

City Council

REGULAR MEETING AGENDA

February 18, 2020 – 6:30 pm

Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

1. Call to Order

A. Pledge of Allegiance – led by Mayor for the Day Justin Berg	<u>Pages</u>
B. Roll Call	
C. 2019 Annual Police Department Report	3

2. Additions and Corrections to Agenda

3. Consent Agenda

Approval of Consent Agenda - All items listed under this heading are considered to be routine by the City Council and will be enacted by one motion. There will be no discussion of these items unless a Council Member so requests in which event the item will be removed from the general order of business and considered in its normal sequence on the agenda.

A. Approval of Minutes:	
1. Council/Manager Meeting – January 14, 2020	4-6
2. Council Strategic Planning Session – January 29, 2020	7
3. City Council Meeting – February 4, 2020	8-12
B. Approval of City Check Register	13
C. Licenses:	
1. Approve Temporary On-Sale Liquor License – The Loppet Foundation	14
2. Gambling License Exemption and Waiver of Notice Requirement – Chesterbird American Legion	15-17
D. Minutes of Boards and Commissions:	
1. Planning Commission – January 13 and January 27, 2020	18-34
2. Open Space and Recreation Commission – November 25 and December 16, 2019	35-40
3. Civil Service Commission – January 21, 2020	41-42
4. Human Services Commission – January 13, 2020	43-44
E. Approval of Bids, Quotes and Contracts:	
1. Authorize Subscription Agreement with Cartegraph Systems LLC	45-73
2. Authorize Small Enterprise Agreement with Esri Geographic Information Systems	74-108
3. Authorize 2020 Contract Extension for the Restoration and Maintenance of Native Plant Communities	109-152
4. Authorize Mill and Overlay of 26 th Avenue North Cooperative Agreement with the City of Robbinsdale	153-161
5. Approve Contract for Hauling and Disposal of 10 th Avenue Fill	162-173
F. Approve 2019 Pay Equity Report	174-175
G. Appointments to Boards/Commissions and Rising TIDES Task Force	176-177
H. Approval of One Year Extension for Recording of Plat for Anderson Addition	178-180



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3. Consent Agenda - continued

- I. Receive and File Northwest Crossing/Bottineau Development Plan 181
- J. Amendment to the Proclamation, Resolution and Letter of Support Policy 20-18 182-188

4. Public Hearing

- A. Public Hearing – Ordinance 677 – Amend Conditional Use Permit (CU-119) Modifying the Condition Regarding the Use of Boone Avenue North 189-232
- B. Public Hearing – Ordinance 678 – Rezone I-394 Mixed Use Properties to Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional 233-248

5. Old Business

6. New Business

All Ordinances listed under this heading are eligible for public input.

- A. Review of Council Calendar
- B. Mayor and Council Communications
 - 1. Other Committee/Meeting updates

7. Adjournment



EXECUTIVE SUMMARY

Police

763-593-8079 / 763-593-8098 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

1. C. 2019 Annual Police Department Report

Prepared By

Jason Sturgis, Chief of Police

Summary

Chief Sturgis will present an overview of police department operations during 2019. Crime rates, community outreach, and productivity will be outlined.

City Council/Manager

January 14, 2020 – 6:30 pm

Council Conference Room
Golden Valley City Hall
7800 Golden Valley Road

REGULAR MEETING MINUTES

The meeting began at 6:30 pm in the Council Conference Room.

Present: Mayor Harris and Council Members; Rosenquist, Fonnest, Sanberg and Harris.

Staff present: City Manager Cruikshank, City Attorney Cisneros, Physical Development Director Nevinski, and Public Works Director Kieffer.

1. Policy for the Design, Installation, Maintenance, and Enforcement of Grease Removal Devices

Public Works Director Kieffer presented the staff report on the policy related to Grease Removal Devices (GRDs) on Food Service Facilities. The standards outlined in the policy are put in place to ensure compliance for the removal of Fats, Oils and Greases (collectively referred to as "FOG") at the source of origination before the FOG discharge into the City's wastewater collection system. The legal department is currently working on a policy to outline ordinance requirements in an attempt to increase the compliance rates by Food Service Facilities (FSFs) in installing and reporting maintenance and inspection of those devices.

The Council discussed overall compliance rates by FSFs and ramifications of noncompliance- mainly blockage of pipes and backup cost of emergency repairs. Council also debated the policy and the implications of the high maintenance levels by the City to prevent sewer backups.

The policy for the design, installation, maintenance and enforcement of GRDs will likely be added as a topic to the February 4th City Council agenda.

2. Discussion of Facilities Needs Study

Physical Development Director Nevinski presented the staff report. In 2016, a facilities and operations analysis of the Fire Department was conducted, and a number of factors were put up for consideration, including updating facilities and location. In 2018, the Urban Land Institute's Technical Assistance Panel (TAP) completed a day and a half visit to Golden Valley's downtown area. It was noted that there are opportunities to redevelop the City Hall Campus to increase activity and investment in the Golden Valley downtown area. Staff recognizes the importance to conduct a more detailed facilities needs analysis for all of Golden valley's operations- with the exception of Brookview. Staff proposes the following process for the needs analysis:

- Hire a Consultant to conduct the needs analysis
- Establish a task force to provide input and make recommendations

- Develop a staff steering committee (Public Works, Public Safety) to work directly with the consultant and provide operational information.

The Council discussed task force development (expectations, time commitment, etc.) and selection criteria- as well as different platforms for gathering community input of various demographics, ages and cultural make ups.

The Council will re-visit the topic in the near future.

3. 2020 Legislative Priorities Discussion

City Manager Cruikshank presented the draft document of the 2020 legislative priorities. The legislative priorities determined annually by Council control the specific City legislative platform and how it lobbies to legislators and legislative delegations. The document is broken down into three main categories: Transportation, Environment, and Finance.

Council reviewed the priorities. They analyzed several examples and projects outlined as opportunities for discussion with specific legislators.

4. Approve 2020 Appointments, Assignments and Reimbursements. Appointment of City Manager to Joint Water Commission

The Council reviewed the 2020 Appointments suggestions of Council members for representatives to various committees and subcommittees. Appointments are for a one-year term. Council discussed a few potential corrections to the proposed appointments on the staff report.

The approval of Appointments, Assignments and Reimbursements is scheduled for the January 21, 2020 City Council meeting.

5. Council Review of Future Draft Agendas: Housing & Redevelopment Authority January 21, City Council January 21, City Council February 4, and Council/Manager February 11, 2020

No changes were submitted for future draft agendas.

The meeting adjourned at 7:50pm.

Shepard M. Harris, Mayor

ATTEST:

Tomas Romano, Assistant to the City Manager’s Office



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City Council

Council Strategic Planning Session

January 29, 2020 – 5:30 pm
Brookview
Valley Room
316 Brookview Parkway

The meeting began at 5:30 pm at the Brookview.

The following members were present: Mayor Harris, Council Members Fonnest, Harris, Rosenquist, and Sanberg.

Also present were: Tim Cruikshank, City Manager; Rick Birno, Director of Parks and Recreation; Kirsten Santelices, Human Resources Director; Marc Nevinski, Physical Development Director; Jason Sturgis, Police Chief; Sue Virnig, Finance Director, Cheryl Weiler, Communications Director, Maria Cisneros, City Attorney and Tim Kieffer, Public Works Director

Council and staff worked through a process to determine direction and action steps for 2020.

The meeting was adjourned at 9 pm.

Shepard M. Harris, Mayor

ATTEST:

Timothy J. Cruikshank, City Manager

City Council

REGULAR MEETING MINUTES

February 4, 2020 – 6:30 pm

Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

1. Call to Order

Mayor Harris called the meeting to order at 6:30 pm.

1A. Pledge of Allegiance

1B. Roll Call

Present: Mayor Shep Harris, Council Members Larry Fonnest, Maurice Harris, Gillian Rosenquist and Kimberly Sanberg

Staff present: City Manager Cruikshank, City Attorney Cisneros and City Clerk Luedke

1C. Annual Discover St. Louis Park Presentation

Ms. Becky Bakken, Discover St. Louis Park, presented a year-end update for Discover St. Louis Park representing St. Louis Park and Golden Valley. Ms. Bakken answered questions from Council. Council thanked the Discover St. Louis Park and their staff.

2. Additions and Corrections to Agenda

MOTION made by Council Member Fonnest, seconded by Council Rosenquist to approve the agenda of February 4, 2020, as submitted and the motion carried.

3. Approval of Consent Agenda

MOTION made by Council Member Rosenquist, seconded by Council Member Harris to approve the consent agenda of February 4, 2020, as revised removal of 3G-Approve appointment of Election Judges and Absentee Ballot Board for Presidential Nomination Primary and the motion carried.

3A. Approval of Minutes:

3A1. City Council Meeting – January 7, 2020

3A2. City Council Executive Session – January 14, 2020

3A3. City Council Meeting – January 21, 2020

3B. Approve City Check Register and authorize the payments of the bills as submitted.

