

**CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE
ACTION**

Agenda Item Number: 3

Meeting Date: June 9, 2014

Attachments: X Yes No

CITY COUNCIL ACTION

Date: June 16, 2014

- | | |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Denied |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Tabled |
| <input type="checkbox"/> Other | |

Originating Department: City Clerk-Treasurer

Agenda Item: Consideration of Northwoods League, Inc. and Willmar Baseball, LLC Lease Agreement

Recommended Action:

Approve the Northwoods League, Inc. and Willmar Baseball, LLC Lease Agreement and Authorize the Mayor and City Administrator to Execute the Agreement.

Background/Summary:

This is the last year of the first five (5) year agreement with the Northwoods League, Inc. and Willmar Baseball, LLC (Willmar Stingers). The new five year agreement was negotiated and subsequently reviewed by the City Attorney. The new rents exceed the prior agreement by \$18,540. The new agreement has more owner (City) control on playability of the field, details concession stand rules, grants Community Ed & Recreation additional signage, prohibits political signage and candidate endorsement, and controls the Facility Close Down dates.

Alternatives: Renegotiate the cost of the rental rates

Financial Considerations: \$75,060.00 plus playoff rentals if applicable

Preparer: City Clerk-Treasurer

Signature:

Comments:

LEASE AGREEMENT

City of Willmar, Minnesota, a Minnesota Municipal Corporation
(hereinafter referred to as "Owner")

-and-

Northwoods League, Inc. and Willmar Baseball, LLC
(hereinafter referred to as the "League")

The parties agree as follows:

1. Subject to the terms and conditions herein contained, Owner leases to League the premises known as Baker Diamond-Taunton Stadium (hereinafter referred to as the "Facility") including all portions thereof during the times referenced during the term of this lease.

Term

2. The term of this Agreement shall begin on August 25, 2014 and expire on August 25, 2019, unless earlier terminated herein.

Renewal

3. Should League desire to renew this Agreement, Owner agrees to negotiate in good faith with the League for such a renewal or extension of this Agreement between August 25-November 30, 2019, in order that any such renewal or extension may be finally agreed to and executed by the parties in writing prior to December 31, 2019.

Rent

4. The rent payable by the League to Owner for the Facility shall be the sum of \$400 per game in 2015; \$410 per game in 2016; \$420 per game in 2017; \$425 per game in 2018; and \$430 per game in 2019 (a 40 game schedule, including 36 regular season and 4 playoff games will be reserved for the league, in addition if the facility is available the League may schedule up to 3 exhibition games at the lease rate). Payment shall be made on the 5th day of the subsequent month. League agrees to pay interest at a rate of 1.5 percent per month (18 percent per annum)(not to exceed the maximum amount allowed by law), on all past due balances due to the City. League agrees to pay any collection costs, including but not limited to court costs, collection fees and attorneys' fees.
5. The rent for a League All Star Game and a League All Star Game Home Run Derby Contest shall be at the same rate as regular season games, each payable on or before July 1.

Use of Field

6. The League shall have the exclusive right to use the Facility for the purpose of playing summer collegiate league baseball on the dates and times so designated pursuant to this Paragraph. The League may be granted permission to use the Facility for purposes of

conducting non-baseball related special events, programs, or special effects on a case-by-case basis at the discretion of the Community Education and Recreation Director. The regular season shall be no more than 36 regular season games and 4 playoff games. The League may use the facility for a League All Star Game. Three exhibition games will be permitted if the field is available, subject to the approval of Owner. The League shall have access to the Facility for infield practice 2 ½ hours prior to game time and have use of the facility for at least 1 hour following the conclusion of games. Owner will submit to the league 45 potential game dates by October 1 of each year of the lease for League scheduling purposes. The League shall thereafter submit to Owner its final schedule for regular season games to take place at the Facility for the upcoming season on or before [January 31] of any year of this Agreement, and thereafter changes to the regular season schedule shall require Owner's approval, which must not unreasonably be withheld.

7. The Owner reserves the right to determine the playability of the field. Decisions on usage will be made in a timely manner with consultation of the League on the playability of the field but final determination will be by the Owner.
 - (a) The Owner will ready the Facility for use during adverse weather days. Once the game has begun any use of products (Diamond Dry) to keep the field playable will be billed to the League at a rate of \$13 per bag of product.
8. Owner shall have full rights to use the Facility at times other than those designated for exclusive League use pursuant to Paragraph 6.

Maintenance

9. During the term of the lease, Owner or its contract designee shall be responsible to maintain the Facility in good repair and condition. Maintenance shall include, but not be limited to, the following:
 - (a) Marking and maintenance of field for League games. Owner will provide maintenance of the field prior to 6:00 p.m. on game nights (or two and one-half hours prior to game time if not a 7:00 p.m. start), and its employees or designee will be responsible for the marking of fields for games. Owner shall have sole discretion and authority to determine the adequacy of playable conditions of the field prior to the start of any League game.
 - (b) Cleaning restrooms and bleachers.
 - (c) Garbage pickup will be completed in a timely manner not to exceed one week.
10. Owner shall be responsible to maintain the mechanical or structural portions of the Facility, including capital repair or replacement, repairs to or replacement of electrical equipment, structural repairs to the walls, ceilings, bleachers, major painting, major renovation or replacement of the Facility structure or roof systems.
11. Any League furnishings shall be maintained by the League.

Improvements and Renovations

12. Improvements or renovations to the Facility desired by the League must be approved in advance in writing by Owner and shall be at the League's expense unless Owner specifically agrees to assume the same. All such improvements (except personal property, business and trade fixtures, equipment and furniture covered by Paragraph 31) shall become the property of Owner. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Willmar City Code. League agrees that not less than thirty days prior to commencement of any construction, League will provide Owner with sufficient proof of required insurance, including worker's compensation coverage. Such proof of insurance must be approved by Owner before League may commence construction of any approved project.

Damage or Destruction of Facility

13. If the Facility shall be damaged by fire or other casualty covered by Owner's insurance, the damage to the Facility shall be repaired by Owner with reasonable diligence at its expense except that repairs to alterations, additions or improvements made by the League shall be performed by Owner, or others acceptable to Owner, at the expense of the League, and the League shall, at its own expense, make all repairs and replacements of property that belongs to the League.

Facility Rendered Untenable

14. Requirements:

- (a) If the Facility is rendered untenable by fire or other casualty, the term of this Agreement shall immediately terminate and the League shall vacate the Facility and surrender all rights to usage of the same to Owner.
- (b) Upon termination of this Agreement under the provisions of this clause, the League's liability for rent shall cease as of the day following the casualty, however, League shall be responsible for and pay Owner for games played prior to the termination date.
- (c) Owner shall not be liable for any damage or loss, including any economic loss suffered by the League, as a result of temporary closure of the Facility, permanent closure of the Facility pursuant to this clause, or for closure for any other reason whatsoever.

Insurance

15. Required Insurance.

- (a) The League shall maintain at League's expense and keep in force during the term of this Agreement, the following insurance coverages in at least the listed minimum amounts:
 - i. Worker's Compensation coverage in statutorily required amounts.

- ii. Employers Liability coverage in limits of One Hundred Thousand Dollars (\$100,000.00) each accident, \$100,000 Disease per each employee, \$500,000 Disease per policy limit.
- iii. Comprehensive General Liability coverage in limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand Dollars (\$1,500,000.00) for leased premises damages liability or League shall maintain commercial general liability (CGL), and if necessary commercial umbrella insurance, with a combined limit of not less than \$1,500,000 each occurrence. Such liability insurance shall additionally cover:
 1. The CGL insurance shall cover public liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractually assumed liability.
 2. Independent contractors—protective contingent liability.
 3. Personal injury.
 4. Owned, non-owned, and hired vehicle coverage on all vehicles operating on premises known as Baker Diamond-Taunton Stadium.
 5. Contractual liability covering the indemnity obligations set forth herein.
 6. Dram Shop liability, if applicable under Paragraph 24.

- (b) All policies listed above shall be written on an “occurrence” form (“claims made” and “modified occurrence” forms are not acceptable) and shall apply on a “per occurrence” basis.
- (c) With the exception of the Worker’s Compensation policies, all policies listed above shall insure the defense and indemnity obligations assumed by the League under this Agreement, and shall name Owner as an additional insured under the policy.
- (d) All policies listed above shall contain a provision that coverages afforded thereunder shall not be canceled or non-renewed, nor shall coverage limits be reduced by endorsement, without thirty (30) days prior written notice to Owner (or such shorter period required by law, if any).

Indemnification

16. The League agrees that it shall indemnify and hold harmless Owner, its employees or agents against all expenses, liability, losses, damages, costs, claims, judgments or proceedings of any kind whatsoever that may arise against Owner, its employees or agents resulting from or arising out of the use of the Facility by the League, or any activities of the League, its subcontractors, agents, guests, patrons, sub lessees or licensees or

employees under this Agreement. Any damage to premises caused by the League or its employees, agents, guests, patrons, subleases, shall be paid by the League.

