P-C
Geller	Amy	Minnetonka W-3 P-A
Giese	Clifford G	Minnetonka W-1 P-E
Goetze	Sherry	Minnetonka W-3 P-D
Goldwyn	Elizabeth Nancy	Minnetonka W-2 P-D
Gooch	Nancy L	Minnetonka W-4 P-B
Goodrich	John	Minnetonka W-3 P-D
Goset	Catherine L	Minnetonka W-3 P-A
Gundlach	Claudia Diane	Minnetonka W-2 P-B
Haggar	Colleen M	Minnetonka W-4 P-A
Hancock	Margaret	Ward Captain
Hardin	Thomas Barr	Minnetonka W-1 P-E
Hawver	Chris	Minnetonka W-4 P-A
Helm	Michelle	Minnetonka W-3 P-A
Hendrix	Maxwell Richmon	Minnetonka W-4 P-E
Hicks	Jane L	Minnetonka W-3 P-B
Hocker	Susan P	Minnetonka W-1 P-D
Hodapp	Michelle	Minnetonka W-1 P-D
Holl	Pamela	Minnetonka W-3 P-D
Holland	Russell Herbert	Minnetonka W-4 P-E
Hollister	Patricia M	Minnetonka W-4 P-C
Houston	Judith A	Minnetonka W-3 P-B
Ingham	Tracy Lynn	Minnetonka W-1 P-B
Ingram	Betty Jean	Minnetonka W-1 P-A
Jacobs	Linda A	Minnetonka W-3 P-A
Jilek	Maggie	Minnetonka W-4 P-C
Jilek	Scott	Minnetonka W-4 P-C
Johnson	Andrea Katherine	Minnetonka W-2 P-A
Johnson	Emelie M	Minnetonka W-3 P-E
Johnson	Rosemary E	Minnetonka W-4 P-D
Johnson	Steven	Minnetonka W-1 P-D
Kable	Jennifer	Minnetonka W-2 P-B
Kalscheuer	Michael J	Minnetonka W-2 P-D
Kern-Pieh	Barbara Lynn	Minnetonka W-4 P-E
Klempp	Ray	Minnetonka W-3 P-B

Klingbeil	Larry James	Minnetonka W-3 P-C
Knudsen	Lori	Minnetonka W-2 P-C
Kongsvik	Linda J	Minnetonka W-3 P-D
Konopliv	Kari	Minnetonka W-2 P-C
Kosovan	Marina	Minnetonka W-3 P-B
Kraemer	Richard	Minnetonka W-2 P-D
Kral	Daniel	Minnetonka W-4 P-E
Kronzer	Craig	Minnetonka W-4 P-C
Landberg	Teresa L	Minnetonka W-3 P-B
Larkin	Alaina Ann	Minnetonka W-3 P-B
Larson	Lisa	Minnetonka W-3 P-C
Larson	Norine A	Minnetonka W-3 P-D
Levine	Jeffrey P	Minnetonka W-1 P-A
Levine	Sharon P	Minnetonka W-4 P-B
Lewis	Ray R	Minnetonka W-1 P-F
Madden	Reid Michael	Minnetonka W-2 P-C
Mason	Kathryn Marie	Minnetonka W-4 P-D
Mason	Martha Jean	Minnetonka W-1 P-C
Maxwell	Denise S	Minnetonka W-1 P-F
McCullough	Jeffrey J	Minnetonka W-3 P-D
McDonald	Jenna	Minnetonka W-2 P-A
Melinat	Judith Marie	Minnetonka W-4 P-A
Melinat	Ronnie J	Minnetonka W-4 P-B
Meyer	Aimee H	Minnetonka W-4 P-A
Meyer	Dean J	Minnetonka W-1 P-F
Midura	Kay C	Minnetonka W-1 P-D
Mies	Richard D	Minnetonka W-3 P-E
Mirviss	Danna Heilicher	Minnetonka W-3 P-D
Mitchell	Michael Anthony	Minnetonka W-1 P-C
Mogilner	Saralee D	Minnetonka W-1 P-D
O Brien	Mary Louise	Minnetonka W-2 P-C
O Connor	Julie Klaustermeier	Minnetonka W-1 P-C
O'Connor	Kevin	Minnetonka W-2 P-C
O'Keefe	Barbara Ann	Minnetonka W-4 P-D
Oconnell	Pamela Andersen	Minnetonka W-2 P-E
Olafson	Jacqueline A	Minnetonka W-4 P-D
Olafson	Norman J	Minnetonka W-4 P-B
Olson	David Milton	Minnetonka W-1 P-F
Olson	Johanna A	Minnetonka W-1 P-A
Olson	Noah	Minnetonka W-1 P-F
Opsahl	John A	Minnetonka W-4 P-D
Orren	Susan Dale	Minnetonka W-2 P-A
Pentcheva	Fidanka Kroumova	Minnetonka W-4 P-D
Pochardt	Mark	Minnetonka W-3 P-D
Podany	Gail A	Minnetonka W-3 P-E
Polansky	Robert	Minnetonka W-3 P-E
Potas	Angela	Minnetonka W-3 P-E

Powell	Joyce G	Minnetonka W-4 P-A
Rabens	Jean A	Minnetonka W-3 P-C
Rabens	Steven J	Minnetonka W-1 P-A
Raymo	JoAnn	Minnetonka W-3 P-C
Reesor Johnsrud	Nancy	Minnetonka W-3 P-E
Ritten	Susan H	Minnetonka W-1 P-B
Robinson	Isabelle C	Minnetonka W-4 P-E
Rosenbaum	James M	Minnetonka W-3 P-A
Rosenbaum	Marilyn Brown	Minnetonka W-2 P-D
Rubin	Dana Elizabeth	Minnetonka W-4 P-C
Sandler	Michael	Minnetonka W-1 P-C
Schmitt	Barbara J	Minnetonka W-3 P-B
Schmitt	Jane C	Minnetonka W-4 P-B
Schowengerdt	Daniel Edward	Minnetonka W-4 P-B
Schroeder	Duane	Minnetonka W-2 P-E
Schroeder	Pamela E	Minnetonka W-2 P-E
Selisky	John Matthew	Minnetonka W-4 P-B
Semmer	Mary	Minnetonka W-2 P-D
Sharpe	Larry Charles	Minnetonka W-1 P-E
Simer	Geraldine S	Minnetonka W-4 P-A
Simer	Loren J	Minnetonka W-1 P-D
Sipma	Lauri	Minnetonka W-4 P-E
Staloch	Lynn Nelson	Minnetonka W-4 P-D
Stewart	Brian	Minnetonka W-1 P-C
Strimling	Richard Samuel	Minnetonka W-3 P-A
Stucki	Maynard Francis	Minnetonka W-2 P-E
Thompson	Mindy S	Minnetonka W-4 P-D
Twite	Rebecca	Minnetonka W-4 P-B
Uran	Reo Deann	Minnetonka W-4 P-D
Wahlberg	Sally J	Minnetonka W-4 P-C
Wahlen	Michelle Lynn	Minnetonka W-1 P-B
Weiler	Carol G	Minnetonka W-1 P-C
Weinshel	Kathy Huber	Minnetonka W-2 P-B
Werley	Mark David	Minnetonka W-4 P-E
Wiens	Myron Paul	Minnetonka W-3 P-E
Wold	Teri L	Minnetonka W-4 P-A
Worrell	Timothy James	Ward Captain
Wyatt	Ashley Nicole	Minnetonka W-2 P-E
Young	Clay Alexander	Minnetonka W-2 P-A
Youngblood	Virginia	Minnetonka W-1 P-C
Zimmerman	Jacqueline A	Minnetonka W-4 P-A
Zimmerman	Linda	Minnetonka W-4 P-E
Zitzloff	Renee	Minnetonka W-1 P-A



**City Council Agenda Item 10E
Meeting of June 27, 2022**

Title: Items concerning Rayito de Sol at 3520 Williston Road:

1. Amendment to the existing master development plan;
2. Conditional use permit for a licensed daycare; and
3. Site and building plan review.

Report From: Ashley Cauley, Senior Planner

Submitted through: Mike Funk, Acting City Manager
Julie Wischnack, AICP, Community Development Director

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

Rayito de Sol (RDS), a Spanish immersion daycare, is proposing to occupy the space formerly occupied by Minnetonka Christian Academy. RDS would be licensed for up to 120 students and is proposing to convert an existing gymnasium and remaining storage area within the building into additional classroom space.

The proposal requires:

- Amendment to the master development plan to convert the remaining storage space into classroom space.
- Conditional use permit for a licensed daycare facility.
- Site and building plan review to expand or change the use of a building by more than 10 percent.

Recommended Action

Adopt the ordinance and resolution.

Strategic Profile Relatability

- | | |
|--|---|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input type="checkbox"/> Safe & Healthy Community |
| <input type="checkbox"/> Sustainability & Natural Resources | <input type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management | <input type="checkbox"/> Community Inclusiveness |
| <input checked="" type="checkbox"/> N/A | |

Statement: N/A

Financial Consideration

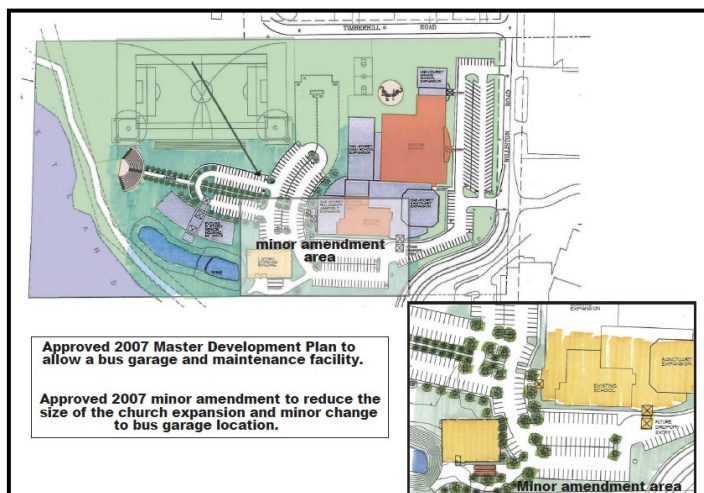
Is there a financial consideration? No Yes [Enter estimated or exact dollar amount]
Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: N/A

Background

A detailed history of the site is included in the attached planning commission report. In summary, the site's master development plan was adopted in 1999. The plan contemplates expansions to the existing church and school buildings and the construction of a 60-unit senior housing buildings, athletic fields, and an outdoor amphitheater. Later amendments to the plan were approved to (1) allow the construction of a storage and maintenance facility; and (2) convert roughly 75 percent of the storage facility into an educational facility.

On May 23, 2022, the city council introduced the ordinance to amend the master development plan to allow RDS to occupy the former storage facility and convert the remaining storage areas into classroom space. The council discussed parking and the tax implications of a for-profit rental of tax-exempt property.



The planning commission considered the request on June 9, 2022. Staff recommended approval finding:

- The amendment to the existing master development plan is reasonable. The conversion of the remaining storage space to classroom space for a daycare would be complementary and consistent with the intent, use, and design considered in the existing master development plan.
- The use would meet the general and specific standards outlined in the city code for daycare uses.
- By code, the parking demands of the site would exceed the amount of parking available on-site *if all three uses operated at the same time*. However, the uses are complementary. The daycare and educational facilities operate during the week, and the religious facility on the weekend. This finding is supported by the parking observations taken by SRF Consulting Group onsite.
- Staff initially expressed concern related to current pick-up and drop-off queuing extending onto city property. Staff secured SRF Consulting Group to observe site circulation and queuing patterns. The study found that the queuing issues are directly related to the unique patterns of a use that is vacating the site. The study concluded that no site improvements are necessary to accommodate all three uses on-site.

At the commission meeting, a public hearing was opened to take comments, but no one appeared to speak. The commission asked questions and discussed the proposal:

- Commissioners confirmed that increases in enrollment numbers could trigger additional reviews if parking and traffic issues arise.
- Commissioners generally agreed that the proposed daycare use was complimentary and the location was suitable.

On a 4-0 vote, the commission recommended the city council adopt the attached ordinance and resolution. The planning commission support and meeting minutes are attached.

MINNETONKA PLANNING COMMISSION
June 9, 2022

Brief Description

Items concerning Rayito de Sol at 3520 Williston Road:

1. Amendment to the existing master development plan;
2. Conditional use permit for a licensed daycare; and
3. Site and building plan review

Recommendation

Recommend the city council approve the request

Background

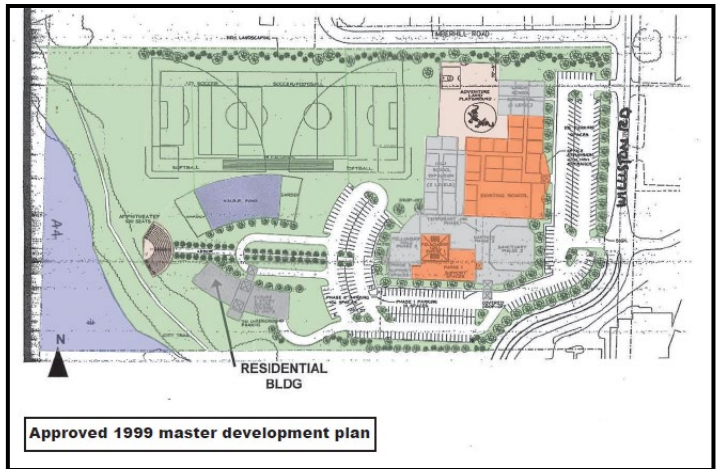
The property at 3520 Williston Road is roughly 20 acres in size and is improved with three buildings and several outdoor recreational amenities (playground and athletic fields, and parking lots).

In 1999, the city council approved a master development plan and a conditional use permit for the property at 3500 Williston Road. The plan contemplates expansions to the existing church and school buildings and the construction of a 60-unit senior housing building, athletic fields, and an outdoor amphitheater. The conditional use permit was for Minnetonka Christian Academy, which was previously a non-conforming use operating since 1968.

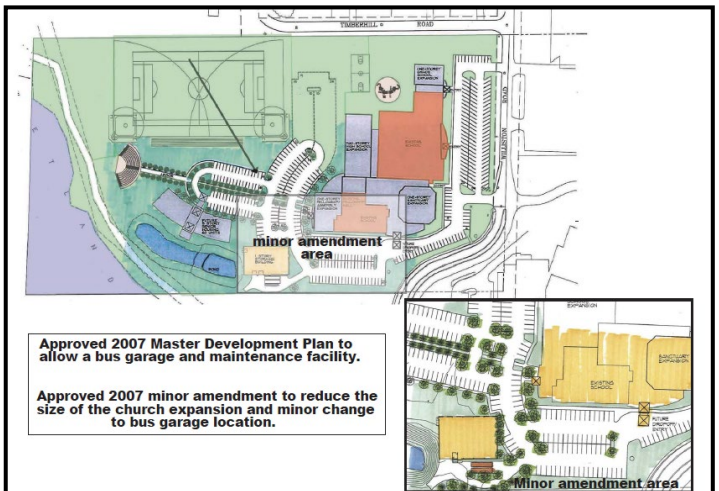
In 2007, the master development plan was amended to (1) increase the number of structures on the property to allow the construction of a storage and maintenance facility; (2) relocate a stormwater pond; and (3) reconfigure future parking lots. The storage facility was to be used to store and maintain the school's bus fleet and various other church and school equipment and supplies. Shortly after, a minor amendment was approved to relocate the storage building slightly as soil testing indicated that the soils in the originally approved location for the storage building were not suitable.



Current aerial



Approved 1999 master development plan



Approved 2007 Master Development Plan to allow a bus garage and maintenance facility.

Approved 2007 minor amendment to reduce the size of the church expansion and minor change to bus garage location.

Minor amendment area

In 2014, the city approved an amendment to the existing master development plan and site and building plans to allow Minnetonka Christian Academy to occupy roughly 75 percent of the 9,000 square foot storage building. Minnetonka Christian Academy has continued to operate within the former storage building but is now relocating back into the larger school building.

Proposal

Rayito de Sol (RDS), a Spanish immersion daycare, currently operates in Minneapolis and Richfield, as well as two additional centers in Chicago. RDS is proposing to occupy the space formerly occupied by Minnetonka Christian Academy. RDS would also convert an existing gymnasium and the remaining storage area within the building into additional classroom space. Very minor changes are proposed to the exterior of the building to close an existing garage door on the west elevation, enlarge the main entry, and add windows.

RDS would be licensed for up to 120 students and have up to 15 staff. Typical hours of operation would be from 7:00 a.m. to 6:00 p.m., Monday through Friday.

The proposal requires:

- Amendment to the master development plan to convert the remaining storage space into classroom space.
- Conditional use permit for a licensed daycare facility.
- Site and building plan review to expand or change the use of a building by more than 10 percent.

Staff Analysis

A land-use proposal is comprised of many details. In evaluating a proposal, staff first reviews the details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions associated with the proposal and the staff's findings:

- **Is the requested amendment to the existing master development plan appropriate?**

Yes. The amendment to the existing master development plan is reasonable. The existing master development plan contemplates thoughtful expansions to the site's existing school and religious uses. The plan also contemplates a future senior housing complex. While these uses are projected for the future, staff finds the conversion of the remaining portion of the storage unit to classroom space for a daycare complementary to and consistent with the intent, use, and design considered in the existing master development plan.

- **Is the requested conditional use permit appropriate?**

Yes. The use would meet the conditional use permit standards for daycare uses as:

1. Loading and drop-off points are reasonably located in front of the daycare facility and would not interfere with traffic or pedestrian circulation.
2. The site has several outdoor play areas, including one in the northwest corner of the daycare building.

3. The daycare requires 29 parking stalls and can be accommodated on site. More information on parking is below.
4. Included as a condition of approval, the daycare must obtain all state, county, and city licenses.

- **Can the trip and parking demands be accommodated on-site?**

Yes. The trip and parking demands can be accommodated onsite.

Parking. By city code, 210 parking stalls are required. The site is currently improved with 147 stalls, with an additional 253 available as proof-of-parking. The parking demands of the site would exceed the amount of parking available onsite *if all three uses operated at the same time* as shown below:

	City Code		ITE Standards
	Calculation	Required	Required
<i>Religious institution</i>	1 per 2.5 seats	120 stalls	66 stalls
<i>Educational facility</i>	1 per 3 students + 1 per instructor	70 stalls	59 stalls
<i>Daycare</i>	1 per 6 children	20 stalls	29 stalls
Total required		210 stalls	154 stalls
<i>Available onsite</i>		147 stalls	
<i>Additional stalls as proof-of-parking</i>		253 stalls	

Staff finds the uses complementary, as the daycare and educational facilities operate during the week and the religious facility operates on the weekend. This finding is supported by parking observations taken by SRF Consulting Group onsite and at RDS's Richfield location.

Trip and traffic. Staff initially expressed concern regarding the current pick-up and drop-off queueing extending across Williston Road and onto city property. Staff secured SRF Consulting Group to observe site circulation and queueing patterns. The study found that the queueing issues are related to the Academy of Whole Learning, which is currently operating in the larger school building. Academy of Whole Learning is the only private school in Minnesota that is specifically designed for students with autism spectrum disorder and individual learning needs.¹ The study observed patterns associated with the Academy of Whole Learning are unique; the school experiences longer pick-up and drop-off times that a more typical school. The full study will be available prior to the planning commission meeting, however, the following was provided as a summary:

- Academy of Whole Learning is relocating offsite for Minnetonka Christian Academy to move in. This is anticipated to mitigate the current pick-off and drop-off issues.
- The study does not anticipate circulation concerns associated with the daycare use based on observations gathered from RDS's Richfield location.

¹ <https://www.academyofwholelearning.org/>

- Minnetonka Christian Academy and RDS will utilize different access points and are expected to have complimentary drop-off and pick-up times.
- No previously identified site improvements are necessary to accommodate all three uses onsite based on the study findings.

Staff Recommendation

Recommend that the city council adopt the following for the property at 3520 Williston Road:

- Ordinance approving an amendment to the existing master development plan and site and building plans for the conversion of the remaining existing storage facility to classroom space for a licensed daycare facility.
- Resolution approving a conditional use permit for a licensed daycare center.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner

Supporting Information

Surrounding Land Uses

Northerly: Single-family residential homes; zoned R-1 and guided low-density residential
Easterly: Minnetonka city hall campus and ice arenas, zoned PUD, and guided institutional
Southerly: Open space, zoned R-1 and guided Institutional
Westerly: Wetland complex

Planning

Guide Plan designation: Institutional
Zoning: PUD, Planned Unit Development

Site Uses

The site has two additional buildings. The following is intended to summarize how the other buildings are utilized:

Minnetonka Seventh-day Adventist Church: The religious facility is roughly 12,000 square feet in size. The active membership of the religious institution is roughly 350 members. The sanctuary has a max designed capacity for 300 people.

Typically, services are held on Saturday:

- 9:30 a.m. with an average of 60 attending members
- 11:30 a.m. with an average of 140 attending members

The religious facility is rented out on Sundays to other religious organizations. Generally, the rental period is from 9 a.m. to 1 p.m. and has up to 150 attendees.

Minnetonka Christian Academy (MCA): The educational facility is roughly 40,000 square feet in size, with 170 students in Pre-K through 10th grade. Typically, the facility is staffed by up to 10 people and three volunteers at any given time.

General hours of operation:

- Monday – Thursday: 8 a.m. – 3:00 p.m.
- Friday: 8 a.m. – 2 p.m.
- After school program: after school – 5:30 p.m.

Ordinance Introduction On [May 23, 2022](#), the city council introduced the ordinance to amend the master development plan. The council discussed parking and the tax implications of a for-profit rental of tax-exempt property. The city council referred the ordinance to the planning commission.

CUP Standards

The proposal would comply with conditional use permit standards as outlined in City Code §300.21 Subd. 5(j):

1. Shall have loading and drop-off points designed to avoid interfering with traffic and pedestrian movements;

2. Outdoor play areas shall be located and designed in a manner which mitigates visual and noise impacts on adjoining residential areas;
3. One parking space for every six children based on the licensed capacity of the center; and
4. Shall obtain all applicable state, county, and city licenses.

SBP Standards

The proposal would comply with all site and building standards as outlined in City Code §300.27 Subd.5

1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;
2. Consistency with this ordinance;
3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;
4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;
5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:
 - a) an internal sense of order for the buildings and uses on the site, and provision of a desirable environment for occupants, visitors and the general community;
 - b) the amount and location of open space and landscaping;
 - c) materials, textures, colors, and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
 - d) vehicular and pedestrian circulation, including walkways, interior drives, and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement and amount of parking.
6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of

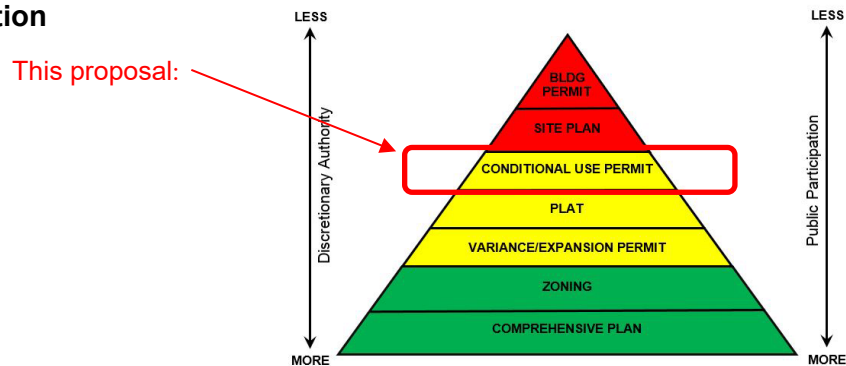
glass in structures, and the use of landscape materials and site grading; and

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Natural Resources

Best management practices must be followed during the course of site preparation and construction activities. This would include the installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval, the applicant must submit a construction management plan detailing these management practices.

Pyramid of Discretion



Voting Requirement

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority.

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case, a motion should be made recommending the city council adopt the resolution approving the request.
2. Disagree with the staff's recommendation. In this case, a motion should be made recommending the city council deny the request. This motion must include a statement as to why denial is recommended.
3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Neighborhood Comments

The city sent notices to 32 area property owners and received no comments.

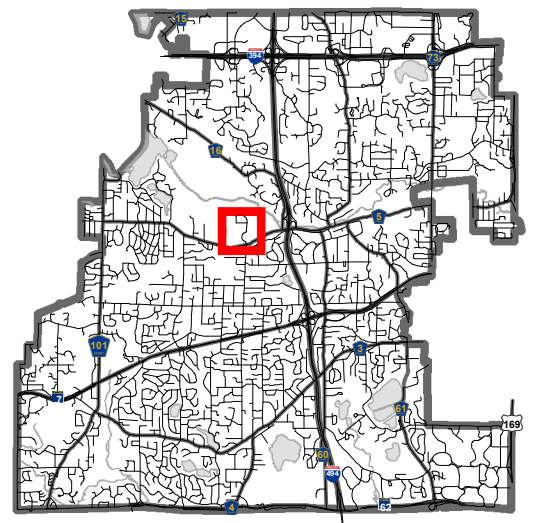
**Deadline for
Decision**

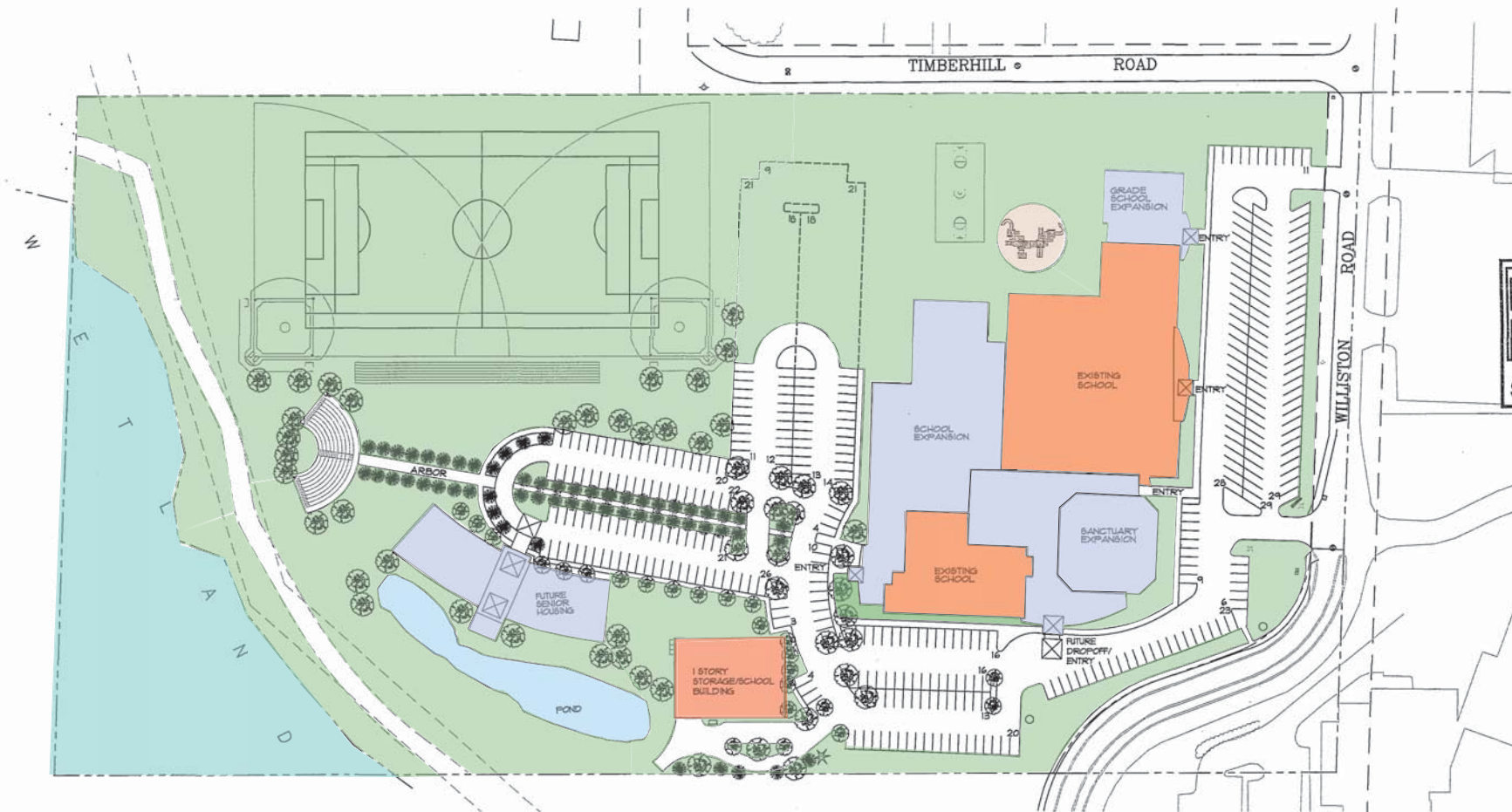
Aug. 25, 2022



Location Map

Project: Rayito de Sol
Address: 3520 Williston Rd





**TROSSEN
WRIGHT
PLUTOWSKI**
ARCHITECTS, PA

4125 Lakeland Ave N.
Suite 200
Minneapolis, Minnesota 55412
Phone: (763) 533-7171
Fax: (763) 533-7979

Consultants

RECEIVED
MAR - 3 2014
Submitted by Applicant

Certification

Project Information
**Minnetonka
Seventh-Day
Adventist Church
Master Plan**

Minnetonka, Minnesota

Revisions
03/07/14 MASTER PLAN REV.