3C. Licenses:

3C1. Authorize Renewal of Multi-Family Rental Licenses as listed below for the period of March 1, 2020, through February 28, 2021: Arcata Apartments, Calvary Center Apartments, Central Park West Apartments, Colonial Apartments, Copacabana Apartments, Cornerstone Creek Apartments, Crosswoods Apartments, Dover Hill Complex, Duluth Street Flats, Flourish, Golden Valley Rd Apartments, Golden Valley Townhomes, Hello Apartments, Herbeck Triplex, Laurel At West End Apartments, The Laurel Apartments, Liberty Crossing Apartments, Mallard Creek Apartments, Medley Park Townhomes, Rutter 4-plex, Southwirth Apartments, Talo Apartments, Trentwood Apartments, Valley Creek West Apartments, Valley Square Commons,

3. Approval of Consent Agenda - continued

- 3C1. Authorize Renewal of Multi-Family Rental Licenses as listed – continued
Valley View Apartments, Valley Village Apartments, West End Apartments, and West End Trails.
- 3C2. Receive and file the gambling license exemption and approve the waiver of notice requirement for Children’s Hospital Association.
- 3D.** Minutes of the Boards and Commissions:
 - 3D1. Civil Service Commission – September 13, 2019
 - 3D2. Environmental Commission – November 23, 2019
 - 3D3. Human Rights Commission – December 17, 2019
 - 3D4. Rising TIDES Task Force – December 10, 2019
 - 3D5. Bassett Creek Watershed Management Commission – December 19, 2019
- 3E.** Approval of Bids, Quotes and Contracts:
 - 3E1. Approve purchase of Sanitary Sewer Flow Meter Upgrades from Tech Sales Co. in the amount of \$35,167.50.
 - 3E2. Authorize the Mayor and City Manager to execute the Agreement with Peterson Companies, Inc. in the form approved by the City Attorney for the purchase and installation of Synthetic Turf on the Lawn Bowling Green at Brookview in the amount of \$139,870.
 - 3E3. Authorize the Mayor and City Manager to execute the Hennepin County Youth Sports Grant Agreement in the form approved by the City Attorney for Scoreboards for Isaacson Park.
- 3F.** Acceptance of Grants and Donations:
 - 3F1. Adopt Resolutions Supporting the following Hennepin County Grant Funding Applications:
 - A. **Resolution 20-10**, Application by Hammer Residences to Hennepin County for Community Development Block Grant (CDBG) Funding.
 - B. **Resolution 20-11**, Application by HOME Line to Hennepin County for Community Development Block Grant (CDBG) Funding.
 - C. **Resolution 20-12**, Application by People Responding in Social Ministry (PRISM) to Hennepin County for Community Development Block Grant (CDBG) Funding.
 - D. **Resolution 20-13**, Application by West Hennepin Affordable Housing Land Trust (WHAHLT) to Hennepin County for Community Development Block Grant (CDBG) Funding.
 - E. **Resolution 20-14**, Application by West Hennepin Affordable Housing Land Trust (WHAHLT) to Hennepin County for HOME and Affordable Housing Incentive (AHIF) Funding.
- ~~**3G.** Resolution approving appointment of the Election Judges and Absentee Ballot Board for the Presidential Nomination Primary on March 3, 2020.~~
- 3H.** Adopt **Resolution 20-16**, ordering the approval of the plans and specification and ordering the advertisement of bids for the 2020 Pavement Management Program.
- 3I.** Adopt **Resolution 20-17**, amending the 2020 General Wages and Salary for the Equity, Inclusion, and Volunteer Manager position.

3. Items Removed From the Consent Agenda:

3G. Approve appointment of the Election Judges and Absentee Ballot Board for the Presidential Nomination Primary on March 3, 2020

Council Member Rosenquist thanked the Golden Valley Election Judges for their service.

MOTION made by Council Member Rosenquist, seconded by Council Member Sanberg to adopt **Resolution 20-15**, approving appointment of the Election Judges and Absentee Ballot Board for the Presidential Nomination Primary on March 3, 2020. Upon a vote being taken, the following voted in favor of: Larry Fonnest, Maurice Harris, Shep Harris, Gillian Rosenquist, and Kimberly Sanberg, the following voted against: none and the motion carried.

4. Public Hearing

5. Old Business

6. New Business

6A. City Adoption of 2040 Comprehensive Plan

Planning Manager Zimmerman presented the staff report and answered questions from Council.

There was Council discussion regarding the 2040 Comprehensive Plan.

MOTION made by Council Member Rosenquist, seconded by Council Member Fonnest to adopt the Golden Valley's 2040 Comprehensive Plan and the motion carried.

6B. Review of Council Calendar

Some Council Members may attend the Annual Crystal Legislative Breakfast on February 8, 2020, at 9:30 am at the Crystal City Hall located 4141 Douglas Drive, Crystal.

Some Council Members may attend the League of Women Voters event on February 8, 2020, from 9:30 to 11:30 am at Brookview located at 316 Brookview Parkway.

Some Council Members may attend the Winter Family Festival on February 8, 2020, from noon to 2 pm at North Wesley Park.

Some Council Members may attend the Seven Dreams Education Foundation "Bird Bash" on February 8, 2020, from 5 to 9 pm at Marriott Northwest located at 7520 Golden Valley Road, Brooklyn Park.

Some Council Members may attend the Winter Market in the Valley on February 9, 2020, from 10 am to 2 pm at Brookview located at 316 Brookview Parkway.

6B. Review of Council Calendar - continued

Some Council Members may attend the West Metro Home Remodeling Fair on February 9, 2020, from 10:30 am to 3 pm at Eisenhower Community Center located at 1001 Highway 7, Hopkins.

Board and Commission Interviews will be on February 11, 2020, at 5 pm.

The next Council/Manager meeting will be on February 11, 2020, at 6:30 pm.

Some Council Members may attend the Remembrance of Noah Joynes on February 15, 2020, from 1 pm to 3 pm at Brookview located at 316 Brookview Parkway.

Some Council Members may attend the Comedy at Brookview on February 15, 2020, at 8 pm at Brookview located at 316 Brookview Parkway.

City Offices are closed on February 17, 2020, in observance of President's Day.

The next City Council meeting will be on February 18, 2020, at 6:30 pm.

Some Council Members may attend the Bike Lane Open House on February 19 and 20, 2020, from 3 pm to 7 pm in the Council Chambers.

Some Council Members may attend the KORT Sign Design Open House on February 21, 2020, from 4 pm to 6 pm at KORT Sign Design located at 701 Decatur Avenue, Suite 204.

Some Council Members may attend the Hopkins Education Foundation "Royal Bash 2020" on February 22, 2020, at 6 pm at Marriott Minnetonka Southwest located at 5801 Opus Parkway, Minnetonka.

Some Council Members may attend the Bassett Creek Trail Second Open House on February 24, 2020, from 4:30 to 6:30 pm at King of Grace Lutheran Church located at 6000 Duluth Street.

The 2020 Precinct Caucuses will be on February 25, 2020.

A Joint Meeting of the Council and Board Commissioners will be on February 26, 2020, from 6 to 8 pm at Brookview located at 316 Brookview Parkway.

6C. Mayor and Council Communication

Council Member Sanberg said that Golden Valley is a finalist in the Minnesota Wild Outdoor Ice Rink contest and reminded residents to vote for the City to receive a free ice skating rink.

Mayor Harris thanked the Golden Valley Lutheran Church and Ms. Rose McGee for baking and distributing 96 sweet potato comfort pies.

7. Adjourn

MOTION made by Council Member Rosenquist, seconded by Council Member Harris and the motion carried to adjourn the meeting at 7:30 pm.

Shepard M. Harris, Mayor

ATTEST:

Kristine A. Luedke, City Clerk



EXECUTIVE SUMMARY

Administrative Services

763-593-8013 / 763-593-3969 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. B. Approval of City Check Register

Prepared By

Sue Virnig, Finance Director

Summary

Approval of the check register for various vendor claims against the City of Golden Valley.

Financial Or Budget Considerations

The check register has a general ledger code as to where the claim is charged. At the end of the register is a total amount paid by fund.

Recommended Action

Motion to authorize the payment of the bills as submitted.

Supporting Documents

Document is located on city website at the following location:

<http://weblink.ci.golden-valley.mn.us/WebLink/browse.aspx?id=717279&dbid=2&repo=GoldenValley>

The check register for approval:

- 02/07/20 Check Register



EXECUTIVE SUMMARY

City Administration

763-593-8006 / 763-593-8109 (fax)

Golden Valley City Council Meeting February 18, 2020

Agenda Item

3. E. 1. Temporary On-Sale Liquor License - The Loppet Foundation

Prepared By

Kris Luedke, City Clerk

Summary

The Loppet Foundation has applied for a temporary on-sale liquor license their event, Fastenal Parallel 45 Winter Festival, to be held at 1221 Theodore Wirth Parkway on Saturday, March 14 through Tuesday, March 17, 2020.

The City Code does provide for temporary sales of liquor with Council approval. In addition, required is a certificate of liquor liability insurance naming the City as an additional insured for \$1,000,000. The Loppet Foundation has provided this certificate for their event.

Financial Or Budget Considerations

Fees received defray costs the City incurs to administer and enforce liquor license regulations and requirements.

Recommended Action

Motion to approve a temporary on-sale liquor license for The Loppet Foundation for their event at 1221 Theodore Wirth Parkway on March 14 through Tuesday, March 17, 2020.



EXECUTIVE SUMMARY

City Administration

763-593-8006 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. E. 2. Gambling License Exemption and Waiver of Notice Requirement – Chesterbird American Legion Post 523

Prepared By

Kris Luedke, City Clerk

Summary

As per State Statute organizations that conduct gambling within the City limits have to submit an application for a lawful gambling permit to the State after the permit has been approved or denied by the City. Depending upon the timing of the permit the applicants may request the City to waive the 30-day waiting period.

Financial Or Budget Considerations

Not applicable

Recommended Action

Motion to receive and file the gambling license exemption and approve the waiver of notice requirement for Chesterbird American Legion Post 523.

Attachments

- Application for Exempt Permit (2 pages)

MINNESOTA LAWFUL GAMBLING
LG220 Application for Exempt Permit

An exempt permit may be issued to a nonprofit organization that:

- conducts lawful gambling on five or fewer days, and
- awards less than \$50,000 in prizes during a calendar year.

If total raffle prize value for the calendar year will be \$1,500 or less, contact the Licensing Specialist assigned to your county by calling 651-539-1900.

Application Fee (non-refundable)

Applications are processed in the order received. If the application is postmarked or received 30 days or more before the event, the application fee is **\$100**; otherwise the fee is **\$150**.

Due to the high volume of exempt applications, payment of additional fees prior to 30 days before your event will not expedite service, nor are telephone requests for expedited service accepted.

ORGANIZATION INFORMATION

Organization Name: SAL LEGION 523 Previous Gambling Permit Number: X02935

Minnesota Tax ID Number, if any: _____ Federal Employer ID Number (FEIN), if any: _____

Mailing Address: 200 N. LILAC DRIVE

City: GOLDEN VALLEY State: MN Zip: 55422 County: HENN.

Name of Chief Executive Officer (CEO): Denny Arons

CEO Daytime Phone: 6128109583 CEO Email: dennyarons@gmail.com
(permit will be emailed to this email address unless otherwise indicated below)

Email permit to (if other than the CEO): _____

NONPROFIT STATUS

Type of Nonprofit Organization (check one):

Fraternal Religious Veterans Other Nonprofit Organization

Attach a copy of one of the following showing proof of nonprofit status:

(DO NOT attach a sales tax exempt status or federal employer ID number, as they are not proof of nonprofit status.)

A current calendar year Certificate of Good Standing
Don't have a copy? Obtain this certificate from:
MN Secretary of State, Business Services Division Secretary of State website, phone numbers:
60 Empire Drive, Suite 100 www.sos.state.mn.us
St. Paul, MN 55103 651-296-2803, or toll free 1-877-551-6767

IRS income tax exemption (501(c)) letter in your organization's name
Don't have a copy? To obtain a copy of your federal income tax exempt letter, have an organization officer contact the IRS toll free at 1-877-829-5500.