Willmar Not Liable for Injury to League

17. Owner shall not be responsible for any injury to persons or damage to property of the League, its agents, employees, customers or invitees as to any of its property while in the Facility, regardless of the cause of such injury or damage.

Taxes

18. In addition to the rent above stated, the League shall be responsible for the payment of all sales and use taxes, which may be applicable to its use and operation of the Facility.

Utilities

19. Utilities (water, sewer, electric and weekly trash pick-up) charges shall be the responsibility of Owner. Any business telephone installation costs and use shall be the responsibility of the League.

Concession Stand Operations

20. During the term of this lease the League shall operate all concessions at the Facility, whether on its own behalf during its exclusive use of the Facility for the Northwoods League games or for the listed events of Ridgewater College, Willmar High School, American Legion, VFW & Willmar Rail games, whether staffed by League personnel or by way of concession agreement with an outside vendor or sponsor. Concession Stand Operator shall operate concessions one half hour prior to game time through the completion of each scheduled game. The League shall be granted exclusive use of the concession stand and storage area including the use of the commercial refrigerator, three compartment sink with hot water, cleaning closet and all counters and storage space, throughout the entire term of this Agreement—not just during the times of the League's exclusive use of the Facility for League games. Storage area does not include the restrooms attached to the concession stand.
21. Concession Stand Operator will be allowed full control of menu and pricing. Concession Stand Operator will apply for and maintain the necessary City of Willmar, Kandiyohi County and the State of Minnesota Licenses needed to conduct food and beverage sales. Concession Stand Operator will be responsible for any damages to concession facility above and beyond normal wear and tear, clean the concession area in accordance to accepted health practices.
22. Concession Stand Operator shall control all revenues and expenditures with accepted cash practices including removal of money daily from Facility so as not to encourage theft or vandalism activities.

23. For any League liquor sales on the premises, the league shall obtain the necessary liquor license. The League shall not allow the consumption of any alcoholic beverages in the Facility, except in accordance with such liquor license and subject to all conditions thereof and applicable Willmar ordinances. Tobacco products may not be advertised, sold or used on the premises.
24. The League agrees that it will, at all times when it is engaged in liquor sales on the premises, maintain in full force and effect a "dram shop" insurance policy meeting the requirements of the State of Minnesota for an on-sale intoxicating liquor license, written by a company licensed to do business in the State of Minnesota, and shall name the City an additional insured on the policy.
25. Liquor advertisement within the concession area only may be displayed during Northwoods League games and shall be removed at the conclusion of the game. The League will be responsible for securing all liquor containers immediately at the conclusion of a game and prior to Facility use by any other Baseball Program.
26. Any required equipment installation to the concession area will be made at League expense and must meet all applicable State/County Health Department requirements.

Advertising Signage

27. The League shall be granted the right to sell and install advertisement signs on the outfield fence of Baker Field /Taunton Stadium and any other signage proposed to be located on other parts of the Facility shall require prior approval by Owner. In exchange for allowing signage rights to the League, the League will provide the City of Willmar and Willmar Community Education & Recreation signage in an area agreed to by both parties.
 - (a) The League is responsible for the installation, maintenance, and removal of the signs.
 - (b) Any modifications made to the fence for support of advertisement signs must be approved by Owner and will be at the League's expense.
 - (c) At termination of the Lease, the League shall remove all such sign installations and return the site and area to its prior status or secure Owner's consent to leave the signs in place. Any repair or removal of advertising not completed at termination of lease conducted by Owner or its' agents shall be reimbursed by the League.
 - (d) The parties agree that Owner, in permitting League to sell and install advertising signs at the Facility, is not creating a forum for public speech protected by the United States or Minnesota constitutions. In furtherance of Owner's objectives of minimizing chances of abuse, appearance of favoritism, and risk of imposing on a captive audience, Owner hereby reserves the right to reject any banner, sign, or other advertising media that it deems inappropriate or offensive, and expressly prohibits the display of political signage in any portion of the Facility or its grounds. This prohibition includes any materials

endorsing or promoting or otherwise related to candidates for political office or political parties.

Scoreboard and Sound System

28. Owner shall provide the existing scoreboard and sound system at the Facility for use by the League. Any modifications to or improvement of the sound system shall be at the League's expense, and all modifications or improvements must remain in the Facility at the termination of the lease and shall become the property of Owner at no cost, with the exception of the "Instant Replay" sound effects system, which remains at all times the property the League.

Entry upon Default

29. If the rent is not paid when due, or in case of breach or non-observance of or non-performance by the League of any of the provisions of this Agreement, and if the default continues for 10 days after written notice thereof to the League, then, in every such case, Owner in addition to any other remedy it has at equity, this contract or by law may, at its option, cancel this Agreement and re-enter and take possession of the Facility or any part thereof by force if necessary without any previous notice of intention to re-enter and may remove all persons and property therefrom, and may use such force and assistance in making such removal as Owner may deem advisable and such re-entry shall not operate as a waiver of satisfaction in whole or in part of any right, claim or demand arising out of or connected with any breach or violation by the League of any covenant or agreement on its part to be performed.

Removal of League's Property

30. All articles of personal property and all business and trade fixtures, equipment and furniture owned by the League or installed by the League in the Facility at the League's expense shall remain the property of the League except as provided in Paragraph 27, and may be removed by the League at any time during the term of this Agreement, provided that the League, at its own expense, shall repair any damage to the Facility caused by such removal or by the original installation and provided that there shall be no unpaid rent due Owner from the League.

No Representation

31. The League agrees that it has leased the Facility after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon Owner unless it be made in writing and signed on behalf of Owner.

Security

32. The League shall be responsible for the security and control of, ingress and egress to the Facility during and at the conclusion of all League events at the Facility during the term of this lease.

Right of Entry to Make Repairs

33. The League agrees that Owner shall have the right to enter the Facility at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as Owner may deem necessary or desirable or as Owner may be required to make by law or in order to repair and maintain the Facility. Owner will exercise reasonable diligence so as to minimize the disturbance or interruption of the League's operations. Renovation or repair shall be scheduled to minimize conflict with the Northwoods League game schedule.

American Legion, VFW, Willmar Baseball Association Baseball Preserved

34. The parties recognize, understand and agree that the Willmar American Legion Post, the Willmar VFW Post, and the Willmar Baseball Association for many years maintained youth baseball teams and amateur baseball teams and will continue to maintain such teams. The parties understand and agree that this baseball contract is not an exclusive contract, but is subservient to the right of Owner to permit the utilization of Baker Field/Taunton Stadium as a baseball park for the Willmar American Legion Post, the Willmar VFW team, and the Willmar Baseball Association teams in accordance with their needs and requirements. The League agrees that it will work with the other teams to arrive at a reasonable schedule, which shall be reduced to writing. Under the schedule, the American Legion Post, the VFW teams, and the Willmar Baseball Association teams will have the right to the utilization and use of Baker Field/Taunton Stadium. In the event of any rescheduling conflict due to postponements, cancellations or rainouts, rescheduled games must be agreed to by Owner.

Facility Close Down

35. The League agrees that Owner shall have the right to terminate the Facility power supply after September 15 of each lease year. League shall remove its personal property by said date and shall acknowledge that the care and custody of concession items stored at Facility shall be the sole responsibility of League, holding the Owner harmless from any loss of personal property that may benefit by said power supply.

General Terms and Conditions

36. Voluntary and Knowing Action. By executing this Agreement, the parties state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement

without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

37. Authorized Signatories. The parties to this Agreement each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
38. No Waiver. The failure of Owner to insist upon strict performance of any covenant or condition in this Agreement or to exercise any right or option hereunder shall not be construed to or operate as a waiver or relinquishment of the future right to enforce any such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by Owner save only an express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the League shall not be construed as an admission or acceptance by Owner of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of Owner.
39. Assignment. This Agreement may not be assigned, transferred or conveyed without the express consent of Owner.
40. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the League and Owner.
41. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the League agrees that Owner, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Owner and involve transactions relating to this Agreement. The League agrees to maintain these records for a period of six years from the date of termination of this Agreement.
42. Data Practices. The parties to this Agreement acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
43. Compliance with Laws. The League shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which the League is responsible.

44. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
45. Interest by City Officials. No elected official, officer, or employee of Owner shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.
46. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
47. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties hereto regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
48. Minnesota Law Governs. The laws of the State of Minnesota shall apply and bind the parties in any and all questions pertaining to the Agreement.
49. Terms Binding on Successors and Assigns. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the League and Owner..

[Signature Page to follow]

Signed by Owner this _____ day of _____, 20____.

The City of Willmar

By _____

Mayor

By _____

City Administrator

Signed by the League this _____ day of _____, 20____.

Northwoods League, Inc.