Date: 06/29/07
Drawn By: JG
Checked By: AP
Job Number: M1013



Sheet Information
MASTER SITE PLAN - REVISED

Approved Master Development Plan

1 MASTER PLAN
A2 1" = 32'-0"

A2

To: City of Minnetonka
Attn: Ashley Cauley
RE: Consolidated Conditional Use Permit and Development Plan Application
April 27th, 2022

Minnetonka Christian Academy (MCA) is leasing its 3520 Williston Road building to Rayito de Sol (RDS), a Spanish immersion daycare, which is a for-profit LLC. A demarcation line around the building, including the existing playground, is being marked for property tax purposes as shown in **Exhibit A**. This is the first occurrence of a for-profit entity leasing a building on the 20-acre campus. Prior to this occurrence all leases and rentals have been to non-profit organizations.

The 20-acre campus has the full legal description as shown in **Exhibit B**. The campus presently has three buildings: 3500 Williston Road (school); 3510 Williston Road (church worship center); and 3520 Williston Road (school).

For reference, though it may not be required, a survey of the 20-acre land parcel is attached in **Exhibit C** and was conducted around 2000 by Schoell Madsen.

The site plan incorporating all three buildings is shown in **Exhibit D** (1 of 2, page T1-1) dated 05/07/2014 as submitted for the 3520 building remodel by Trossen, Wright, Plutowski Architects. The second page (2 of 2, L1-R1) documents the 3 building site locations, pick-up/drop off points and traffic circulation as currently practiced since 2014 to present and proposed going forward.

Additional narrative is attached in **Exhibit E** detailing hours of operations, enrollment numbers / maximum capacity, teachers, classroom numbers, drop-off and pick-up times for both MCA and RDS. Also included are membership numbers, attendance and typical schedule for the church worship center.

Exhibit F shows the current 3520 building elevation (page A5-1) and floor plan (page A3-1A). A proposed conversion by RDS of the remaining storage and gym space into classrooms is also included in **Exhibit G**.

There are no plans for changes to the 3500 or 3510 buildings.

The intended use of the 3520 Building is to lease it to Rayito de Sol (RDS), a Spanish immersion daycare that will operate as the sole tenant/occupant of the entire 3520 building and within the land demarcation perimeter. Prior to leasing, this building has been used as a PK-8th grade church school (MCA) since 2014 until present. Traffic flow, circulation and parking density is expected to be less than or on par with current campus experience. Appropriate permits and licensing, including the Department of Human Services, will be secured by RDS.

Respectfully submitted,

David Land
MCA Lessor

Exhibit E

Minnetonka Campus Data

3500, 3510, 3520 Williston Road

What is changing on campus summer 2022?

- Minnetonka Christian Academy (MCA) is moving from 3520 back to the 3500 Building
- Rayito de Sol (RDS) is leasing the 3520 building with plans to convert some remaining storage and gym space into classrooms

MCA needs more space to grow its current student base of 72 students to 108 students for the 2022-2023 school year. The school was originally operating in the 3500 building since the 1960's but right sized in 2012-13 and operated from the smaller 3520 building beginning the 2014-15 school year to present. MCA is at capacity with pressure in lower grades for classrooms/students in the 3520 building and so will now move back into the larger 3500 building.

MCA began a search for a tenant to lease the 3520 building in November 2021 and secured an agreement with RDS, a Spanish immersion daycare March 24th, 2022. The daycare plans to be operational September 1st, 2022. As RDS builds its student base, it plans to subsequently convert some remaining storage and gym space into classrooms to fully utilize the building for its mission. *A proposed floor plan for these classrooms is provided in Exhibit G.* Since RDS is a for-profit company a demarcation line around the building, including the existing playground, is being marked for property tax purposes (Exhibit A).

There are currently no plans for changes to the 3500 or 3510 buildings.

Here is a summary of the three campus properties, including hours of operation, enrollment numbers/maximum capacity; teachers; number of classrooms for MCA and RDS. Church membership numbers, attendance and typical worship schedule are also provided:

- 1. Minnetonka Christian Academy (MCA) 3500 Williston Road Building:** (approx. 40,000 gross sq. ft (gsf); Pre-K – 10 School
 - a. Projected enrollment for July 2022 – June 2023 School Year: 108 students covering Pre-Kindergarten through 10th grade
 - b. Teaching Staff (including Principal, art, music) 10; Volunteers: up to 3
 - c. Maximum student capacity (all classrooms): 170 students
 - d. 10 Classrooms (including Art and Music)
 - e. School Operating Hours: Monday – Thursday 8:00am–3:00pm; Friday: 8am-2pm
 - f. Staggered drop-off occurs between 7:30-8:15am and pick-up between 3-3:15pm (Friday: 2-2:15pm)
 - g. Between 10-20 students are in the after-care program for parents to pick-up at staggered times from 3:15-5:30pm

- 2. Minnetonka Seventh-day Adventist Church 3510 Williston Road Building:** (approx. 12,100 gsf); Worship Center
 - a. Active membership: 350
 - b. Saturday Attendance, 200 average: 60 @1st Service; 140 @ 2nd service (Total of two services 9:30am and 11:30am)
 - c. Sunday Attendance (when rented): Up to 150 (9-1pm)
 - d. Worship Center capacity: Approx. 300 people

- 3. Rayito de Sol (RDS) Lessee 3520 Williston Road Building:** (approx. 9,000 gsf); Spanish Immersion Daycare/School- Ages 3 months – 5 ½ years old
 - a. Projected enrollment September 2022 - August 2023: Up to 95 students, 90% of capacity
 - b. Teaching Staff: 15
 - c. Maximum student capacity (with additional classrooms) approx. 114 (Department of Human Services determines based on classroom square footage)
 - d. 5 classrooms, growing to 7
 - e. Our goal is to get to the following classroom classifications: 2 Infant, 2 Toddler, 3 Preschool
 - f. School Operating Hours: Monday – Friday 7:00am–6:00pm
 - g. Drop-off is very staggered from 7-9am
 - i. Early care drop-off for parents is typically 7-8am, with a majority of children arriving between 8:30-9am
 - h. Pick-up of students is also very staggered from 4-6pm.
 - i. 6:00pm pick-up is for those parents who need post care late pickup.

Traffic circulation with routes drawn out and pick-up/drop off spots are shown on the site plan (Exhibit D, 2 of 2, page L1-R1). This same circulation pattern and pick-up/drop off spots have been successfully in place since 2014.

Church attendance is on the weekend, whereas both schools operate Monday to Friday, so there is no overlap. MCA and RDS have different drop-off and pick-up times so there is minimal overlap. Each school has a separate circulation route through the campus which avoids interference with any temporary traffic lines.

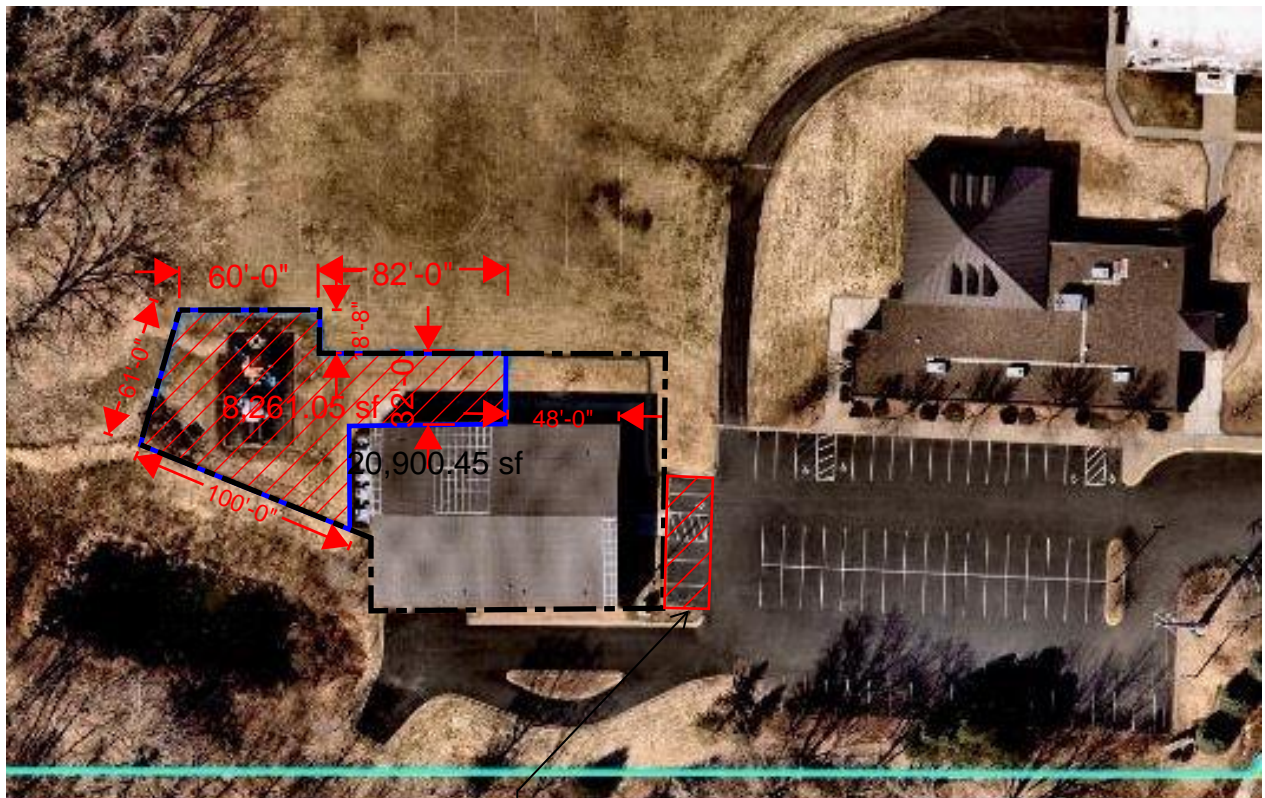
Please note that the entire 20-acre campus (land and buildings) is part of the assets of the Minnesota Conference Association of Seventh-day Adventists, a Minnesota nonprofit corporation.

Exhibit A
Legal Description of the Real Estate
Demarcation of RDS Lease

As of 4-5-2022 pending formal survey and official boundary description:

The drawn blue line represents a black chain-link fence extension for the perimeter of the property around the children's playground back to the side hallway exit door on the north side.

The drawn black line is the approximate property boundary up to the front of the building to meet the vertical line from the curb edge of the exclusive parking spaces in front of the 3520 building.



North

RDS EXCLUSIVE
PARKING

4/26/2022 ANNOTATION

EXHIBIT - A -

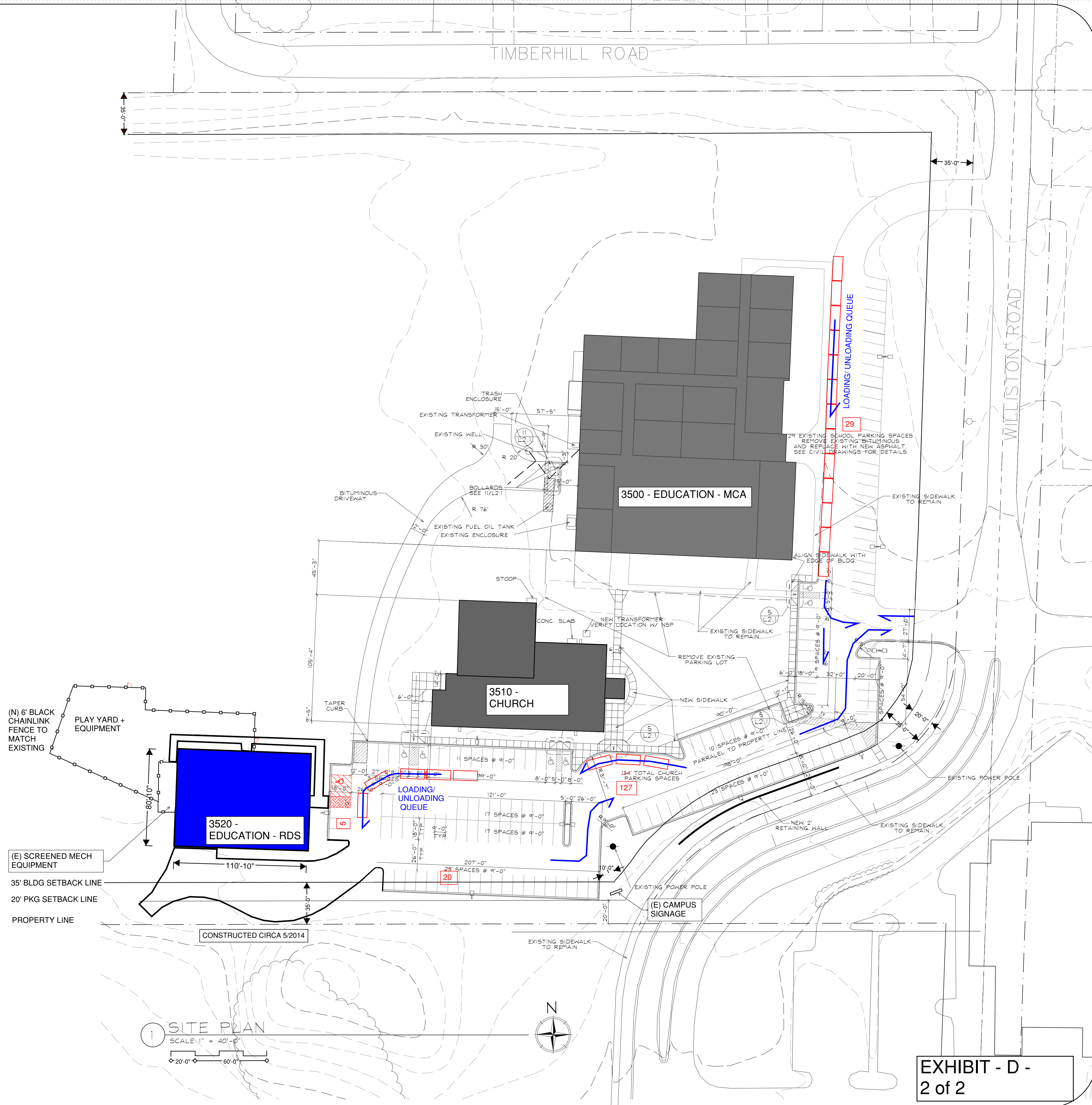
Exhibit B

Legal Description of the Property Lot

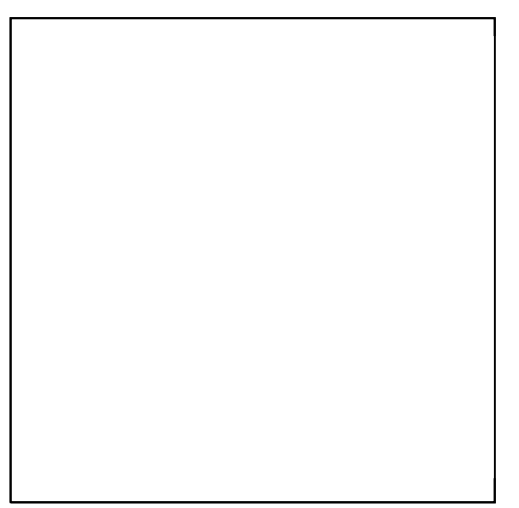
Certificate of Title for the property lot has the following legal description:

The NW 1/4 of the SE 1/4 of Sect. 16, Township 117, Range 22 except the South 640 ft. thereof and except that part thereof described as follows:

Beginning at the NE corner of the South 640 ft. of said NW 1/4 of the SE 1/4, thence N 2 deg. 05 min. 38 sec. East along the East line thereof a distance of 228.0 ft. thence North 87 deg. 54 min. 22 sec. West 33.0 ft.; thence Southwesterly 138.86 ft. along a non-tangible curve concave to the Northwest, having a radius of 117.0 ft. and a central angle of 68 deg. and a chord bearing South 36 deg. 05 min. 38 sec. West; thence South 70 deg. 05 min. 38 sec. West, tangent to said last described curve 88.44 ft.; thence Southwesterly along a tangential curve, concave to the Southeast having a central angle of 68 deg. and a radius of 187.0 ft. to the North line of said South 640 ft.; thence North 89 deg. 56 min. 33 sec. East along said North line thereof to the point of beginning and there terminating.



MINNETONKA SEVENTH-DAY ADVENTIST
 CHURCH + MINNETONKA CHRISTIAN ACADEMY
 PARTIAL SITE CIRCULATION PLAN
 MINNETONKA MINNESOTA



SITE CIRCULATION PLAN

Drawn By
 Project Architect
 Checked By
 Date FEBRUARY 4, 2000
 Revisions

4/26/2022 3520
 BLDG + PARKING
 RECOUNT

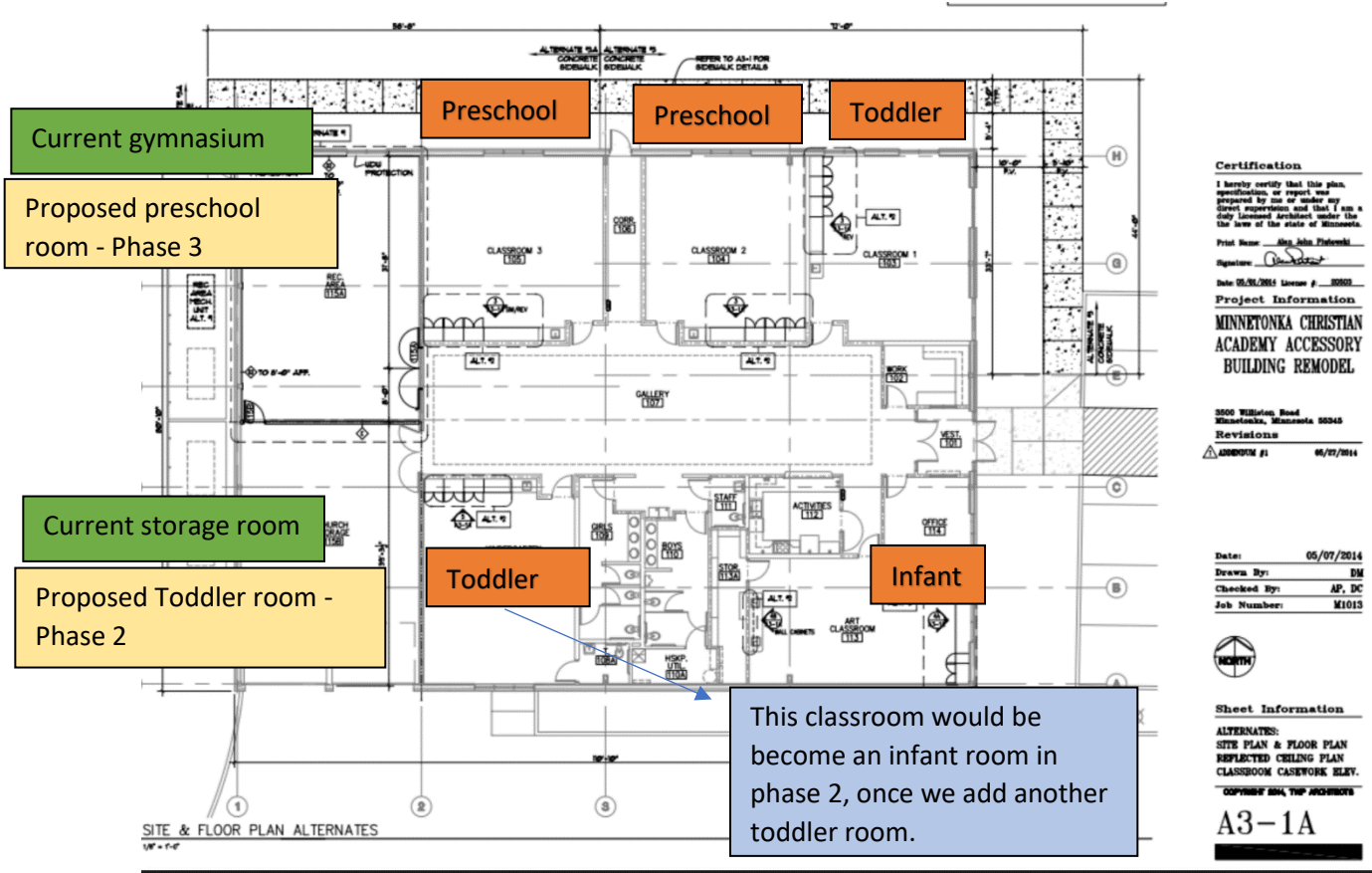
Project No. **L1-1R**

EXHIBIT - D -
2 of 2

Exhibit G

Rayito De Sol Floor Plan

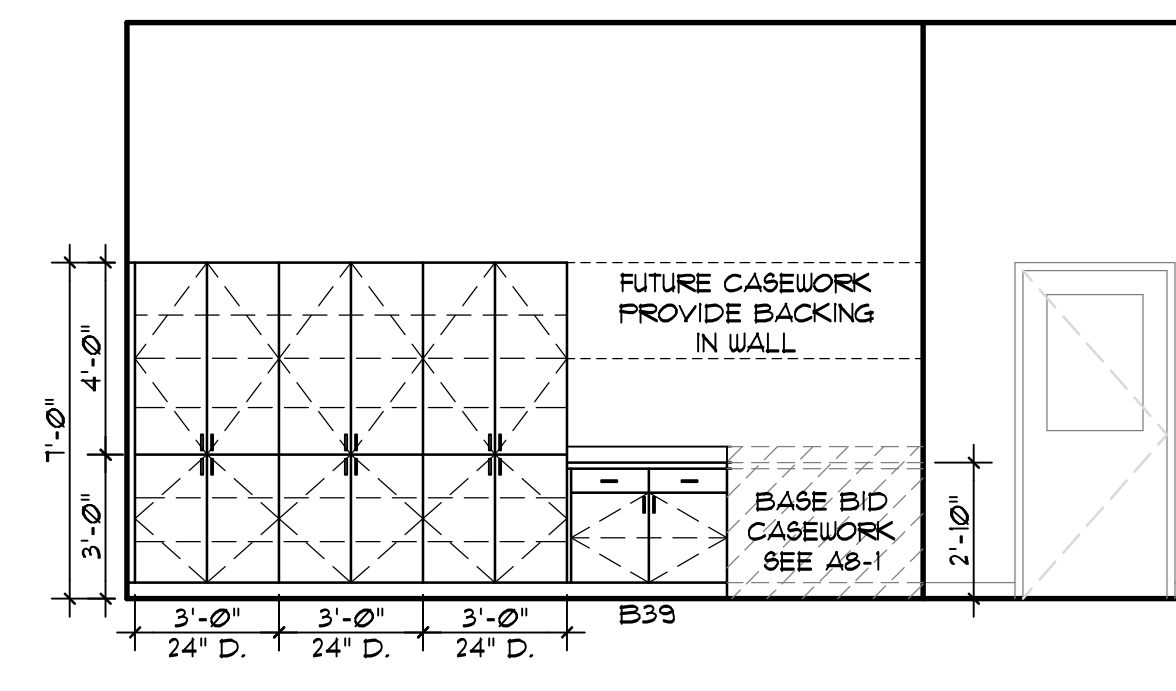
Current floor plan as the school currently operates. We will schedule the changes in 2 phases once the land use is approved. We want to open using the current floor plan and once we have been approved by DHS. We need to ramp our enrollment before we make any building changes.



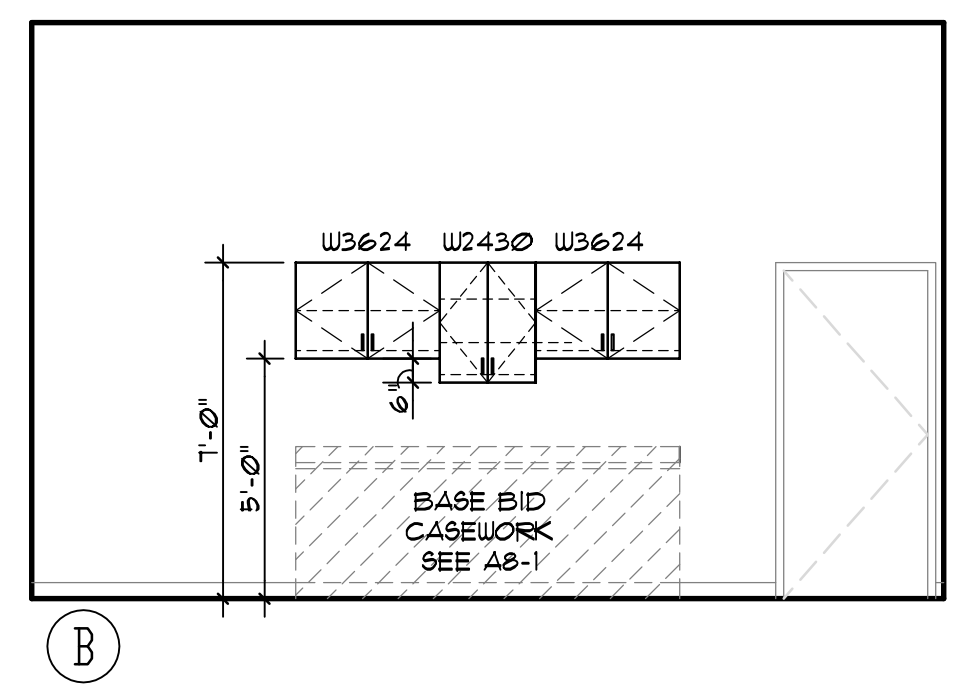
GENERAL PLAN NOTES

- ◇ SEE SHEET A10-1 FOR WALL TYPES
- (101) SEE SHEET A10-1 FOR DOOR SCHEDULE
- △ SEE SHEET A10-1 FOR WINDOW TYPES
- SEE SHEET A10-1 FOR ROOM FINISH SCHEDULE
- SEE SHEET A10-1 FOR WINDOW, DOOR, WALL & FRAME TYPES
- INDICATES DROPPED SOFFIT ABOVE
- - - - 2-HOUR FIRE SEPARATION WALL
- FE-R - REFERS TO SEMI RECESSED FIRE EXTINGUISHER REFER TO DETAIL A9-1 FOR CABINET RECESS IN WALL
- REFER TO SHEET A9-1 FOR FLOOR MATERIAL TRANSITIONS
- FIRE STOP ALL OPENINGS IN FIRE WALLS & BARRIERS AS NEEDED TO MEET CODE. FIELD VERIFY EXTENT. PROVIDE DAMPER @ DUCT PENETRATIONS.
- DIMENSIONS**
- INTERIOR - ALL DIMENSIONS FOR NEW CONSTRUCTION ARE TO CENTERLINE OF STUDS (UNLESS OTHERWISE NOTED).
- EXTERIOR - ALL DIMENSIONS ARE TO FACE OF SHEATHING OR FACE OF MASONRY (UNLESS OTHERWISE NOTED).