IRS - Affiliate of national, statewide, or international parent nonprofit organization (charter)
If your organization falls under a parent organization, attach copies of both of the following:
1. IRS letter showing your parent organization is a nonprofit 501(c) organization with a group ruling; and
2. the charter or letter from your parent organization recognizing your organization as a subordinate.

GAMBLING PREMISES INFORMATION

Name of premises where the gambling event will be conducted (for raffles, list the site where the drawing will take place): PLESIERBIRD LEGION 523

Physical Address (do not use P.O. box): 200 N. LILAC DR. GV MN

Check one:
 City: GOLDEN VALLEY Zip: 55422 County: HENN

Township: _____ Zip: _____ County: _____

Date(s) of activity (for raffles, indicate the date of the drawing): 4/3/2020

Check each type of gambling activity that your organization will conduct:

Bingo Paddlewheels Pull-Tabs Tipboards Raffle

Gambling equipment for bingo paper, bingo boards, raffle boards, paddlewheels, pull-tabs, and tipboards must be obtained from a distributor licensed by the Minnesota Gambling Control Board. EXCEPTION: Bingo hard cards and bingo ball selection devices may be borrowed from another organization authorized to conduct bingo. To find a licensed distributor, go to www.mn.gov/gcb and click on **Distributors** under the **List of Licensees** tab, or call 651-539-1900.

LOCAL UNIT OF GOVERNMENT ACKNOWLEDGMENT (required before submitting application to the Minnesota Gambling Control Board)

**CITY APPROVAL
for a gambling premises
located within city limits**

- The application is acknowledged with no waiting period.
- The application is acknowledged with a 30-day waiting period, and allows the Board to issue a permit after 30 days (60 days for a 1st class city).
- The application is denied.

Print City Name: Golden Valley

Signature of City Personnel: [Signature]

Title: City Clerk Date: 2-6-20

The city or county must sign before submitting application to the Gambling Control Board.

**COUNTY APPROVAL
for a gambling premises
located in a township**

- The application is acknowledged with no waiting period.
- The application is acknowledged with a 30-day waiting period, and allows the Board to issue a permit after 30 days.
- The application is denied.

Print County Name: _____

Signature of County Personnel: _____

Title: _____ Date: _____

TOWNSHIP (if required by the county)

On behalf of the township, I acknowledge that the organization is applying for exempted gambling activity within the township limits. (A township has no statutory authority to approve or deny an application, per Minn. Statutes, section 349.213.)

Print Township Name: _____

Signature of Township Officer: _____

Title: _____ Date: _____

CHIEF EXECUTIVE OFFICER'S SIGNATURE (required)

The information provided in this application is complete and accurate to the best of my knowledge. I acknowledge that the financial report will be completed and returned to the Board within 30 days of the event date.

Chief Executive Officer's Signature: [Signature] Date: 2/2/20
(Signature must be CEO's signature; designee may not sign)

Print Name: DANNY ARENS

REQUIREMENTS

Complete a separate application for:

- all gambling conducted on two or more consecutive days; or
- all gambling conducted on one day.

Only one application is required if one or more raffle drawings are conducted on the same day.

Financial report to be completed within 30 days after the gambling activity is done:

A financial report form will be mailed with your permit. Complete and return the financial report form to the Gambling Control Board.

Your organization must keep all exempt records and reports for 3-1/2 years (Minn. Statutes, section 349.166, subd. 2(f)).

MAIL APPLICATION AND ATTACHMENTS

Mail application with:

- _____ a copy of your proof of nonprofit status; and
- _____ application fee (non-refundable). If the application is postmarked or received 30 days or more before the event, the application fee is **\$100**; otherwise the fee is **\$150**. Make check payable to **State of Minnesota**.

To: Minnesota Gambling Control Board
1711 West County Road B, Suite 300 South
Roseville, MN 55113

Questions?

Call the Licensing Section of the Gambling Control Board at 651-539-1900.

Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board will be able to process the

application. Your organization's name and address will be public information when received by the Board. All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data about your organization are available to Board members, Board staff whose work requires access to the information; Minnesota's Depart-

ment of Public Safety; Attorney General; Commissioners of Administration, Minnesota Management & Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.

This form will be made available in alternative format (i.e. large print, braille) upon request.

Planning Commission

January 13, 2020 – 7 pm
Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

REGULAR MEETING MINUTES

Call to Order

The meeting was called to order at 7 pm by Chair Blum

Roll Call

Commissioners present: Rich Baker, Ron Blum, Adam Brookins, Andy Johnson, Lauren Pockl, Ari Prohofskey, and Chuck Segelbaum
Commissioners absent: Ryan Sadeghi,
Staff present: Planning Manager Jason Zimmerman and Planner Myles Campbell
Council Liaison present: Not Assigned

Approval of Agenda

MOTION made by Brookins, seconded by Johnson to approve the agenda of January 13, 2020, as submitted and the motion carried unanimously.

Approval of Minutes

MOTION made by Baker, seconded by Johnson to approve the December 9, 2019, minutes as submitted and the motion carried.

Continued Informal Public Hearing – CUP Amendment

Applicant: Home Health Care Plus, Inc.
Address: 800 Boone Avenue North
Purpose: To modify an existing condition that limits the use of Boone Ave for loading, unloading, and parking of busses and vans

Staff announced that the applicant was requesting that the public hearing be delayed until additional plans from the architect could be provided for presentation.

MOTION made by Baker, seconded by Brookins, to table the agenda item to the January 27, 2020, Planning Commission meeting and the motion carried unanimously.



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Informal Public Hearing – Zoning Map Amendments

Applicant: City of Golden Valley
Address: I-394 Corridor Mixed Use Properties
Purpose: To rezone properties located in the I-394 Corridor from I-394 Mixed Use to a variety of other zoning designations including Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional, as documented in the City's 2040 Comprehensive Plan

Jason Zimmerman, Golden Valley Planning Manager, reminded the board that the I-394 Mixed Use zoning designation was approved in late 2019 and took effect at the start of 2020. This rezoning has different subdistricts and has designations by scale and intensity; i.e. Community Mixed Use or Neighborhood Mixed Use. Golden Valley's 2040 Comprehensive Plan is scheduled to be adopted on February 4, 2020. Part of that Comp Plan is an updated Future Land Use Map and state statute requires consistency between land use and zoning.

Zimmerman displayed a map showing the exact location of discussion. He then displayed the 2040 Future Land Use Map and explained that this map guides the rezoning.

Zimmerman gave a history of the rezoning conversation and how it began in 2016 at an open house at City Hall. The conversation progressed in to 2017 at a Planning Commission meeting then in 2018 was part of the 2040 Comp Plan that was recommended for approval. In 2019 City Council directed staff to submit the approved plan to Met Council and in 2020 they are expected to approve. In February of 2020, City Council is expected to adopt the 2040 Comp Plan and the I-394 rezoning is part of that approval.

Zimmerman went in more detail on the property types:

- 21 properties to remain mixed use
- 23 properties are part of a PUD (Planned Unit Development)
- 18 properties rezoned away from mixed use
 - 14 to Commercial
 - 2 to Institutional
 - 1 to Office
 - 1 to Medium-Density Residential (R-3)

Zimmerman reiterated that the rezoning was done in an effort to more closely align the properties with their current use, not to prepare for a proposed project. He stated that businesses would be allowed to continue with current uses and site layouts under a legally non-conforming status. He continued that if the City chooses not to rezone any of these properties, the Future Land Use Map would need to be amended with the Met Council.

Commissioner Segelbaum asked Zimmerman what would happen if the use on the rezoned PUDs changed. **Zimmerman** stated that the underlying zoning generally reflects what's happening on site and the rezoning will more closely align with current uses. The PUD itself dictates more detail and if that

were to change, the PUD would need to be amended or revoked; then the zoning would govern further use.

Commissioner Johnson asked about the distinction between rezoning a property and changing a land use. **Zimmerman** replied that it's almost the same thing but the land use map is suggesting a particular zoning and the zoning of property implements regulatory language.

PUBLIC HEARING

Greg Hayes, Lupient Auto Group, asked if there would be a more detailed explanation of the difference between commercial and residential zoning.

Mike Baskfield 675 Rhode Island Ave S, asked for clarity on what the rezoning means for his commercial business.

Susan Myer, 510 Pennsylvania Ave, all summer the cars go through the stop sign on Laurel and Pennsylvania. If more apartments are to be added, then a roundabout or another stop sign should be added.

Don Taylor, 5120 Circle Down, living in a currently high density living area and would like clarity on definitions between neighborhood and community. Mentioned wanting to see retail buildings put in the rezoned areas that will add value aside from high density living buildings.

Joanna Hyman, 95 Oregon Ave S, is curious about the impact of more high density residential and the resulting overcrowding at Meadowbrook Elementary. She also stated that she supports mixed use properties that provide retail/commercial on the first floor and high density residential on the upper levels. Requested a more clear definition of what mixed-use means.

John Bean, 501 Radisson Road, Requesting clarification and what the rezoning means, and if it will be easier for more buildings to be built.

Chair Blum, closed the public hearing section at 7:30 pm

Chair Blum addressed the questions from the public hearing and asked staff to point residents to definitions of the zoning changes.

Zimmerman responded that the packet definitions were general but the zoning code for Golden Valley is accessible to the public and has a detailed descriptions of each zoning classification. **Zimmerman** went on to state that when the re-zoning was approved, part of the equation was to encourage small-scale neighborhood services in the mixed-use properties. Addressing other questions, **Zimmerman** reiterated that the rezoning wasn't done with a building plan in place but done rather to encourage projects as the market creates opportunities. He also reiterated that this rezoning is not allowing for more high density housing but actually scaling back on that in this particular area.

Chair Blum mentioned that residents should read the city code, accessible through the City of Golden Valley website, as well as look at past meeting videos and minutes.

Zimmerman addressed the difference between Neighborhood Mixed Use and Community Mixed Use. Neighborhood Mixed Use are those with more neighborhood amenities and with modest building height regulations. Community Mixed Use has less modest building height regulations, development can be a larger scale, parking was addressed, and pedestrian friendly amenities. **Zimmerman** echoed the Chair's suggestion to view past meeting videos and read previous minutes. He also stated that this rezoning process did not include a traffic study and therefore there wasn't immediate data for the stop sign on Laurel, per the resident inquiry. Contact information for the City's engineering department was shared as well as an invitation to connect with other questions.