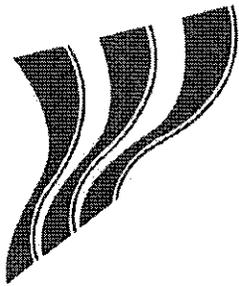
By _____

It's _____

Willmar Baseball, LLC

By _____

It's _____



**CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE
ACTION**

Agenda Item Number: 4

Meeting Date: June 9, 2014

Attachments: Yes No

CITY COUNCIL ACTION

Date: June 16, 2014

- | | |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Denied |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Tabled |
| <input type="checkbox"/> Other | |

Originating Department: City Clerk-Treasurer

Agenda Item: Consideration of Arvig Enterprises, Inc. Lease Agreement

Recommended Action:

Approve the Arvig Enterprises, Inc. Lease Agreement and Authorize the Mayor and City Administrator to Execute the Agreement.

Background/Summary:

Article VIII, Section 8.01 of the City Code of the City of Willmar prohibits the placement "in, on or over any public street, alley or public property of any kind any utility service, communication line or tube, transportation facility or other service, of permanent or semi-permanent nature, without first having obtained a franchise from the City"; and

Minnesota Statutes Sections 237.162 and 237.163 prohibit cities from requiring franchises of "telecommunications right-of-way users" as defined within said statutes; thereby in discussion with the City Attorney a "license" needs to be developed for any company wanting to use City Right-of Way.

Arvig Enterprises, Inc. has contracted with the District Court of the State of Minnesota to install a redundancy connection for the District Court Information System and they need to install wires in the City Right-of Way.

Alternatives:

Financial Considerations: \$2,000

Preparer: City Clerk-Treasurer

Signature:

Comments:

(top three inches reserved for recording data)

LICENSE AGREEMENT

This License Agreement is made as of the _____ day of _____, 2014, by and between the City of Willmar, a municipal corporation under the laws of the State of Minnesota (herein the "City"), and Arvig Enterprises, Inc., a corporation under the laws of the State of Minnesota (herein "Arvig").

Whereas, the City has public utility easement(s), said easement(s) described as follows:

The South 15' of the 33' R.O.W. adjacent to North line platted in the TRI-CORNER ADDITION TO THE CITY OF WILLMAR;

The West 15' of the 70' R.O.W. adjacent to the following described tract: THE E'LY 297', OF A.G. ANDERSON'S OUTLOTS 1&2 EXC. THAT PORTION OF OUTLOT 2 LYING S'LY OF HWY. 12 (95-914-1650)

The West 15' of the 70' R.O.W. adjacent to the following described tract: Section 11, Township 119, Range 35 E 168 FT OF GOVT LOT 5 S OF RR ROW; (95-911-0732)

The West 15' of the 70' R.O.W. adjacent to the following described tract: THE E'LY 402.60' OF A.G. ANDERSON'S OUTLOT #2 LYING S. OF TH.12 AS PRESENTLY CONSTRUCTED (95-914-1660)

The West 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 S.100', OF N.758.5' OF E 435.6' OF NE1/4 OF NE1/4; (95-914-1100)

The West 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 PART NE1/4 OF NE1/4. COM 758.5' S OF NE COR. OF SEC. 14, W.150', S.90', E.150', N TO BEG.; (95-914-1070)

The West 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 THAT PART OF NE1/4 OF NE1/4; BEG. ON E LINE OF NE1/4 OF NE1/4 858.50 FT S OF NE COR. TH W 153 FT TH S 197 FT. TH W 170 FT TH S 197 FT. TO LINE WH. IS 66 FT. N OF & PARA. WITH S LINE OF NE1/4 OF NE1/4; TH E 323 FT. TH N 394 FT. TO BEG. SUBJ. TO R.O.W.; (95-914-1040)

The West 15' of the 70' R.O.W. platted in the ERICKSON'S THIRD ADDITION TO THE CITY OF WILLMAR;

The West 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 S 610' OF NE1/4 EXC W 393.61';SE1/4 EXC S 914.88' OF W 1085' & EXC PARTS IN PLATS- BERGQUISTS ESTATES, PERKINS 5TH & GESCH PARK EXC THAT PART OF THE S1/2OFNE1/4 DESC AS FLWS: COMM 715' S & 393.61' E OF NW COR OF SW1/4 NE1/4, TH E TO SW COR OF LOT 7, BLK 7 ERICKSON'S THIRD ADD, TH S 70', TH W TO E LINE OF WELCH'S ADD, TH N 70' TO PT OF BEG. &EXC PART PLATTED INTO GESCH YMCA ADDITION & EXC THAT PART OF THE S1/2OFSE1/4 DESC AS FLWS:BEG AT THE NW COR OF LOT 2,BLK 1, GESCH YMCA ADD,TH S 548.78',TH W 363.89', TH N 54' TO SE COR OF LOT 1,BLK 6,PERKINS FIFTH ADD,TH CONT N 495' TO NE COR OF LOT 1,BLK 4,PERKINS FIFTH ADD,TH E ALONG S'LY R-O-W BNDRY LINE OF OLENA AVE 363.89' TO PT OF BEG; EXC PART PLATTED INTO CITY OF WILLMAR 12TH ST SE R-O-W PLAT.; (95-914-2610)

The West 15' of the 50' R.O.W. platted in the GESCH YMCA ADDITION;

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 S 610' OF NE1/4 EXC W 393.61';SE1/4 EXC S 914.88' OF W 1085' & EXC PARTS IN PLATS- BERGQUISTS ESTATES, PERKINS 5TH & GESCH PARK EXC THAT PART OF THE S1/2OFNE1/4 DESC AS FLWS: COMM 715' S & 393.61' E OF NW COR OF SW1/4 NE1/4, TH E TO SW COR OF LOT 7, BLK 7 ERICKSON'S THIRD ADD, TH S 70', TH W TO E LINE OF WELCH'S ADD, TH N 70' TO PT OF BEG. &EXC PART PLATTED INTO GESCH YMCA ADDITION & EXC THAT PART OF THE S1/2OFSE1/4 DESC AS FLWS:BEG AT THE NW COR OF LOT 2,BLK 1, GESCH YMCA ADD,TH S 548.78',TH W 363.89', TH N 54' TO SE COR OF LOT 1,BLK 6,PERKINS FIFTH ADD,TH CONT N 495' TO NE COR OF LOT 1,BLK 4,PERKINS FIFTH ADD,TH E ALONG S'LY R-O-W BNDRY LINE OF OLENA AVE 363.89' TO PT OF BEG; EXC PART PLATTED INTO CITY OF WILLMAR 12TH ST SE R-O-W PLAT.; (95-914-2610)

The North 15' of the 50' R.O.W. platted in the BETHESDA NURSING HOME SECOND ADDITION;

The North 15' of the 50' R.O.W. platted in the GESCH ADDITION;

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 PART SW1/4, BEG. AT A PT IN S.LINE OF SW1/4 1977' E OF SW COR.TH. N.420', TH. E.300', TH S.420',TH W 300' TO PT. OF BEG.; (95-914-1450)

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 PART OF SW1/4,BEG. AT PT ON S.LINE OF SW1/4,1758' E. OF SW COR.,TH. N.420' TH. E.219', TH. S.420', TH. W'LY 219' TO BEG.; (95-914-1460)

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 PART OF S1/2 OF SW1/4 AS FFS:COM. AT A PT.ON S. LINE OF SW1/4 361' E. OF SW COR. OF SW1/4, TH. N. 875' TO PT. TH. E.TO W. LINE OF MITIVET'S OUT-LOT, TH. S.TO SW COR. OF MITTVET'S OUTLOT, TH. E. TO SE COR. THEREOF;TH. N TO SW COR.OF CAL. CHURCH PROPERTY, TH. E.& PAR. WITH S. LINE OF OLENA A.

TO PT. 1,758' W. OF W. LINE OF SW1/4 TH S TO PT ON S. LINE OF SAID SW1/4 TH W ON S LINE OF SW1/4 1,397', TO PT.OF BEG.; (95-914-1600)

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 THE E 178' OF W 361' OF THE S 243.85' OF SW1/4 OF SW1/4; (95-914-1570)

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 14, Township 119, Range 35 PART SW4, OF SW4:COM. 33 FT.E. OF SW COR.OF SW1/4 OF SW1/4, TH. N.150',10" TH E.150',TH.S.150'10", TH. W.150' TO BEG.; (95-914-1490)

The North 15' of the 33' R.O.W. platted in the HANSON'S ADDITION TO WILLMAR;

The North 15' of the 70' R.O.W. adjacent to the following described tract: Section 15, Township 119, Range 35 PART SE1/4 OF SE1/4, BEG AT PT ON W.LINE OF W.4TH ST., 170'S. OF SE COR OF LOT 7 OF BLK.4, HANSON'S ADD. TH. W.150', TH.S'LY PAR. WITH W.LINE OF 4TH ST. TO N.LINE OF WILLMAR AVE. TH. E'LY ALONG WILLMAR AVE. TO W.LINE OF 4TH ST.TH.N'LY TO BEG. (95-915-2650)

(the Public Easement Area); and

Whereas, Article VIII, Section 8.01 of the City Code of the City of Willmar prohibits the placement "in, on or over any public street, alley or public property of any kind any utility service, communication line or tube, transportation facility or other service, of permanent or semi-permanent nature, without first having obtained a franchise from the City"; and

Whereas, Minnesota Statutes Sections 237.162 and 237.163 prohibit cities from requiring franchises of "telecommunications right-of-way users" as defined within said statutes; and

Whereas, said statutes give authority to local governments to manage the utilization of public rights-of-way by telecommunications right-of-way users as defined therein; and

Whereas, Arvig wishes to install and maintain telecommunications facilities within the Public Easement Area to serve the buildings on the Property, and the City is willing for Arvig to do so on the terms and conditions provided herein.