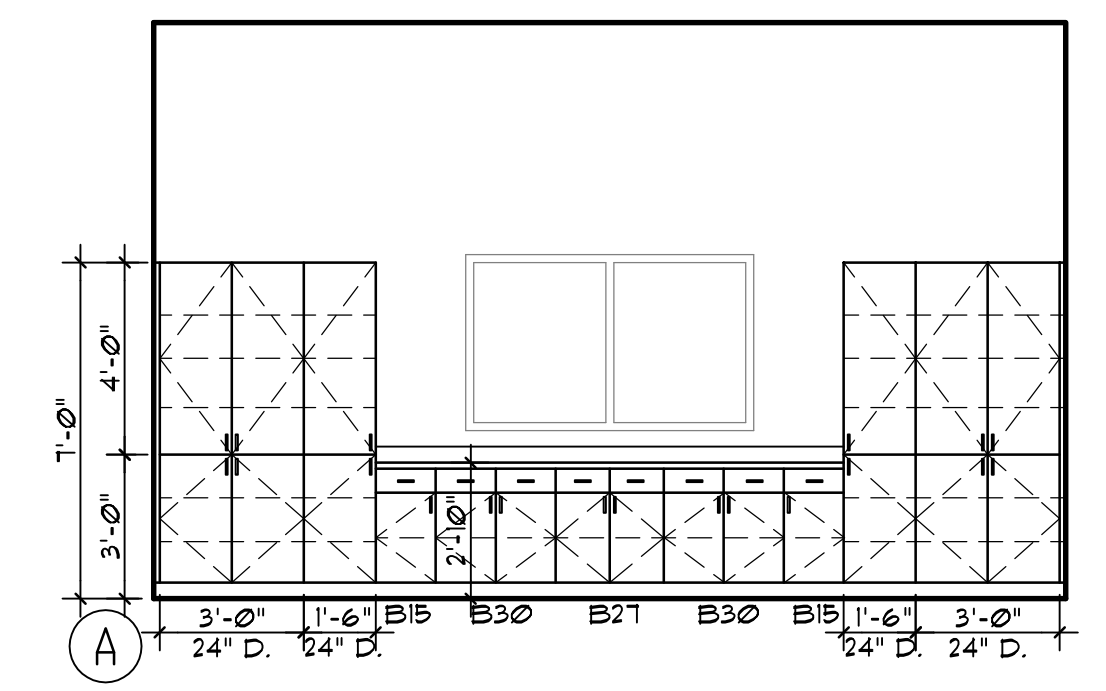
NOTE:
FLAM CABINETS W/ FLAM COUNTER, BACK & SIDE SPLASH, TYP.
ALL CABINETS TO HAVE KEYED LOCKS



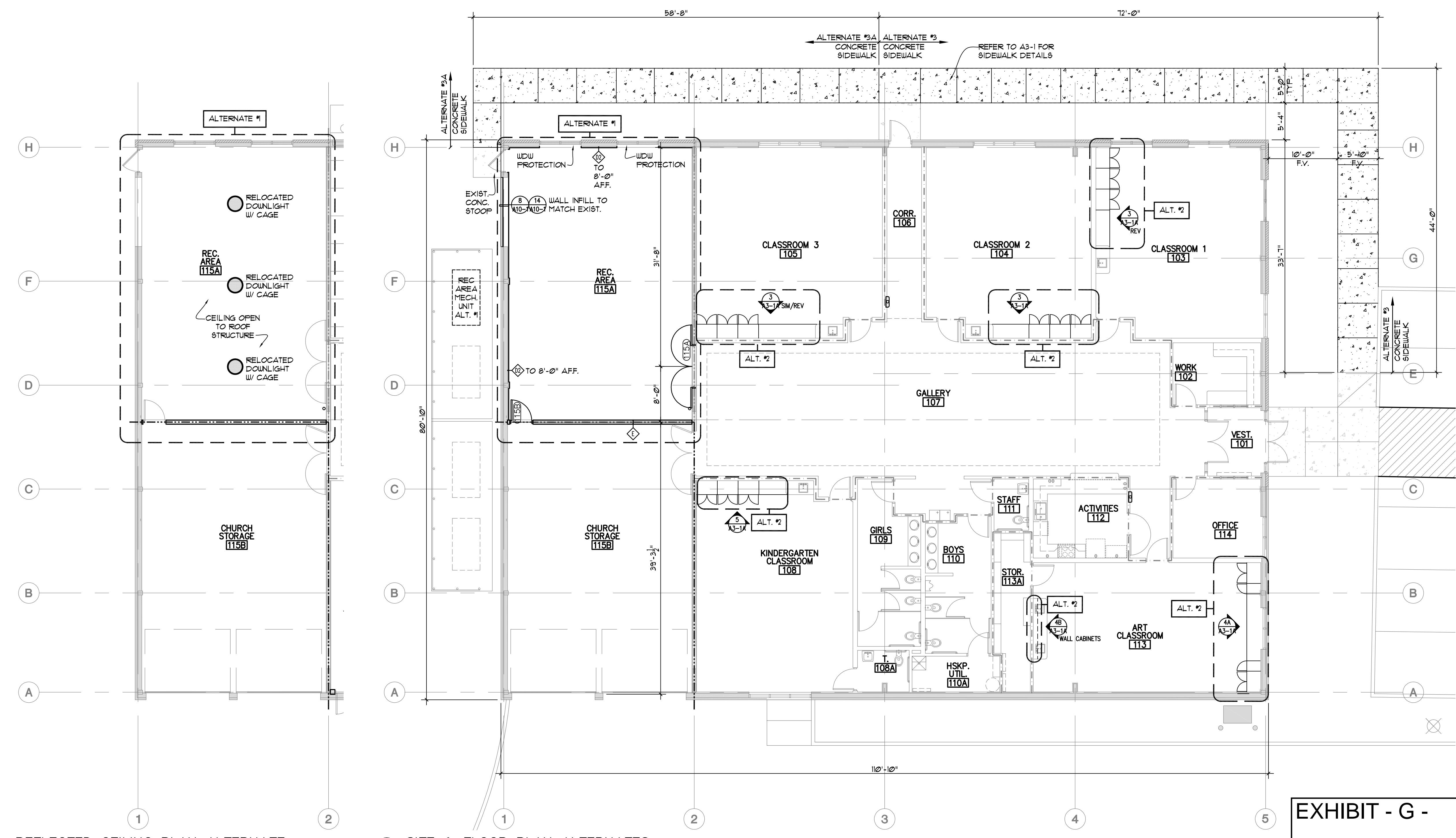
5 KINDERGARTEN CLASSROOM - ALT. #2
A3-1A 1/4" = 1'-0"



4 ART CLASSROOM - ALT. #2
A3-1A 1/4" = 1'-0"



3 TYP. CLASSROOM - ALT. #2
A3-1A 1/4" = 1'-0"



2 REFLECTED CEILING PLAN ALTERNATE
A3-1A 1/8" = 1'-0"

1 SITE & FLOOR PLAN ALTERNATES
A3-1A 1/8" = 1'-0"

EXHIBIT - G -

Certification

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the state of Minnesota.

Print Name: Alan John Plutowski
Signature: *[Signature]*

Date: 05/01/2014 License #: 20503

Project Information
MINNETONKA CHRISTIAN
ACADEMY ACCESSORY
BUILDING REMODEL

3500 Williston Road
Minnetonka, Minnesota 55345
Revisions

△ ADDENDUM #1 05/27/2014

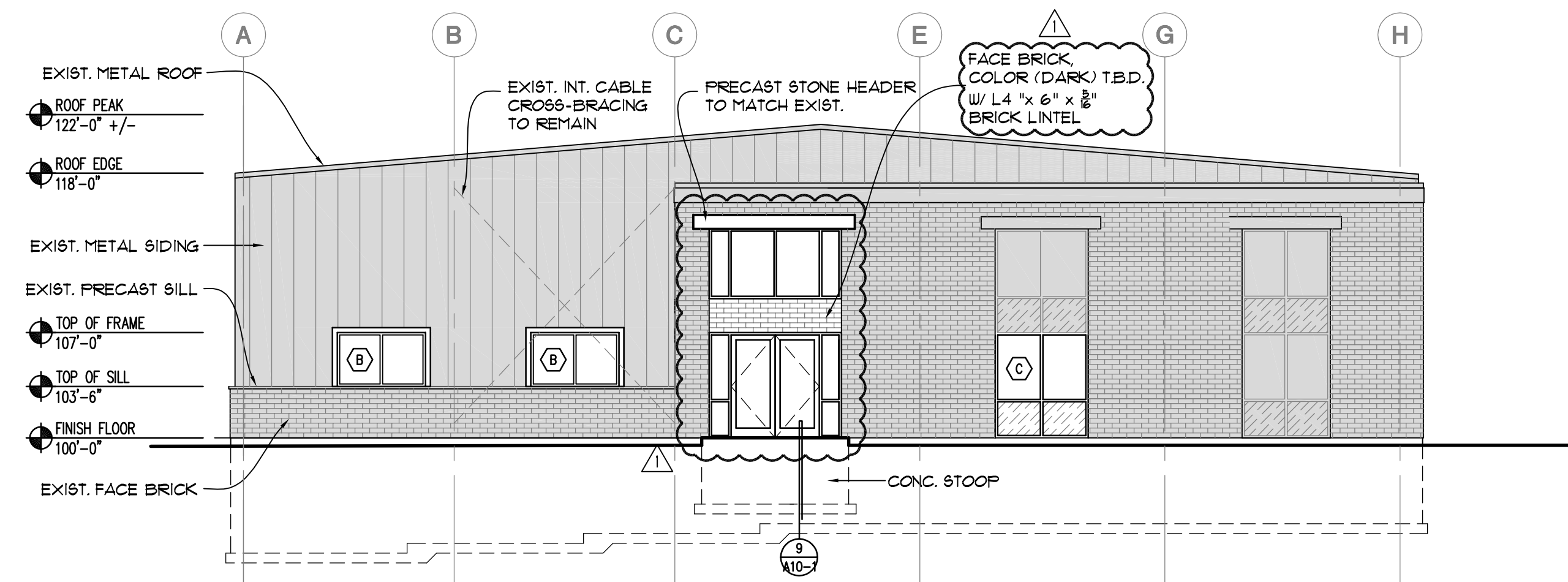
Date: 05/07/2014
Drawn By: DM
Checked By: AP, DC
Job Number: M1013



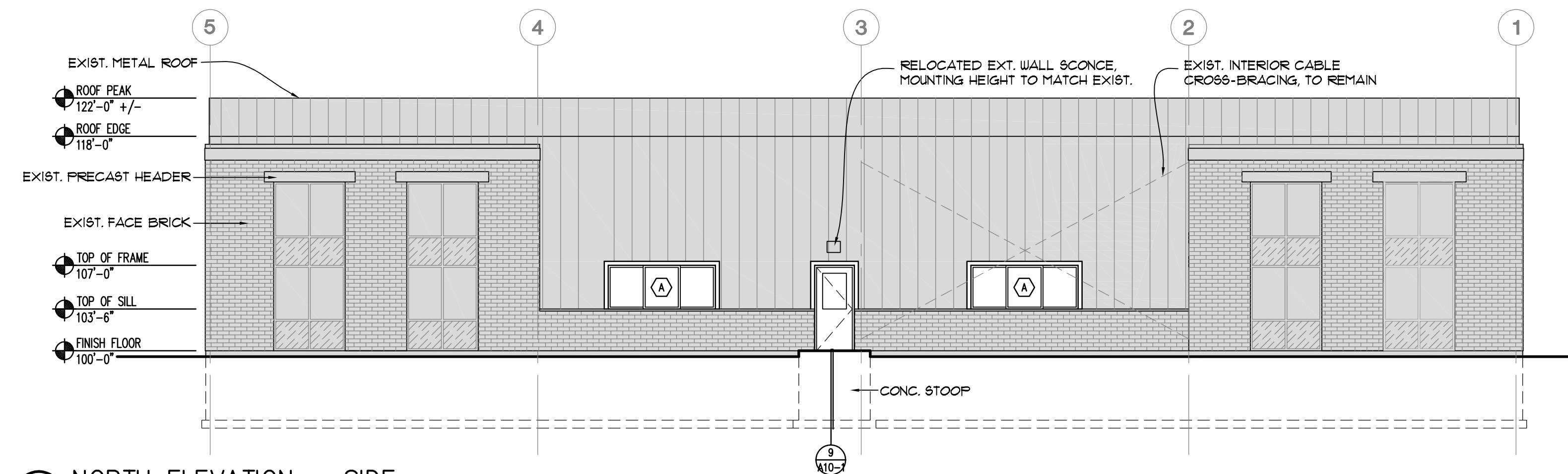
Sheet Information

ALTERNATES:
SITE PLAN & FLOOR PLAN
REFLECTED CEILING PLAN
CLASSROOM CASEWORK ELEV.

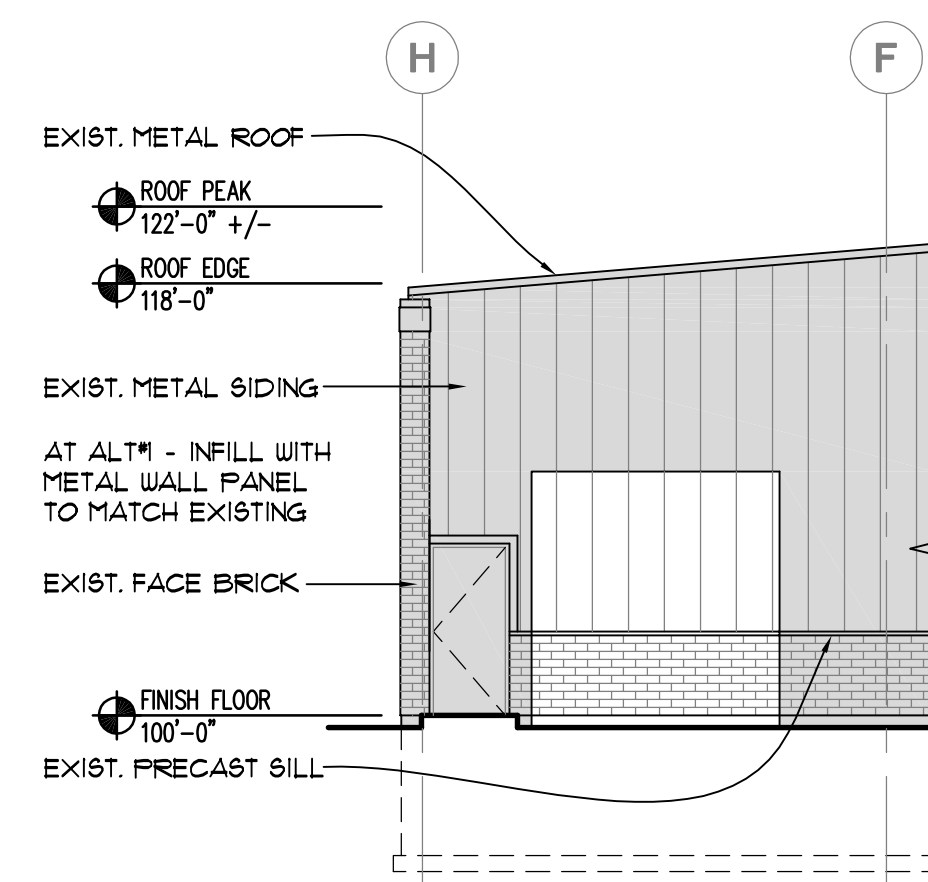
COPYRIGHT 2014, TWP ARCHITECTS



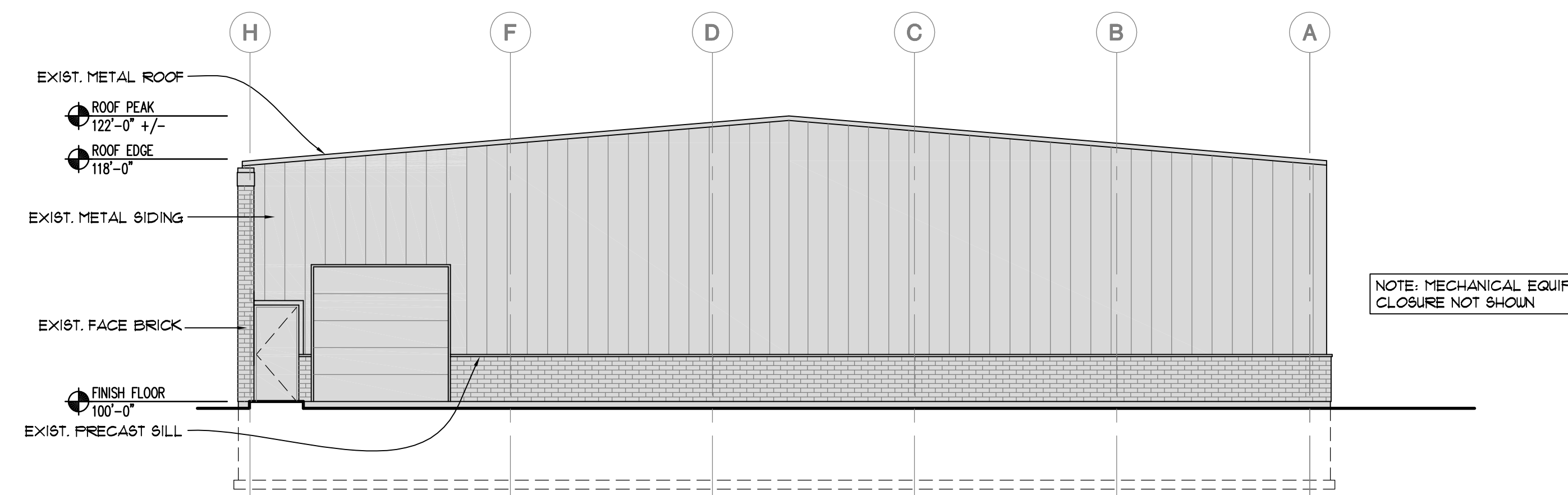
4 EAST ELEVATION - FRONT
A5-1 1/8" = 1'-0"



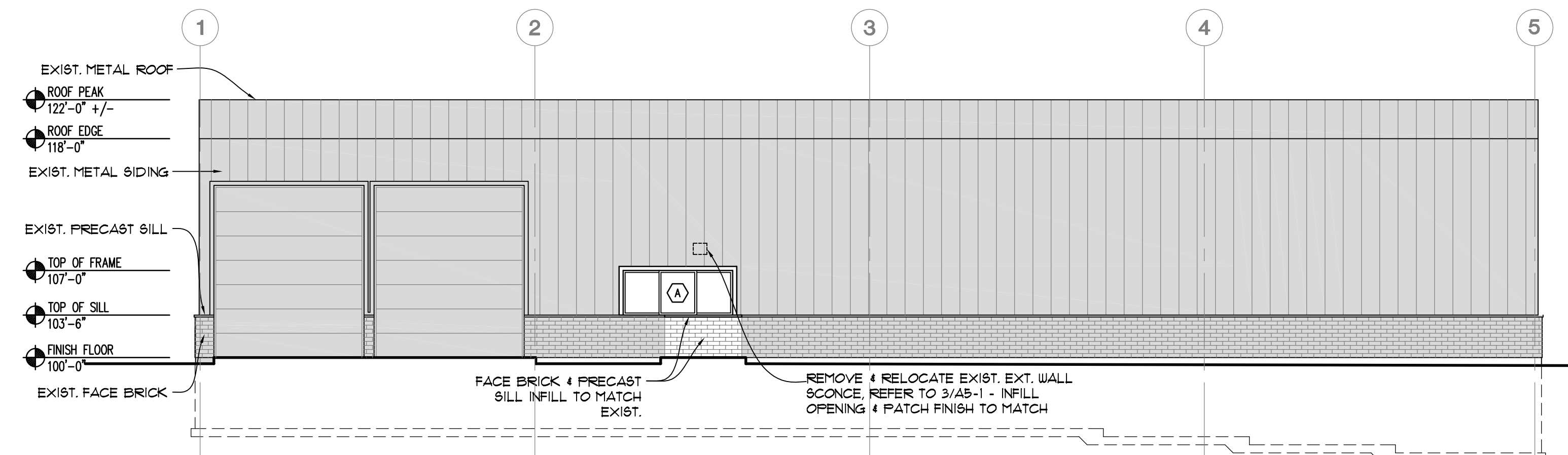
3 NORTH ELEVATION - SIDE
A5-1 1/8" = 1'-0"



2A WEST ELEVATION - BACK - ALTERNATE #1
A5-1 1/8" = 1'-0"



2 WEST ELEVATION - BACK
A5-1 1/8" = 1'-0"



1 SOUTH ELEVATION - SIDE
A5-1 1/8" = 1'-0"

Certification

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the state of Minnesota.

Print Name: Alan John Plutowski

Signature: *[Signature]*

Date: 05/01/2014 License #: 20503

Project Information

MINNETONKA CHRISTIAN
ACADEMY ACCESSORY
BUILDING REMODEL

3500 Williston Road
Minnetonka, Minnesota 55345

Revisions

ADDENDUM #1 05/27/2014

Date: 05/07/2014

Drawn By: DM

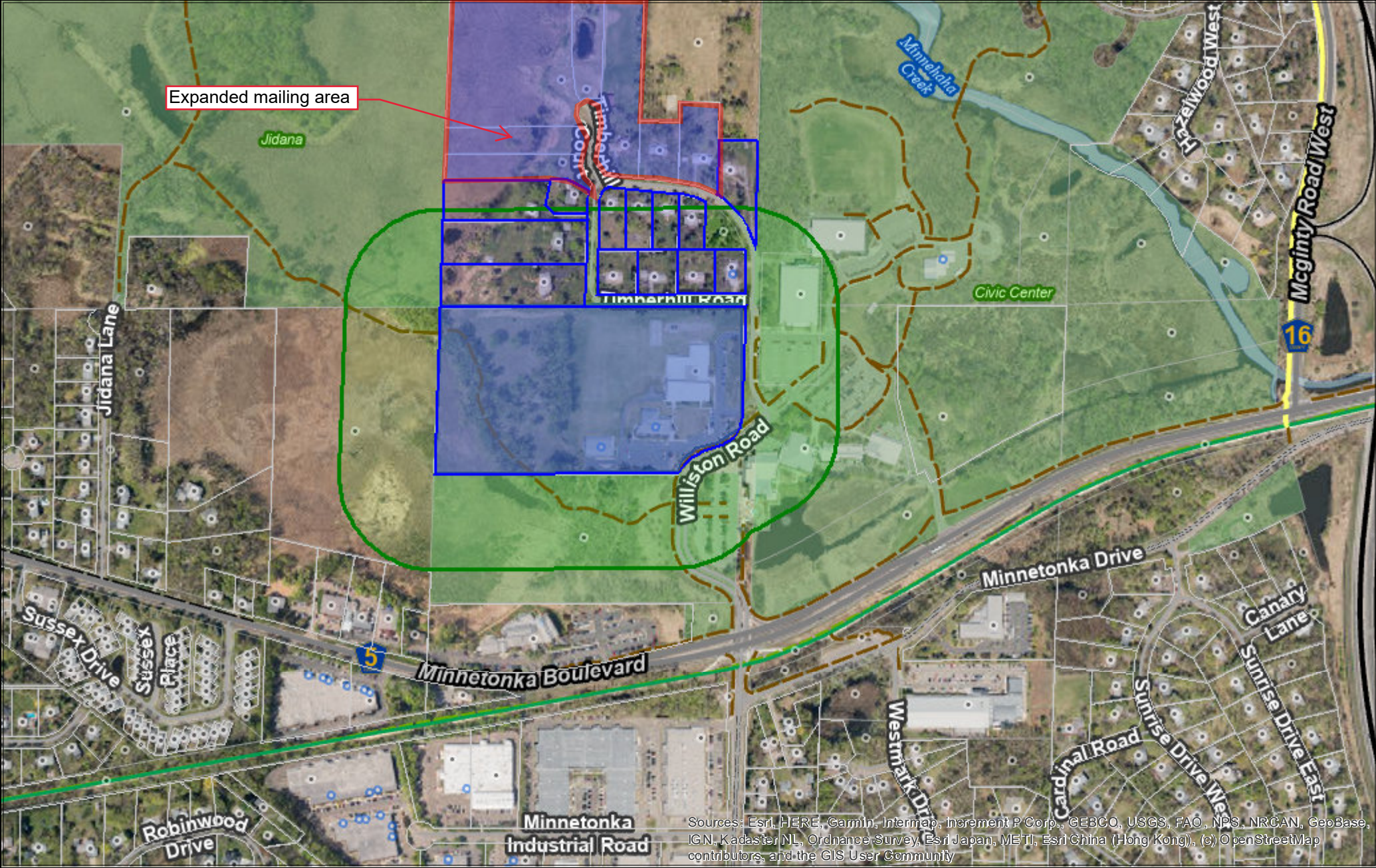
Checked By: AP, DC

Job Number: M1013

Sheet Information

EXTERIOR ELEVATIONS

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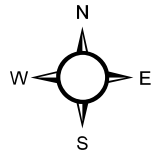
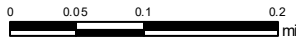
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

2022-05-16 10:28:56 AM



RDS Mailing Area

DISCLAIMER:
 This drawing is not a legally recorded plat or an accurate survey.
 It is intended to be only an approximate representation of information from various government offices and other sources.
 It should not be used for a purpose that requires exact measurement or precision.
 People who use this drawing do so at their own risk.
 The City of Minnetonka is not responsible for any inaccuracies contained in the drawing.
 The City of Minnetonka provides no warranty, express or implied, about the correctness of the information.





14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | eminnetonka.com

To: Planning Commission
From: Loren Gordon, City Planner
Date: June 9, 2022
Subject: Change Memo for the June 9th Planning Commission meeting

ITEM 8B – Rayito del Sol

As noted in the staff report, the traffic study is attached.

Page 3 of the Resolution should include the addition of the following traffic related condition:

3. All queuing must be contained on-site and not extend on city streets or adjacent properties. Further review of site circulation and mitigation measures may be required if queuing extends beyond property lines.
- 3.4. Eight to 10 parking spaces should be dedicated to parent drop-off/pick-up procedures for Rayito de Sol. These stalls should be reserved with a time limit of 10 minutes during the a.m. and p.m. peak periods.
- 4.5. The applicant must contact the state fire marshal division for their fire inspection.
- 5.6. Cash escrow in the amount of \$1000. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document, the builder and property owner will acknowledge:
 - The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- 6.7. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7.8. Any change to the approved use that results in a significant increase in a significant change in character would require a revised conditional use permit.



To: Ashley Cauley
City of Minnetonka

From: Tom Sachi, PE, Project Manager
Eric Wurst, Engineer I

Date: June 8, 2022

Subject: Rayito de Sol Traffic Study; Minnetonka, Minnesota

Introduction

As requested, SRF has completed a traffic study for the proposed daycare/immersion school development in the City of Minnetonka. The proposed development is generally located along Williston Road immediately west of City Hall. (see Figure 1: Project Location). The main objectives of the study are to evaluate the existing operations and queueing within the study area, identify any transportation impacts associated with the proposed development, and recommend improvements to address any issues, if necessary. The following information provides the assumptions, analysis, and recommendations offered for consideration.

Existing Conditions

Existing conditions were reviewed to establish a baseline to identify any future impacts associated with the proposed development. The evaluation of existing conditions includes a review of traffic volumes, roadway characteristics, and an intersection capacity analysis, which are summarized in the following sections.

Data Collection

Vehicular turning movement counts of the before and after school periods and the p.m. peak hour were collected by SRF during the week of May 23, 2022, at the following study intersections:

- Williston Road and North Site Access
- Williston Road and South Site Access
- Williston Road and City Hall Access

Queueing observations of existing pick-up/drop off operations at the Minnetonka Christian Academy (MCA) and Academy of Whole Learning were performed, as well as observations at an existing Rayito de Sol facility within the Twin Cities to understand trip generation, queueing, and pick-up/drop-off procedures. Further discussion of the Rayito De Sol observations is included later in the report.



K:\Traffic\staff\Tom\15798\Figures\Fig01_Project Location.cdr



Project Location

Rayito de Sol Traffic Study
City of Minnetonka

02215798
June 2022

Figure 1

Roadway Characteristics

A field assessment was completed to identify various roadway characteristics within the transportation system study area. Williston Road is classified as a local street with a two-lane undivided roadway and a posted speed limit of 30 mph. From a traffic control perspective, all study intersections are unsignalized with side-street stop controlled. Existing geometrics, traffic controls, and traffic volumes in the study area are shown in Figure 2.