In regards to the overcrowding at Meadowbrook, the Commission and staff discussed that enrollment projections are part of the City Comp Plan and the City has no jurisdiction over the school's enrollment cap. As of today, Meadowbrook's cap is at 800 students.

Chair Blum asked staff what the expected date is for the City Council to take action. **Zimmerman** responded that it will occur on February 4th, 2020, the same meeting that the Comp Plan will be considered for adoption.

MOTION made by **Commissioner Brookins** to recommend City Council approval of the presented rezoning of the I-394 Corridor Mixed Use Properties. Seconded by **Commissioner Johnson** and passed unanimously.

DISCUSSION – Tobacco Sales Restrictions

Myles Campbell, Golden Valley Planner, gave a presentation on tobacco sales zoning regulations that the City Council requested the Planning Commission to consider. Amendments to the handling of tobacco sales were first raised as potential work items through the City Council's 2019 goal setting process. Tobacco licensing was amended and approved in October of 2019 and previous conversations occurred at three other meetings in 2019.

Campbell presented the commission with an extensive list of licensing changes and explained the 3 goals of amending the zoning code in conjunction with those changes.

- Restrictions placed on tobacco licenses are extremely effective at creating a safer tobacco sales environment, but are still linked to the license itself and deal mostly in the operation of the retailer.
- Zoning can be used to place restrictions applicable to all commercially zoned land, and can be more effective at combatting retailer density or accessibility to youth consumers.
- A combination of both zoning and licensing controls gives the city a more comprehensive procedure to mitigate the negative public health impacts posed by tobacco retailers.

The three new regulations that City staff and the Planning Commission examined, per the City Council direction are:

- Permitted zoning districts
- Proximity to other land uses
- Site requirements

Campbell expanded on each item.

Permitted Zoning Districts

Commercial	Permitted
I-394	Permitted with conditions
Revised Mixed Use	Permitted with restrictions

Campbell explained that in order to have proximity restrictions on tobacco sales, the districts would need to list tobacco sales as a restricted use or a conditional use. In addition, many communities have used proximity restrictions to decrease the overall density of tobacco retailers and access to youth consumers. These two types of proximity restrictions are

- Proximity to Youth-Oriented Uses
 - Reduces distance between retailers and places like parks, schools, and community centers
- Proximity to Other Tobacco Retailers
 - Requires a minimum distance between retailers to reduce over-densification

Looking throughout the metro area for ordinances to model, staff found only Minneapolis and Saint Paul have these restrictions. Based on size, the parameters aren't transferable to Golden Valley. However, **Campbell** presented a model ordinance from the Public Health Law Center. Utilizing this model, staff created four scenarios with potential buffer distances and displayed that model for the Commission. **Campbell** presented maps of the City of Golden Valley with each buffer option as an overlay.

As a final consideration, **Campbell** discussed updating site design requirements to assist in limiting the public health impact of tobacco. For each of the potential code amendments, there must be reasonable justification and have a clear link to the City's stated interest in diminishing the negative health impact of tobacco consumption.

Commissioner Segelbaum asked Campbell to clarify if a "tobacco retailer" includes gas stations. **Campbell** responded that a tobacco retailer includes anyplace with an active license to sell tobacco products.

Commissioner Johnson asked if the City has already approved licensing changes related to tobacco sales and **Campbell** responded affirmatively and reminded the commissioners the information is in their agenda packet.

Based on the fact that the license and ordinance changes were approved, **Johnson** asked why the redlined draft document was presented to the Planning Commission. **Campbell** responded that he added the draft so the commissioners could see what the old language was and what the new approved language is. He expanded that the Planning Commission is not approving any language changes in the licensing or the ordinance. **Johnson** made a final comment that the group was not presently discussing the changes in the ordinance or the licensing requirements.

Commissioner Baker mentioned the revised and approved ordinance to cap tobacco retailers in the City at eight as currently there are 15. He asked if reducing that number by license lapsing will be City imposed or volunteered. **Jason Zimmerman, Golden Valley Planning Manager**, stated that it will be volunteered. **Campbell** added that if someone came in to apply for a new license, they would not be approved as the retailer cap is already above eight.

Commissioner Pockl asked if the cap was eight retailers, does that also mean eight is a minimum to maintain. **Campbell** responded in the negative, currently there is not a minimum to maintain.

Baker commented that capping the tobacco retailers to eight is already pretty restrictive and it seems unlikely a new license would be granted. **Segelbaum** echoed the statement.

Johnson stated the Planning Commission bylaws direct discussion to environmental and land use concerns, not social or health concerns. While these issues are important, it's imperative the Commission adhere to its discussion topics. **Baker** responded that in addition to items stated in the bylaws, the Commission is charged with addressing items as requested by the City Council. This topic being an example of that.

Commissioner Brookins stated that if there is to be only one zoned area to allow tobacco sales, he would choose Commercial. The Commission was unanimous in supporting this statement and adding that it be Commercial with restrictions.

The Commission was unanimous in deciding to not be in favor of the City regulating the density of tobacco retailers.

Brookins stated that he supports regulating tobacco retailers around areas of assembly at 500 feet.

Pockl asked if the zoning code had a definition for a "youth oriented facility". **Zimmerman** stated that currently there is not a definition.

Commissioner Prohofsky stated that the proximity regulation of tobacco retailers around schools should be 1000 feet at a minimum. He continued that changing signs won't do much, if tobacco is being sold at a location, people will know. He added witnessing minors soliciting older adults to purchase tobacco for them and making a retailer further from an area of congregation, will make that process more difficult. **Segelbaum** echoed this statement.

Campbell stated he will provide maps showing the difference between distance proximities at the next meeting.

Johnson stated there should be alignment between smoking in public places and these potential proximity regulations. **Pockl** stated that the Public Health Law Center has a definition of youth oriented facilities and that definition should be considered when defining the same term for Golden

Valley. **Zimmerman** stated that the group should consider ease of enforcement, a mapped buffer zone is clearly defined. He added that according to city code, smoking is prohibited in public parks and recreation facilities. **Chair Blum** said that fact reinforced his opinion that a proximity regulation should be instated in an area where smoking is prohibited.

Pockl restated her previous question and asked if the cap is at eight allowable locations, does that also mean eight is a minimum to maintain. **Campbell** responded in the negative and added that if there are seven or fewer allowable locations, then that would be a red flag to staff that restrictions are potentially not reasonable.

When mentioning potential site requirements for tobacco related businesses, the members agreed that signage should be regulated. **Campbell** reminded them that signage regulation can't be specific to only tobacco retailers but must be consistent with other businesses. **Baker** mentioned that he'd like to see something akin to firearms regulation where the product can't be displayed outwardly. **Zimmerman** added that signage and displays are different.

In summary, at the next meeting:

- Staff will provide options regarding Commercial as the permitted district, with restrictions.
- Staff will not look at density of tobacco retailers.
- Staff will research proximity restrictions and provide maps with buffer examples, specifically to youth oriented facilities, as defined by Commissioners.
- Staff research into sign restrictions will be approached at a later date.

--Short Recess--

Council Liaison Report

None given.

Reports on Meetings of the Housing and Redevelopment Authority, City Council, Board of Zoning Appeals, and other meetings

None given.

Other Business

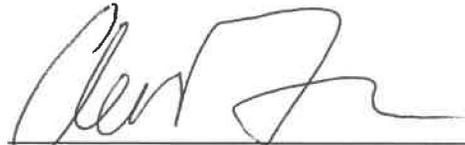
Zimmerman reminded the Commissioners of the Narrow Lot Public Forum on Thursday, January 16. **Chair Blum** and **Commissioner Baker** indicated they would attend and the group discussed the role of Commissioners at the meeting. It was agreed that they should represent the Commission and keep their personal feelings on the issues private at the Forum.

Adjournment

MOTION made **Commissioner Segelbaum**, seconded by **Commissioner Pockl** and the motion carried unanimously to adjourn the meeting at 9:15 pm.



Arnie Kolesar, Planning Assistant



Adam Brookins, Secretary

Planning Commission

January 27, 2020 – 7 pm
Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

REGULAR MEETING MINUTES

1. Call to Order

The meeting was called to order at 7 pm by Chair Blum

Roll Call

Commissioners present: Rich Baker, Ron Blum, Adam Brookins, Andy Johnson, Lauren Pockl, Ari Prohofsky, Ryan Sadeghi, and Chuck Segelbaum

Commissioners absent:

Staff present: Planning Manager Jason Zimmerman and Planner Myles Campbell

Council Liaison present: Gillian Rosenquist

2. Approval of Agenda

MOTION made by Segelbaum, seconded by Baker to approve the agenda of January 27, 2020, as submitted and the motion carried unanimously.

3. Approval of Minutes

Chair Blum, asked for a motion to approve the minutes from January 13, 2020.

Commissioner Johnson requested an edit to page six when he referenced the bylaws for the Planning Commission, the perceived direction of the group, and the environmental exception. As a result, there was a consensus to strike the following section from the January 13th, 2020 minutes:

Zimmerman mentioned the zoning chapter in the city code creates an overlap in responsibility as it states:

Sec. 113-2. - Purpose.

The purpose of this chapter is to regulate land use within the City, including the location, size, use, and height of buildings, the arrangement of buildings on lots, and the density of population within the City for the purpose of promoting the health, safety, order, convenience, and general welfare of all citizens of the City.

Therefore, this topic is relatable to the Planning Commission as defined by Sec. 113-2.

Johnson requested an edit to page five, within the tobacco ordinance item. **Johnson** requested adding to public record his vocalization that adding draft language and edits of an ordinance was not relevant to



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the Planning Commission but that the final language was. Johnson restated that he disagreed with providing the draft language as that is policy related and not Planning Commission related. As a result, the following section was added for clarity:

Commissioner Johnson asked if the City has already approved licensing changes related to tobacco sales and Campbell responded affirmatively and reminded the commissioners the information is in their agenda packet. Based on the fact that the license and ordinance changes were approved, Johnson asked why the redlined draft document was presented to the Planning Commission. Campbell responded that he added the draft so the commissioners could see what the old language was and what the new approved language is. He expanded that the Planning Commission is not approving any language changes in the licensing or the ordinance. Johnson made a final comment that the group was not presently discussing the changes in the ordinance or the licensing requirements.