Now, therefore, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. LICENSE. The City grants to Arvig a non-exclusive, terminable, license for the limited purpose to install, maintain, repair, replace and reconstruct telecommunications facilities within the Public Easement Area to serve the buildings on the Property, all as described above.

2. **TERM.** This license shall be for an indefinite term commencing on the date first written above and continuing until terminated by the City by written notice to Arvig. Such notice shall be given at least ninety (90) days in advance of the effective date of such termination. Such notice shall be delivered to Arvig or its successor in interest (as their interests and addresses may appear on the tax rolls of the County in which the Property is located), either personally or by certified mail. If such service cannot be made, service may be posted on the Public Easement Area. Before the effective date of such termination, Arvig shall remove any or all of Arvig's improvements from the Public Easement Area, as directed by the City, at Arvig's sole cost and expense, and shall return the Public Easement Area to its preexisting condition or better, unless otherwise directed by the City.

This license may also be terminated at any time by Arvig by written notice to the City. Such notice shall be given at least ninety (90) days in advance of the effective date of such termination and shall be delivered either personally or by certified mail to the City Administrator at the City's main offices (currently 333 6th Street Southwest, Willmar, MN 56201). Before the effective date of such termination, Arvig shall remove all of Arvig's improvements from the Public Easement Area, at Arvig's sole cost and expense, and shall return the Public Easement Area to its preexisting condition or better.

3. **CONDITION OF PREMISES NOT WARRANTED.** The City does not warrant that the Public Easement Area is suitable for the purposes for which it is permitted to be used under this Agreement but Arvig assumes all risk with respect to its activities within and use of the Public Easement Area. The City shall have no responsibility with regard to any failure of or damage to Arvig's improvements within the Public Easement Area.
4. **REGISTRATION REQUIRED.** Upon execution of this Agreement, Arvig shall provide in writing to the City, and update annually, the following information:
 - a. Arvig's name, Gopher State One-Call registration number under Minnesota Statutes Section 216D.03, address, and telephone and facsimile numbers;
 - b. the name, address, and telephone and facsimile numbers of Arvig's local representative;
 - c. proof of adequate insurance as identified in Paragraph Eight (8) below; and
 - d. such other information deemed reasonably necessary by the City for the efficient administration of the Public Easement Area.
5. **CONSTRUCTION AND MAJOR MAINTENANCE PLANS; RIGHT-OF-WAY PERMIT REQUIRED.**
 - a. At least twenty (20) days prior to the commencement of construction of telecommunications facilities in the Public Easement Area, Arvig shall submit to the City plans and specifications for construction and major maintenance that may require excavation and obstruction of the Public Easement Area. Arvig shall commence no work with regard to the same without prior written

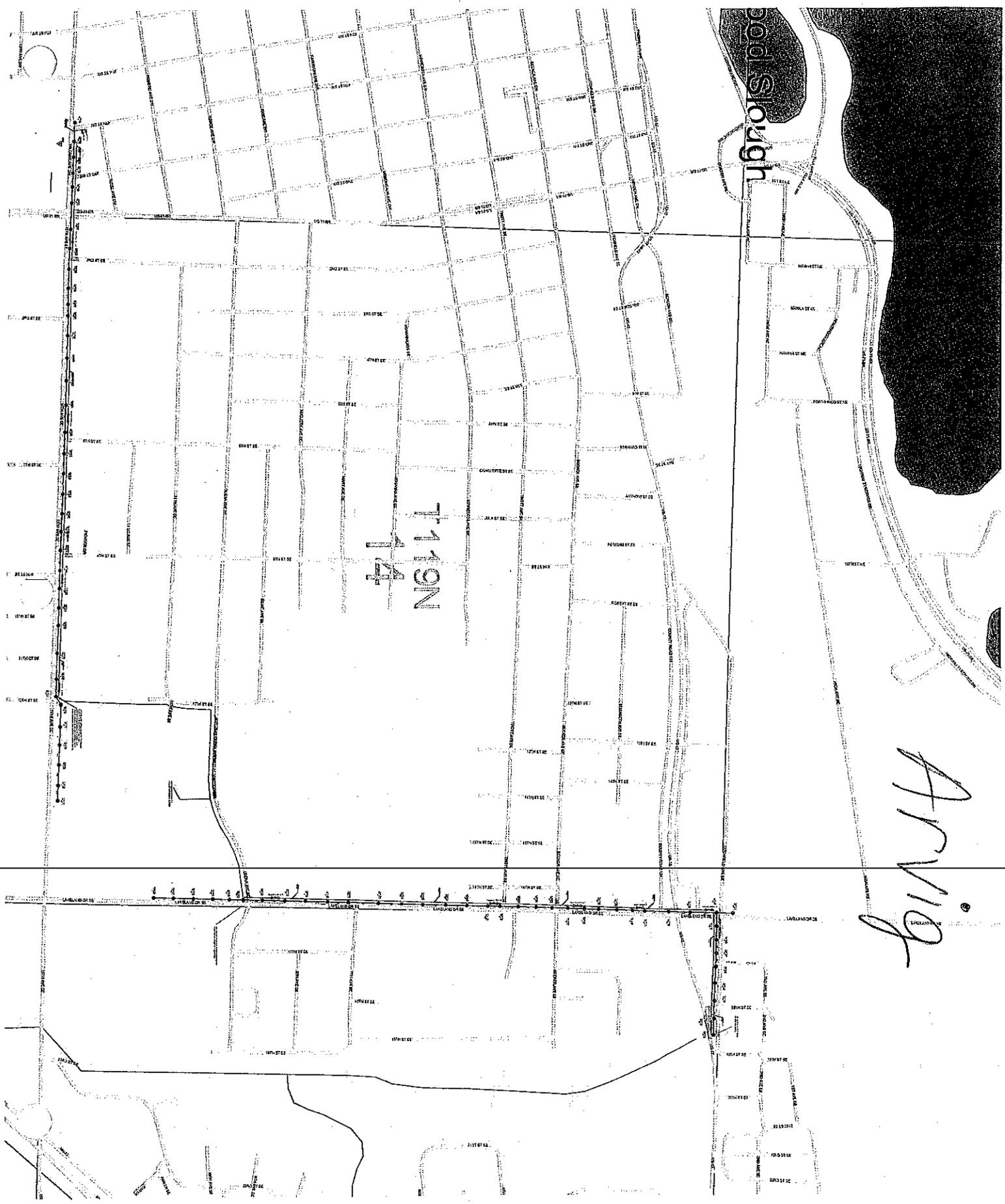
- approval from the City. Arvig's plans shall conform to the standard requirements and any special requirements of the City, in all respects.
- b. Based on the data submitted by Arvig in the plans and specifications, City may require Arvig to apply for and obtain a right-of-way permit addressing:
 - i. installation and construction standards;
 - ii. location and relocation requirements for equipment and facilities;
 - iii. coordination and timing requirements;
 - iv. provision by Arvig of project data reasonably necessary to allow the City to develop or maintain a right-of-way mapping system, such as a geographical information mapping system;
 - v. removal requirements for abandoned equipment or facilities, if required in conjunction with the proposed activity; and
 - vi. imposing reasonable penalties for unreasonable delays in construction.
 - c. If a right-of-way permit is required, City agrees to charge and Arvig agrees to pay a fee established at a level necessary for the City to recover actual right-of-way management costs, including those associated with Arvig's registration; permit processing, issuance, and verification; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits.
 - d. A right-of-way permit may be revoked or denied under the following circumstances:
 - i. if Arvig does not comply with a provision of this Agreement;
 - ii. if the City determines that the denial is necessary to protect the health, safety, and welfare, or is necessary to protect the Public Easement Area and its current use;
 - iii. in the event of a substantial breach of the terms and conditions of statute, ordinance, rule, or regulation or any material condition of the permit. A substantial breach includes, but is not limited to, the following:
 - a) a material violation of a provision of the right-of-way permit;
 - b) an evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - c) a material misrepresentation of fact in the right-of-way permit application;
 - d) failure to complete work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond Arvig's control; and
 - e) a failure to correct, in a timely manner, work that does not conform to applicable standards, conditions, or codes, upon inspection and notification by the City of the faulty condition.