Intersection Capacity Analysis

An intersection capacity analysis was completed using Synchro/SimTraffic software to establish a baseline condition to which future traffic operations could be compared. Capacity analysis results identify a Level of Service (LOS) which indicates how well an intersection is operating. Intersections are graded from LOS A through LOS F. The LOS results are based on average delay per vehicle, which correspond to the delay threshold values shown in Table 1. LOS A indicates the best traffic operation, while LOS F indicates an intersection where demand exceeds capacity. Overall intersection LOS A through LOS D is generally considered acceptable based on MnDOT guidelines.

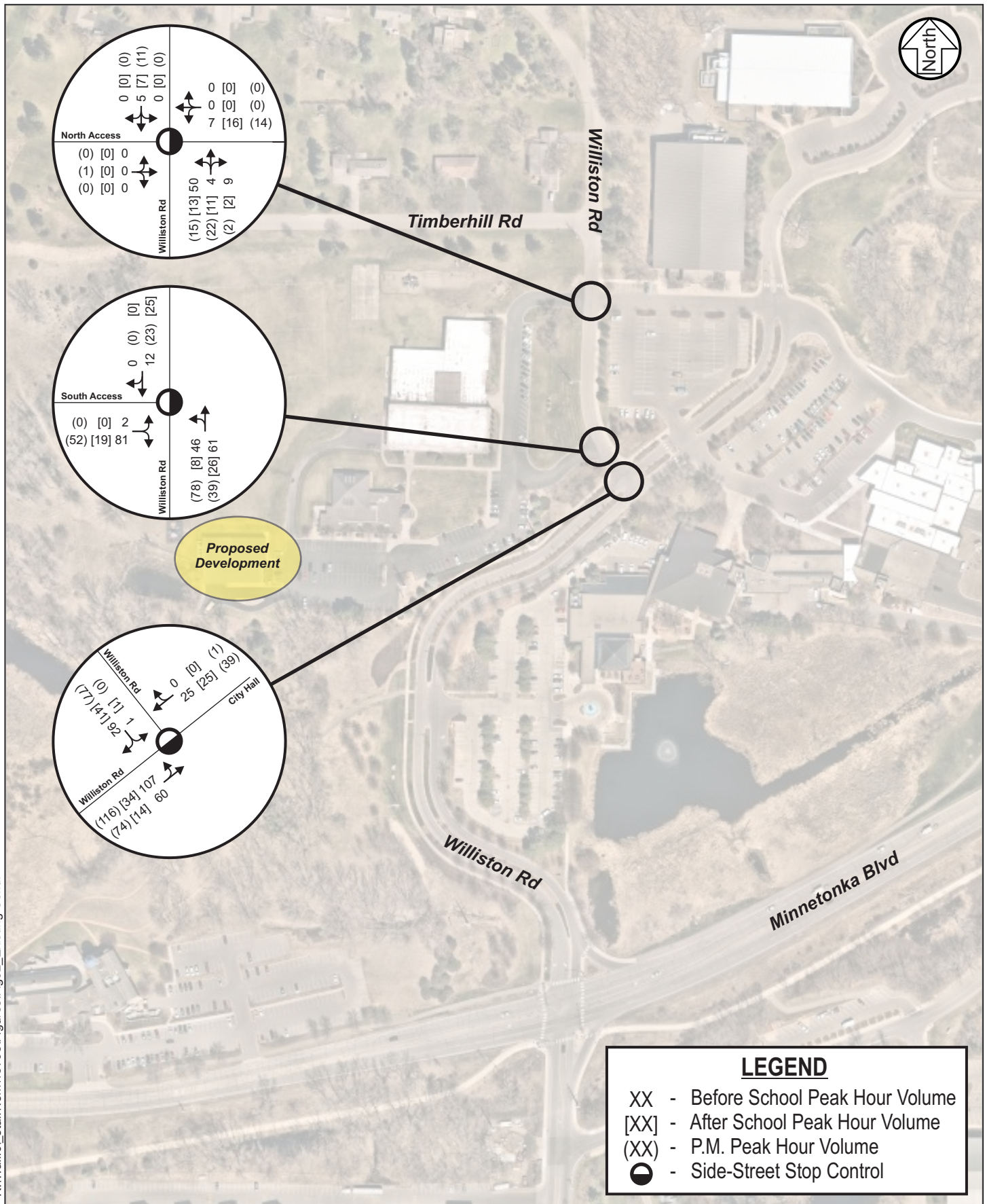
Table 1. Level of Service Criteria for Signalized and Unsignalized Intersections

LOS Designation	Signalized Intersection Average Delay/Vehicle (seconds)	Unsignalized Intersection Average Delay/Vehicle (seconds)
A	≤ 10	≤ 10
B	> 10 - 20	> 10 - 15
C	> 20 - 35	> 15 - 25
D	> 35 - 55	> 25 - 35
E	> 55 - 80	> 35 - 50
F	> 80	> 50

For side-street stop/yield-controlled intersections, special emphasis is given to providing an estimate for the level of service of the side-street approach. Traffic operations at an unsignalized intersection with side-street stop/yield control can be described in two ways. First, consideration is given to the overall intersection level of service. This takes into account the total number of vehicles entering the intersection and the capability of the intersection to support these volumes.

Second, it is important to consider the delay on the minor approach. Since the mainline does not have to stop, the majority of delay is attributed to the side-street approaches. It is typical of intersections with higher mainline traffic volumes to experience high-levels of delay (i.e. poor levels of service) on the side-street approaches, but an acceptable overall intersection level of service during peak hour conditions.

K:\Traffic\staff\Tom\15798\Figures\Fig02_Existing Conditions.cdr



Existing Conditions
 Rayito de Sol Traffic Study
 City of Minnetonka

02215798
 June 2022

Figure 2

Results of the existing capacity analysis, shown in Table 2, indicate that all study intersections currently operate at an acceptable overall LOS A during the peak hours, with the existing geometric layout and traffic controls.

Table 2. Existing Intersection Capacity Analysis

Intersection	Before School		After School		P.M. Peak Hour	
	LOS	Delay	LOS	Delay	LOS	Delay
Williston Road / North Site Access ⁽¹⁾	A/B	10 sec.	A/B	11 sec.	A/A	9 sec.
Williston Road / South Site Access ⁽¹⁾	A/A	9 sec.	A/A	9 sec.	A/A	9 sec.
Williston Road / City Hall Access ⁽¹⁾	A/A	9 sec.	A/A	9 sec.	A/A	9 sec.

(1) Indicates an unsignalized intersection with side-street stop control, where the overall LOS is shown followed by the worst side-street approach LOS. The delay shown represents the worst side-street approach delay.

While not indicated from an hourly level of service perspective, it was observed that the North Access has drop-off and pick-up queues that occur in the Ice Arena parking lot. It was observed that a portion of parents doing drop-off/pick-up do not utilize Williston Road, rather they continue northeast near City Hall and enter the Ice Arena parking lot. This queuing behavior lasted for about five (5) to 10 minutes during the peak arrival and departure periods. This is a result of the Academy of Whole drop-off/pick-up service rates. It was observed that drop-off/pick-up behavior at Academy of Whole takes longer than typical school drop-off/pick-up from other schools due to the nature of the school. This results in the longer than typical queues and parents would rather queue in the Ice Arena lot than Williston Road. Note, the MCA school was not observed to have queuing issues during the peak arrival and departure periods.

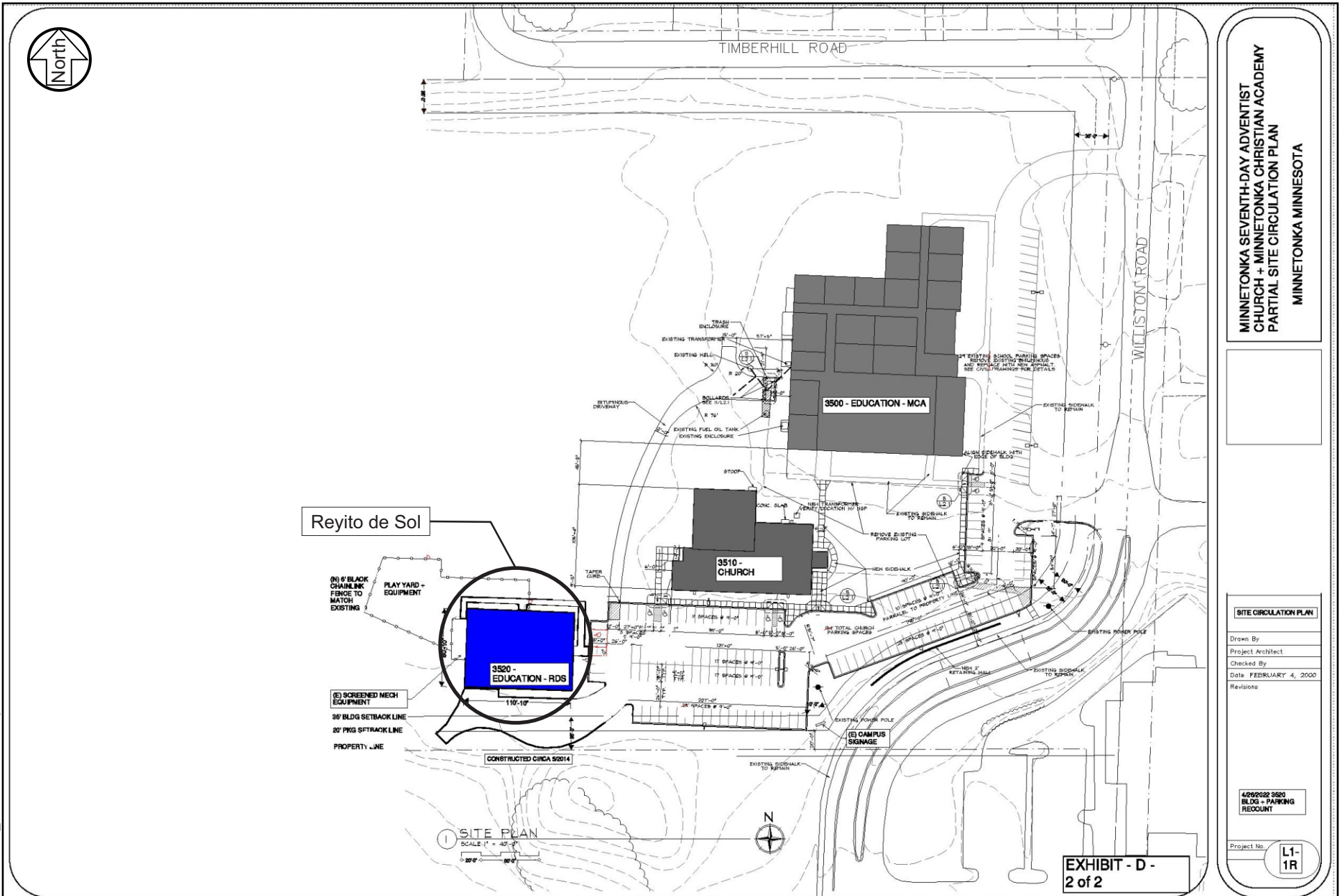
Proposed Development

The proposed development, shown in Figure 3, is generally located along Williston Road immediately west of City Hall. As part of the future conditions, it is expected that Academy of Whole moves to a new site, off the site of the study area. MCA would move from their current location to the existing Academy of Whole building. It is proposed that a Rayito de Sol daycare/school with a potential maximum enrollment of 100 students will occupy the current MCA space.

Traffic Forecasts

To identify potential impacts associated with the proposed development, traffic forecasts for year 2023 (i.e., one-year after opening) conditions were developed. The year 2023 traffic forecasts take into account general area background growth and traffic generated by the proposed development. The following sections outline the proposed development trip generation, as well as the overall traffic forecast development process and assumptions.

K:\Traffic\staff\Tom\15798\Figures\Fig03_Site Plan.cdr



MINNETONKA SEVENTH-DAY ADVENTIST
 CHURCH + MINNETONKA CHRISTIAN ACADEMY
 PARTIAL SITE CIRCULATION PLAN
 MINNETONKA MINNESOTA

SITE CIRCULATION PLAN

Drawn By
 Project Architect
 Checked By
 Date FEBRUARY 4, 2000
 Revisions

4/26/02 2620
 BLDG + PARKING
 RECOUNT

Project No.
L1-1R



Site Plan
 Rayito de Sol Traffic Study
 City of Minnetonka

02215798
 June 2022

Figure 3

Background Traffic Growth

To account for general background growth in the area, an annual growth rate of one (1) percent was applied to the existing peak hour traffic volumes to develop year 2023 background forecasts. This growth rate was developed using a combination of historical average daily traffic (ADT) volumes from surrounding roadways as published by MnDOT, traffic forecasts from the *City of Minnetonka's 2040 Comprehensive Guide Plan*, and engineering judgment.

Proposed Development Trip Generation

To account for traffic impacts associated with the proposed development, trip generation estimates for the proposed land uses were completed. As part of the data collection task for the project, data was collected at an existing Rayito de Sol location in Richfield during the before school, after school, and p.m. peak hour. The Richfield Rayito de Sol school only has an enrollment of 50 students, therefore the entering/exiting data was modified to reflect a 100 student enrollment (i.e. volumes were doubled). Note, the before school and after school peak hours reflect the arrival and departure times of the MCA school, which will still be on site. The Rayito de Sol facility is currently open from 7:30 a.m. to 5:00 p.m., at the peak hours are expected to be during the before school and p.m. peak hours. These estimates are shown in Table 3.

Table 3. Proposed Development Trip Generation Estimate

Land Use Type (ITE Code)	Size	Before School		After School		P.M. Peak Hour	
		In	Out	In	Out	In	Out
Day Care Center (565)	100 students	46	36	8	4	34	38

Results of the trip generation estimate indicate that the proposed development is expected to generate approximately 82 before school, 12 after school, and 72 p.m. peak hour trips. The trips generated were distributed throughout the area based on the directional distribution shown in Figure 4, which was developed based on existing travel patterns and engineering judgement. The resultant year 2023 traffic forecasts, which include general area background growth and trips generated by the proposed development, are shown in Figure 5.

Note, as part of developing the future year 2023 build conditions volumes, the traffic volumes associated with the existing Academy of Whole school were removed from the traffic forecasts. This school is planning to move off site. Volumes related to the existing MCA school were then moved from entering/exiting within the South Access to entering in the North Access and exiting via the South Access. This follows the designated drop-off/pick-up area alongside the future school.



K:\Traffic\staff\Tom\15798\Figures\Fig04_Directional Distribution.cdr



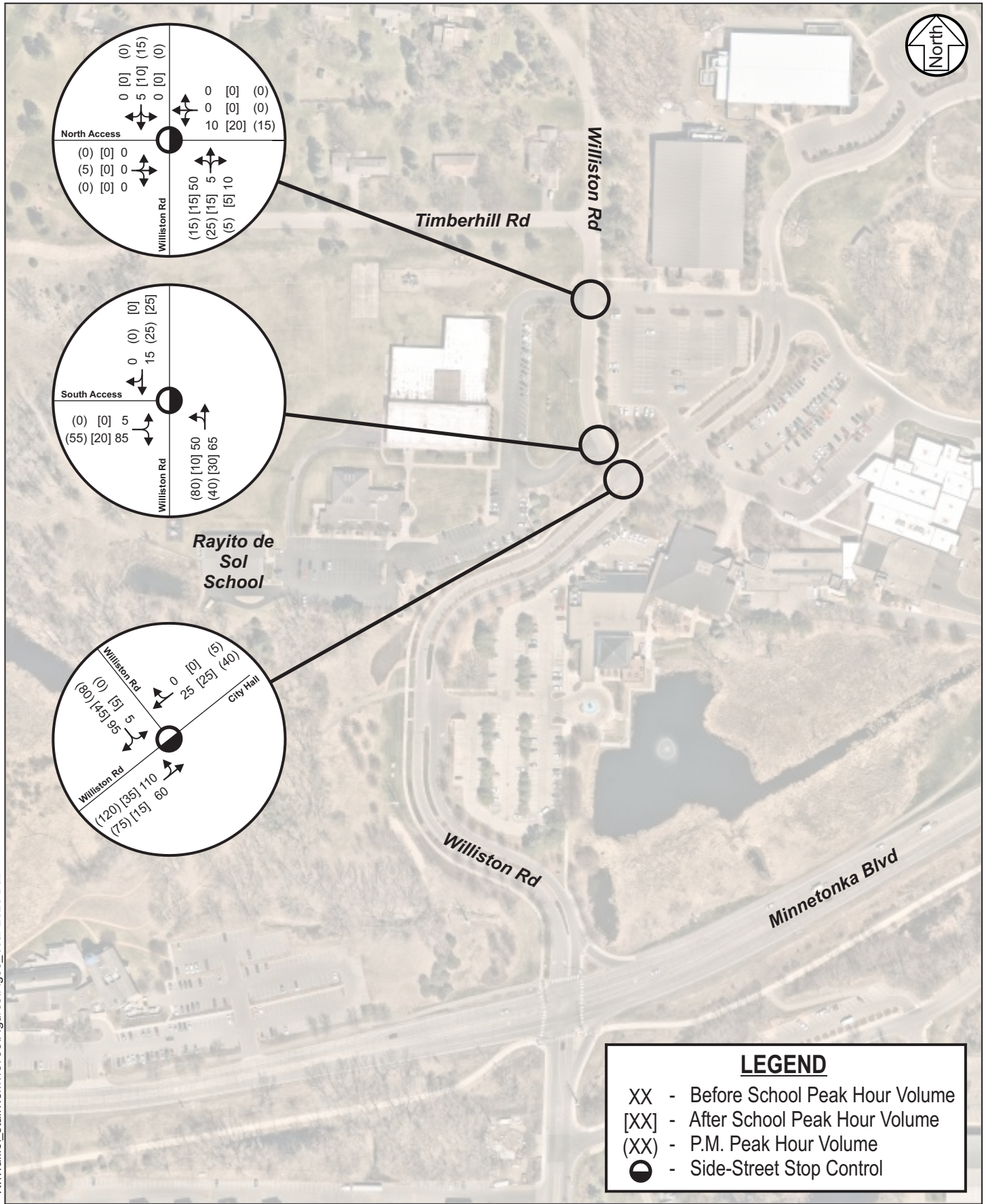
Directional Distribution

Rayito de Sol Traffic Study
City of Minnetonka

02215798
June 2022

Figure 4

K:\Traffic\staff\Tom\15798\Figures\Fig05_Year 2023 Build Conditions.cdr



Year 2023 Build Conditions

Rayito de Sol Traffic Study
City of Minnetonka

Figure 5

Year 2023 Build Conditions

To determine how the study intersections and site access will operate under year 2023 conditions, an intersection capacity analysis was completed using Synchro/SimTraffic software. Results of the analysis, summarized in Table 4, indicate that all study intersections are expected to continue to operate at an acceptable overall LOS A during the peak hours. Side-street delays at the study intersections are expected to remain similar to existing conditions over the course of the peak hours.

Table 4. 2023 Build Intersection Capacity Analysis

Intersection	Before School		After School		P.M. Peak Hour	
	LOS	Delay	LOS	Delay	LOS	Delay
Williston Road / North Site Access ⁽¹⁾	A/A	10 sec.	A/A	9 sec.	A/A	10 sec.
Williston Road / South Site Access ⁽¹⁾	A/A	9 sec.	A/A	9 sec.	A/A	9 sec.
Williston Road / City Hall Access ⁽¹⁾	A/A	9 sec.	A/A	9 sec.	A/A	9 sec.

(1) Indicates an unsignalized intersection with side-street stop control, where the overall LOS is shown followed by the worst side-street approach LOS. The delay shown represents the worst side-street approach delay.

Based on the year 2023 build conditions operations analysis, no geometric or traffic control changes are expected to be necessary to accommodate the proposed development from an intersection capacity perspective. 95th percentile queues exiting from the South School access are expected to be approximately 2-3 vehicles during the before and after school periods.

With Academy of Whole moving off site, it is not expected that the pick-up or drop-off lines will continue to extend through the North Access into the Ice Arena parking lot. The duration of drop-off/pick-up maneuvers is expected to be quicker, which will reduce the potential of queues extending beyond the designated area. The current issues, which are primarily caused by the longer drop-off/pick-up times of Academy of Whole, are not expected to be replicated by MCA as the time for students to enter/exit vehicles will be quicker, which will keep the queue moving. No major queueing issues were observed during the existing conditions observations at MCA that would indicate issues at the new location.

Site Plan Review

In regards to drop-off/pick-up procedures at Rayito de Sol, these maneuvers were not observed to be completed curbside, rather parents parked and walked in/out of the existing facility with their children. Given the pick-up and drop-off procedures of the current Rayito Del Sol, it is expected that this proposed location will need between eight (8) to 10 parking spaces dedicated to parents during the a.m. and p.m. peak hours (i.e. between 7:30 to 8:30 a.m. and 4:00 to 5:00 p.m.). A majority of pick-ups were noted to be completed in the 4:30 to 5:00 p.m. period. Note, if necessary, curbside parallel parking spaces could be dedicated for drop-off and pick-up, however, it should be known that the parents will enter/exit the facility rather than wait in their car, increasing the service time.

Additionally, it was observed at the Richfield location that there were 5 staff vehicles on-site during the observation periods. Given this site will have double the students, it would be expected that a minimum of 10 staff spaces are necessary. However, verification with Rayito should be done to identify their peak staff load and parking demand.

A further review of the proposed site plan was completed to identify any issues and recommend potential improvements for consideration with regard to access, circulation, traffic controls, and multimodal facilities. In general, the following should be considered when designing internal traffic control and access roadways:

1. Incorporate traffic controls, signing, and striping based on guidelines established in the Manual on Uniform Traffic Control Devices (MUTCD).
2. Special consideration should be made to limit any sight distance impacts from future structures, landscaping, and signing.
3. Designate between eight (8) to 10 parent drop-off/pick-up stalls either within a parking lot or a designated curbside location. Limit parking in these stalls to 10 minutes to ensure a proper turnover during those peak drop-off and pick-up timeframes.

In general, all roadways within the proposed development are expected to function adequately as two-lane facilities, and all internal intersections are expected to operate adequately with side-street stop control.

Summary and Conclusions

The following study conclusions and recommendations are offered for consideration:

- 1) Results of the existing intersection capacity analysis indicate that the study intersections currently operate at an acceptable overall LOS A during the before school, after school, and p.m. peak hours with the existing geometric layout and traffic controls. No significant side-street delays were identified.
 - a. At the North Access, drop-off and pick-up queues for Academy of Whole currently extend into the Ice Arena parking lot. These queues were observed to last between five (5) to 10 minutes.
- 2) The proposed development consists of a Rayito de Sol daycare/school with 100 students which will move into the current Minnetonka Christian Academy (MCA) space. MCA will be moving from their current location to the existing Academy of Whole building. Academy of Whole is planning to move off-site.
- 3) Observations completed at the existing Rayito de Sol location in Richfield found the proposed development is expected to generate approximately 82 before school, 12 after school, and 72 p.m. peak hour trips.

- 4) Results of the year 2023 build capacity analysis indicate that all study intersections are expected to continue to operate at an overall LOS A during the before school, after school, and p.m. peak hours. No significant side street delays or queuing issues were identified, as the current queuing issues that are occurring on site are expected to be mitigated with Academy of Whole moving off site.
- 5) No roadway changes or mitigation are anticipated to be needed to accommodate the proposed development from an intersection capacity perspective.
- 6) Based on observations at their existing site, between eight (8) to 10 parking spaces should be dedicated to parent drop-off/pick-up procedures for Rayito de Sol. These stalls should be reserved with a time limit of 10 minutes during the a.m. and p.m. peak periods.

B. Items concerning Rayito de Sol at 3520 Williston Road.

Chair Sewall introduced the proposal and called for the staff report.

Gordon reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Henry and Gordon discussed the drop-off area and traffic pattern for the site.

Lisa Wadsen, director of real estate and construction for Rayito de Sol, stated that:

- The applicant is excited to be a part of the Minnetonka School District. The brand is looking to grow to 13 locations in three years. The founder has won numerous small business wards in the twin cities since 2012. The founder is a teacher striving to bring wellness to infants through preschool-age children.
- The school provides a full Spanish-immersion experience.
- The location would fit beautifully and provide a great natural resource and playground behind the building.
- The current plan is to locate the drop-off and loading area in the spots in front of the school. The drop-off time would be 7 a.m. to 9 a.m. It would not interfere with church traffic at all. It would not operate on the weekends. The school would be closed for the holidays.

Vanessa Pujic, principal of Minnetonka Christian Academy (MCA), stated that:

- The school serves pre-K to 10th-grade students.
- Rayito de Sol's mission and vision fit well with the campus.
- MCA is allowing the Academy of Whole Learning to finish off its lease. MCA is done operating for the summer and has moved out of the 3520 building. MCA will move into the 3500 building in July, when the Academy of Whole Learning has vacated.
- There will be signs to identify the entrances and exits to the different parts of the campus that belong to different entities and direct traffic flow.

Powers confirmed with Ms. Pujic that the 3520 building functioned well for a school use.

Henry confirmed with Ms. Pujic that the 3500 building would provide ample space to meet a potential increase in the number of students in the future.

David Land of MCA stated that:

- It would be possible to house a second tenant in the 3500 building, but it would be housed at opposite ends of the gymnasium, which is not the most desirable space. It would only be available for a temporary period until enrollment increases. It would be possible but challenging.

- The church operates Saturday and Sunday. The schools operates Monday through Friday.
- MCA has been operating out of the 3500 building for nearly 50 years. The number of students being planned for the future would be the same as the number of students that have been housed there before.

The public hearing was opened. No testimony was submitted, and the hearing was closed.

In response to Henry's question, Gordon explained that the city does not limit a school's enrollment but may require changes to correct a traffic issue if one is created in the future.

Powers visited the site. It is an ideal site for the proposal. He has no problem with the application. He welcomed Rayito de Sol.

Henry likes the location being close to nature and secluded. He supports the staff's recommendation.

Banks agreed. It would be a great location. The proposal makes sense. He did not see any parking issues. He wished the applicant luck.

Chair Sewall did not see a problem with traffic flow or parking. He supports the proposal.

Powers moved, second by Henry, to recommend that the city council adopt an ordinance approving an amendment to the existing master development plan and site and building plans for the conversion of the remaining existing storage facility into classroom space for a licensed daycare facility and a resolution approving a conditional use permit for a licensed daycare center for the property at 3520 Williston Road.

Henry, Powers, Banks, and Sewall voted yes. Hanson, Maxwell, and Waterman were absent. Motion carried.

9. Adjournment

Banks moved, second by Henry, to adjourn the meeting at 7:15 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary

Ordinance No. 2022-

An ordinance amending an existing master development plan and approving final site and building plans for Rayito de Sol at 3520 Williston Road

The City Of Minnetonka Ordains:

Section 1.

1.01 This ordinance hereby amends an existing master development plan for the conversion of an existing storage and maintenance facility into an educational facility at 3520 Williston Road.

1.02 The property is located at 3520 Williston Road. It is legally described as follows:

The Northwest Quarter of the Southeast Quarter of Section 16, Township 117, Range 22 except the south 640 feet thereof and except that part thereof described as follows:

Beginning at the Northeast Corner of the South 640 feet of said Northwest quarter of the Southeast Quarter, thence north 2 degrees and 05 minutes 38 seconds East along the East line thereof a distance of 228.00 feet thence North 87 degrees 54 minutes 22 seconds West 33.00 feet; thence Southwesterly 138.86 feet along a non-tangential curve concave to the Northwest, having a radius of 117.00 feet and a central angle of 68 degrees and a chord bearing South 36 degrees 05 minutes 38 seconds West; thence South 70 degrees 05 minutes 38 seconds West; tangent to said last described curve 88.44 feet; thence Southwesterly along a tangential curve, concave to the Southeast having a central angle of 68 degrees and a radius of 187.00 feet to the North line of South 640 feet; thence North 89 degrees, 66 minutes 33 seconds East along North line thereof to the point of beginning and there terminating.

Torrens Certificate No. 687852

Section 2.