MOTION made by Commissioner Brookins, seconded by Commissioner Pockl to approve the January 13, 2019, minutes after edits and the motion carried.

4. Continued Informal Public Hearing – CUP Amendment

Applicant: Health Care Plus, Inc.
Address: 800 Boone Avenue North
Purpose: To modify an existing condition that limits the use of Boone Ave for loading, unloading, and parking of buses and vans

Jason Zimmerman, Planning Manager, reminded the Commission that the following presentation and conversation is a continuation of one started in December 2019. By way of background, the operators are requesting an amendment to the current CUP in order to modify a condition that prohibits the use of Boone Ave for loading, unloading, and parking of vehicles related to the adult day care business. This amendment to the CUP occurred in 2018, due to safety concerns, and required loading, unloading, and parking of vans and buses to take place in the parking lot.

Zimmerman continued that after a tour and conversations, the applicant has stressed the need for Boone Ave access to continue due to restrictions imposed by the parking lot and the building access point from the lot. The applicant has indicated that 26 buses/vans arrive on Boone Avenue in the morning over a period of about an hour (7:50 am to 8:55 am). The timing is staggered so that only two vehicles arrive at a time; it takes 5-10 minutes to unload each vehicle. In the afternoon, 20 buses/vans arrive between 1:40 and 2:45 pm to pick up clients. During the day, approximately 8 vehicles depart and return between the hours of 10:00 am and 12:30 pm; in the summer, additional field trips occur between 10:00 am and 1:30 pm. Each of these individual trips require a bus or van to be parked on Boone Avenue for approximately 30 minutes.

After laying out zoning and engineering considerations, **Zimmerman** stated staff supports the request to continue loading and unloading on the east side of Boone Ave, with the caveat that future restrictions may be imposed in light of the pending conversation around on-street bicycle lanes. In 2020 it is likely

parking will be removed from Boone because on-street bike lanes will be added and staff believes it's advantageous to the applicant to plan for an area to load/unload on site.

Based on the findings, staff recommends approval of the amended CUP, subject to the following conditions:

1. The adult day care shall be limited to 350 clients, as specified by the Minnesota Department of Human Services license issued August 1, 2019.
2. All necessary licenses obtained by the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. Subject to any additional posted traffic regulations, all vans and buses shall be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.
6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.
8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

Failure to comply with one of more of the above conditions shall be grounds for revocation of the CUP.

Commissioner Baker asked when the CUP amendment with the modified condition regarding loading and unloading was added. **Zimmerman** responded in October/November of 2018. **Baker** followed up with asking if staff now thought that amendment was a mistake. **Zimmerman** responded that in 2018 staff recommended limiting loading and unloading to the east side of Boone and the Commission adopted the broader parking lot restriction. **Baker** reiterated his question and **Zimmerman** responded in the affirmative and without findings of a safety issue, staff recommends approval of the current amendment.

Commissioner Segelbaum mentioned previous confusion on if the applicant was the business owner or the property owner. He followed up by asking if the CUP should more clearly state which owner is responsible for the conditions. **Zimmerman** responded that in a situation where a building has multiple

tenants, either the property or business owner can apply. Both the property owner and the operator are present for the CUP Amendment agenda item.

Zimmerman continued on to specific conditions mentioned by the commissioner and gave examples of amended word choices to assist in clarification.

Segelbaum followed up by asking if the operator were to leave, would the CUP follow the operator or the property. **Zimmerman** stated that the CUP is filed with the county so it'll stay at the property. In the event that there is a violation, the property owner is responsible.

If the business owner is the one to apply for a CUP, then the property owner signs it, stating acknowledgement. Therefore either entity can apply but the property owner is responsible for violations to the CUP.

The discussion continued into the cap for the number of clients at the facility and who determines that number. Staff reminded the commissioners that previous conditions stated the Department of Human Services would determine that client cap as they're issuing the operating license. The cap on the operator's current license is 350 clients; staff said they hadn't considered reducing that cap to then create the city's own limit, but rather looked into further enforcing the current cap. This conversation evolved to addressing the operating hours; the city's condition is a weekday window of 7:30-5:30 and the operator is choosing to operate from 8-4:30 weekdays.

Chair Blum invited the applicant and operator to make comments.

Christine Eid, attorney on behalf of Healthcare Plus, introduced herself and then introduced Inessa Marinov from Healthcare Plus, and Randy Engel, the architect for the same company. **Eid** reminded the commissioners that they were before the Commission in December 2019 and after a series of poignant questions raised, they accepted a continuance to collect the necessary information to reappear. **Eid** thanked staff for their work through this process and the report presented before the Commission. **Eid** went on to address the discussed violation to the CUP granted in 2007 to allow for an adult daycare facility in the 800 Boone Ave building. **Eid** went on to read Golden Valley City Code as it pertains to adult daycare facilities and concluded that all clients at this operation qualify without further evaluation. Part of the daily accommodations include providing the most accessible and shortest path from the buses to their daily activities. This accommodation necessitates utilizing the east side of Boone for bus drop offs and pick-ups.

Eid went on to address the violation to the CUP granted in 2007. This was not an operator violation, but lead to an amendment in 2018 to prohibit drop-off/pick-up on the east side of Boone, which did directly and negatively impact the operator. **Eid** addressed the conditions listed in the staff presentation and their team agrees to work with city staff and the planning commission to cap the cliental at 350. The team would like to amend condition number five due to its broad nature and would like to participate in conversations with the city to ensure a bike lane may co-exist with regular drop-offs and pick-ups.

Randy Engel, Healthcare Plus Architect, presented a map of the 800 Boone building and listed minimal physical characteristics for an adult day care facility. **Engel** elaborated on the building structure and its split between businesses, he added that not every door to the building equates direct access to Healthcare Plus. **Engel** went on to explain the space requirements to accommodate the current cliental as well as the space options already considered by the operator in order to accommodate future possible clients.

Commissioner Segelbaum asked if the team has discussed edits to the fifth condition with city staff and how they concluded the line item “Subject to any additional posted traffic regulations,” meant removal of vehicle access due to a bike lane. **Eid** responded that while she doesn’t specifically know that is what it means, she understands a bike lane on Boone is being discussed and would like her team to be part of that conversation. **Eid** went on to state that she knows the City has full right to the right of way but currently she would like to see that condition item be silent.

Commissioner Brookins asked what the future intent is for the number of people being served. The operator responded that the intent is to serve the cap number of people, per the license granted by the Department of Human Services. The company has the staff, space, and met requirements to meet the needs to serve 350 people. Currently the organization serves 241 clients.

Blum noted that the required public hearing for this item occurred in December of 2019 and at the time of this meeting, attendees of the meeting consisted of: City staff, Commissioners, Applicant and team, and City Council Member. **Segelbaum** made a motion to open the floor for a public hearing and at 8:19 pm, **Chair Blum** formally opened the floor for a public hearing. No comments were made and the hearing was closed.

Segelbaum commented that originally tabling this item was so the applicant and City staff could come to a compromise. He believes the applicant has a point about the condition they addressed and commented that the City Attorney may be the best person to address it. With that in mind, **Segelbaum** believes it may be premature for the Planning Commission to address the agenda item. Baker and Brookins echoed Segelbaum. **Segelbaum** asked for the time limit on responding to the applicant and **Zimmerman** responded that it needed to be to City Council by February 22nd or the applicant would need to agree to an extension in writing. **Brookins** commented that he’d like to make a determination today and that will give staff time to make recommendations when this item is presented to City Council. **Commissioner Pockl** echoed this statement. **Commissioner Baker** commented that putting a transition plan in place for the applicant when a bike lane occurs may be beneficial.

The conversation continued on to the possibility of capping the clients at a number below the cap provided by the MN Dept. of Human Services. Concerns about this Commission’s authority to override the Dept. of Health’s client cap was raised. **Commissioner Sadeghi** pointed out that the concern for this committee was traffic related and therefore instead of capping the client number, could client transportation be reconfigured so the number of drop-offs could be capped. Staff replied that it’s possible but there is concern about who would enforce that cap on vehicles.

This conversation moved on to condition five, as addressed by the applicant. The applicant/operator chimed in and added that during the architect’s presentation, he showed that open space for new clients is in the back of the building. Therefore, any addition of clients, will be loaded and unloaded in the parking lot by way of following the operator’s policy of providing the most accessible and shortest path from the buses to their daily activities. An increase in clients will not cause a direct impact on Boone Ave. **Blum** stated that based on the drawing provided, it appears the capacity will increase in the front of the building, directly accessible by Boone Ave.

Commissioner Johnson stated that according to the Secretary of State Website, all the organizations in 800 Boone Ave are related to one another. Because of that, it's disingenuous for the applicant to assert that there's nothing to be done, internally, to accommodate the conditions. **Johnson** added that it seems within the purview of the Planning Commission to discuss condition five and if the City Attorney determines that's inaccurate, then the Commission should be given a finding to support that.

Zimmerman asked the Commission to address the two questions posed:

1. If the Commission was interested in amending the condition to allow or not allow use of the east side of Boone for loading and unloading.
2. Regardless of that choice, is there any consideration for a cap on the number of clients to be served, even if it's lower than the current number of clients allowed on their residence.

Regardless of the choice there should be reasonable findings to support the decision.

Baker stated he's opposed to revising condition five as requested by the applicant. **Blum** is concerned about loading and unloading on the west side of the street, crossing the street for this client is inherently dangerous. It's reasonable to restrict loading/unloading to the east side of the street. **Pockl** echoed Blum's statement and added that the loading/unloading may occur on the street but to encourage use of the parking lot.

Commissioners continued their conversation on if they should cap the number of clients aside from the current DHS license the applicant holds. The conversation moved back to the impact of loading and unloading of vehicles on Boone and what the impact of the city is and evolved on to if a traffic study would help create a solution. **Pockl** circled back to the original recommendation and stated that the commission still hasn't shown findings to support forbidding loading/unloading on Boone. **Brookins** added that car dealerships are not allowed to load and unload on the street in front of the business. **Blum** noted a parking restriction on Boone based on its proximity to Hwy 55 is reasonable.

MOTION made by **Baker**, to accept the recommendations of city staff with the exception that condition five is not included; to prohibit loading and unloading on Boone. Motion was seconded by **Brookins**, with an amendment to return some language from the 2007 CUP regarding client numbers to be determined by DHS and approved by the City. **Brookins** suggested that cap be determined at 350. **Baker** accepted that amendment to his motion. **Zimmerman** added that the commission can't strike condition five but can choose to not accept the amended language to condition five.