- e. In no event will the City unreasonably withhold approval of Arvig's application for a right-of-way permit, or unreasonably revoke a permit.
 - f. During construction or major maintenance, Arvig shall take all necessary precautions to protect and preserve the City's improvements within the Public Easement Area during any activities within or use of the Public Easement Area.
6. RESTORATION OF PUBLIC EASEMENT AREA.
- a. After completion of construction or major maintenance requiring excavation or obstruction of the Public Easement Area, Arvig shall provide for restoration of the Public Easement Area, including the pavement and its foundation, in the same condition that existed before the excavation or obstruction. Such restoration must be completed within six (6) months after the completion of construction or major maintenance.
 - b. Arvig may elect to restore the Public Easement area at Arvig's own cost, or allow the City to restore the Public Easement Area and charge the costs of restoration back to Arvig. Arvig shall inform the City in writing of its election as part of the plans submitted to the City prior to the commencement of construction as provided in Paragraph Five (5) above.
 - c. In the event such construction or major maintenance in the Public Easement Area disturbs uncultivated sod, and Arvig has elected to restore the Public Easement Area, Arvig shall, as part of such restoration, plant grasses that are native to Minnesota and, wherever practicable, that are of the local eco-type, unless the City objects in writing to the planting of such grasses. In restoring the Public Easement Area, Arvig shall consult with the Department of Natural Resources regarding the species of native grasses that conform to the requirements of this paragraph.
7. INDEMNIFICATION. Arvig shall defend, indemnify and hold harmless the City and its officers, employees and agents from and against any and all claims, demands, actions, and causes of action, including expenses, reasonable attorneys' fees, and costs of alternative dispute resolution, arising out of or related to Arvig's activities within and use of the Public Easement Area.
8. INSURANCE. Arvig shall purchase and maintain commercial general liability insurance to protect itself from claims for damages because of bodily injury, death, and injury to or destruction of tangible property, including loss of use resulting therefrom. The base limits of this policy shall be at least \$1,000,000 combined single limit. Arvig shall provide the City with evidence of such insurance in the form of a certificate of insurance, no later than ten (10) days after execution of this Agreement. The City shall be an additional named insured and the certificate shall contain a provision that the insurance shall not be cancelled unless prior written notice thereof is given to the City not less than fifteen (15) days prior to the effective date of such cancellation. If Arvig fails to give such certificate of insurance to the City within ten (10) days after execution of this Agreement, this Agreement shall be null and void. Arvig shall provide additional

certificates of insurance to the City from time to time upon the reasonable request of the City.

9. GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota.
10. ENTIRE AGREEMENT. This Agreement shall constitute the entire Agreement of the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
11. MODIFICATION OF AGREEMENT. Any modification of this Agreement shall be binding only if evidenced in writing signed by both parties.
12. ATTORNEYS' FEES AND EXPENSES. In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to any other sums ordered to be paid, a reasonable sum for the successful party's attorneys' fees and expenses.
13. RECORDING. This Agreement may be recorded by either party at the expense of that party.
14. LICENSE FEE. As consideration for this Agreement, and to reimburse the City for right-of-way management costs as provided in Minnesota Statutes, Arvig agrees to pay the City a license fee of Two Thousand and no/00 Dollars (\$2,000), due and payable at the time this Agreement is executed.

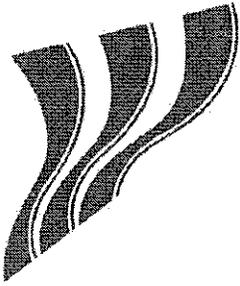
(continued on next page)



Good Slough

T119N
14

Arvig



**CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION**

Agenda Item Number: 5

Meeting Date:

Attachments: Yes No

CITY COUNCIL ACTION

Date: June 16, 2014

- | | |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Denied |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Tabled |
| <input type="checkbox"/> Other | |

Originating Department: Public Works

Agenda Item: County Ditch Repairs in City Limits

Recommended Action: Reallocate funds from the Surface Water Management Budget to pay repair liens and Redetermination of Benefits levied by County board for County ditches within City limits.

Background/Summary: The annual levy on each county ditch is based on the previous year expenses. The City has received invoices for ditch repairs and Redetermination of Benefits in the amount of \$156,270.29. In accordance with State Drainage Code 103E, when ditch maintenance repairs are performed the property owners listed on the Viewers Report are responsible for all repair costs. Ditches may require work every year while some may not accrue expenses at all.

These costs include the Redetermination of Benefits of five of the seven ditches. The City of Willmar is responsible for future expenses for routine maintenance and repairs will be considerably less.

Alternatives: Find funding from another source.

Financial Considerations: The 2014 budget includes \$20,000 for repairs. There is approximately \$207,000 budgeted for Surface Water Management which would leave a remaining balance of \$72,000. Funds for Redetermination of Benefits will come from the Surface Water Management Fund.

Preparer: Sean Christensen, P.E.
Public Works Director

Signature:

Comments:

City of Willmar

Drainage Benefits Summary

Stormwater, Streets, Industrial and Residential Properties

This list does not include individual parcels the City owns

Net Benefits are Relative to the Total Ditch Benefits

Loren Engelby, Kandiyohi County Drainage Dept.

(320) 235-3266 ext. 4250

April 1, 2014

County Ditch #10 (Begins at the outlet of Foot lake and ends west of Priam)

Total Ditch Benefits = \$6,866,016

City of Willmar Total Net Benefits = \$1,219,260

Airport = \$106,260

Stormwater = \$1,003,000

Sanitary Sewer = \$110,000

County Ditch #12 (Through Valley Brook Estates)

Total Ditch Benefits = \$938,889

City of Willmar Total Net Benefits = \$120,000

County Ditch #19 (West end of the new airport)

Total Ditch Benefits = \$4,136,091

City of Willmar Total Net Benefits = \$624,239

Airport = \$458,830

Sanitary Sewer = \$165,409

County Ditch #23 (Willmar to Wakanda)

Total Ditch Benefits = \$8,246,060

City of Willmar Total Net Benefits = \$4,497,900

County Ditch #46 (Old Sanitary outfall ditch)

Total Ditch Benefits = \$2,616,149

City of Willmar Total Net Benefits for Storm sewer = \$420,000

Parcel #33-020-0011 for Interceptor Line Property = \$22,230

Joint County Ditch #1 (South Fork Crow River-Downstream of CD 23)

Total Ditch Benefits = \$1,096,824

City of Willmar Total Net Benefits = \$106,584

Joint County Ditch #7 (Hawk Creek-Downstream of CD 10, 12, 19 and 46)

Total Ditch Benefits = \$2,882,836

City of Willmar Total Net Benefits = \$600,000

The annual levy is based on the previous year expenses. Now that the County Ditches have gone through a Redetermination of Benefits, future expenses will be for routine maintenance and repairs. We usually have our annual levy calculated by mid January. You can calculate your share by multiplying your net benefit by the levy percentage.

Statement

KANDIYOHI COUNTY AUDITOR
P.O. Box 936
Willmar, Minnesota 56201
Telephone 231-6202

Date: March 18, 2014

To: City of Willmar
Kevin Halliday - Clerk
P.O. Box 755
Willmar, MN 56201

=====
Benefits to Streets

Per Loren E. billing missed

County Ditch #12

4.3% repair lien levied by the County board 2014
(#753) County Ditch #12
Storm Sewer/Streets, Industrial & Residential Properties

(14-601-A-0715-5053) \$5,160.00

Total Due \$5,160.00

=====
I declare under the penalties of law that this account, claim or demand is just and correct and that no part of it has been paid.



Signature of Claimant

Kandiyohi County Auditor
P.O. Box 936
Willmar, Minnesota 56201

47.

Statement

KANDIYOHI COUNTY AUDITOR
P.O. Box 936
Willmar, Minnesota 56201
Telephone 231-6202

Date: March 18, 2014

To: City of Willmar
Kevin Halliday - Clerk
P.O. Box 755
Willmar, MN 56201

Benefits to Streets

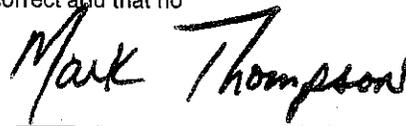
Per Loren E. billings missed

County Ditch #46

| | | | |
|--|-------------|---------------------|-------------|
| Repairs for Storm Sewer/Streets, Industrial & Residential Properties | | (16-601--0769-5053) | |
| 2% 2012 | \$8,400.00 | | |
| 2.5% 2013 | \$10,500.00 | | |
| 1% 2014 | 4,200.00 | | \$23,100.00 |

Total Due \$23,100.00

I declare under the penalties of law that this account, claim or demand is just and correct and that no part of it has been paid.



Signature of Claimant

Kandiyohi County Auditor
P.O. Box 936
Willmar, Minnesota 56201

Statement

KANDIYOHI COUNTY AUDITOR
P.O. Box 936
Willmar, Minnesota 56201
Telephone 231-6202

Date: March 18, 2014

To: City of Willmar
Kevin Halliday - Clerk
P.O. Box 755
Willmar, MN 56201



Benefits to Streets

| | | |
|--|----------------------|--------------|
| 2.5% repair lien levied by the County Board for 2014 (#8541) County Ditch #23 | (14-601-1-0730-5053) | \$112,447.50 |
| .4% repair lien levied by the County Board for 2014 (#193) County Ditch #19 | (14-601-1-0724-5053) | \$2,496.95 |
| 1% repair lien levied by the County Board for 2014 (#6649) Judicial Ditch #1, M & K | (14-601-1-0604-5053) | \$1,065.84 |
| 2% repair lien levied by the County Board for 2014 (#6200) Judicial Ditch #7, C K & R | (14-601-1-0658-5053) | \$12,000.00 |

Total Due \$128,010.29

I declare under the penalties of law that this account, claim or demand is just and correct and that no part of it has been paid.