2.01 This ordinance is based on the following findings:

1. The proposed conversion of space is not contrary to the intent of the existing master development plan.

2. The proposal would meet the required standards and ordinances for a site and building plan approval.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans unless modified by the conditions below:
 - Exhibit G, Floor Plans, attached to Planning Commission staff report dated June 9, 2022
 - Exhibit F, Exterior Elevations, attached to Planning Commission staff report dated June 9, 2022

The above plans are hereby adopted as the master development plan and as the final site and building plans.

2. The building must be equipped with automatic fire sprinklers, subject to the review of the fire marshal.
3. The building must be constructed and maintained only in compliance with the approved plans. Any change in use requires additional staff review.
4. Construction must begin by Dec. 31, 2023, unless the planning commission grants a time extension.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on June 27, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this ordinance:

Date of introduction: May 23, 2022

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on June 27, 2022.

Becky Koosman, City Clerk

Resolution No. 2022-

**Resolution approving a conditional use permit for Rayito de Sol, a licensed daycare at
3520 Williston Road**

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The subject property is located at 3520 Williston Road. It is legally described as:

The Northwest Quarter of the Southeast Quarter of Section 16, Township 117, Range 22 except the south 640 feet thereof and except that part thereof described as follows:

Beginning at the Northeast Corner of the South 640 feet of said Northwest quarter of the Southeast Quarter, thence north 2 degrees and 05 minutes 38 seconds East along the East line thereof a distance of 228.00 feet thence North 87 degrees 54 minutes 22 seconds West 33.00 feet; thence Southwesterly 138.86 feet along a non-tangential curve concave to the Northwest, having a radius of 117.00 feet and a central angle of 68 degrees and a chord bearing South 36 degrees 05 minutes 38 seconds West; thence South 70 degrees 05 minutes 38 seconds West; tangent to said last described curve 88.44 feet; thence Southwesterly along a tangential curve, concave to the Southeast having a central angle of 68 degrees and a radius of 187.00 feet to the North line of South 640 feet; thence North 89 degrees, 66 minutes 33 seconds East along North line thereof to the point of beginning and there terminating.

Torrens certificate number is 687852.

1.02 Rayito de Sol has requested a conditional use permit for licensed daycare within the former storage and maintenance facility most recently occupied by Minnetonka Christian Academy.

1.03 On June 9, 2022, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permit.

Section 2. Standards.

- 2.01 City Code §300.16 Subd. 2 outlines the general standards that must be met for granting a conditional use permit. These standards are incorporated into this resolution by reference.
- 2.02 City Code §300.21 Subd. 5(j) outlines the following specific standards that must be met for granting a conditional use permit for such facilities:
1. Shall have loading and drop-off points designed to avoid interfering with traffic and pedestrian movements;
 2. Outdoor play areas shall be located and designed in a manner which mitigates visual and noise impacts on adjoining residential areas;
 3. One parking space for every six children based on the licensed capacity of the center; and
 4. Shall obtain all applicable state, county, and city licenses.

Section 3. Findings.

- 3.01 The proposal meets the general conditional use permit standards outlined in City Code §300.21 Subd.2.
- 3.02 The proposal meets all of the specific conditional use permit standards outlined in City Code 300.21 Subd.5(j).
1. Drop-off and pick-up points are reasonably located in front of the daycare facility and would not interfere with traffic or pedestrian circulation.
 2. The site has several outdoor play areas, including one in the northwest corner of the daycare building.
 3. The daycare requires 29 parking stalls and can be accommodated on site. An educational and religious institution also operates on-site. The three uses have complimentary peak parking demand times.
 4. Included as a condition of approval, the daycare must obtain all state, county, and city licenses.

Section 4. City Council Action.

- 4.01 The above-described conditional use permit is approved, subject to the following conditions:
1. This resolution must be recorded with Hennepin County.
 2. A building permit is required.

3. All queueing must be contained on-site and not extend on city streets or adjacent properties. Further review of site circulation and mitigation measures may be required if queueing extends beyond property lines.
4. Eight to 10 parking spaces should be dedicated to parent drop-off/pick-up procedures for Rayito de Sol. These stalls should be reserved with a time limit of 10 minutes during the a.m. and p.m. peak periods.
5. The applicant must contact the state fire marshal division for their fire inspection.
6. Cash escrow in the amount of \$1000. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document, the builder and property owner will acknowledge:
 - The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
7. The city council may reasonably add or revise conditions to address any future unforeseen problems.
8. Any change to the approved use that results in a significant increase in a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on June 27, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on June 27, 2022.

Becky Koosman, City Clerk



**City Council Agenda Item 10F
Meeting of June 27, 2022**

Title: Employment agreement with new city manager
Report From: Dawn Pearson, Human Resources Manager
Submitted through: Moranda Dammann, Acting Assistant City Manager
Corrine Heine, City Attorney

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

At a special meeting of the council on June 2, 2022, the council recommended hiring Mike Funk to be the next city manager of the City of Minnetonka and directed Charlene Stevens of GovHR to work with the human resources manager and city attorney to conduct employment contract negotiations with Mr. Funk. The agreement is attached for the council's consideration.

Recommended Action

Approve the attached employment agreement with Mike Funk to be Minnetonka's next city manager.

Strategic Profile Relatability

Financial Strength & Operational Excellence Safe & Healthy Community
 Sustainability & Natural Environment Livable & Well-Planned Development
 Infrastructure & Asset Management Community Inclusiveness
 N/A

Financial Consideration

Is there a financial consideration? No Yes amount]
Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: Salary and benefit package is budgeted within the Administration Department

Background

On May 24, 2021, the city council accepted the retirement notice from City Manager Geralyn Barone. The city council appointed Mike Funk, Assistant City Manager, to serve as the acting city manager effective Sept. 11, 2021.

On Jan. 24, the city council directed staff to proceed with soliciting proposals from executive search firms to assist the city in conducting a search for the next city manager. The city

manager search commenced with the posting of the position on Feb. 28 and concluded with the city council conducting interviews with finalists on June 2. The city council recommended hiring Mike Funk as the next city manager and directed the staff and consultant to present an employment agreement for council consideration. The full agreement is attached. Major provisions of the agreement are as follows:

1. Salary. The base salary will be \$198,265 effective on the next pay period following execution of the agreement. Mr. Funk is currently earning \$196,691 in his role as acting city manager. The base salary and/or benefits for calendar year 2023 and thereafter, will be set when salaries are established for other non-union employees. Dependent on a satisfactory performance review, the Manager's salary shall be adjusted in the same manner as increases for other non-union employees.
2. Performance review. An initial performance review will be conducted after six months. Thereafter, Mr. Funk will participate in an annual performance review during the last fiscal quarter of each calendar year.
3. Paid leave. For purposes of employment benefits such as leave accrual, Mr. Funk will retain the current vacation accrual bank in place and will earn vacation at the four week accrual level per the city's personnel policy. Mr. Funk will earn 3.08 hours per pay period as Paid Time Off (PTO).
4. Automobile. Mr. Funk will be reimbursed for the use of his personal automobile on the City business on a per mile basis in accordance with existing IRS regulations. No separate car allowance will be provided.
5. Termination benefits. The city shall provide the city manager with thirty (30) days' notice of its intent to terminate the employment of the manager. In the event the manager is terminated by the city during such time that the manager is willing and able to perform the duties of city manager for the city, then in that event, the city agrees to pay the manager at the time of receipt of his last paycheck a lump sum cash payment equal to six months aggregate salary and to continue to provide and pay for continuation of insurances in effect at the time of termination for a period of six months following termination, plus all accrued hours of all forms of paid leave, including, vacation, PTO, and sick leave.

If the manager voluntarily resigns his position with the city, the manager agrees to give the city thirty (30) days' advance notice. If the manager voluntarily resigns his position with the city, no termination benefits are paid to the manager.

The total compensation package comparison to the former city manager.

	<i>Former city manager</i>	<i>Mike Funk</i>
<i>Total cash compensation =</i>	\$175,868	\$198,265
<i>Total non-cash/benefit compensation =</i>	\$10,850	none
<i>Total</i>	\$186,718*	\$198,265**
<i>PTO (paid time off)</i>	115.36 hours (through September 2021)	80 hours per year

*2021 Governor's salary cap with waiver limit = \$186,720

**2022 Governor's salary cap with waiver limit = \$198,265

City of Minnetonka
Employment Agreement

THIS AGREEMENT is made and entered into this 27th day of June 2022 by and between the CITY OF MINNETONKA, a political subdivision of the State of Minnesota (the "City"), and Michael S. Funk (the "Manager").

IN CONSIDERATION OF THE TERMS AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. POSITION. The City agrees to employ Michael S. Funk as its City Manager to serve in accordance with state statutes, the City charter, City ordinances and the Code of Ethics of the International and Minnesota City/County Management Associations, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign. The Manager's effective appointment date is June 28, 2022, but may be modified by agreement of both parties.
2. SALARY. The annual salary of the Employee as City Manager shall be determined by mutual agreement of the City and the Manager, and subject only to the terms of this Agreement, and the Minnesota local government employee salary cap (Minn. Stat. 43A.17). Subject to receiving satisfactory performance reviews by the City, the City and Manager mutually agree to the following:
 - a) Commencing the first payroll period after the effective appointment date hereof, Manager's annual base salary shall be \$198,265.
 - b) The base salary and/or benefits for calendar year 2023 and thereafter, shall be set when salaries are established for other non-union employees. Dependent on a satisfactory performance review, the Manager's salary shall be adjusted in the same manner as increases for other non-union employees.
 - c) Further provided that if there is a material change in the state statute regarding the salary cap during the term of this Agreement, the Parties agree to enter into good faith negotiations regarding potential adjustment to the annual salary of the City Manager.
3. PERFORMANCE REVIEW. The City and Manager agree that an initial performance review will be conducted after 6 months. Thereafter, the City agrees to conduct an annual performance review of Manager during the last fiscal quarter of each calendar year. The review shall be in accordance with specific criteria developed jointly by the City and the Manager. Such criteria may be added to or deleted as the City may determine from time to time in consultation with the Manager. The City shall provide the Manager with a written performance review and provide adequate opportunity for the Manager to discuss the review with the City, as allowed by Minnesota State Statutes. The failure of the City to conduct the annual review during the last fiscal quarter of the calendar year shall not affect the parties' respective rights to terminate this Agreement or any other rights under the Agreement; nor shall it prevent the Manager from receiving the annual salary increase as provided in section 2 of this Agreement beginning as of the Effective Date and on each annual renewal date thereafter.

4. PAID LEAVE. For purposes of employment benefits such as leave accrual, the Manager will retain the current vacation accrual bank in place and will earn vacation at the four week accrual level per the city's personnel policy.

In addition to vacation, the Manager will earn paid-time off (PTO) as provided in this paragraph. PTO is distinct and separate from the city's normal vacation and sick leave program and is not subject to a cap on accrual. PTO will be accrued on a per pay period basis and may be used as earned, maintained in a paid leave (PTO) bank or cashed out upon separation of employment. If during any year that this Agreement is in effect, the City's council approves a salary for the Manager that would cause the Manager to exceed the compensation limit requirements of Minn. Stat. 43A.17, subd. 9 if paid as salary, the City will convert the excess salary into an equivalent number of hours of PTO per pay period, which the Manager will earn on a per pay period basis. At a minimum, the Manager will earn 3.08 hours of PTO per pay period, regardless of whether the Manager's total compensation exceeds the compensation limit requirements of Minn. Stat. 43A.17, subd. 9. The provisions of this paragraph supersede any inconsistent provision of the City's personnel policy, and the Manager shall not be entitled to PTO under the personnel policy unless this Agreement is amended by mutual consent of the parties.

5. BENEFITS AND RETIREMENT. The City shall provide the Manager with the same insurance and retirement plan options as required by law and/or provided in the personnel policy.
6. DUES AND SUBSCRIPTIONS. The City shall budget and pay the professional dues and subscriptions for the Manager which are deemed reasonable and necessary for the Manager's continued participation in national, regional, state and local associations necessary and desirable for the Manager's continued professional participation, growth and advancement.
7. PROFESSIONAL DEVELOPMENT. The City shall budget and pay necessary and reasonable registration, travel and subsistence expenses of the Manager for professional and official travel, meetings and occasions adequate to continue the professional development of the Manager and to adequately pursue necessary official and other committees thereof which the Manager serves as a member. The Manager shall use good judgment in his outside activities so he will not neglect his primary duties to the City.
8. CIVIC CLUB MEMBERSHIP. City recognizes the desirability of representation in local civic and other organizations. Manager is authorized, at the City's expense, to become a member of such civic clubs or organizations as deemed appropriate by the Manager and City, including, but not limited to, the Chamber of Commerce and other local service organizations.
9. AUTOMOBILE. The Manager shall be reimbursed for the use of his personal automobile on City business on a per mile basis in accordance with then existing IRS regulations.
10. WORK TOOLS. City agrees to provide the Manager with contemporary technology devices such as a mobile telephone, computer and other devices, and to pay the monthly or annual service charges, which are, in the judgment of the Manager, necessary to accomplish the work of the Manager.

Manager may make personal use of the devices in accordance with the personnel policy provisions applicable to non-union employees. Manager recognizes that devices and tools provided to the Manager by the City under this section of the agreement are and remain property of the City. Manager agrees to return said property to the City no later than the Manager's final date of employment.

11. GENERAL EXPENSES. The City shall reimburse the Manager reasonable miscellaneous job-related expenses which it is anticipated the Manager will incur from time to time when provided appropriate documentation.
12. HOURS OF WORK. It is understood the position of City Manager requires attendance at evening meetings and occasionally at weekend meetings. It is understood by the Manager that additional compensation and compensatory time shall not be allowed for such additional expenditures of time. It is further understood that the Manager may absent himself from the office to a reasonable extent in consideration of extraordinary time expenditures for evening and weekend meetings at other than normal working hours.

The Manager may engage in teaching, consulting, speaking or perform other non-City connected activities for which he is compensated without consent of the City provided the activities do not diminish the Manager's ability to perform the essential duties of the City Manager position, as described in the position description, and provided the activities do not conflict with the interests of the City. The Manager agrees to provide written notice to the City's city council and human resources manager of activities conducted under this section of the Agreement.

13. TERMINATION BENEFITS. The City shall provide the Manager with thirty (30) days' notice of its intent to terminate the employment of the Manager. In the event the Manager is terminated by the City during such time that the Manager is willing and able to perform the duties of city manager for the City, then in that event, the City agrees to pay the Manager at the time of receipt of his last paycheck a lump sum cash payment equal to six months aggregate salary and to continue to provide and pay for continuation of insurances in effect at the time of termination for a period of six months following termination, plus all accrued hours of all forms of paid leave, including, vacation, PTO, and sick leave.

However, in the event Manager is terminated because of his malfeasance in office, gross misconduct, conviction for a felony, or conviction for an illegal act involving personal gain to Manager, then the City shall have no obligation to pay the termination benefits.

If the City at any time during the employment term reduces the salary or other financial benefits of Manager in a greater percentage than across-the-board reduction for all non-union Employees, or if the City refuses, following written notice, to comply with any other provisions of this Agreement benefiting Manager, or Manager resigns following a formal suggestion by the City that he resign, then Manager may, at his option, be deemed to be "terminated" on the effective date of Manager's resignation and the Manager shall also be entitled to receive the termination benefits set forth above.

If the Manager voluntarily resigns his position with the City, the Manager agrees to give the City thirty (30) days' advance notice. If the Manager voluntarily resigns his position with the City, there shall be no termination benefit due to the Manager.

14. INDEMNIFICATION. City shall defend and indemnify the Manager pursuant to Minn. Stat. §466.07 and §465. 76. In addition, City shall defend, hold harmless, and indemnify Manager from all torts; civil damages, penalties, and fines; violation of statutes, laws, rules, and ordinances, provided the Manager was acting in the performance of the duties of the position and was not guilty of malfeasance in office, willful neglect of duty, or bad faith.

15. GENERAL CONDITIONS OF EMPLOYMENT. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Manager at any time, for any reason, subject only to the provisions of this Agreement and statutory requirements. Furthermore, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Manager to resign at any time from his position with the City, subject only to the provisions of this Agreement.

16. LEGAL COMPLIANCE. Notwithstanding any provision of this Agreement, the total compensation paid to the Manager shall not exceed any limit established by Minn. Stat. 43A.17, as it may be amended from time, or other applicable state law. The Manager agrees to cooperate with the City In making reimbursement to the City, if it is determined by the City’s auditor, the state auditor, Minnesota Attorney General or a court that a payment was made to the Manager in violation of law. The provisions of this paragraph survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused the execution of this Agreement the day and year stated above.

Date: _____

Brad Wiersum, Mayor

Date: _____

Michael S. Funk



**City Council Agenda Item 12A
Meeting of June 27, 2022**

Title: Ordinance amending City Code 600.030 and 600.035 relating to liquor licenses

Report From: Fiona Golden, Community Development Coordinator

Submitted through: Mike Funk, Acting City Manager
Julie Wischnack, AICP, Community Development Director

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

Staff is proposing amendments to City Code 600 for liquor licenses to reflect updates to the [Minnesota Code, Chapter 86](#) as adopted by reference. The proposed changes to the ordinance include a new off-sale small container license to small breweries, issuance of cocktail room licenses to licensed distilled spirits manufacturers, and issuing temporary liquor licenses in accordance with state regulations.

Recommended Action

Introduce the ordinance.

Strategic Profile Relatability

- | | |
|--|---|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input type="checkbox"/> Safe & Healthy Community |
| <input type="checkbox"/> Sustainability & Natural Resources | <input type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management | <input type="checkbox"/> Community Inclusiveness |
| <input checked="" type="checkbox"/> N/A | |

Statement: N/A

Financial Consideration

- Is there a financial consideration? No Yes [Enter estimated or exact dollar amount]
- Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: N/A

Background

The city last updated the liquor code in July 2015 when the council adopted Ordinance 2015-13. The ordinance authorized the issuance of licenses for an on-sale microdistillery cocktail room and off-sale microdistillery. On-sale brewer taproom, on-sale brewpub, and Sunday off-sale for growlers / crowlers. It also updated administrative application procedures.

Staff is proposing amendments to City Code 600.030 and 600.035 to reflect updates to the [Minnesota Code, Chapter 86](#), as adopted by reference.

Proposed changes to the ordinance

- ***Off-sale small brewer 3.2 percent malt liquor – 128 ounces small container license***
Minnesota Statutes, section 340A.29 now allows a brewer licensed under Minnesota Statutes, section 340A.301 that produces 7,500 barrels or less of malt liquor annually to be issued a license by a municipality for off-sale of up to 128 ounces per customer per day in any packaging conforming to state and federal regulation. The city will issue this license along with the regular off-sale growler / crowler license, giving taprooms flexibility in their products. Customers can still purchase unlimited crowlers and growlers, but smaller vessels are limited to 128oz per customer per day – two 4-packs, one 6-pack, or four 32oz cans. The city currently has two off-sale growler / crowler licenses. Both licensees have submitted applications to the city for the new small container license.

- ***On-sale cocktail room and off-sale microdistillery license***
Minnesota Statutes, section 340A.22, subdivision 2, now allows a municipality to issue a cocktail room license to the holder of a distilled spirits manufacturer license. This authorizes the on-sale of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller.

Under this new authorization, a municipality must notify the commissioner within ten days of issuance or of any adverse action involving the license, just as it would a microdistillery cocktail room license. This provision also changes the amount for cities' microdistillery off-sale licenses from 375 milliliters to up to 750 milliliters per customer per day in any size container or combination of approved containers. Currently, the city has no licenses for an on-sale cocktail room or off-sale microdistillery.

- ***Elimination of 30-day temporary license restriction***
Minnesota Statutes, section 340A.410, subdivision 10, no longer restricts a municipality over a population of 5,000 from issuing more than one temporary license authorized under Minnesota Statutes, section 340A.404, subdivision 10 for any one organization or political committee, or for any one location within 30 days. The city issues ten temporary licenses per year on average. Half are issued to the two breweries for special events. The other five are issued for charitable fundraisers to non-profits and places of worship. Eliminating the 30-day "waiting period" between temporary licenses for an approved organization will benefit groups who want to host multiple events without the 30-day restriction.

The purpose of introducing an ordinance is to allow the city council the opportunity to review the ordinance and provide feedback before bringing it back for a final decision. Introducing an ordinance does not constitute approval. Staff has tentatively scheduled the final review on July 18, 2022 city council meeting.

Ordinance No. 2022-

An Ordinance amending sections 600.030 and 600.035 of the Minnetonka City Code; relating to liquor licenses; authorizing issuance of cocktail room licenses to licensed distilled spirits manufacturers; authorizing issuance of on-sale small brewer – small container licenses for certain small brewers of 3.2 percent malt liquor or intoxicating malt liquor

The City of Minnetonka Ordains:

Section 1. Section 600.030 of the Minnetonka City Code is amended to read as follows:

600.030. 3.2 Percent Malt Liquor Licenses.

The city council may issue the following types of 3.2 percent malt liquor licenses.

1. "On-sale 3.2 Percent Malt Liquor" Licenses. Retail "on-sale 3.2 percent malt liquor" licenses obtained pursuant to this ordinance will permit the licensee to sell 3.2 percent malt liquors for consumption on the licensed premises and will be issued only to restaurants, hotels, bona fide clubs and establishments used exclusively for the sale of nonintoxicating malt beverages with the incidental sale of tobacco and soft drinks.
2. "Off-sale 3.2 Percent Malt Liquor" Licenses. Retail "off-sale 3.2 percent malt liquor" licenses obtained pursuant to this ordinance will permit the licensee to sell 3.2 percent malt liquors in original packages for consumption off the premises only.
3. "Off-sale brew pub 3.2 percent malt liquor" licenses may be issued only to a brewer who holds a state license issued under Minn. Stat. § 340A.301, subd. 6, clause (d) and a city-issued on-sale 3.2 percent malt liquor license for a restaurant operated in the place of manufacture. The off-sale brew pub malt liquor license authorizes the off-sale of 3.2 percent malt liquor produced and packaged on the premises. The license is subject to the requirements of this section and Minn. Stat. § 340A.301, subd. 7(b).
4. "Off-sale small brewer 3.2 percent malt liquor" licenses may be issued only to a brewer who holds a brewer license issued by the state pursuant to Minn. Stat. § 340A.301, subd. 6, clause (c), (i) or (j). The license authorizes the brewer to sell, at off-sale, 3.2 percent malt liquor that has been produced and packaged by the brewer at its licensed premises, subject to the requirements and limitations in Minn. Stat. § 340A.28-~~in 64-ounce containers commonly known as "growlers" or in 750 milliliter bottles. The license is subject to the requirements of this section and Minn. Stat. § 340A.301, subd. 6d.~~
5. "Off-sale small brewer 3.2 percent malt liquor – small container" licenses may be brewer who holds a license issued by the commissioner of public safety, in accordance with Minn. Stat. § 340A.29. The license authorizes the brewer to sell, at off-sale, malt

The ~~stricken~~ language is deleted; the underlined language is inserted.

liquor that has been produced and packaged by the brewer at its licensed premises, subject to the requirements and limitations in Minn. Stat. §§ 340A.28 and 340A.29.

56. “Temporary” Licenses.

a. A temporary on-sale license for 3.2 percent malt liquor may be issued to a club or charitable, religious or nonprofit organization subject to the following:

(1) submission of a completed application to the director of community development at least 60 days in advance of the event for which the license is requested;

(2) submission of evidence of insurance with the same coverage limits and provisions as is required for the issuance of an “on-sale” or “off-sale” license for an establishment with sales of 3.2 percent malt liquor of \$25,000 or more per year;

(3) posting of a performance bond in the amount of \$1,000;

(4) payment of the license fee specified in section 710;

(5) submission of a list of responsible persons who may be contacted in case of any emergency. Those persons must be residents of the twin cities metropolitan area as defined by Minn. Stat. § 473.121, subd. 2. At least one of the listed persons must be present on the licensed premises during all hours of sale.

(6) submission of other information as may be required by the city council.

b. The license may be issued for a specified period of time, not to exceed three consecutive days, after a hearing on the matter by the city council. Notice of the hearing must be published in the official newspaper at least ten days before the date of the hearing.

c. The license may be issued for an event to take place on public property, including in or near any school building.

67. Exemptions. Any person holding an on-sale intoxicating liquor license may sell 3.2 percent malt beverages at on-sale without obtaining a license under this section. Any person holding an off-sale intoxicating liquor license may sell 3.2 percent malt beverages at off-sale without obtaining a license under this section.

Section 2. Section 600.035 of the Minnetonka City Code is amended to read as follows:

600.035. Intoxicating Liquor Licenses.

The city council may grant the following types of intoxicating liquor licenses.

1. "On-sale intoxicating" licenses may be issued only to hotels, clubs, and restaurants. A license may be issued to clubs and congressionally chartered veterans organizations if they have been in existence for at least three years and liquor sales will only be to members and bona fide guests. A restaurant that holds an on-sale intoxicating liquor license may also operate under a caterer's permit issued by the Minnesota commissioner of public safety, if the operation is in accordance with state law.
2. "On-sale wine" licenses may be issued to restaurants for the sale of wine not exceeding 14 percent alcohol by volume and for consumption on the licensed premises only in conjunction with the sale of food. An on-sale wine license may only be issued to a restaurant that has seating for at least 25 guests at one time.
3. "On-sale brewer taproom" licenses may be issued only to the holder of a brewer's license issued by the state and in accordance with Minn. Stat. § 340A.26.
4. "On-sale brew pub" licenses may be issued only to a brew pub in accordance with Minn. Stat. § 340A.24.
5. "On-sale ~~microdistillery~~-cocktail room" licenses may be issued only to the holder of a microdistillery license or distilled spirits manufacturer license issued by the state of Minnesota and in accordance with Minn. Stat. § 340A.22.
6. "On-sale culinary class" license may be issued to a business establishment that is not otherwise eligible for an on-sale intoxicating liquor license and that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only. All provisions of city code section 600 that apply to on-sale intoxicating liquor licenses apply to licenses issued under this subdivision, except section 600.055 and other provisions inconsistent with this subdivision.
7. "Off-sale intoxicating" licenses may be issued only to exclusive liquor stores and will permit "off-sales" of intoxicating liquor and 3.2 percent malt liquor. As an incident to these sales, ice, soft drinks and all forms of tobacco may also be sold.
8. "Off-sale brew pub malt liquor" licenses may be issued only to the holder of an on-sale brew pub license, in accordance with Minn. Stat. § 340A.24. The off-sale brew pub malt liquor license authorizes the off-sale of malt liquor produced and packaged on the premises.
9. "Off-sale small brewer malt liquor" licenses may be issued only to a brewer who holds a brewer license issued by the Minnesota commissioner of public safety, in accordance with Minn. Stat. § 340A.28. The license authorizes the brewer to sell, at off-

sale, malt liquor that has been produced and packaged by the brewer at its licensed premises, subject to the requirements and limitations in Minn. Stat. § 340A.28 ~~in 64-ounce containers commonly known as "growlers" or in 750 milliliter bottles.~~

10. "Off-sale small brewer malt liquor – small container" licenses may be issued to a brewer who holds a license issued by the commissioner of public safety, in accordance with Minn. Stat. § 340A.29. The license authorizes the brewer to sell, at off-sale, malt liquor that has been produced and packaged by the brewer at its licensed premises, subject to the requirements and limitations in Minn. Stat. §§ 340A.28 and 340A.29.

~~4011.~~ "Off-sale microdistillery" licenses may be issued only to a microdistillery in accordance with Minn. Stat. § 340A.22. The license authorizes the microdistillery to sell, at off-sale, distilled spirits ~~one 375 milliliter bottle per customer per day of product manufactured on-site~~, subject to the requirements and limitations of § 340A.22.

~~4112.~~ A license for "Sunday sales" at on-sale may be issued only to a hotel or restaurant to which an "on-sale" license has been issued. A license for Sunday sales at off-sale may be issued only to a brewer that holds an off-sale brew pub malt liquor license or an off-sale small brewer malt liquor license, and Sunday off-sales may only be made between the hours of 10:00 a.m. and 10:00 p.m. No Sunday sales license is needed for "on-sale wine" licensees. Except in the case of "on-sale wine" licensees, no Sunday sales of intoxicating liquor may be made without a license for Sunday sales.