Johnson suggested to remove the first sentence in the condition and change no parking on the west side of Boone to say entirety of Boone. **Baker** withdrew his motion. **Blum** asked for a new motion.

MOTION made by **Johnson** to accept the recommendations made by staff, regarding the CUP, with the exception of condition 5, to then look like this:

5. ~~Subject to any additional posted traffic regulations, all vans and buses shall be loaded and unloaded along the east side of Boone Avenue.~~ No vans or buses shall be loaded, unloaded, or parked along the ~~west side~~ entirety of Boone Avenue. No vans or buses

may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.

Brookins seconded this motion. Approval of the motion went to vote and was failed 3-4.

Ayes: Baker, Brookins, Johnson

Nays: Blum, Pockl, Sadeghi, Segelbaum

Based on that denial, **Blum** asked for a further motion.

MOTION made by **Blum** to accept staff recommendation and approve the CUP application and to not amend condition 1 but to amend condition 2 to replace the word “by” with “from”. Condition five is accepted with edits, so condition five reads:

5. Subject to any additional posted traffic regulations, all vans and buses ~~shall~~ **may** be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses may be parked in the angled parking stalls, ~~or~~ in the first 21 perpendicular stalls located south of the building along the drive aisle, **or on the east side of Boone Ave.**

Segelbaum seconded this motion and the motion was approved 4-3.

Ayes: Blum, Pockl, Sadeghi, Segelbaum

Nays: Baker, Brookins, Johnson

Zimmerman stated the February 18th City Council meeting will receive this information.

5. DISCUSSION – Narrow Lots

Jason Zimmerman, Planning Manager, presented a summary of the public forum held at Golden Valley City Hall, on January 16th, 2020.

Zimmerman listed the specific items City Council directed to the Planning Commission.

- Investigate possible modifications to the City Code for narrow lot development
- Focus on lots 50’ wide or less but note ideas that might apply more broadly
- Involve outside experts – realtors, architects, and builders
- Solicit resident feedback
- Aim to bring forward recommendations before the spring building season

Zimmerman followed with a list of items already addressed and presented the Commission with a revised timeline of events. City Council will hold a public hearing on this topic on April 7th.

Public Forum Summary:

- Divided into three parts
 1. Overview of study
 2. Small group discussion
 - a. City Staff provided a few questions as conversation starters.
 3. Large group report out and Q&A
 - a. Commonly raised issues revolved around height restrictions, setbacks, impact on residents, green space and trees.

Next steps include addressing non-zoning regulations and policy questions that arose at the meeting and looking at the purview of the BZA for variances to ensure consistency.

Commissioner Baker commented that height restrictions and the resulted shading of neighbors seems to be a top concern. **Baker** revisited the comments from a local builder on the public forum panel who suggested height restriction were possible while introducing dormers for space. **Baker** stated that it seems possible to find a solution that won't restrict the purchase of and building on narrow lots while also ensuring quality of life for neighboring residents. **Commissioner Pockl** echoed this statement and asked staff for optional solutions versus the Commission inventing their own ideas for solutions. **Zimmerman** presented a list of such options.

- Develop language around incentivizing reduction in height in exchange for dormer space
- Increase some side yard setbacks
- Lower maximum lot coverage and/or impervious percentages to preserve open space
- Eliminate two stall garage requirements similar to R2 single-family zoning regulations
- Reduce existing secondary front yard setbacks on corner lots in order to eliminate need for variances

Baker mentioned the desire to require the preservation of old trees in conjunction with developments. **Pockl** asked how many houses on narrow lots have alley access and what the process to construct an alley is. **Zimmerman** responded he can provide that information but that public and builder feedback shies away from creating alleys. **Chair Blum** stated that bringing BZA into alignment with resident preferences is a priority. In conjunction, there are points to consider with comprehensive plan consistency, zoning elements, and essential character elements that are all reflected in City ordinances. **Blum** stated that the setback consideration he's gravitating towards are larger than historically seen: 10 ft setbacks on a 40 ft wide lot. This considerations seems consistent with resident feedback while setting the city up for flexibility in development in the future. **Blum** continued that while incentivizing houses to reduce height is reasonable, he suggests incentives to reduce tax parcel division of larger lots all together. **Commissioner Brookins** stated that he thinks the setbacks are satisfactory but that the focus should be height requirements, building envelope, and neighborhood character preservation. **Commissioner Segelbaum** stated the need for precise language and the clear differentiation between subdivision and tax parcel division.

Television portion of the meeting concluded at 10:06pm

--Short Recess--

6. Council Liaison Report

Gillian Rosenquist introduced herself as the new City Council liaison to the Planning Commission. Council Member Rosenquist gave a brief description of her background on the City Council and other committees. She praised the Planning Commission for their ongoing work and asked for their thoughts on how the Council Liaison role could be improved to provide more information to Commissioners. Rosenquist provided additional information on upcoming projects and items, including: potential BRT along Highway 55, upcoming bonding projects, and the City Council's goal setting meeting for 2020.

7. Reports on Meetings of the Housing and Redevelopment Authority, City Council, Board of Zoning Appeals, and other meetings

No other reports were given.

8. Other Business

Staff provided a brief update on some upcoming goals of the City's HRA.

9. Adjournment

MOTION made by **Commissioner Pockl**, seconded by **Commissioner Baker** and the motion carried unanimously to adjourn the meeting at 10:27 pm.



Amie Kolesar, Planning Assistant



Adam Brookins, Secretary

Open Space & Recreation Commission

December 16, 2019 – 6:30 pm
Bassett Creek North Room
Brookview Golden Valley
316 Brookview Parkway S

REGULAR MEETING MINUTES

1. Call to Order

The meeting was called to order at 6:30 pm by Mattison.

2. Roll Call

Commissioners present: Roger Bergman, John Cornelius, Bill Delaney, Max Hyberger, Kelly Kuebelbeck, Bob Mattison, Kimberly Sanberg, Dawn Speltz, and Della Daml.

Commissioners absent: Matthew Sanders

Staff present: Rick Birno, Director of Parks and Recreation, Al Lundstrom, Park Maintenance Supervisor, and Sheila Van Sloun, Administrative Assistant.

3. Agenda Changes or Additions

None.

4. Approval of November 25, 2019 Minutes

Approval of the November 25, 2019 minutes tabled until the January meeting.

5. Brookview Goose Management Update

Birno said staff implemented a goose removal plan at Brookview Golf Course during the 2019 season. Brookview was provided with a permit from the DNR to remove up to eighty geese. Thirty-four of the eighty tags were utilized during the contracted removal in late June. He went on to say that GPS nest location was not implemented and that eggs were not disturbed.

Birno said staff met with representatives from the University of Minnesota in an effort to develop a potential site partnership for long range management of geese at Brookview. Unfortunately, the proposal to work with a graduate student from the U of M annually was too expensive. Birno said they will continue to look for other options.

6. Proposed Improvements to Medley Park

Birno shared partial results of the citywide online survey, which is open for input until December 31. He said at this point in the survey process, most of the respondents are from the northwest area of



This document is available in alternate formats upon a 72-hour request. Please call 763-593-8006 (TTY: 763-593-3968) to make a request. Examples of alternate formats may include large print, electronic, Braille, audiocassette, etc.



Golden Valley are not in support of the proposed amenities. He also noted that there are not many residents from the southwest and southeast quadrants providing survey input. Commissioners asked staff about the 2016 survey results and how many residents were contacted during that process. Lundstrom responded that the 2016 City Survey results are based on 400 residents being contacted and this survey currently has 198 participants.

Birno then reviewed all additional input received by staff as well as the Medley Park Community Input Report information updated to this point.

Commissioners expressed two initial concerns regarding the results. One concern is the neighborhood focus which may, possibly skew results based on the small percentage of voters. The second concern is the survey not being easily visible online.

Staff and commission discussed both the positive attributes of the off-leash area proposed at Medley Park and the negative aspects. Kuebelbeck and Bergman said they would like to see the park left as open space without adding a dog park. Sanberg noted she is concerned there is a lack of data from the community based on the survey input at this point. She would like to look at the city more comprehensively with regard to a dog park. Cornelius said he is not sure there is a strong enough desire for a dog park.

Discussion then focused on the tennis courts and community garden. Commissioners were in agreement to leave the tennis courts as is for neighborhood use until removal is necessary in 2022. Birno questioned if they were recommending routine maintenance or funding capital improvements over the next two years. The Commission supported routine maintenance over the next two seasons and no capital investment. Lundstrom added the removal in 2022 would be done in-house. Chair Mattison requested a motion for the recommendations.

MOTION moved by Sanberg and seconded by Hyberger to leave the tennis courts open at Medley Park for two more seasons without any capitol reinvestment, and to pursue, educate, and promote, a new community garden once the tennis courts are officially closed. Motion carried unanimously.

Lundstrom and Birno were asked about other possible locations for an off-leash area. Their concern is most of the location options in the Golden Valley park system would probably generate the same neighborhood issues brought forward by the residents around Medley Park. Commissioners continued to discuss the pros and cons of the proposed off-leash area. Comments included leaving the park as open space without the addition of a dog park, lack of neighborhood support for the proposed amenity, questionable demand for a dog park, northwest location, soil conditions, parking issues, distance of proposed amenity from the small parking lot, and the future water management project. Chair Mattison asked for a motion to provide staff with a recommendation.

MOTION moved by Delaney and seconded by Kuebelbeck to temporarily table the proposed dog park for future discussion, remove ballfield, and work with Golden Valley Engineering staff and the

Watershed District to create a conceptual plan for a green space infrastructure at Medley Park. Motion did not carry.

MOTION amended by Cornelius and seconded by Delaney to eliminate dog park concept at Medley Park. Motion did not carry.

MOTION amended by Delaney and seconded by Cornelius to not move forward with an off-leash area, remove west ballfield, keep the area as open space, and eventually work with Golden Valley Engineering staff and the Watershed District on a conceptual plan for the park area. The future plan should accommodate the storm water management needs and preserve and enhance the open space, improve internal park trails, and provide connectivity to the current park access points. Motion carried unanimously.

7. Commission and Staff Updates

• Staff Updates

- Lundstrom announced the ice rinks will open Saturday, December 21.
- Birno said the city was awarded the Hennepin County Youth Sports Grant and a donation from Golden Valley Little League, which will be used to add two new scoreboards at Isaacson Park.

• Brookview Winter Recreation Trail Lights

Birno said the trail lights at Brookview are up and working great. He added the trails are groomed on Monday, Wednesday, and Friday.