Mark Thompson

Signature of Claimant

Kandiyohi County Auditor
P.O. Box 936
Willmar, Minnesota 56201

*SHWS
125k*

*Surface Water Management fund
417,
0445
0449*

156,270,29

City of Willmar

16-601-1-0769

IMP'T. DESC. C.D #46 DITCH NO. _____ CODE S/A # 46

BEGINNING DATE _____ RECORDING DATE _____ INT. RATE _____ NO. OF YRS. _____

| | DESCRIPTION BY V4 OR LESS | TOTAL AMOUNT | ANNUAL PRINCIPAL | | | |
|----|---|-------------------------------------|------------------|-----------|----------|---------|
| 1 | <u>Storm Sewer</u> Streets, Industrial + Residential Properties | Benefits \$420,000 ⁰⁰ | | | | |
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| | YEAR PAYABLE | AMOUNT | MEMO | PRINCIPAL | INTEREST | BALANCE |
| | | | FWD. | | | |
| 5 | 2% 2012 | 8,400 ⁰⁰ | | | | |
| 6 | 2 1/2% 2013 | 10,500 ⁰⁰ | | | | |
| 7 | 1% 2014 | 4,200 ⁰⁰ | | | | |
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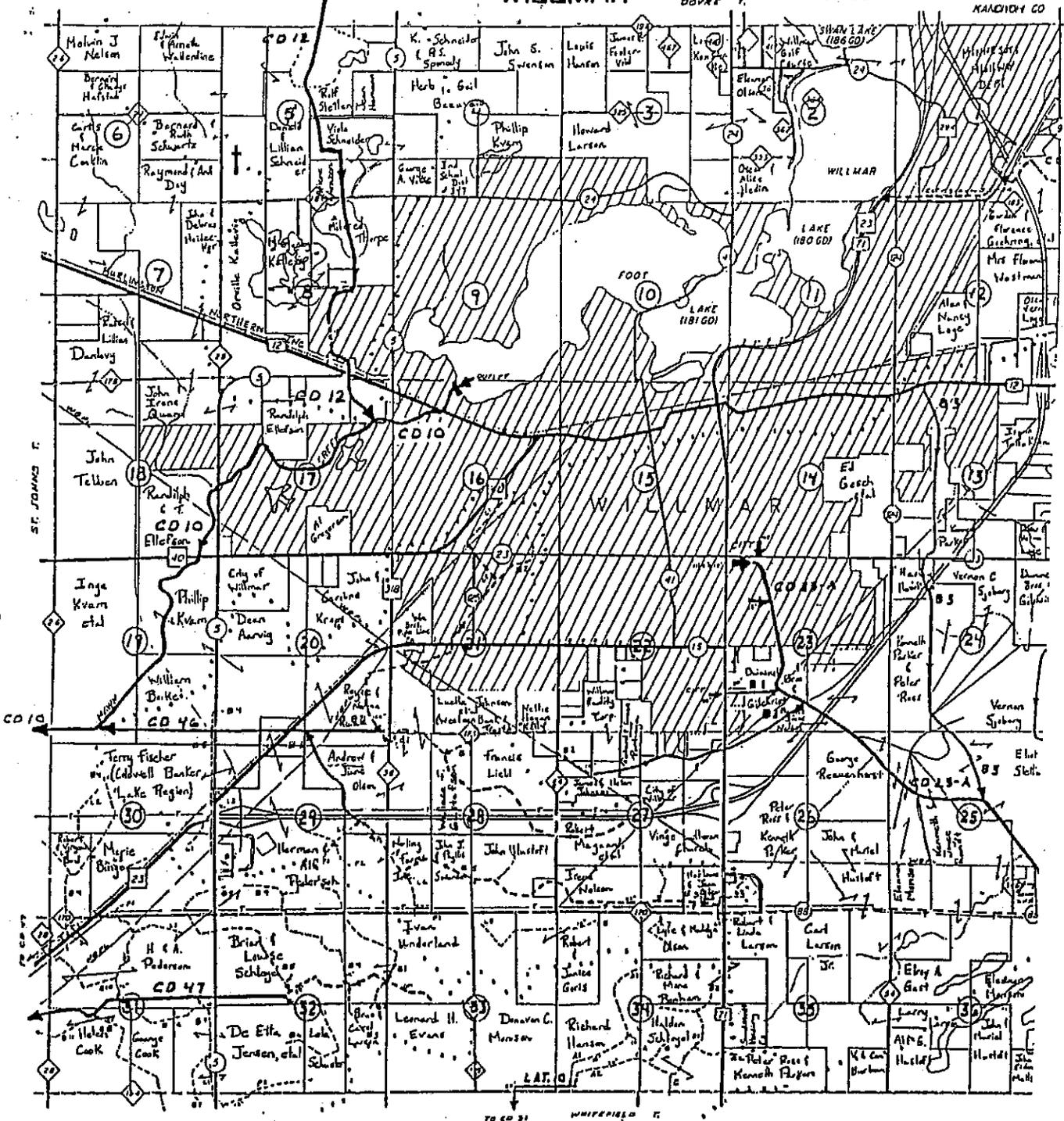
TOWNSHIP 119 N.

WILLMAR

DOVER T.

RANGE 35 W.

KANDIYHI CO.



County Ditch 46

City of Willmar

IMP'T. DESC. County Ditch 13 (R/B) DITCH NO. _____ CODE 753
 (2013)

BEGINNING DATE _____ RECORDING DATE _____ INT. RATE 5.25% NO. OF YRS. 15
S.L. # 14-601/715

| | DESCRIPTION BY V4 OR LESS | TOTAL AMOUNT | ANNUAL PRINCIPAL |
|---|---|----------------|----------------------|
| 1 | <i>Storm Sewer, Streets, Industrial & Residential Properties:</i> | <i>Benefit</i> | <i>\$ 120,000.00</i> |
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| | YEAR PAYABLE | AMOUNT | MEMO FWD. | PRINCIPAL | INTEREST | BALANCE |
|----|------------------|-----------------|-----------|-----------|----------|---------|
| | <i>4.3% 2014</i> | <i>5,160.00</i> | | | | |
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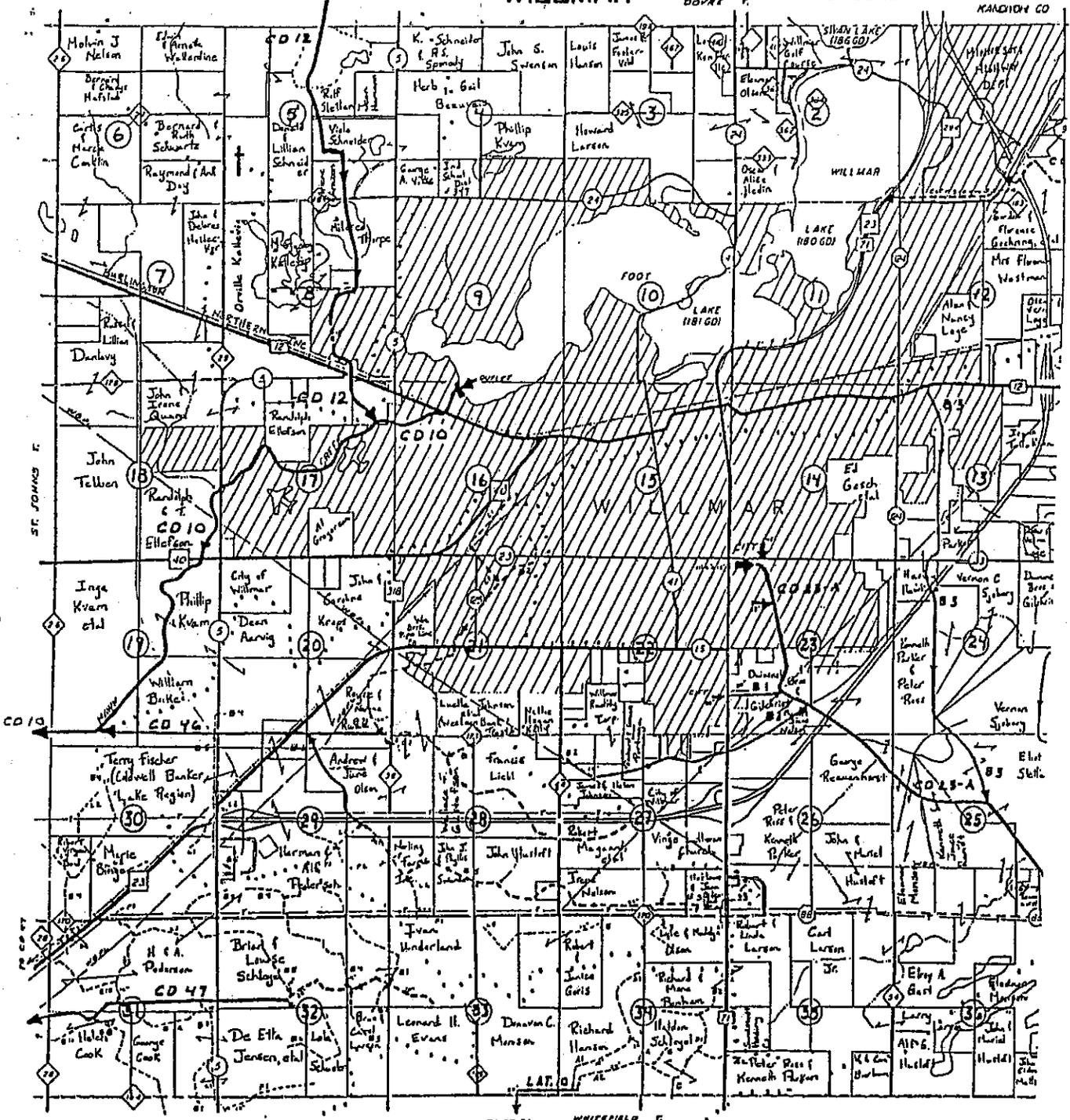
TOWNSHIP 119 N.