~~4213.~~ A "consumption and display permit" may be issued to an organization that complies with the requirements of Minn. Stat. § 340A.414 and that has obtained a permit from the commissioner of public safety. No business establishment or club that does not hold an on-sale intoxicating liquor license may directly or indirectly allow the consumption and display of alcoholic beverages or knowingly serve any liquid for the purpose of mixing with intoxicating liquor in the city without first obtaining a permit from the city.

~~4314.~~ "Temporary on-sale licenses" may be issued only to (a) a club or charitable, religious, or other nonprofit organization that has been in existence for at least three years or (b) a brewer who manufacturer fewer than 3,500 barrels of malt liquor in a year, in connection with a social event sponsored by the organization holding the temporary license. The licenses are subject to the same conditions listed in 600.030(5) except that the time period may not exceed four consecutive days. The insurance requirements of Minnesota Statutes section 340A.409, subdivisions 1 through 3a, apply to a temporary license issued to a brewer under this subdivision. The number of temporary licenses issued may not exceed the number of temporary licenses established by state law.

~~4415.~~ "Temporary consumption and display permits" may be issued for one day to nonprofit organizations in conjunction with social events sponsored by the organization in the city. No more than ten temporary permits may be issued in one year. The permits are subject to the same conditions listed in 600.030(5).

4516. “Temporary off-sale wine licenses” may be issued to allow for the off-sale of vintage wine at an auction. The wine must be at least five years old and of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. No more than 600 cases of wine may be sold at any auction, and each license may not exceed three consecutive days.

4617. Exemption. A person who holds an on-sale wine license and an on-sale 3.2 percent malt liquor license, may sell intoxicating malt liquors at on-sale without an additional on-sale license.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on _____, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this Ordinance:

Date of introduction: June 27, 2022

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

Becky Koosman, City Clerk



**City Council Agenda Item 13A
Meeting of June 27, 2022**

Title: Modification of the Tax Increment Financing District No. 1-2
(Boulevard Gardens)

Report From: Alisha Gray, EDFP, Economic Development and Housing
Manager

Submitted through: Mike Funk, Acting City Manager
Julie Wischnack, AICP, Community Development Director

Action Requested: Motion Informational Public Hearing
Form of Action: Resolution Ordinance Contract/Agreement Other N/A
Votes needed: 4 votes 5 votes N/A Other

Summary Statement

Modification of the Boulevard Gardens Tax Increment Financing District No. 1-2. This action will allow the retention of approximately \$4 million of TIF pooling funds generated from 2020-2022 to continue to support affordable housing efforts in the community. A public hearing is required.

Recommended Action

Adopt the resolution, authorizing the modification of the Boulevard Gardens Tax Increment Financing District No. 1-2.

Strategic Profile Relatability

Financial Strength & Operational Excellence Safe & Healthy Community
 Sustainability & Natural Resources Livable & Well-Planned Development
 Infrastructure & Asset Management Community Inclusiveness
 N/A

Statement: Tax Increment Financing supports the city's affordable housing efforts.

Financial Consideration

Is there a financial consideration? No Yes [Enter estimated or exact dollar amount]
Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: This action modifies the budget for the Boulevard Gardens Tax Increment Financing District No. 1-2.

Background

Tax Increment Financing (TIF) District 1-2 (Boulevard Gardens) is a redevelopment district established in 1995 to assist with a mixed-use development including retail, affordable family and senior rentals, and townhomes, north of 394. In 2010, the city council and EDA modified the TIF Plan to provide additional TIF pooling for affordable housing and adjust the budget and bonded debt according to the "Jobs Bill" for special TIF pooling. The EDA also adopted a spending plan for the district at the same time the TIF Plan was modified in 2010. The spending plan authorized \$100,000 to pay for a portion of the city utility costs associated with the senior housing building constructed in the Glenhaven District by St. Therese.

The initial TIF obligation was paid in 2011. Since then, 65% of the increment has been returned annually to Hennepin County. The remaining increment is available to pay for affordable rental housing developments in the city that meet certain tax credit requirements. In 2011, the EDA provided \$1,025,000 to the Ridge Apartments to construct a 64-unit apartment building with 48 units affordable at 60% AMI. In 2020, the city authorized \$146,988 for expenses to construct a stormwater pipe at Shady Oak Station to serve the area for future redevelopment. Lastly, in 2021, the EDA authorized the transfer of the remaining balance of \$3,753,602 from Boulevard Garden's pooled increment through 2019 to the newly established Affordable Housing Trust Fund.

The estimated TIF generated over the term of the district is anticipated to be more than when the district was originally established in 1995. When TIF districts are established, several variables (development timing, valuations, inflation, and city tax rates) factor into the actual amount of tax increment generated and collected over 26 years. This requires the budget to be modified to show the increased/actual increment expected to be collected through the remaining term of the district, an increased TIF revenue of approximately \$4 million. If the budget is not modified, the city would return the TIF it receives in 2022, over the budgeted amount, in the original plan. This type of modification is common for older TIF districts.

Staff is requesting that the city council and EDA adopt a resolution to approve a TIF modification to allow the retention of approximately \$4 million of TIF pooling funds generated from 2020-2022 to continue to support affordable housing efforts in the community. The attached memo from Stacie Kvilvang, Ehlers, provides additional information.

Attachments:

- Memo form Stacie Kvilvang (Ehlers)
- TIF Modification Plan

MEMORANDUM

TO: Alisha Gray - Economic Development and Housing Manager
FROM: Stacie Kvilvang - Ehlers
DATE: June 27, 2022
SUBJECT: Budget Modification for TIF District 1-2 (Boulevard Gardens)

TIF District 1-2 (Boulevard Gardens) (the “District”) is a redevelopment TIF district established in 1995 and will terminate at the end of this year. The District currently generates approximately \$1.9 million/year. The City utilizes these dollars for its affordable housing initiatives and transfers them to its Housing Trust Fund pursuant to the special legislation received by the City in 2021.

The estimated TIF to be generated over the term of the district is more than what was anticipated when the district was originally established and modified over time. Because the City is expecting increased TIF revenue, the budget needs to be modified to show the increased/actual increment expected to be collected through the remaining term of the district (if the budget is not modified the City will have to return the TIF it receives in 2022 over the budgeted amount). This type of modification is quite common for older TIF districts since trying to estimate the amount of tax increment that will be generated and collected over a 26-year period is difficult (no one can say with certainty what will happen as far as development (timing), valuations, inflation and City tax rates).

In order to complete the modification, the City has to go through the entire process, as if they were establishing a new TIF district. Meaning, the City needs to complete the full notification process to the County and School District for fiscal implications, as well as hold a public hearing.

Please contact me at 651-697-8506 with any questions.

Adoption Date: December 11, 1995
Modification #1: December 20, 2010

Modification #2 Public Hearing: June 27, 2022

City of Minnetonka

Hennapin County, Minnesota

MODIFICATION to the Tax Increment Financing (TIF) Plan Tax Increment Financing District No. 1-2 (Boulevard Gardens) (a redevelopment district)

Located in Development District No. 1



Prepared by:

Ehlers
3060 Centre Pointe Drive
Roseville, Minnesota 55113

BUILDING COMMUNITIES. IT'S WHAT WE DO.

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Modification to the Tax Increment Financing Plan for Tax Increment Financing District No. 1-2 (Boulevard Gardens)

FOREWORD

The City of Minnetonka (the "City"), staff and consultants have prepared the following information to expedite the Modification of Tax Increment Financing District No. 1-2 (Boulevard Gardens) (the "District"), a redevelopment tax increment financing district, located in Development District No. 1. The purpose of the Modification is to reflect actual increment collected to date and expected to be collected through the term of the District and align the budget with actual expenditures.

ESTIMATE OF PROJECT COSTS

As modified June 27, 2022

Section 2.7 of the Tax Increment Financing Plan for Tax Increment Financing District No. 1-2 (Boulevard Gardens) shall be amended as follows:

The budget is being modified / increased to account for TIF collected to date and anticipated through the term of the District. In addition, we are aligning expenditures with actual project costs to date and anticipated to reflect OSA TIF reporting. The total project cost, including financing costs (interest) listed in the table on the following page does not exceed the total projected tax increments for the District as shown in the Sources of Revenue section.

USES	December 11, 1995	December 10, 2010	June 27, 2022
Land/Building Acquisition	\$ 9,556,000	\$ 10,164,578	\$ 10,164,578
Site Improvements/Preparation	-	-	8,260,000
Jobs Bill Spending Plan	-	400,000	900,000
Contingency	955,600	-	-
Affordable Housing	-	6,400,000	11,000,000
Administrative Costs (up to 10%)	-	2,335,422	2,335,422
PROJECT COSTS TOTAL	\$ 10,511,600	\$ 19,300,000	\$ 32,660,000
Returned TIF to County		11,000,000	\$ -
Interest	9,680,032	7,350,000	8,066,019
PROJECT AND INTEREST COSTS TOTAL	\$ 20,191,632	\$ 37,650,000	\$ 40,726,019

Estimated costs associated with the District are subject to change among categories without a modification to this TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. The City may expend funds for qualified housing activities outside of the District boundaries.

Section 2.9 of the Tax Increment Financing Plan for Tax Increment Financing District No. 1-2 (Boulevard Gardens) shall be amended as follows:

SOURCES OF REVENUE

SOURCES	December 11, 1995	December 10, 2010	June 27, 2022
Tax Increment	\$ 20,191,632	\$ 36,000,000	\$ 40,000,000
Interest	-	350,000	535,882
Bond Proceeds	-	-	-
MVHC	-	400,000	190,137
Other	-	900,000	-
TOTAL	\$ 20,191,632	\$ 37,650,000	\$ 40,726,019

The costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax increments. The City reserves the right to incur bonds or other indebtedness as a result of the TIF Plan. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the City to incur debt. The City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

The City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of \$32,660,000. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

ESTIMATED IMPACT ON OTHER TAXING JURISDICTIONS

As modified June 27, 2022

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the EDA or City have determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is \$0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met:

Impact on Tax Base			
Entity	2021/Pay 2022 Total Net Tax Capacity	2022 Captured Tax Capacity (CTC)	Percent of CTC to Entity Total
County	2,139,107,659	1,738,541	0.0813%
City	115,391,223	1,738,541	1.5066%
ISD	139,347,745	1,738,541	1.2476%

Impact on Tax Rates				
Entity	Pay 2022 Extension Rate	Percent of Total	CTC	Potential Taxes
County	38.5350%	34.61%	1,738,541	\$ 669,947
City	37.2880%	33.49%	1,738,541	648,267
ISD	26.7830%	24.05%	1,738,541	465,633
Other	8.7420%	7.85%	1,738,541	151,983
	111.3480%	100.00%		\$ 1,935,831

The estimates listed above display the pay 2022 captured tax capacity since this is the last year of the District. The tax rate used for calculations is the Pay 2022 rate. The total net capacity for the entities listed above are based on Pay 2022 figures.

Appendix A: December 10, 2010 TIF Plan Modification



Modification of the Development Program

for

Development District No. 1

and

Modification of the Tax Increment Financing Plan

for

Redevelopment Tax Increment Financing District No. 2
(Boulevard Gardens)

Minnetonka Economic Development Authority
City of Minnetonka
County of Hennepin
State of Minnesota

Public Hearing: October 23, 1995 (continued to November 13, 1995)
November 13, 1995 (continued to November 27, 1995)
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MUNICIPAL ACTION TAKEN

Based upon the statutory authority described in the Modified Development Program attached hereto, the public purpose findings by the City Council and for the purpose of fulfilling the City's development objectives as set forth in the Modified Development Program, the City Council has created, established and designated Development District No. 1 pursuant to and in accordance with the requirements of Minnesota Statutes, Section 469.126.

The following municipal action was taken in connection therewith:

Development District No. 1

June 28, 1983: The Development Program for Development District No. 1 was adopted by the City Council.

December 13, 1993: The Development Program for Development District No. 1 was modified by the City Council to reflect an enlargement of geographic area and increased budgetary authority.

December 11, 1995: The Development Program for Development District No. 1 was modified by the City Council to reflect an increased budget authority due to the creation of a new tax increment financing district, Tax Increment Financing District No. 2.

January 27, 1997: The Development Program for Development District No. 1 was modified by the City Council to reflect an increased budget authority due to the modification of a tax increment financing district, Housing Tax Increment Financing District No. 1.

April 13, 1998: The Development Program for Development District No. 1 was modified by the City Council to reflect an increased budget authority due to the creation of a new tax increment financing district, Tax Increment Financing District No. 3.

December 6, 2010: The Development Program for Development District No. 1 was modified by the City Council to reflect and increased budget authority due to the modification of Redevelopment Tax Increment Financing District No. 2, which includes extending the duration of the District.

The following municipal action was taken with regard to the Tax Increment Financing Districts located within Development District No. 1:

Economic Development TIF District No. 1

January 3, 1984: The Tax Increment Financing Plan for Economic Development District No. 1 was adopted by the City Council.

December 13, 1993: The Tax Increment Financing Plan for Economic Development District No. 1 was modified by the City Council to reflect increased budgetary authority.

Redevelopment TIF District No. 2

December 11, 1995: The Tax Increment Financing Plan for Redevelopment Tax Increment Financing District No. 2 was adopted by the City Council to assist in retail and housing development.

December 6, 2010: The Tax Increment Financing Plan for Redevelopment Tax Increment Financing District

No. 2 was modified by the City Council to spend tax increment for affordable housing initiatives and to spend tax increment for projects in accordance with new TIF law amendments passed in 2010 (the Jobs Bill). The term of the District and the budget will also be modified.

Redevelopment TIF District No. 3

April 13, 1998: The Tax Increment Financing Plan for Redevelopment Tax Increment Financing District No. 3 was adopted by the City Council to assist in the redevelopment and/or rehabilitation of a residential area in the City.

SECTION I.
DEVELOPMENT PLAN FOR DEVELOPMENT DISTRICT NO. 1

Subsection 1.1. Definitions

The terms defined below shall, for purposes of this Development Plan, have the meanings herein specified, unless the context otherwise specifically requires:

"Authority" means the City of Minnetonka, or subsequently following the transfer of authority of the Development District and the Economic Development District to the EDA, means EDA.

"City" means the City of Minnetonka.

"City Council" means the City Council of the City of Minnetonka, Minnesota, also referred to as the governing body.

"Comprehensive Plan" means the documents which contain the objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation of all lands and water within the City.

"County" means the County of Hennepin, Minnesota.

"County Board" means the County Board of Hennepin County, Minnesota.

"Development District Act" means the statutory provisions of Minnesota Statutes, Sections, 469.124 through 469.134, inclusive as amended.

"Development District No. 1" means the development district established on June 28, 1983 and modified on December 13, 1993.

"Development Plan" means this Development Plan for Development District No. 1, as initially adopted and amended, and as it shall be modified.

"Economic Development District No. 1" means the tax increment district as established on January 3, 1984.

"EDA" means the Minnetonka Economic Development Authority.

"EDA Act" means the statutory provisions of Minnesota Statutes, Sections 469.090 through 469.1081, inclusive, as amended.

"Housing District No. 1" means the tax increment financing district established on May 7, 1984

"HRA Act" means the statutory provisions of Minnesota Statutes, Sections 469.001 through 469.047, inclusive, as amended.

"Redevelopment Project" means the Highway 12 Redevelopment Project established on May 7, 1984, and modified on January 7, 1985 and May 20, 1985.

"Redevelopment Tax Increment Financing District No. 2" means the tax increment financing district

established on December 11, 1995.

"State" means the State of Minnesota.

"Tax Increment Bonds" means any obligation or revenue tax increment bonds issued and to be issued by the City or Authority to finance the public costs associated with Development District No. 1 as stated in the Development Plan and in the Tax Increment Financing Plan for Economic Development District No. 1 within Development District No. 1. The term "Tax Increment Bonds" shall also include any obligations issued to refund the Tax Increment Bonds.

"Tax Increment Financing District" or "TIF District" means any tax increment financing district presently established or to be established in the future in Development District No. 1.

"Tax Increment Financing Act" means the statutory provisions of Minnesota Statutes, Sections 469.174 through 469.179, inclusive, as amended.

"Tax Increment Financing Plan" or "TIF Plan" means the respective Tax Increment Plan for each Tax Increment Financing District located within the Development District.

Subsection 1.2. Statement of Public Purpose

In June, 1983, the City Council established Development District No. 1 and, on June 28, 1983, established a tax increment finance district, Economic Development District No. 1, and has issued revenue and general obligation bonds to assist various housing and development projects

In 1988, the City authorized the establishment of the Minnetonka Economic Development Authority ("EDA") and the abolishment of the Housing and Redevelopment Authority ("HRA"). As a result of the abolishment of the HRA, the City transferred the control, authority, and operation of all projects and programs undertaken by the HRA to the EDA, specifically the Highway 12 Redevelopment Project ("Redevelopment Project") and Housing District No. 1 (The Cliffs/Ridgepoint). The EDA's potential scope of activities, as described in the EDA Act and the HRA Act, includes actions such as conducting various economic development, housing, and redevelopment programs and activities.

Given the geographical separation of Development District No. 1 and the Redevelopment Project, the City Council found cause to explore opportunities to more effectively address the public interest. These opportunities include developing a more efficient method of financing public costs and assisting in the development and redevelopment by private enterprise unimpeded by the boundaries of the individual Redevelopment Project and Development District. The City Council found that it is necessary to facilitate the flow of fund into areas of the City which are in need of public intervention but previously had little or no resources available. As a result, on December 13, 1993, the City Council approved by resolution the expansion of Development District No. 1.

The expansion of Development District No. 1 did not replace the existing Redevelopment Project, include the establishment of a new tax increment financing district, or extend the duration of any existing tax increment financing districts. Instead, the 1993 modification enabled Development District No. 1 to serve as an umbrella entity, by incorporating within its boundaries the area of the Redevelopment Project. Therefore, costs of financing redevelopment and development activities were reduced.

Immediately subsequent to modifying the Development Program, the City Council transferred the control, authority and operation of Development District No. 1 to the EDA, subject to the limitations set forth in City

Council Resolution No. 88-8637.

On December 11, 1995, the City Council modified the Development Program to expand the boundaries of Development District No. 1 and to reflect a change in the budget due to the creation of Redevelopment Tax Increment Financing District No. 2.

Subsection 1.3. Statutory Authority

The Authority established Development District No. 1 pursuant to the Development District Act.

Subsection 1.4. Statement of Objectives

See Section I, Subsection A of the Development Plan for Development District No. 1 as adopted on June 28, 1983.

As amended on December 13, 1993, City Council seeks to achieve the following additional objectives:

10. To achieve a high level of design quality through the use of design features such as landscaping to enhance the physical environment.
11. To better utilize vacant or underdeveloped land.
12. To provide increased employment opportunities.

As amended on December 11, 1995:

13. To facilitate the development of mixed housing and commercial facilities, including housing for low and moderate income persons.

Subsection 1.5. Environmental Controls

See Section I, Subsection C of the Development Plan for Development District No. 1 as adopted on June 28, 1983.

Subsection 1.6. Proposed Reuse of Property

See Section I, Subsection D of the Development Plan for Development District No. 1 as adopted on June 28, 1983.

As amended on December 13, 1993, as specific plans are formulated for Development District No. 1, the Development Plan will be amended.

As amended on December 11, 1995, specific development and redevelopments plans within Redevelopment TIF District No. 2 are set forth in the TIF plan for that district.

Subsection 1.7. Administration and Maintenance of Development District

See Section I, Subsection E of the Development Plan for Development District No. 1 as adopted on June 28, 1983.

As amended on December 13, 1993, the maintenance and operation of Development District No. 1 will be the responsibility of the EDA of the City of Minnetonka. Immediately subsequent to modifying the Development Program, the EDA assumes power of Development District No. 1. The EDA has limited power as indicated in a City Council resolution passed in 1988. The City Manager serves as the Executive Director for the EDA.

Subsection 1.8. Relocation

See Section II, Subsection C of the Development Plan for Development District No. 1 as adopted on June 28, 1983.

Subsection 1.9. Boundaries of Development District No. 1

The description of Development District No. 1 is found on a map in Exhibit I-A-1 and as outlined on the following page:

(AS MODIFIED APRIL 13, 1998)

The boundaries of Development District No. 1 are being expanded to include the parcels identified for Redevelopment Tax Increment Financing District No. 1-3 not already included in Development District No. 1. A map of this expansion can be found in Appendix A of this document and a legal description of the area added to Development District No. 1 can be found in Appendix B.

Subsection 1.10. Parcels To Be Acquired or May Be Acquired in Whole or In Part Within the Development District

The Authority may acquire any parcel located in Development District No. 1.

(AS MODIFIED APRIL 13, 1998)

The Development Program is being modified to identify additional parcels for acquisition. A list of parcels to be acquired can be found in Subsection 2-5 of the Tax Increment Financing Plan for Redevelopment Tax Increment Financing District No. 1-3.

Subsection 1.11. Modification of Development Plan and/or Development District No. 1

The modified Development Plan for Development District No. 1 was adopted by the City Council on December 13, 1993 and again on December 11, 1995.

(AS MODIFIED APRIL 13, 1998)

Subsection 1.12. Development Activities to be Financed

A detailed uses of funds is outlined in the Tax Increment Financing Plan for the Redevelopment Tax Increment Financing District. The Development Program is hereby modified to included these uses.

*SECTION II
TAX INCREMENT PLAN FOR
REDEVELOPMENT TAX INCREMENT FINANCING DISTRICT NO. 2*

Subsection 2.1. Forward

The City, staff and consultants have prepared the following information to expedite and create Redevelopment Tax Increment Financing District No. 2 (“Redevelopment District No. 2”) in Development District No. 1.

Subsection 2.2. Statutory Authority

Within the City of Minnetonka (the “City”), there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the City and the Minnetonka Economic Development Authority (the “EDA”) have certain statutory powers pursuant to the TIF Act to assist in financing eligible activities related to these development needs.

The City faces various existing land use problems that require corrective action by the City or EDA before development by private enterprise becomes financially feasible or desirable. The EDA and City are authorized to establish a tax increment district pursuant to Minnesota Statutes, Section 469.174 to 469.179, as amended, to assist in financing public costs related to this project. Tax increments are derived only from the increased amount of taxes which are paid on a parcel of property after the construction of a new structure on the parcel. Tax increment districts encompass the parcels from which tax increments are paid for a period of time.

Below is the Tax Increment Financing Plan (the "Plan") for Redevelopment Tax Increment Financing District No. 2. Other relevant information is contained in the Development Program for Development District No. 1 as amended on December 11, 1995. Development District No. 1 includes the area proposed for Redevelopment District No. 2. The EDA or the City reserves the right to approve all or a portion of the property as proposed to be included in Redevelopment District No. 2.

Subsection 2.3. Statement of Objectives

Redevelopment District No. 2 is a redevelopment tax increment district which currently consists of 76 parcels of land and adjacent and internal right-of ways of which 62 parcels contain existing structures. Present plans for the new development on the site include 250,000 square feet of retail, 63 units of rental apartments, 104 units of town homes, 108 units of condominiums and 126 units of rental senior apartments.

Redevelopment District No. 2 is expected to achieve many of the objectives set forth in the Project Plan in regard to land use. These objectives include but are not limited to:

1. Acquisition of property containing structurally substandard buildings and remove structurally substandard buildings for which rehabilitation is not feasible.
2. Acquisition of property containing economically or functionally obsolete or underutilized buildings and remove said buildings.
3. Acquisition of property of irregular form and shape or abandoned by railroad or inadequate size which has prevented normal development.
4. Provision of land for expansion of existing businesses.
5. Attempt to improve the property tax base of the city and other local taxing jurisdictions.

6. Enhancement of the tax base of the City.
7. Provision of maximum opportunity, consistent with the needs of the City, for the development by private enterprise.
8. Better utilization of vacant or underdeveloped land.
9. Provision of on-going benefit to the residents of the City and those who may frequent the area.
10. Development of affordable and life style housing opportunities.

The activities contemplated in the present development and redevelopment plans do not preclude the undertaking of other qualified redevelopment activities. These activities are anticipated to occur over the life of the tax increment district.

See Appendix C for the data on the qualifications of the redevelopment tax increment financing district.

(AS MODIFIED DECEMBER 20, 2010)

The City and EDA originally utilized Redevelopment District No. 2 for the redevelopment of the Westridge Market and surrounding housing in the northwest quadrant of I-394 and County Road 71. The last payment under the development agreement with CSM will be made on a pay-as-you-go note on February 1, 2011. The City would like to utilize tax increments from 2011 to 2022 for two potential purposes. The first would be TIF for new development as authorized under Minnesota Statutes, Section 469.176, subdivision 4m, commonly known as the State of Minnesota JOBS bill. The authority to spend TIF under the JOBS Bill expires in 2011, unless extended by the Legislature. The second purpose is for affordable housing under Minnesota Statutes, Section 469.1763, subdivision 2. This allows the EDA and City to utilize up to 35% of the TIF (including any administrative costs) for affordable housing objectives. The City and EDA may decide to utilize a portion of the TIF and return a portion to the County on an annual basis or it may take all of the TIF in one year to assist eligible projects.

Subsection 2.4. Legal Description of Property of Redevelopment Tax Increment Financing District No. 2

Redevelopment District No. 2 encompasses all property and adjacent rights-of-way identified by parcel numbers contained in Appendix A. See the map in Appendix B for further information on the location of Redevelopment District No. 2.

Subsection 2.5. Classification of Redevelopment Tax Increment Financing District No. 2

The City and EDA, in determining the need to create a tax increment financing district in accordance with Minnesota Statutes, Section 469.174 to 469.179, as amended, inclusive, finds that Redevelopment Tax Increment Financing District No. 2 to be established is a redevelopment district pursuant to Minnesota Statutes, Section 469.174, Subdivision 10 as defined below:

- (a) *"Redevelopment district" means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one of the following conditions, reasonably distributed throughout the district, exists:*
 - (1) *parcels consisting of 70 percent of the area in the district are occupied by buildings, streets, utilities, or other improvements and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance; or*

(2) *The property consists of vacant, unused, underused, inappropriately used, or infrequently used railyards, rail storage facilities or excessive or vacated railroad rights-of-way.*

(b) *For purposes of this subdivision, "structurally substandard" shall mean containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance.*

A building is not structurally substandard if it is in compliance with the building code applicable to new buildings or could be modified to satisfy the building code at a cost of less than 15 percent of the cost of constructing a new structure of the same square footage and type on the site. The municipality may find that a building is not disqualified as structurally substandard under the preceding sentence on the basis of reasonably available evidence, such as the size, type, and age of the building, the average cost of plumbing, electrical, or structural repairs or other similar reliable evidence. If the evidence supports a reasonable conclusion that the building is not disqualified as structurally substandard, the municipality may make such a determination without an interior inspection or an independent, expert appraisal of the cost of repair and rehabilitation of the building...

(c) *For purposes of this subdivision, a parcel is not occupied by buildings, streets, utilities or other improvements until 15 percent of the area of the parcel contains improvements.*

In meeting the statutory criteria described above, the City relies on the following facts and findings:

1. Redevelopment District No. 2 consists of 76 parcels replatted into 14 new parcels and 8 other parcels.
2. An inventory of the parcels shows that over 70% of the parcels are occupied as defined in the Act.
3. An inspection of the buildings located within Redevelopment District No. 2 finds that over 50% of the buildings are structurally substandard as defined in the Act.
4. All of the parcels in Redevelopment District No. 2 are contiguous.

Subsection 2.6. Property To Be Acquired

The City or EDA may acquire any parcel within Redevelopment District No. 2 including interior and adjacent street rights of way.

1. Any properties identified for acquisition will be acquired by the City or the EDA only in order to accomplish one or more of the following: storm sewer improvements; provide land for needed public streets, utilities and facilities; carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan.
2. The following are conditions under which properties not designated to be acquired may be acquired:

The City or EDA may acquire property by gift, dedication, condemnation or direct purchase from willing sellers in order to achieve the objectives of this tax increment financing plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

Subsection 2.7. Estimate of Project Costs

Currently under consideration is a proposal by C.S.M. Corporation to redevelop the area included in Redevelopment District No. 2. The Developer's plans include 250,000 square feet of retail, 63 units of rental apartments, 104 units of town homes, 108 units of condominiums and 126 units of rental senior apartments. To facilitate these projects, this Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimated cost of these are described below:

Land acquisition and relocation	\$9,556,000
Contingency	<u>955,600</u>
Total	\$10,511,600

These figures represent the estimated amounts the City or EDA may expend to implement the Plan and the Development Program. The adoption of the Plan does not commit the City or EDA to make any expenditures. The items of cost and the amounts thereof shown above are estimated to be necessary based on the best information available. It is anticipated amounts in each category may vary provided that the total expenditures will not exceed the total listed above, plus administrative expenses, as provided in Subsection 2.15 herein.