• Spin Scooters

Birno gave an update and shared the annual report for Spin Scooter use in Golden Valley for 2019.

• New Catalog Mailing Process

Birno explained the new catalog mailing process. He said the decision came after the Communications Department did research on the mailing process. He added that the new process is more accurate and will reach residents more efficiently.

• Artist Showcase

Birno said that Golden Valley Arts and St. Louis Park Friends of the Arts are partnering to host an Artist Showcase featuring local artists from Golden Valley and St. Louis Park. The opening reception will be held at Brookview on January 31 from 5-9 p.m.

• Next Meeting

Birno said the next meeting will be held on January 27, 2020 at 6:30 p.m. at Brookview.

• Joint Council and Commission Meeting

Birno said the Joint Council and Commission meeting will be held on February 26, 2020 at 5:30 p.m.

• Commissioner Sanberg Final Meeting

Staff and Commissioners thanked Sanberg for her service and celebrated her final meeting with refreshments.

8. Adjournment

MOTION moved by Bergman and seconded by Sanberg to adjourn at 8:55 p.m.



Sheila Van Sloun, Administrative Assistant



Bob Mattison, Chair

Open Space & Recreation Commission

November 25, 2019 – 6:30 pm
Bassett Creek North Room
Brookview Golden Valley
316 Brookview Parkway S

REGULAR MEETING MINUTES

Open house for residents to review and discuss proposed Medley Park amenities with Open Space and Recreation Commission members (6:30–7 pm).

1. Call to Order

The meeting was called to order at 7 pm by Mattison.

2. Roll Call

Commissioners present: Roger Bergman, John Cornelius, Bill Delaney, Kelly Kuebelbeck, Bob Mattison, Kimberly Sanberg, Matthew Sanders, Dawn Speltz, and Della Daml.

Commissioners absent: Max Hyberger

Staff present: Rick Birno, Director of Parks and Recreation, Al Lundstrom, Park Maintenance Supervisor, and Sheila Van Sloun, Administrative Assistant.

3. Agenda changes or Additions

None.

4. Approval of October 28, 2019 Minutes

MOTION moved by Bergman and seconded by Cornelius to approve the October 28, 2019 meeting minutes. Motion carried unanimously.

5. Staff Presentation of Proposed Off-Leash Pet Exercise Area by Al Lundstrom

Lundstrom reviewed the proposed off-leash pet exercise area, including pavement management and storm water plans in the area. Lundstrom then answered brief questions from the Commissioners.

6. Staff Presentation of Proposed Community Garden by Rick Birno

Birno reviewed the proposed community garden concept. He also shared the many issues with the existing tennis courts. Birno then answered brief questions from the Commissioners.



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7. Public Input to Open Space and Recreation Commission

About forty residents were in attendance. Several residents spoke to the Commissioners regarding the proposed changes to Medley Park. Comments included:

- Concern about increased traffic and parking in the area where the streets have been narrowed.
- No adequate off street parking/parking lots.
- Concern regarding access for maintenance vehicles.
- Walkway to dog park area is too close to the play structure therefore increasing the potential for children to be harmed by dogs.
- Potential dog behavior issues like barking and aggressive behavior.
- Increased animal feces in the park.
- There seems to be no regard for the value of open space.
- Poor and damp soil conditions and flooding in areas of the park.
- Cost to maintain proposed amenities.
- Proposed amenities are taking half the park away.
- Tennis courts are utilized by residents and should be reconstructed.
- Keep tennis courts in their current condition and allow residents to utilize at their own risk.
- Who to contact for issues and/or aggressive behavior by dogs or owners.
- Not the appropriate area for either amenity.
- Not at Medley – look for alternate location that is more centrally located within the city.
- Consider adding an asphalt trail loop in the park.
- Consider what the neighborhood is giving up to add both amenities.
- Consider long grasses and open spaces designed for butterflies.
- Addition of a dog park will benefit those without a fenced yard.

Birno said in addition to taking public input tonight, the city has also created an online survey regarding the proposed amenity changes at Medley, which will be available through the city website from November 25 thru December 31, 2019. He said all input will be compiled and share with the City Council.

8. Commission and Staff Updates

A. Regular meeting scheduled for December 16 at 6:30 pm at Brookview

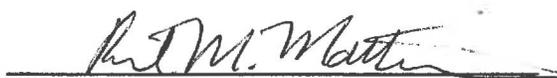
Birno reminded the Commissioners about the December 16 meeting.

9. Adjournment

MOTION moved by Bergman and seconded by Kuebelbeck to adjourn at 8:50 pm.



Sheila Van Sloun, Administrative Assistant



Bob Mattison, Chair

Civil Service Commission

SPECIAL MEETING MINUTES

January 21, 2020 – 8:30 am
Public Safety Conference Room
Golden Valley Police Department
7700 Golden Valley Road

Call to Order

The meeting was called to order at 8:33 am by Chair Wold.

Roll Call

Commissioners present: Andrew Wold, Chair
Ralph Schulz, Secretary
Gloria Kumagai

Commissioners absent: None

Council Member Present: Gillian Rosenquist

Staff present: Jason Sturgis, Chief of Police
Steve Johnson, Commander
Dave Kuhnly, Commander
Amanda Johnson, Administrative Assistant

Approval of Agenda

Approval of Minutes

Motion by Commissioner Schulz to approve the September 13, 2019 meeting minutes. Seconded by Commissioner Kumagai. Motion carried 3-0.

Agenda Item

Chief Sturgis provided a staffing update for commissioners. There are two new police officers currently in field training and there two additional vacancies left to fill.

Chief Sturgis distributed the hiring process outline for commissioners and presented an updated police officer eligibility register for approval. The register includes six new officer candidates and three candidates who are still viable from the prior hiring process. The register reflected a tie score between candidate number four and five and also between candidate number six and seven. Per the Rules & Regulations, Chair Wold conducted a coin toss to determine placement of candidate number four and five, which resulted in a heads win. The candidate with the surname closest to the beginning of the alphabet was ranked number four and the tying candidate was ranked number five. Chair Wold conducted a second coin toss to determine placement of candidate number six and seven, which resulted in a heads win. The candidate with the surname closest to the beginning of the alphabet was ranked number six and the tying candidate was ranked number seven.



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Motion by Commissioner Kumagai to approve the police officer eligibility register. Seconded by Commissioner Schulz. Motion carried 3-0.

Council Member Rosenquist introduced herself to commissioners and advised she is the new council liaison for the commission.

Chief Sturgis advised commissioners of the annual Council/Commission banquet scheduled for February 26, 2020 at 5:30 pm at Brookview Community Center.

Commission Communications

Adjourn

Motion by Commission Schulz to adjourn the meeting at 8:47 am. Seconded by Commissioner Kumagai. Motion carried 3-0.



Andrew Wold, Chair

Amanda Johnson, Police Operations
Staff Name, Staff Position *Supervisor*

Human Services Commission

January 13, 2020, 6:45 pm
Rice Lake Conference Room
Brookview Golden Valley
316 Brookview Parkway S

REGULAR MEETING MINUTES

Call to Order

The meeting was called to order at 6:46 pm by Aaron Black, Chair.

Roll Call

Commissioners present: Denise La Mere –Anderson, Aaron Black, Stephanie Devitt, Joel Nelson and Sophia Vento

Commissioners absent: Jonas Courneya, Hilmer Erickson, Katie Hart, Toots Vodovoz

Staff present: Brian Erickson, Staff Liaison

Approval of Minutes

MOTION by La Mere Anderson, Devitt 2nd

New Member, Joel Nelson

Nelson introduced himself and commission members went around the table and shared a little about themselves.

Agenda Item

1. Old Business

- A. Budget – La Mere-Anderson reviewed and updated the commission. She noted that the budget looks good and pull tab revenue is doing well. Final 2019 budget information will not be available until end of January, 2020. La Mere- Anderson presented the idea of adding a mid-year allocation. It was also suggested to invite the Golden Valley Finance Director to a future meeting to work on the 2021 budget.
- B. City Council Meeting Update from December 3, 2019 – Black updated the commission on the allocation request presented to council in December. He shared how council approved the funding request of \$78,500 and thanked the commission for all their work.



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2. New Business

A. Run the Valley, Saturday, April 18, 2020

- i. Sponsorship – Black spoke about the role of sponsors at our events. The sponsor list for Run the Valley 2019 was reviewed and updated for 2020. Commissioners selected businesses they would contact. Black requested that the sponsor form be sent, electronically, to all commission members. A sponsorship funding goal of \$8,000 was agreed upon.
- ii. Registration – Staff Liaison, Erickson, updated the commission that registration is now being taken and that people can register online, on the Run the Valley webpage, and in person at Brookview.
- iii. Volunteers – Staff Liaison, Erickson, mentioned the need for volunteers and asked commission members to reach out to people who may be available to volunteer. Vento said that she would work to find at least 12 volunteers from Armstrong High School.

B. Review Member Roster – Staff Liaison, Erickson, asked people to review and update the commission roster with contact information.

C. Council allocation request in 2020 - Staff Liaison, Erickson, told the commission that council will review the allocation request for 2021, at the November 17, 2020, Golden Valley Council Meeting. This is earlier than in past years. La-Mere Anderson noted that the application for funding should be posted early, due to the earlier date.

Adjourn

MOTION by Black at 7:35 pm, Devitt 2nd



Aaron Black, Chair



Brian Erickson, Staff Liaison



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EXECUTIVE SUMMARY

Administrative Services

763-593-8013 / 763-593-3969 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. E. 1. Authorize Subscription Agreement with Cartegraph Systems LLC

Prepared By

Adam Knauer, IT Supervisor
Sue Virnig, Finance Director

Summary

The City has made significant investments in its infrastructure, including mapping and data that support the physical infrastructure. Staff purchased Cartegraph to help inventory, track, and report maintenance of many public assets and provide more efficient and effective customer service. The City is managing the following assets in Cartegraph:

- vehicle maintenance fleet and parts
- sanitary sewer mains and structures
- water mains, laterals, hydrants, valves, main break reporting, meter inventory
- storm sewer mains and structures
- stormwater treatment facilities, ponds and wetlands, MPCA stormwater permit reporting
- street segments, pavement condition and analysis
- pavement markings (striping)
- street signs
- City trees
- snow plowing
- sanitary I & I compliance and FOG ordinance compliance
- ROW and stormwater permits inspection and compliance
- parks, ice rink maintenance, mowing, playground inspections
- sidewalk and ramp ADA compliance

Cartegraph is integrated with ESRI Geographic Information System (GIS) mapping technology to provide powerful spatial analysis and mapping capabilities. As part of the Cartegraph renewal, the City's GIS licensing must also be renewed. The City received a quote from ESRI to continue its Enterprise Licensing Agreement for three years.