WILLMAR

DOVER T.

RANGE 35 W.

KANDIOWI CO.



County Ditch 12

Steve Okins

From: Sean Christensen
Sent: Monday, June 09, 2014 3:58 PM
To: Steve Okins
Subject: FW: ditch levies

From: Loren Engelby [mailto:Loren_E@co.kandiyohi.mn.us]
Sent: Friday, May 23, 2014 8:27 AM
To: Sean Christensen
Subject: RE: ditch levies

The State Drainage Code is 103E. It outlines how we must manage public systems. When a public system is established, a list of benefited property owners is developed as part of the proceedings. That list is approved at the final hearing and the list of property owners are responsible for all maintenance and repair costs. There is nothing in statute that describes how Drainage Authorities levy needed funds. In this county, we conduct the maintenance and repairs as needed. Some ditches need work every year and some may not have any expenses for many years in a row. The annual levy is set in January of each year. The levy is based on previous year expenses. I usually recommend a levy that covers the expenditures plus a reserve.

In a nutshell, these "public drainage systems" are owned by all the property owners listed on the Viewers Report (not by the Public in general). The County is the Drainage Authority and is the banker and manager of those systems as outlined in Statute 103E. You can go to: www.revisor.mn.gov to look up any Minnesota State Statute.

If you ever have difficulty sleeping at night, simply go to Drainage Code 103E and you'll be asleep in no time!!!!

Hope this helps. Have a great weekend.
Loren

From: Sean Christensen [<mailto:schristensen@willmarmn.gov>]
Sent: Thursday, May 22, 2014 4:46 PM
To: Loren Engelby
Subject: ditch levies

Loren,
I had one more question that I didn't get around to asking...

Is there an agreement (verbal or otherwise, even a statute) that says the county will clean/maintain the ditches and charge the levies the following year?

Thanks again for meeting with me today.

SEAN CHRISTENSEN, P.E.
PUBLIC WORKS DIRECTOR/CITY ENGINEER
CITY OF WILLMAR
333 6TH STREET
P.O. BOX 755
WILLMAR, MN 56201
OFFICE: 320.235.4913
CELL: 320.212.0538

LICENSE AGREEMENT TO USE PUBLIC RIGHT-OF-WAY

This License Agreement ("License" or "Agreement") is entered into by and between the City of Willmar, a municipal corporation under the laws of the State of Minnesota ("City"), and James M. Anfinson ("Licensee").

WHEREAS, Licensee owns real property located at 2309 Williams Parkway Southwest in the City, identified by the Kandiyohi County Recorder's Office as Parcel No. 95-715-1560 (the "Property"); and

WHEREAS, the City owns dedicated public right-of-way easement rights to a portion of the Property along its northeastern boundary which it uses and maintains as a public right-of-way, namely, Williams Parkway Southwest ("Williams Parkway"); and

WHEREAS, the City additionally owns dedicated public right-of-way easement rights to a portion of the Property along its southeastern boundary for public right-of-way purposes, but has not to date constructed improvements within such right-of-way (the "Unimproved Right-of-Way"); and

WHEREAS, Licensee desires to construct and maintain a concrete driveway ten feet in width by one hundred twenty feet in length, as measured from the southern edge of the pavement for Williams Parkway within the portion of the Unimproved Right-of-Way (the "Encroachment") as depicted on the attached Appendix A and as legally defined as follows:

The land which is charged with this encroachment right and privilege, is located in Section 21, Township 119N, Range 35W in the County of Kandiyohi and State of Minnesota, and is more particularly described as follows:

Beginning at the Northeast corner of Lot 6, Block 3 of Southgate Third Addition; thence on an assumed bearing of North 35 degrees 14 minutes 43 seconds East, a distance of 40.00 feet ; thence on a bearing of South 54 degrees 45 minutes 17 seconds East, a distance of 30.00 feet ; thence on a bearing of South 35 degrees 14 minutes 43 seconds West, a distance of 120.00 feet ; thence on a bearing of North 54 degrees 45 minutes 17 seconds West, a distance of 30.00 feet ; thence on a bearing of North 35 degrees 14 minutes 43 seconds East, a distance of 80.00 feet to point of beginning.

(the "Licensed Premises"); and

WHEREAS, The City is willing to permit Licensee to construct and maintain the Encroachment pursuant to the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. LICENSE. The City shall grant to Licensee a terminable license to construct a concrete driveway within the Licensed Premises and otherwise maintain and repair the Encroachment within the Licensed Premises as necessary to serve the building on the Property during the term of this Agreement, subject to the following conditions:
 - a. Licensee shall commence no work authorized by this License until it has obtained all required approvals and permits as required by the City and following written authorization from the City Engineer.
 - b. Licensee shall take all necessary precautions to protect and preserve the City's improvements within Williams Parkway and/or the Licensed Premises during any activities within or use of the Licensed Premises as contemplated in this License.
 - c. Licensee shall take all necessary precautions to avoid creating unsafe or unsanitary conditions and shall not hinder the natural free and clear passage of water through the gutters or other waterways.
 - d. Licensee shall conduct any work authorized by this License in a manner so as to insure the least obstruction to and interference with present and continued use of Williams Parkway and the Licensed Premises.
 - e. Licensee shall notify Gopher State One Call prior to conducting any excavation necessary to construct, maintain or repair the Encroachment and comply with the requirements thereof.
 - f. Licensee shall protect the root growth of all significant trees and shrubbery located within the Licensed Premises and adjacent thereto.
 - g. Licensee shall maintain access to all properties and cross streets during the term of this License, including emergency vehicle access.
 - h. Licensee shall remove daily all dirt or debris from sidewalks, trails, public and private roadway surfaces and curbs and gutters during any work authorized by this License.
 - i. Licensee shall fully comply with all applicable federal, state and local laws, regulations and ordinances.
 - j. Licensee shall be responsible for either; 1) removing the Encroachment and all associated costs, or 2) the cost of removal of the Encroachment by the City, should the City or another authorized party need to conduct work in the Licensed Premises.
2. TERM. This License shall be for an indefinite term commencing on the date of the last signatory to this Agreement and continuing until terminated by the City by written notice to the Licensee. Such notice shall be given at least 90 days in advance of the effective date of such termination. Such notice shall be delivered to Licensee or its successor in interest (as their interests and addresses may appear on the tax rolls of the County in

which the Property is located), either personally or by certified mail. If such service cannot be made, service may be posted on the Property.

This License may also be terminated at any time by Licensee by written notice to the City. Such notice shall be given at least 90 days in advance of the effective date of such termination and shall be delivered either personally or by certified mail to the City Administrator at the City's main offices (333 6th Street Southwest, Willmar MN 56201).

Before the effective date of any such termination of this License under this Section, Licensee shall remove the entirety of the Encroachment from the Licensed Premises, at Licensee's sole cost and expense, and shall restore the Licensed Premises to its preexisting condition, unless otherwise directed by the City in writing. In the event that Licensee fails to remove the Encroachment from the Licensed Premises before the effective termination date of this License, the City or its authorized agents or representatives may perform any work necessary to remove the Encroachment from the Licensed Premises and restore the Licensed Premises to its preexisting condition, and Licensee shall reimburse City for all expenses reasonably incurred by the City in performing such work. If Licensee fails to so reimburse the City as required by this paragraph within 30 days of Licensee's receipt of a billing statement for such charges from the City, the unpaid charges shall constitute a lien against the Property from and after the date they were due and unpaid. The City may take any action it is authorized under law to take to recover such unpaid charges, including certifying such unpaid charges to the county auditor for collection with taxes.