(AS MODIFIED DECEMBER 20, 2010)

The major purpose of this TIF Plan modification is to elect the increased pooling percentage for affordable housing, as permitted under Minnesota Statutes, Section 469.1763, subd. 2(d). The City hereby elects to increase by 10 percentage points (i.e, from 25% to 35%) the permitted amount of expenditures of increment from Redevelopment District No. 2 for activities located outside the geographic area of Redevelopment District No. 2.

Upon approval of this TIF Plan amendment, the Authority may expend 35% of the tax increment (as defined in Section 469.176, subd. 25, clause (1) of the TIF Act) from Redevelopment District No. 2 (the "Expanded Pooling Amount") as follows:

- 1. The Expanded Pooling Amount may be spent anywhere in the City (whether or not located within Development District No. 1).**
- 2. Expenditures of the Expanded Pooling Amount are not subject to the limitations set forth in Section 469.176, subd. 4j (relating to correcting conditions that allow the establishment of redevelopment district).**
- 3. The Expanded Pooling Amount must be used exclusively to assist housing that meets the requirement for a qualified low-income building, as that term is used in Section 42 of the Internal Revenue Code of 1986, as amended (the "Tax Credit Act").**
- 4. Expenditures of the Expanded Pooling Amount for any qualified low-income buildings may not exceed the qualified basis of that building, as defined in the Tax Credit Act, less the amount of any tax credit allowed under the Tax Credit Act for that building.**
- 5. The Expanded Pooling Amount may be used to acquire and prepare sites for qualified rental housing; acquire construct or rehabilitate the housing, and make public improvements directly related to such housing.**

The table below shows total cumulative estimated expenditures of tax increment from Redevelopment District No. 2, revised to reflect expenditures of the Expanded Pooling Amount for qualified housing, as well as to reflect the historical use of tax increment from this district. Note that a significant portion

of the total tax increment is expected to be returned to the County redistribution on an annual basis.

<u>USES OF TAX INCREMENT FUNDS</u>	<u>TOTAL</u>
Land/Building Acquisition	\$10,164,578
Site Improvements/Preparation	\$0
Jobs Bill Spending Plan	\$400,000
Public Parking Facilities	\$0
Streets and Sidewalks	\$0
Affordable Housing	\$6,400,000
<u>Administrative Costs (up to 10%)</u>	<u>\$2,335,422</u>
PROJECT COST TOTAL	\$19,300,000
Returned TIF to County	\$11,000,000
<u>Interest</u>	<u>\$7,350,000</u>
PROJECT AND INTEREST COSTS TOTAL	\$37,650,000

For purposes of OSA reporting forms, uses of funds include interfund loans, bond principal, TIF Note principal, and transfers, all in the principal amount of \$19,300,000. These amounts are not cumulative, but represent the various forms of “bonds” included within the concept of bonded indebtedness under the TIF Act.

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in Appendix D.

Estimated capital and administrative costs listed above are subject to change among categories by modification of the TIF Plan without hearings and notices as required for approval of the initial TIF Plan, so long as the total capital and administrative costs combined do not exceed the total listed above. Further, the EDA may spend up to 20 percent of the tax increments from the District for activities (described in the table above) located outside the boundaries of the District but within the boundaries of the Project (including administrative costs, which are considered to be spend outside the District), subject to all other terms and conditions of this TIF Plan.

Subsection 2.8. Bonded Indebtedness

As presently proposed, the amount of pay-as-you-go would not exceed \$10,511,600. This provision does not obligate the City or EDA to incur debt. The City or EDA will finance the activities to be undertaken pursuant to the Tax Increment Financing Plan through a “pay-as-you-go” basis for eligible activities paid for by the Developer.

(AS MODIFIED ON DECEMBER 20, 2010)

The City or EDA may incur debt, including pay-as-you-go notes, interfund loans, and/or general

obligation tax increment bonds in a principal amount not-to-exceed \$19,300,000.

Subsection 2.9 Sources of Revenue

The City and EDA anticipates using Tax Increment as the primary source to pay for the estimated tax increment eligible costs of the Development Program as they relate to the Tax Increment Financing District. The City or EDA reserves the right to use other sources of revenue legally applicable to the Development Program to pay for the estimated tax increment eligible costs.

The total estimated tax increment revenues for the District are expected to be approximately \$37,300,000, as shown in the table below:

<u>SOURCES OF FUNDS</u>	<u>TOTAL</u>
Tax Increment	\$37,300,000
Interest	\$350,000
<u>Land Sale Proceeds/Lease Revenue</u>	<u>\$0</u>
TOTAL	\$37,650,000

The EDA or City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of \$19,300,000. Such bonds may be in the form of pay-as-you go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of this Modification.

Subsection 2.10. Original Tax Capacity and Tax Rate

Pursuant to Minnesota Statutes, Section 469.174, Subdivision 7 and Section 469.177, Subdivision 1, the Original Net Tax Capacity (ONTC) as certified for Redevelopment District No. 2 is based on the market values placed on the property by the assessor in 1995 for taxes payable 1996. The original tax capacity of the property when the tax increment financing district is certified in December, 1995 will be \$271,618 (estimate).

Pursuant to Section 469.177, Subds. 1 and 2, of the Tax Increment Financing Act, the County Auditor shall certify in each year (beginning in the payment year 1998) the amount by which the original value has increased or decreased as a result of a change in tax exempt property within the Tax Increment Financing District, reduction or enlargement of the Tax Increment Financing District or changes in connection with previously issued building permits. In any year in which the current Net Tax Capacity value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the City.

The County Auditor shall certify in each year after the date the ONTC was certified (beginning in payment year 1998), the amount the ONTC has increased or decreased as a result of:

1. change in tax exempt status of property;
2. reduction or enlargement of the geographic boundaries of the district;
3. change due to adjustments, negotiated or court-ordered abatements;
4. change in the use of the property and classification; or
5. change in state law governing class rates.

The original local tax rate for Redevelopment District No. 2 will be the local tax rate for 1996 taxes which is currently estimated to be 1.38299, based on the rate for pay 1995.

Subsection 2.11. Estimated Captured Net Tax Capacity Value/Increment

Pursuant to Minnesota Statutes, Section 469.174 Subdivision 4 and Minnesota Statutes, Section 469.177, Subdivision 1, 2, and 4, the estimated Captured Net Tax Capacity (CTC) of Redevelopment District No. 2, within Development District No. 1, will annually approximate \$1,090,923. The City requests 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 1998. The project tax capacity listed is an estimate of values when the buildings are completed.

Subsequent phases of development will produce additional captured tax capacity. These figures rely on assumptions about construction costs, timing and the conversion to taxable property valuation. Changes in these assumptions will affect the actual tax capacity captured by Redevelopment District No. 2.

Estimated Project Tax Capacity	1,362,541	
less Original Tax Capacity		<u>271,618</u>
Estimated Captured Tax Capacity		<u>1,090,923</u>

(AS MODIFIED DECEMBER 20, 2010)

The actual original local tax rate for the TIF District is 134.726%, which is the rate for taxes payable in 1995. The estimated rate for taxes payable in 2010 is lower, as shown in the chart below, so the lower rate is used for purposes of tax increment projections in the Modification.

Project Estimated Tax Capacity upon Completion (PTC)	\$1,518,245	
Original Estimated Net Tax Capacity (ONTC)	\$74,606	
Reduction for Fiscal Disparities Contribution	\$0	
Estimated Captured Tax Capacity (CTC)	\$1,443,639	
Original Local Tax Rate	1.05663	Pay 2010
Estimated Annual Tax Increment (CTC x Local Tax Rate)	\$1,525,392	
Percent Retained by the EDA	100%	

Subsection 2.12. Duration of Redevelopment District No. 2

Pursuant to Minnesota Statutes, Section 469.176, Subd. 1b, the Authority may collect tax increment from a redevelopment district for a period of 25 years from the date of receipt of the first increment by the Authority, or any shorter period specified in the tax increment plan. At the present time, the Authority intends to collect tax increment from Redevelopment District No. 2 for a 14-year period, beginning with taxes payable in 1998 (or any earlier year, if tax increment is generated earlier) and concluding with taxes payable in 2012. The Authority may determine to extend the duration of the district for any additional period up to the maximum duration permitted under the Tax Increment Financing Act, provided that any such extension shall be

approved by modification of this TIF Plan in accordance with Section 469.175, subd. 4.

(AS MODIFIED DECEMBER 20, 2010)

The Tax Increment Financing Plan for Redevelopment Tax Increment Financing District No. 2 is being modified to extend the term of the district to 25 years after receipt of the first increment by the EDA, pursuant to M.S., Section 469.176, Subd. 1b. The date of receipt by the City of the first tax increment was July, 1997. Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after December 31, 2022, or when the TIF Plan is satisfied. The EDA reserves the right to decertify the District prior to the legally required date.

Subsection 2.13. Estimated Impact on Other Taxing Jurisdictions

The estimated impact on other taxing jurisdictions assumes construction which would have occurred without the creation of Redevelopment District No. 2. If the construction is a result of tax increment financing, the impact is \$0 to other entities. Notwithstanding, the fact that the fiscal impact on the other taxing jurisdictions is \$0 due to the fact that the construction would not have occurred without the assistance of the City, the estimated impact of Redevelopment District No. 2 would be as appears below if the "but for" test was not met.

IMPACT ON TAX BASE

<u>ENTITY</u>	<u>ENTITY'S TOTAL NET TAX CAPACITY</u>	<u>CAPTURED TAX CAPACITY</u>	<u>% OF CAPTURED TAX CAPACITY TO ENTITY TOTAL</u>
Hennepin County	966,907,816	1,090,923	0.11%
City of Minnetonka	63,643,917	1,090,923	1.71%
School District No. 270	35,743,017	1,090,923	3.05%
Other Taxing Jurisdictions	N/A	1,090,923	N/A

IMPACT ON TAX RATES

<u>ENTITY</u>	<u>CURRENT TAX RATE</u>	<u>CAPTURED TAX CAPACITY</u>	<u>POTENTIAL TAXES</u>
Hennepin County	0.37454	1,090,923	408,594
City of Minnetonka	0.19290	1,090,923	210,439
School District No. 270	0.75076	1,090,923	819,021
Other Taxing Jurisdictions ¹	0.06479	1,090,923	70,681
TOTAL	1.38299		1,090,923 1,508,736

The tax rate used for calculations is the 1994/Pay 1995 rate, used for estimates only. The total net capacity for the entities listed above are based on Pay 1995 figures.

(AS MODIFIED DECEMBER 20, 2010)

The actual original local tax rate for the TIF District is 134.726%, which is the rate for taxes payable in 1995. The estimated rate for taxes payable in 2010 is lower, as shown in the chart below, so the lower rate is used for purposes of tax increment projections in the Modification.

IMPACT ON TAX BASE			
	2009/Pay 2010 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) Upon Completion	Percent of CTC to Entity Total
Hennepin County	1,439,645,193	1,443,639	0.1003%
City of Minnetonka	872,483,223	1,443,639	0.1655%
Hopkins ISD No. 270	100,057,256	1,443,639	1.4428%

IMPACT ON TAX RATES				
	Pay 2010 Extension Rates	Percent of Total	CTC	Potential Taxes
Hennepin County	0.426400	40.35%	1,443,639	615,568
City of Minnetonka	0.311480	29.48%	1,443,639	449,665
Hopkins ISD No. 270	0.230500	21.81%	1,443,639	332,759
Other	0.088250	8.35%	1,443,639	127,401
Total	1.056630	100.00%		1,525,392

Subsection 2.14. Modifications to Redevelopment District No. 2

In accordance with Minnesota Statutes, Section 469.175, Subdivision 4, any reduction or enlargement of the geographic area of the project or tax increment financing district; increase in amount of bonded indebtedness to be incurred, including a determination to capitalize interest on debt if that determination was not a part of the original plan, or to increase or decrease the amount of interest on the debt to be capitalized; increase in the portion of the captured tax capacity to be retained by the City; increase in total estimated tax increment expenditures; or designation of additional property to be acquired by the City shall be approved upon the notice and after the discussion, public hearing and findings required for approval of the original plan. The geographic area of a tax increment financing district may be reduced, but shall not be enlarged after five years following the date of certification of the original tax capacity by the county auditor. Modifications to Redevelopment District No. 2 in the form of a budget modification or an expansion of the boundaries will be recorded in this subsection of the Plan.

(AS MODIFIED DECEMBER 20, 2010)

In accordance with *M.S., Section 469.175, Subd. 4*, any:

1. **Reduction or enlargement of the geographic area of the District, if the reduction does not meet the requirements of *M.S., Section 469.175, Subd. 4(e)*;**
2. **Increase in amount of bonded indebtedness to be incurred;**

3. A determination to capitalize interest on debt if that determination was not a part of the original TIF Plan;
4. Increase in the portion of the captured net tax capacity to be retained by the City;
5. Increase in the estimate of the cost of the project, including administrative expenses, that will be paid or financed with tax increment from the District; or
6. Designation of additional property to be acquired by the City,

shall be approved upon the notice and after the discussion, public hearing and findings required for approval of the original TIF Plan.

Pursuant to *M.S. Section 469.175 Subd. 4(f)*, the geographic area of the District may be reduced, but shall not be enlarged after five years following the date of certification of the original net tax capacity by the county auditor. If a redevelopment district is enlarged, the reasons and supporting facts for the determination that the addition to the district meets the criteria of *M.S., Section 469.174, Subd. 10*, paragraph (a), clauses (1) to (5), must be documented in writing and retained. The requirements of this paragraph do not apply if (1) the only modification is elimination of parcel(s) from the District and (2) (A) the current net tax capacity of the parcel(s) eliminated from the District equals or exceeds the net tax capacity of those parcel(s) in the District's original net tax capacity or (B) the City agrees that, notwithstanding *M.S., Section 469.177, Subd. 1*, the original net tax capacity will be reduced by no more than the current net tax capacity of the parcel(s) eliminated from the District.

The City must notify the County Auditor of any modification that reduces or enlarges the geographic area of the District. Modifications to the District in the form of a budget modification or an expansion of the boundaries will be recorded in the TIF Plan.

Subsection 2.15. Administrative Expenses

In accordance with Minnesota Statutes, Section 469.174, Subdivision 14, and Minnesota Statutes, Section 469.176, Subdivision 3 administrative expenses means all expenditures of an authority other than amounts paid for the purchase of land or amounts paid to contractors or others providing materials and services, including architectural and engineering services, directly connected with the physical development of the real property in the district, relocation benefits paid to or services provided for persons residing or businesses located in the district or amounts used to pay interest on, fund a reserve for, or sell at a discount bonds issued pursuant to Section 469.178. Administrative expenses also include amounts paid for services provided by bond counsel, fiscal consultants, and planning or economic development consultants. The Authority may use tax increment to pay any administrative expenses for the tax increment financing district in an amount up to ten percent of the total tax increment expenditures authorized by the tax increment financing plan or the total tax increment expenditures for the project, whichever is less.

Pursuant to Minnesota Statutes, Section 469.176, Subdivision 4h, tax increments may be used to pay for the county's actual administrative expenses incurred in connection with Redevelopment District No. 2. The county may require payment of those expenses by February 15 of the year following the year the expenses were incurred.

(AS MODIFIED DECEMBER 20, 2010)

In accordance with *M.S., Section 469.174, Subd. 14*, administrative expenses means all expenditures of the City, *other than*:

1. Amounts paid for the purchase of land;

2. Amounts paid to contractors or others providing materials and services, including architectural and engineering services, directly connected with the physical development of the real property in the project;
3. Relocation benefits paid to or services provided for persons residing or businesses located in the project; or
4. Amounts used to pay principal or interest on, fund a reserve for, or sell at a discount bonds issued pursuant to *M.S., Section 469.178*; or
5. Amounts used to pay other financial obligations to the extent those obligations were used to finance costs described in clauses (1) to (3).

For districts for which the request for certification were made before August 1, 1979, or after June 30, 1982, administrative expenses also include amounts paid for services provided by bond counsel, fiscal consultants, and planning or economic development consultants. Pursuant to *M.S., Section 469.176, Subd. 3*, tax increment may be used to pay any authorized and documented administrative expenses for the District up to but not to exceed 10 percent of the total estimated tax increment expenditures authorized by the TIF Plan or the total tax increments, as defined by *M.S., Section 469.174, Subd. 25, clause (1)*, from the District, whichever is less.

Pursuant to *M.S., Section 469.176, Subd. 4h*, tax increments may be used to pay for the County's actual administrative expenses incurred in connection with the District. The county may require payment of those expenses by February 15 of the year following the year the expenses were incurred.

Pursuant to *M.S., Section 469.177, Subd. 11*, the County Treasurer shall deduct an amount (currently .36 percent) of any increment distributed to the City and the County Treasurer shall pay the amount deducted to the State Treasurer for deposit in the state general fund to be appropriated to the State Auditor for the cost of financial reporting of tax increment financing information and the cost of examining and auditing authorities' use of tax increment financing. This amount may be adjusted annually by the Commissioner of Revenue.

Subsection 2.16. Limitation of Increment

Pursuant to Section 469.176, Subd. 1, of the Tax Increment Financing Act, no tax increment shall be paid to the City for the Tax Increment Financing District after three (3) years from the date of certification of the Original Net Tax Capacity value of the taxable property in the Tax Increment Financing District by the County Auditor unless within the three (3) years period:

- (a) bonds have been issued pursuant to Section 469.178, or in aid of a project pursuant to any other law, except revenue bonds issued pursuant to Minnesota Statutes, Section 469.156 to 469.165,
- (b) the City has acquired property within the Tax Increment Financing District, or
- (c) the City has constructed or caused to be constructed public improvements within the Tax Increment Financing District.

The bonds must be issued, or the City must acquire property or construct or cause public improvements to be constructed by approximately December, 1998.

The tax increment pledged to the payment of bonds and interest thereon may be discharged and the Tax Increment Financing District may be terminated if sufficient funds have been irrevocably deposited in the

debt service fund or other escrow account held in trust for all outstanding bonds to provide for the payment of the bonds at maturity or redemption date.

Pursuant to Minnesota Statutes, Section 469.176, Subdivision 6:

if, after four years from the date of certification of the original tax capacity of the tax increment financing district pursuant to Minnesota Statutes, Section 469.177, no demolition, rehabilitation or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer or water systems, has been commenced on a parcel located within a tax increment financing district by the authority or by the owner of the parcel in accordance with the tax increment financing plan, no additional tax increment may be taken from that parcel and the original tax capacity of that parcel shall be excluded from the original tax capacity of the tax increment financing district. If the authority or the owner of the parcel subsequently commences demolition, rehabilitation or renovation or other site preparation on that parcel including improvement of a street adjacent to that parcel, in accordance with the tax increment financing plan, the authority shall certify to the county auditor in the annual disclosure report that the activity has commenced. The county auditor shall certify the tax capacity thereof as most recently certified by the commissioner of revenue and add it to the original tax capacity of the tax increment financing district. The county auditor must enforce the provisions of this subdivision... For purposes of this subdivision, qualified improvements are limited to (1) construction or opening of a new street, (2) relocation of a street, and (3) substantial reconstruction or rebuilding of an existing street.

The City or a property owner must improve parcels within Redevelopment District No. 2 by approximately December, 1999.

Subsection 2.17. Use of Tax Increment

Pursuant to Minnesota Statutes, 469.176, Subd. 4, at least 90 percent of the revenues derived from tax increments from a redevelopment district must be used to finance the cost of correcting conditions that allow designation of redevelopment districts under section 469.174, Subdivision 10. These costs include acquiring properties containing structurally substandard buildings or improvements, acquiring adjacent parcels necessary to provide a site of sufficient size to permit development, demolition of structures, clearing of the land and installation of utilities, roads, sidewalks, and parking facilities for the site.

The revenues shall be used to finance or otherwise pay public development costs pursuant to Minnesota Statutes, Chapter 462C or 469. These revenues shall not be used to circumvent any levy limit law. No revenues derived from tax increment shall be used for the construction or renovation of a municipally owned building used primarily and regularly for conducting the business of the municipality; this provision shall not prohibit the use of revenues derived from tax increments for the construction or renovation of a parking structure, a commons area used as a public park or a facility used for social, recreational or conference purposes and not primarily for conducting the business of the municipality. For tax increment financing districts for which certification was requested after April 30, 1990, pursuant to Minnesota Statutes, Section 469.1763, Subdivisions 1 and 2, an amount equal to at least 75 percent of the revenue derived from tax increments from the district's parcels must be expended on activities in the district.

All revenues derived from tax increment shall be used in accordance with the tax increment financing plan, pursuant to Minnesota Statutes, Section 469.176, Subdivision 4 and Section 273.1399, Subdivision 1. The revenues shall be used for the following purposes:

1. to pay the principal of and interest on bonds used to finance a project;
2. to finance, or otherwise pay the capital and administration costs of the Development District pursuant to the Development District Act;
3. to pay for project costs as identified in the budget; and
4. to finance, or otherwise pay for other purposes as provided in Section 469.176, Subd. 4, of the Tax Increment Financing Act.

(AS MODIFIED DECEMBER 20, 2010)

The EDA or City hereby determines that it will use 100 percent of the captured net tax capacity of taxable property located in the District for the following purposes:

1. **To pay the principal of and interest on bonds issued to finance a project;**
2. **To finance, or otherwise pay the cost of development of the Development District No. 1 pursuant to *M.S., Sections 469.124 to 469.134*;**
3. **To pay for project costs as identified in the budget set forth in the TIF Plan;**
4. **To finance, or otherwise pay for other purposes as provided in *M.S., Section 469.176, Subd. 4*;**
5. **To pay principal and interest on any loans, advances or other payments made to or on behalf of the EDA or City or for the benefit of Development District No. 1 by a developer;**
6. **To finance or otherwise pay premiums and other costs for insurance or other security guaranteeing the payment when due of principal of and interest on bonds pursuant to the TIF Plan or pursuant to *M.S., Chapter 462C. M.S., Sections 469.152 through 469.165, and/or M.S., Sections 469.178*; and**
7. **To accumulate or maintain a reserve securing the payment when due of the principal and interest on the tax increment bonds or bonds issued pursuant to *M.S., Chapter 462C, M.S., Sections 469.152 through 469.165, and/or M.S., Sections 469.178*.**
8. **To pay for qualified rental housing projects using the Expanded Pooling Amount, as described in Section 2.7 of this TIF Plan.**

These revenues shall not be used to circumvent any levy limitations applicable to the City nor for other purposes prohibited by *M.S., Section 469.176, Subd. 4*.

Subsection 2.18. Notification of Prior Planned Improvements

The City shall, after due and diligent search, accompany its request for certification to the County Auditor or its notice of Tax Increment Financing District enlargement with a listing of all properties within the Tax Increment Financing District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the tax increment financing plan by the municipality pursuant to Section 469.175, Subd. 3, of the Tax Increment Financing Act. The County Auditor shall increase the original value of the Tax Increment Financing District by the value of improvements for which a building permit was issued.

Pursuant to Minnesota Statutes, Section 469.177, Subdivision 4, the City has reviewed the area to be included in the Redevelopment District No. 2 and found no parcels for which building permits have been issued during the 18 months immediately preceding approval of the Plan by the City. If the building permit had been issued within the 18 month period preceding approval of the plan by the City, the county auditor shall increase the original tax capacity of the district by the valuation of the improvements for which the building permit was

issued.

Subsection 2.19. Excess Tax Increments

Pursuant to Minnesota Statutes, Section 469.176, Subdivision 2, in any year in which the tax increment exceeds the amount necessary to pay the costs authorized by the tax increment plan, including the amount necessary to cancel any tax levy as provided in Minnesota Statutes, Section 475.61, Subdivision 3, the City shall use the excess amount to do any of the following:

1. prepay the outstanding bonds;
2. discharge the pledge of tax increment therefor;
3. pay into an escrow account dedicated to the payment of such bond; or
4. return the excess to the County Auditor for redistribution to the respective taxing jurisdictions in proportion to their tax capacity rate as provided in Minnesota Statutes, Section 469.176, Subd. 2.

(AS MODIFIED DECEMBER 20, 2010)

Excess increments, as defined in M.S., Section 469.176, Subd. 2, shall be used only to do one or more of the following:

- 1. Prepay any outstanding bonds;**
- 2. Discharge the pledge of tax increment for any outstanding bonds;**
- 3. Pay into an escrow account dedicated to the payment of any outstanding bonds; or**
- 4. Return the excess to the County Auditor for redistribution to the respective taxing jurisdictions in proportion to their local tax rates.**

The EDA or City must spend or return the excess increments under paragraph (c) within nine months after the end of the year. In addition, the EDA or City may, subject to the limitations set forth herein, choose to modify the TIF Plan in order to finance additional public costs in Development District No. 1 or the District.

Subsection 2.20. Requirements for Agreements with the Developer

The City will review any proposal for private development to determine its conformance with the Project Plan and with applicable municipal ordinances and codes. To facilitate this effort, the following documents may be requested for review and approval: site plan, construction, mechanical, and electrical system drawings, landscaping plan, grading and storm drainage plan, signage system plan, and any other drawings or narrative deemed necessary by the City to demonstrate the conformance of the development with city plans and ordinances. The City may also use the Agreements to address other issues related to the development.

Pursuant to Section 469.176, Subd. 5, of the Tax Increment Financing Act, no more than twenty-five percent (25%), by acreage, of the property to be acquired in the Tax Increment Financing District as set forth in the tax increment financing plan shall at any time be owned by the City as a result of acquisition with the proceeds of bonds issued pursuant to Section 469.178, of the Tax Increment Financing Act, without the City having, prior to acquisition in excess of twenty-five percent (25%) of the acreage, concluded an agreement for the development or of the property acquired and which provides recourse for the City should the development not be completed.

(AS MODIFIED DECEMBER 20, 2010)

As of the date of this modification, the Authority has entered into contracts with the following developers for the following development activities:

1. CSM Investors, Inc., dated December 11, 1995. Activity is construction of retail, 63 units of rental apartments, 80 units of senior apartments, 46 units of senior section 202 apartments, 108 condominiums and 104 townhomes.

2. CSM Investors, Inc., dated May 21, 1996. First Amendment of Contract for Private Redevelopment.

3. CSM Investors, Inc., dated July 8, 1997. Second Amendment of Contract for Private Redevelopment. Complete

Subsection 2.21. Assessment Agreements

Pursuant to Minnesota Statutes, Section 469.177, Subdivision 8, the City may enter into an agreement in recordable form with the developer of property within the tax increment financing district which establishes a minimum market value of the land and completed improvements for the duration of Redevelopment District No. 2. The assessment agreement shall be presented to the assessor who shall review the plans and specifications for the improvements constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appear, in the judgment of the assessor, to be a reasonable estimate, the assessor may certify the minimum market value agreement.

Subsection 2.22. Administration of Redevelopment District No. 2

Administration of Redevelopment District No. 2 will be handled by the Executive Director of the EDA.

Subsection 2.23. Financial Reporting Requirements

Pursuant to Minnesota Statutes, Section 469.175, Subdivisions 5, 6, and 6(a); an authority must file an annual disclosure report for all tax increment financing districts with the Office of the State Auditor, the county board, school board, and Department of Revenue.

Pursuant to Section 469.175, Subd. 5, of the Tax Increment Financing Act, the City must file an annual disclosure report for the Tax Increment Financing District. The report shall be filed with the State Auditor's Office. The report to be filed by the City shall include the following information:

1. the amount and source of revenue in the tax increment account;
2. the amount and purpose of expenditures from the account;
3. the amount of any pledge of revenues, including principal and interest, on any outstanding bond indebtedness;
4. the original value of the Tax Increment Financing District;
5. the captured value retained by the City;
6. the captured value shared with other taxing districts;
7. the tax increment received;
8. any additional information to demonstrate compliance with the tax increment financing plan.

Section 469.175, Subd. 5, of the Tax Increment Financing Act also provides that an annual statement showing the tax increment received an expended in that year, the original value, captured value, amount of outstanding bonded indebtedness and any additional information the City deems necessary shall be published in a newspaper of general circulation in the City.

(AS MODIFIED DECEMBER 20, 2010)

Pursuant to M.S., Section 469.175, Subds. 5, 6, and 6b the City must undertake financial reporting for all tax increment financing districts to the Office of the State Auditor, County Board and County Auditor on or before August 1 of each year. M.S., Section 469.175, Subd. 5 also provides that an annual statement shall be published in a newspaper of general circulation in the City on or before August 15.

If the City fails to make a disclosure or submit a report containing the information required by M.S., Section 469.175 Subd. 5 and Subd. 6, the OSA will direct the County Auditor to withhold the distribution of tax increment from the District.

Subsection 2.24. Municipal Approval and Public Purpose

The reasons and facts supporting the finds for the adoption of the Tax Increment Financing Plan for Redevelopment District No. 2 as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. Finding that the Redevelopment District No. 2 is a redevelopment district as defined in Minnesota Statutes, Section 469.174, Subdivision 11 and Section 273.1399, Subdivision 1.

Redevelopment District No. 2 consists of 76 parcels of property. Parcels consisting of more than 70 percent of the area are occupied by buildings and improvements. Buildings have been reviewed by city staff and consultants and more than 50 percent of the buildings within each noncontiguous area have been found to be structurally substandard (See Appendix C).

2. Finding that the proposed development, in the opinion of the Council, would not occur solely through private investment within the reasonably foreseeable future and, therefore, the use of tax increment financing is deemed necessary and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District.

Due to the high cost of redevelopment on parcels currently occupied by substandard buildings and the cost of financing the proposed improvements, this project is feasible only through assistance, in part, from tax increment financing.

A comparative analysis of estimated market values both with and without establishment of Redevelopment District No. 2 and the use of tax increments has been performed as described above. Such analysis is contained in Appendix C of the Tax Increment Financing Plan for Redevelopment District No. 2 and indicates that the increase in estimated market value of the proposed development (less the indicated subtractions) exceeds the estimated market value of the site absent the establishment of Redevelopment District No. 2 and the use of tax increments (See Appendix D).

3. Finding that the Tax Increment Financing Plan for Redevelopment District No. 2 conforms to the general plan for the development or redevelopment of the municipality as a whole.

The site is appropriately zoned. The Tax Increment Financing Plan has been reviewed by the Planning Commission and been found to confirm to the general development plan of the City.

4. Finding that the Tax Increment Financing Plan for Redevelopment District No. 2 will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development of Development District No. 1 by private enterprise.

The establishment of Redevelopment District No. 2 will result in increased employment for the City and increased availability of safe and decent housing in the City.

(AS MODIFIED DECEMBER 20, 2010)

It is found and determined, and it is the reasoned opinion of the City, that:

- i. The proposed redevelopment described in the TIF Plan Modification would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future. The major purpose of the TIF Plan Modification is to encourage the development of additional rental housing that is affordable to persons who meet the income and rent limits for housing that is eligible for federal low-income tax credits. The City and Authority have determined that rental housing intended for low-income persons cannot feasibly be constructed without significant public financing from multiple sources, and that additional tax increment (using the Expanded Pooling Amount) will permit the development of such housing throughout the City.*
- ii. The increased market value of the site that could reasonable be expected to occur solely through private investment without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected increments for the maximum duration of the district permitted by the TIF Plan. In most cases, sites planned for affordable housing would not necessarily develop for higher valued alternative uses. Further, the developers of affordable housing would not, and in most cases could not, finance higher-valued market rate housing in the absence of tax increment assistance, due to lack of reasonable financing for such developments. Therefore, the City and Authority have no reason to expect that individual sites would develop at higher market values absent the tax increment assistance for affordable housing described in this TIF Plan.*
- iii. The Tax Increment Plan Modification conforms to the general plan for the redevelopment of the City as a whole. The Tax Increment Plan Modification was reviewed and commented upon by the City's Planning Commission on December 6, 2010, and was approved by the Commission on that same date.*
- iv. The Tax Increment Plan Modification will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the redevelopment of the Project by private enterprise. The City has promoted affordable rental and owner-occupied housing for several years. The tax increment from the TIF District will be used to encourage the private market to offer a range of affordable housing choices and ensure that affordability is maintained over an extended period of time.*

Subsection 2.25. State Tax Increment Financing Aid

(AS MODIFIED DECEMBER 20, 2010)

Minnesota Statutes, Section 273.1399 has been repealed, and Section 2.25 of the TIF Plan is therefore deleted.

Pursuant to Minnesota Statutes, Section 273.1399, for tax increment financing districts for which certification was requested after April 30, 1990, a municipality incurs a reduction in state tax increment financing aid (RISTIFA) applied to the municipality's Local Government Aids (LGA) first and, Homestead and Agricultural Aid (HACA) second, in an amount equal to a formula based upon the equalized qualifying captured tax capacity (QCTC) of the tax increment financing district.

Pursuant to Minnesota Statutes, Section 273.1399, Subdivision 6, for tax increment financing districts certified after June 30, 1994, the City may choose an option to the LGA-HACA penalty. A tax increment financing district is exempt if the City elects at the time of approving the tax increment financing plan to make a qualifying local contribution. To qualify for the exemption in each year, the City must make a qualifying local contribution to the project of a certain percentage. The local contribution for a redevelopment district is 7.5 percent. The maximum local contribution for all districts in the City is limited to two percent of the City's net tax capacity.

The amount of the local contribution must be made out of unrestricted money of the authority or municipality, such as the general fund, a property tax levy, or a federal or a state grand-in-aid which may be spent for general government purposes. The local contribution may not be made, directly or indirectly, with tax increments or developer payments. The local contribution must be used to pay project costs and cannot be used for general government purposes.

The City elects to make the annual local contribution to the project to exempt itself from the LGA-HACA penalty.

Subsection 2.26. County Road Costs

Pursuant to Minnesota Statutes, Section 469.175, Subdivision 1a, the county board may require the authority to pay for all or part of the cost of county road improvements if the proposed development to be assisted by tax increment will in the judgement of the county, substantially increase the use of county roads requiring construction of road improvements or other road costs and if the road improvements are not scheduled within the next five years under a capital improvement plan or other county plan.

The improvements outlined in the Plan serve as notice to the county that the development of the residential facilities will be assisted with tax increment. In the opinion of the Authority and consultants, the proposed development will have little or no impact upon county roads. If the county elects to use increments to improve county roads, it must notify the Authority within thirty days of receipt of this plan.

Subsection 2.27. Fiscal Disparities Election

Pursuant to Minnesota Statutes, Section 469.177, Subdivision 3, the governing body may elect one of two methods to calculate fiscal disparities. If the calculations pursuant to Minnesota Statutes, Section 469.177, subdivision 3, clause a, are followed the following method of computation shall apply:

- (1) The original tax capacity and the current tax capacity shall be determined before the application of the fiscal disparity provisions of Chapter 473F. Where the original tax capacity is equal to or greater than the current tax capacity, there is no captured tax capacity and no tax increment determination. Where the original tax capacity is less than the current tax capacity, the difference between the original tax capacity and the current tax capacity is the captured tax capacity. This amount less any portion thereof which the authority has designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured tax capacity of the authority.*

- (2) *The county auditor shall exclude the retained captured tax capacity of the authority from the taxable value of the local taxing districts in determining local taxing district tax capacity rates. The tax capacity rates so determined are to be extended against the retained captured tax capacity of the authority as well as the taxable value of the local taxing districts. The tax generated by the extension of the lesser of (A) the local taxing district tax capacity rates or (B) the original tax capacity rate to the retained captured tax capacity of the authority is the tax increment of the authority.*

If the calculations pursuant to Minnesota Statutes, Section 469.177, subdivision 3, clause b, are followed the following method of computation shall apply

- (1) *The original tax capacity shall be determined before the application of the fiscal disparity provisions of chapter 473F. The current tax capacity shall exclude any fiscal disparity commercial-industrial tax capacity increase between the original year and the current year multiplied by the fiscal disparity ratio determined pursuant to section 473F.08, subdivision 6. Where the original tax capacity is equal to or greater than the current tax capacity, there is no captured tax capacity and no tax increment determination. Where the original tax capacity is less than the current tax capacity, the difference between the original tax capacity and the current tax capacity is the captured tax capacity. This amount less any portion thereof which the authority has designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured tax capacity of the authority.*
- (2) *The county auditor shall exclude the retained captured tax capacity of the authority from the taxable value of the local taxing districts in determining local taxing district tax capacity rates. The tax capacity rates so determined are to be extended against the retained captured tax capacity of the authority as well as the taxable value of the local taxing districts. The tax generated by the extension of the less of (A) the local taxing district tax capacity rates or (B) the original tax capacity rate to the retained captured tax capacity of the authority is the tax increment of the authority.*

The authority shall submit to the county auditor at the time of the request for certification which method of computation of fiscal disparities the authority elected. By resolution, the City of Minnetonka will choose to calculate fiscal disparities by clause a.

According to Minnesota Statutes, Section 469.177, Subdivision 3:

- (c) *The method of computation of tax increment applied to a district pursuant to paragraph (a) or (b) shall remain the same for the duration of the district, except that the governing body may elect to change its election from the method of computation in paragraph (a) to the method in paragraph (b).*

Subsection 2.28. Economic Development and Job Creation

To the extent applicable, the City agrees to comply with Minnesota Statutes, Section 116J.991, which states that a business receiving state or local government assistance for economic development or job growth purposes, including tax increment financing, must create a net increase in jobs in Minnesota and meet wage requirements within two years of receiving assistance.

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Minnesota Statutes, Section 116J.991 has been repealed and replaced by Sections 116J.993 to 116J.995 (the "Business Subsidy Act"). However, all the assistance using the Expanded Pooling Percentage under this TIF Plan amendment will be for housing, which is exempt from the Business Subsidy Act.

Subsection 2.29. Definition of Tax Increment Revenues

Pursuant to *M.S., Section 469.174, Subd. 25*, tax increment revenues derived from a tax increment financing district include all of the following potential revenue sources:

1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under *M.S., Section 469.177*;
2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the Authority with tax increments;
3. Principal and interest received on loans or other advances made by the Authority with tax increments;
4. Interest or other investment earnings on or from tax increments;
5. Repayments or return of tax increments made to the Authority under agreements for districts for which the request for certification was made after August 1, 1993; and
6. The market value homestead credit paid to the Authority under *M.S., Section 273.1384*.

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Subsection 2.30. Summary

The Minnetonka Economic Development Authority is establishing the District to preserve and enhance the tax base, redevelop substandard areas, and provide employment opportunities in the City. The TIF Plan for the District was prepared by Ehlers & Associates, Inc., 3060 Centre Pointe Drive, Roseville, Minnesota 55113, telephone (651) 697-8500.

APPENDIX A
PARCELS INCLUDED IN REDEVELOPMENT TIF DISTRICT NO. 2

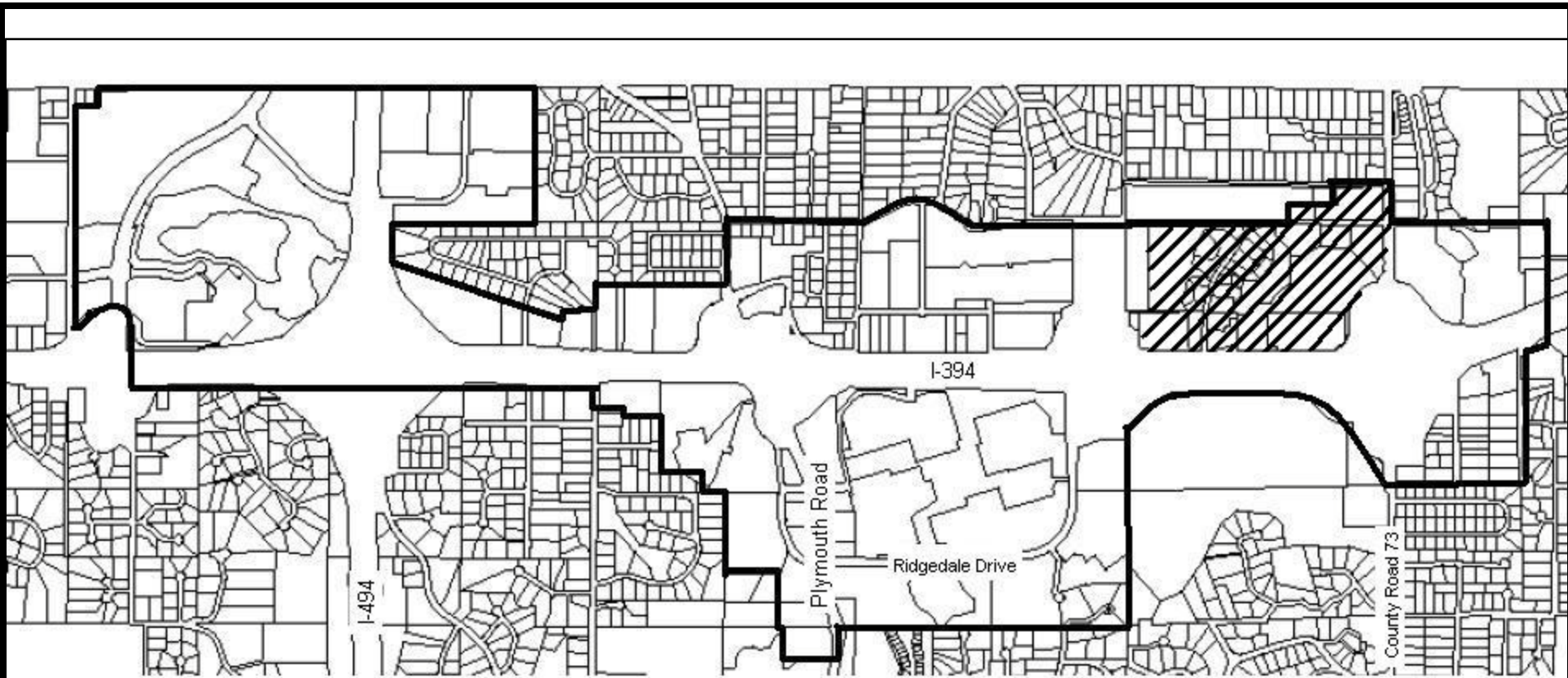
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APPENDIX B
BOUNDARY MAP OF DEVELOPMENT DISTRICT NO. 1 AND
REDEVELOPMENT TAX INCREMENT FINANCING DISTRICT NO. 2



TIF District 1-2 Boulevard Gardens



Development District No. 1



TIF District 1-2—Boulevard Gardens

APPENDIX C
REDEVELOPMENT TIF DISTRICT QUALIFICATIONS

For full reports, please see City files.

APPENDIX D
CASH FLOW

(AS MODIFIED DECEMBER 20, 2010)

**City of Minnetonka
Fund Balance Analysis**

TIF 1-2 Boulevard Gardens

Redevelopment
City approved: 12/11/1995
Cert Request:6/11/1996
Certified:7/2/1996
Decertifies:12/31/22

	Original Budget	2010 Cumulative Modified Budget	End of District Actual Projected Total	2022	2021	2020	2019	2018	2017	2016	2015	2014
Beginning Fund Balance				271,968	323,890	374,794	424,700	473,628	521,596	568,623	614,729	659,930
Revenues												
Bond proceeds			0									
Tax increment	20,191,632	36,000,000	35,591,730	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
Interest (2%)		350,000	241,627	5,439	6,478	7,496	8,494	9,473	10,432	11,372	12,295	13,199
MVHC		400,000	358,302	16,600	16,600	16,600	16,600	16,600	16,600	16,600	16,600	16,600
Other		900,000	872,031									
Total Revenues	20,191,632	37,650,000	37,063,690	1,522,039	1,523,078	1,524,096	1,525,094	1,526,073	1,527,032	1,527,972	1,528,895	1,529,799
Expenditures												
Land/building	9,556,000	10,164,578	9,516,099	0	0	0	0	0	0	0	0	0
Admin	955,600	2,335,422	2,622,250	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
Jobs Bill Spending Plan		400,000	300,000									
Loan			0									
Principal			0									
Interest	9,680,032	7,350,000	7,219,323	112,989	0	0	0	0	0	0	0	0
Affordable Housing		6,400,000	6,300,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Returned TIF to County		11,000,000	11,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total Expenditures	20,191,632	37,650,000	36,957,672	1,687,989	1,575,000	1,575,000	1,575,000	1,575,000	1,575,000	1,575,000	1,575,000	1,575,000
Projected Ending Fund Balance		0	106,018	106,018	271,968	323,890	374,794	424,700	473,628	521,596	568,623	614,729

Projected							Acctd for In Prior Years
2013	2012	2011	2010	2009	2008	2007	
704,245	747,692	347,138	598,567	499,053	635,811	851,507	
1,500,000	1,500,000	1,500,000	1,500,000	1,519,925	1,460,645	1,368,995	11,742,165
14,085	14,954	6,943	11,971	9,981	2,062	4,206	92,748
16,600	16,600	16,600	16,600	16,600	16,600	17,408	91,894
							872,031
1,530,685	1,531,554	1,523,543	1,528,571	1,546,506	1,479,307	1,390,609	12,798,838
0	0	100,000	1,119,805	996,594	1,085,837	1,085,414	5,128,449
75,000	75,000	110,000	150,000	151,993	146,065	136,305	1,102,887
		300,000					
0	0	112,989	210,195	298,406	384,163	384,586	5,715,995
500,000	500,000	500,000	300,000				
1,000,000	1,000,000						
1,575,000	1,575,000	1,122,989	1,780,000	1,446,993	1,616,065	1,606,305	11,947,331
659,930	704,245	747,692	347,138	598,567	499,053	635,811	851,507

(AS MODIFIED DECEMBER 20, 2010)

**APPENDIX E
SPENDING PLAN FOR DISTRICT**

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA

CITY OF MINNETONKA

SPENDING PLAN

FOR REDEVELOPMENT TAX INCREMENT FINANCING DISTRICT NO. 2

(TEMPORARY TIF AUTHORITY UNDER MINN. STATS., SECTION 469.176, SUBD. 4M)

ADOPTED BY EDA BOARD SEPTEMBER 13, 2010

ADOPTED BY CITY COUNCIL SEPTEMBER 13, 2010

SPENDING PLAN
FOR TAX INCREMENT FINANCING DISTRICT NO. 2
(TEMPORARY TIF AUTHORITY UNDER MINN. STATS., SECTION 469.176, SUBD. 4M)

I. PURPOSE

The City of Minnetonka (the “City”) and the Economic Development Authority in and for the City of Minnetonka (the “the “Authority”) propose to adopt a spending plan (the “Spending Plan”) for Tax Increment Financing District No. 2 (the “TIF District”) in accordance with 2010 Minnesota Law, Chapter 216, Section 32 (codified as Minnesota Statutes, Section 469.176 Subd. 4m, and referred to as the “Temporary TIF Authority Act”).

Under the Temporary TIF Authority Act, the Authority is authorized to spend available tax increment from any existing tax increment financing district, notwithstanding any other law to the contrary, to provide improvements, loans, interest rate subsidies, or assistance in any form to private development consisting of construction or substantial rehabilitation of buildings and ancillary facilities, if the following conditions exist:

- (1) Such assistance will create or retain jobs in the State of Minnesota, including construction jobs;
- (2) Construction commences before July 1, 2011;
- (3) The construction would not have commenced before that date without the assistance; and
- (4) The City Council approves a written spending plan (after a duly noticed public hearing) that specifically authorizes the Authority to take such actions.

The City and Authority have determined to authorize expenditures of tax increment from the TIF District under the Temporary TIF Authority Act as further described in this Spending Plan.

II. SPENDING PLAN

The Authority is authorized as follows:

(a) The Authority may use any available tax increments from the TIF District on hand at the time of approval of this Spending Plan and received through December 31, 2010 and not otherwise pledged to any outstanding contract or obligation (referred to as “Available Spending Plan Increment”), to provide improvements, loans, interest rate subsidies, or assistance in any form to private development occurring anywhere within the City that meets the requirements of the Temporary TIF Authority Act described above.

(b) The assistance authorized under this Spending Plan expressly includes, but is not limited to, assistance to Glen Lake Senior Housing Development, LLC (the “Phase II Subdeveloper”) in the amount of not more than \$100,000 to defray a portion of certain City

utility charges owing by the Phase II Subdeveloper in connection with construction of an approximately 150-unit senior rental housing development in the City. Such development is referred to as “Phase II” in the Contract for Private Redevelopment among the Authority, the City and Glen Lake Redevelopment LLC dated as of January 4, 2010 (the “Contract”), as partially assigned to the Phase II Subdeveloper.

In connection with such assistance, the Authority and City expressly find that:

1. Construction of Phase II will create approximately 30 new full-time equivalent jobs in the State (representing jobs that would not otherwise exist elsewhere in Minnesota), based on estimates provided by the Phase II Subdeveloper.
2. Under the Contract (as partially assigned), the Phase II Subdeveloper is required to commence construction of Phase II by August 1, 2012, but the Authority expects that construction will in fact commence before July 1, 2011, and the Authority will require such accelerated construction as a condition of providing assistance under this Spending Plan..
3. Construction of Phase II would not have commenced before July 1, 2011 without the assistance under this Spending Plan, both because that date accelerates the construction schedule otherwise required under the Contract, and because unexpected increases in various utility charges exceed amounts in the Phase II Subdeveloper’s planned pro forma for Phase II, making the development infeasible without the assistance under this Spending Plan.

(c) In addition to the assistance for the Phase II housing development described above, the Authority is authorized to spend Available Spending Plan Increment for any other private development in the City for which the Authority finds that the private development will create or retain jobs in the State (including construction jobs); that the private development will commence before July 1, 2011; and that such construction would not have commenced before that date without the assistance under this Spending Plan. The Authority must document its findings under this section at the time of approval of assistance to each development.

(d) In accordance with the Temporary TIF Authority Act, the Authority may implement this Spending Plan by making an equity or similar investment in a corporation, partnership or limited liability that the Authority determines is necessary to make construction that meets the requirements of paragraph (c) financially feasible.

(e) This Spending Plan authorizes, but does not obligate, the Authority to spend Available Spending Plan Increment. Any obligation to provide assistance under this Spending Plan must be evidenced by a contract approved by the Authority’s board, entered into with a private party who otherwise meets the requirements of this Spending Plan and the Temporary TIF Authority Act.

(f) In accordance with the Temporary TIF Authority Act, the authority to spend Available Spending Plan Increment under this Spending Plan expires on December 31, 2011. No Available Spending Plan Increment may be spent under this Spending Plan after December 31, 2011 unless such expenditure is otherwise authorized by law without regard to the Temporary TIF Authority Act.

(g) The City and Authority acknowledge that assistance provided pursuant to this Spending Plan will be subject to Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidy Act"), unless the assistance provided to a specified recipient is exempt from the Business Subsidy Act under the terms of that statute.

(h) The Authority and City may amend this Spending Plan at any time in accordance with the procedures for approval of the Spending Plan under the Temporary TIF Authority Act.

(i) Authority staff are authorized and directed to maintain a copy of this Spending Plan with the Authority's records for the TIF District, and to file a copy of the Spending Plan with the Office of the State Auditor (as requested by the State Auditor in the August, 2010 TIF Division Newsletter).

Resolution No. 2022-

**Resolution approving a modification to the tax increment financing plan for Tax
Increment Financing District No. 1-2 (Boulevard Gardens)**

Be it resolved by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City") as follows:

Section 1. Recitals.

- 1.01. The City and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") previously established, and the Authority administers, Tax Increment Financing District No. 1-2 (Boulevard Gardens) (the "TIF District"), a redevelopment district within Development District No. 1 (the "Development District") in the City. The City and the Authority approved a tax increment financing plan, as heretofore amended (the "TIF Plan"), for the TIF District pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (the "TIF Act").
- 1.02. The City and the Authority have determined to modify and increase the budget and modify the sources of revenue set forth in the TIF Plan to reflect the tax increment generated from property within the TIF District to date and align the budget with expenditures (collectively, the "Modification"). The proposed Modification has been presented to the City Council.
- 1.03. Pursuant to pursuant to Section 469.175, subdivision 2a of the TIF Act, notice of the proposed Modification was presented to the commissioner of Hennepin County, Minnesota representing the area included in the TIF District at least thirty (30) days before the publication of a notice of public hearing on the proposed Modification.
- 1.04. Pursuant to Section 469.175, subdivision 2 of the TIF Act, the proposed Modification and the estimates of the fiscal and economic implications of the Modification were presented to the Clerk of the Board of Education of Independent School District No. 276 (Minnetonka Public Schools) and to the Taxpayer Services Division Manager, as the county auditor (the "County Auditor"), of Hennepin County, Minnesota at least thirty (30) days before the date of the public hearing on the proposed Modification.
- 1.05. On the date hereof, the City Council conducted a duly noticed public hearing on the proposed Modification to the TIF Plan, at which the views of all interest parties were heard.

Section 2. Findings; Development District.

- 2.01. It is hereby found and determined that the Development Program for the Development District (the "Development Program") remains in full force and effect and that the goal of the Development Program is to encourage

redevelopment in accordance with the general plan for development of the City as set forth in the comprehensive municipal plan.

Section 3. Findings; TIF District.

- 2.01. It is found and determined that it is necessary and desirable for the sound and orderly development of the Development District, and for the protection and preservation of the public health, safety, and general welfare, that the authority of the TIF Act be exercised by the City to provide financial assistance to the TIF District and the Development District.
- 2.02. It is further found and determined, and it is the reasoned opinion of the City, that the development proposed in the TIF Plan, as modified by the proposed Modification to the TIF Plan, could not reasonably be expected to occur solely through private investment within the reasonably foreseeable future and the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value expected to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the district permitted by the TIF Plan, as modified by the proposed Modification.
- 2.03. The proposed public improvements to be financed in part through tax increment financing are necessary to permit the City to realize the full potential of the TIF District and the Development District in terms of redevelopment of blighted property, development intensity, and tax base.
- 2.04. The TIF Plan, as modified by the proposed Modification to the TIF Plan, conforms to the general plan for development of the City as a whole.
- 2.05. The TIF Plan, as modified by the proposed Modification to the TIF Plan, will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the redevelopment of the TIF District and the Development District by private enterprise.
- 2.06. The TIF District is a redevelopment district under Section 469.174, subdivision 10 of the TIF Act.
- 2.07. Reasons and facts supporting all the above findings are set forth in the TIF Plan, as modified by the proposed Modification to the TIF Plan, and are incorporated herein by reference. The City Council has also relied upon reports and recommendations of its staff and consultants, as well as the personal knowledge of members of the City Council, in reaching its conclusions regarding the TIF Plan, as modified by the proposed Modification.

Section 3. Public Purpose.

- 3.01. The adoption of the proposed Modification to the TIF Plan conforms in all respects to the requirements of the TIF Act. The proposed Modification will help facilitate redevelopment that will create additional affordable rental housing, increase employment, create new commercial uses, and improve the tax base. The City expressly finds that any private benefit to be received by any private

developer is incidental, as the tax increment assistance is provided solely to make the redevelopment financially feasible and thus produce the public benefits described. Therefore, the City finds that the public benefits of the proposed Modification exceed any private benefits.

Section 4. Approvals; Further Proceedings.

4.01. The Modification to the TIF Plan is hereby approved and adopted in substantially the form on file at City Hall.

4.02. The City Council hereby transmits the Modification to the TIF Plan to the Board of Commissioners of the Authority (the "Board of Commissioners") and recommends that the Board of Commissioners approve such Modification.

4.03. Upon approval of the Modification to the TIF Plan by the Board of Commissioners, the Authority is authorized and directed file a copy of the Modification to the TIF Plan with the County Auditor and with the Commissioner of Revenue of the State of Minnesota and the State Auditor, as required by Section 469.175, subdivision 4 of the TIF Act.

4.04. City staff, the City's advisors, and legal counsel are authorized and directed to proceed with the implementation of the Modification to the TIF Plan.

Adopted by the City Council of the City of Minnetonka, Minnesota, on June 27, 2022.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

- Motion for adoption:
- Seconded by:
- Voted in favor of:
- Voted against:
- Abstained:
- Absent:
- Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City

Council of the City of Minnetonka, Minnesota, at a meeting held on June 27, 2022.

Becky Koosman, City Clerk