3. **CONDITION OF PREMISES NOT WARRANTED.** The City does not warrant that the Licensed Premises is suitable for the purposes for which it is permitted to be used under this License. The City shall have no responsibility with regard to any failure of or damage to the Encroachment within the Licensed Premises. Licensee understands and acknowledges that this Agreement grants it only a terminable license to use the Licensed Premises, and does not confer any permanent property rights with respect to the Licensed Premises or the Encroachment upon Licensee. Licensee further knows, understands and acknowledges the risks and hazards associated with using the Licensed Premises for the purposes permitted herein and the Encroachment thereon and hereby assumes any and all risks and hazards associated therewith. Licensee understands and acknowledges that the primary purposes of Williams Parkway and the Licensed Premises, notwithstanding this Agreement, are to facilitate the safety of the traveling public and to accommodate public utility facilities, and that the Licensed Premises and utility facilities located therein require regular maintenance, repairs or other work. Licensee hereby irrevocably waives any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Licensee or any person using the Encroachment and hereby irrevocably releases and discharges the City and any of its officials, employees or agents from any and all such claims of liability related in any way to the Licensed Premises, the Encroachment, or the City's maintenance, repair or other work conducted within the Licensed Premises.

4. **INSPECTION.** Licensee shall make the Licensed Premises available to the City and its authorized agents or representatives, and all others authorized by law, for inspection at all reasonable times during the term of this License.
- a. The City may order the immediate cessation of any project work that exceeds the scope of this license or otherwise poses a serious threat to the life, health, safety or welfare of the public.
 - b. The City may order Licensee to correct any project work to comply with this License or other applicable standards, conditions or laws. If the Encroachment falls into disrepair at any time during the term of this License, the City may order Licensee to conduct any repairs or perform any maintenance necessary to bring the Encroachment into compliance with this License. Any such order by the City authorized by this Paragraph shall state the violation, the terms of correcting the violation and that failure to correct the violation within the stated time limits shall be cause for immediate revocation of this License. If the violation is not corrected within the stated time limits, the City may immediately revoke this License and pursue any and all remedies available to it upon termination of this License pursuant to the terms of Paragraph 2 above.
5. **INDEMNIFICATION.** Licensee shall indemnify, protect, save, hold harmless and insure the City, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages, including expenses, reasonable attorneys' fees, and costs of alternative dispute resolution, which may arise out of or be caused by Licensee or its agents, employees, contractors, with respect to Licensee's use of the Licensed Premises or its installation and/or maintenance of the Encroachment therein. Licensee shall defend City against the foregoing, or litigation in connection with the foregoing, at Licensee's expense, with counsel reasonably acceptable to City. City, at its expense, shall have the right to participate in the defense of any Claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the gross negligence or willful misconduct of City. All indemnification obligations shall survive termination, expiration or cancellation of this License.
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6. **INSURANCE.** Licensee shall purchase and maintain general liability insurance to protect itself from claims for damages because of bodily injury, death, and injury to or destruction of tangible property, including loss of use resulting therefrom, in accordance with the minimum standards for insurance set forth in City Code § 13-3 (d) (4). Licensee shall provide the City with evidence of such insurance in the form of a certificate of insurance no later than ten days after executing this Agreement and annually thereafter. The City shall be an additional insured on such policy and all certificates shall contain a provision that the insurance shall not be cancelled unless prior written notice thereof is given to the City not less than 30 days prior to the effective date of such cancellation. If Licensee fails to give such certificate of insurance to the City within ten days after

execution of this Agreement, this License shall be null and void. Licensee shall annually provide additional certificates of insurance to the City. If Licensee fails to maintain a policy of insurance as required by the City for the term of this Agreement, the City may immediately revoke this License and require the immediate removal by the Licensee of the Encroachment from the Licensed Premises at the Licensee's sole cost and expense, and the Licensee shall restore the Licensed Premises to its preexisting condition.

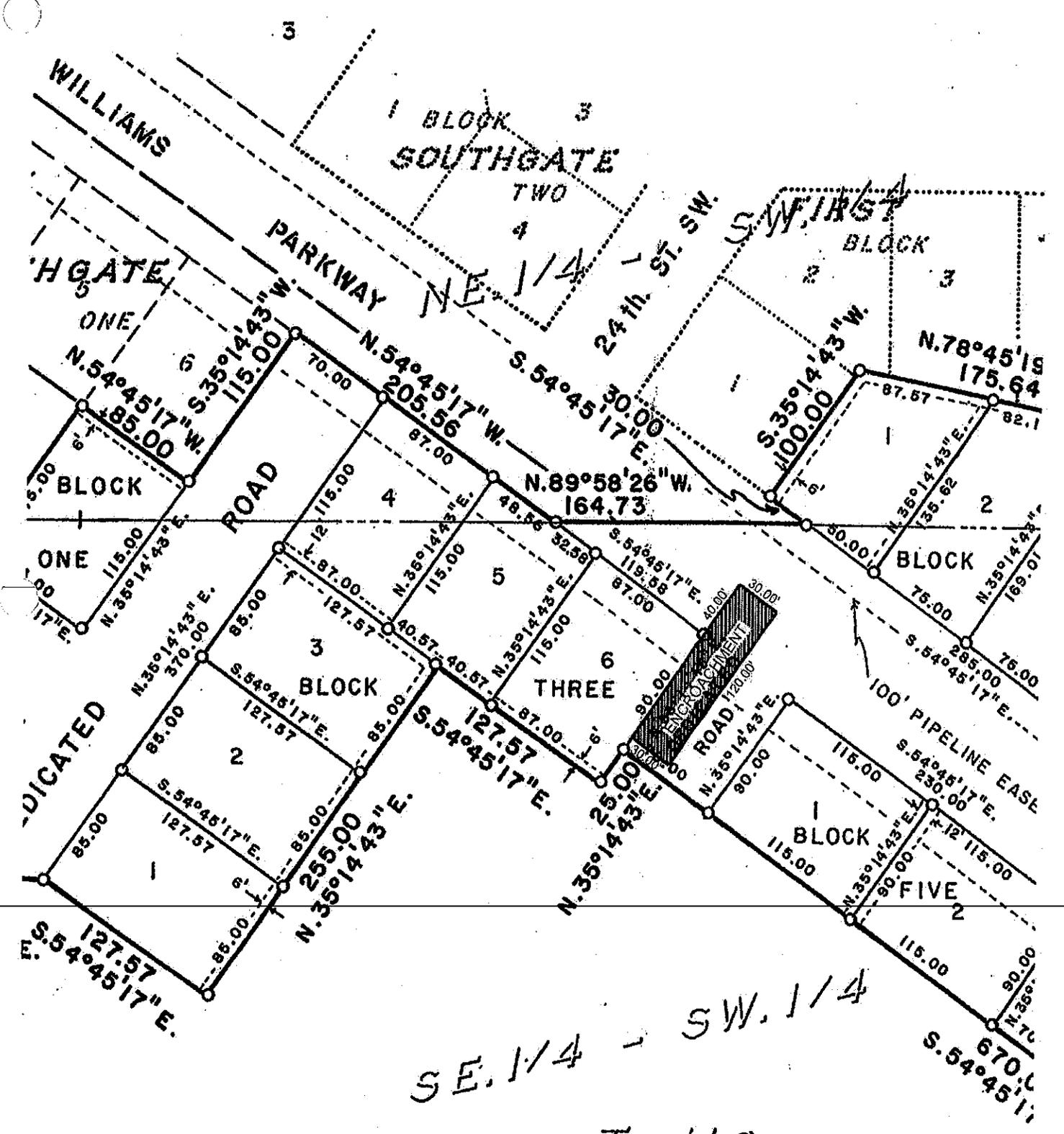
7. LICENSE FEE. As consideration for this Agreement, Licensee agrees to pay the City a license fee of Four Hundred Fifty and no/00 Dollars (\$450), due and payable at the time this Agreement is executed.

8. GENERAL TERMS.

- a. VOLUNTARY AND KNOWING ACTION. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. AUTHORIZED SIGNATORIES. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. ASSIGNMENT. This Agreement may not be assigned by either party without the written consent of the other party.
- d. MODIFICATIONS/AMENDMENT. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the City and Licensee.
- e. RECORDS—AVAILABILITY AND RETENTION. Pursuant to Minn. Stat. § 16C.05, subd. 5, Licensee agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Licensee and involve transactions relating to this Agreement. Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.
- f. COMPLIANCE WITH LAWS. Licensee shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, improvements, programs and staff for which Licensee is responsible.

- g. GOVERNING LAW. This Agreement shall be deemed to have been made and accepted in Kandiyohi County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- h. DATA PRACTICES. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- i. NO WAIVER. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- j. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- k. ENTIRE AGREEMENT. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- l. HEADINGS AND CAPTIONS. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- m. SURVIVABILITY. All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of City and Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- n. RECORDING. This Agreement may be recorded by either party at the expense of that party.

[Signature page to follow]



SE. 1/4 - SW. 1/4

T-119
SOUTHGATE THIRD ADDITION