The cost to renew Cartegraph for three years is \$130,164.49. The cost to renew GIS licensing is \$25,000 per year for a total of \$75,000 for three years.

Financial Or Budget Considerations

The purchase agreement is for three years. Year 1 (2020) is \$41,052 for software and \$1,030 for technical support. Year 2 (2021) is \$42,329.92 for software and \$1,060 for technical support. Year 3 (2022) is \$43,599.84 for software and \$1,092.73 for technical support. The 2020 Information Services budget has \$52,000 for Cartegraph. The proposed 2021 Information Services budget has \$52,000. We will be adding the same amount for the proposed 2022 budget later this year.

Recommended Action

Motion to authorize the Mayor and City Manager to execute the Subscription Agreement with between Cartegraph Systems, LLC and the City of Golden Valley in the form approved by the City Attorney for the next three years for a total of \$130,164.49.

Supporting Documents

- Purchase Agreement with Cartegraph Systems, LLC (27 pages)

Purchase Agreement

Cartegraph is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between **City of Golden Valley** (hereinafter referred to as "**Customer**") and **Cartegraph Systems LLC** (hereinafter referred to as "**Cartegraph**"). In the case that any terms or conditions provided in the Cartegraph Solutions Agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Cartegraph Solutions Agreement shall control.

Customer Bill To:	Customer Ship To:
City of Golden Valley 7800 Golden Valley Golden Valley, MN 55427	Same

Investment Summary

The Addendums attached hereto, include:

Addendum A – Support Services

Cartegraph's proposed fees for this project are included in the summary below.

Today's Date: January 21, 2020

Signature February 28, 2020
Expiration Date:

Purchase #PA1237
Agreement No.:

	Purchase Type	Qty.	Unit Price	Total Price
YEAR 1				
SOLUTIONS				
Cartegraph OMS – Platform - Enterprise	Subscription, Cartegraph Cloud Deployment 2/28/2020-2/27/2021	1	\$18,025.00	\$18,025.00
Cartegraph OMS Extension	Advanced Work Management Subscription	1	\$3,862.50	\$3,862.50
Cartegraph OMS Extension	Advanced Asset Management Subscription	1	\$3,862.50	\$3,862.50
Cartegraph OMS Extension	Advanced User Tools Subscription	1	\$2,575.00	\$2,575.00
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,300.00	\$10,300.00
Test Environment	Test Environment	1	\$2,427.00	\$2,427.00
TECHNICAL SUPPORT				
Systems Integration Support	Fixed Fee On-Premise Support #Q12122016; Gasboy	1	\$1,030.00	\$1,030.00
YEAR 1 SUB-TOTAL				\$42,082.00

YEAR 2				
SOLUTIONS				
Cartegraph OMS – Platform - Enterprise	Subscription, Cartegraph Cloud Deployment 2/28/2021-2/27/2022	1	\$18,565.75	\$18,565.75
Cartegraph OMS Extension	Advanced Work Management Subscription	1	\$3,978.38	\$3,978.38
Cartegraph OMS Extension	Advanced Asset Management Subscription	1	\$3,978.38	\$3,978.38
Cartegraph OMS Extension	Advanced User Tools Subscription	1	\$2,652.25	\$2,652.25
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,609.00	\$10,609.00
Test Environment	Test Environment	1	\$2,546.16	\$2,546.16
TECHNICAL SUPPORT				
Systems Integration Support	Fixed Fee On-Premise Support #Q12122016; Gasboy	1	\$1,060.00	\$1,060.00
YEAR 2 SUB-TOTAL				\$43,389.92
YEAR 3				
SOLUTIONS				
Cartegraph OMS – Platform - Enterprise	Subscription, Cartegraph Cloud Deployment 2/28/2022-2/27/2023	1	\$19,122.75	\$19,122.75
Cartegraph OMS Extension	Advanced Work Management Subscription	1	\$4,097.73	\$4,097.73
Cartegraph OMS Extension	Advanced Asset Management Subscription	1	\$4,097.73	\$4,097.73
Cartegraph OMS Extension	Advanced User Tools Subscription	1	\$2,731.82	\$2,731.82
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,927.27	\$10,927.27
Test Environment	Test Environment	1	\$2,622.54	\$2,622.54
TECHNICAL SUPPORT				
Systems Integration Support	Fixed Fee On-Premise Support #Q12122016; Gasboy	1	\$1,092.73	\$1,092.73
YEAR 3 SUB-TOTAL				\$44,692.57
TOTAL COST (3-YEAR TERM)				\$130,164.49

NOTES:

The pricing listed above does not include applicable sales tax.

Hosting includes 50G of available file storage. If additional storage is required, the Customer can purchase in 50G increments.

Payment Terms and Conditions

In consideration for the Solutions and Services provided by **Cartegraph** to **Customer**, **Customer** agrees to pay **Cartegraph** the Fees in U.S. Dollars as described below:

1. **Delivery:** Customer shall be provided with the ability to access and use the Solutions upon execution of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** Customer agrees to work with Cartegraph to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Solutions Invoicing:** The Fee for Solutions will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
 - a. \$41,052.00 due upon execution of the Purchase Agreement.
 - b. \$42,329.92 due 15 days prior to 1st year anniversary of term start date.
 - c. \$43,599.84 due 15 days prior to 2nd year anniversary of term start date.
4. **Technical Support:** Invoicing for the Technical Support fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
 - a. \$1,030.00 due upon execution of the Purchase Agreement.
 - b. \$1,060.00 due 15 days prior to 1st year anniversary of term start date.
 - c. \$1,092.73 due 15 days prior to 2nd year anniversary of term start date.
5. **Payment Terms:** All payments are due Net 30 days from start date of invoice.

BY SIGNING BELOW, THE PARTIES AGREE THAT ALL USE AND ACCESS TO THE SOLUTIONS DESCRIBED IN THIS PURCHASE AGREEMENT SHALL BE GOVERNED BY THE CARTEGRAPH SOLUTIONS AGREEMENT, WHICH CAN BE REVIEWED AT: <https://www.cartegraph.com/solutions-agreement/>. THE PARTIES AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CARTEGRAPH SOLUTIONS AGREEMENT AND THIS PURCHASE AGREEMENT REFERENCED HEREIN.

CARTEGRAPH: Cartegraph Systems LLC

CUSTOMER: City of Golden Valley, MN

By _____
(Signature)
Mitch Bradley

(Type or print name)

By _____
(Signature)

(Type or print name)

Title _ SVP of Sales & Marketing _____

Title _____

Date _____

Date _____

Cartegraph Systems LLC
Addendum A - Support Services
Cartegraph Support and Training Services – Scope of Work

The Support Services listed in the Investment Summary of the Purchase Agreement are specific Cartegraph Services which will be delivered to the Customer based on the descriptions below and on the terms and conditions and subject to the limitations set forth in this Addendum A, the applicable Purchase Agreement, and the Cartegraph Solutions Agreement. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes.

As part of Customer's subscription to access and use of the Cartegraph Solutions, Customer will receive:

1. Support Services

a. Campus – www.campus.cartegraph.com

Our User Assistance area is a convenient and easily-shareable resource designed to help you and your co-workers better understand the functions and capabilities of your Cartegraph Solutions. Instantly access user tips, step-by-step instructions, videos, and more.

b. Dedicated, Unlimited, Toll-free Phone Support - 877.647.3050 and Live Chat

When questions need answers and difficulties arise, count on our industry-leading Support team to provide the guidance and assistance you need. Reach us as often as you need Monday-Friday, 7:00 am-7:00 pm CT. Live Chat is available within the product or through Campus.

c. Support via Case Submittal or Email

If a phone call or live chat is not your best option, you can always request support via our online case submittal form available in Campus or via email. Email support is available at support@cartegraph.com.

2. Training & Education Services

a. Convenient Online Resources: All the information you need, one click away. Take advantage of online training opportunities, tutorial videos, upcoming event information, and more.

b. Customer Led User Groups: Meet and network with similar Cartegraph users in your region. Customer led User Groups allow you to find out what other organizations are doing to get more from their Cartegraph solutions and services.

3. Releases & Upgrades

a. New Releases: Cartegraph is continuously innovating and enhancing the Cartegraph OMS collection of products. As a customer with an active subscription, you will receive each new release of the software.

- i. Cloud-hosted customers: Your cloud-hosted site will be upgraded by our Cartegraph System Consultants after the release is available.
- ii. On-premise customers: For your on-premises installation, our Technical Consultants will work with your organization's IT staff to deliver the latest software release. Software will be made available after installation to the Cartegraph cloud-hosted customers.

b. Service Packs: A Service Pack consists of lower-severity bug fixes and/or small platform updates.

- i. If required, cloud-hosted sites will receive Service Packs as needed. These Service Packs are installed by the Cartegraph System Consultants.
- ii. On-premises customers that contacted Cartegraph Technical Support about an issue that is resolved with the Service Pack, will be provided the service pack for installation. These on-premises customers can then schedule a time to install the Service Pack with our Technical Support team

c. Hot Fixes: If an issue is determined to be a defect and falls outside the standard release cycle, Cartegraph will issue a hot fix and provide application specialists with detailed levels of product knowledge to work with you in achieving a timely and effective resolution

Cartegraph will provide the Support Services only to Customer, provided that Cartegraph reserves the right to contact any third party as necessary to facilitate the delivery of Support Services or other services relating to the Solutions. Said support applies only to the most current version of the product and the previous version in succession.

All Support Services are dependent upon the use by Customer of the Solutions in accordance with Cartegraph's documentation and specifications. Cartegraph is under no obligation to modify the Solutions so that the modified Solutions would depart from Cartegraph's published documentation and specifications for such Solutions.

**ADDENDUM TO CARTEGRAPH SOLUTIONS AGREEMENT,
DATED MARCH 28, 2018**

THIS ADDENDUM is dated today', and contains terms intended to supersede and clarify the terms set forth in that certain Cartegraph Solutions Agreement, to which this Addendum is attached and incorporated by this reference.

Section 14.2 is hereby amended to read:

14.2 Exceptions.

Unless prohibited by law, the Receiving Party's obligations with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already lawfully known to the Receiving Party as of the Effective Date; (b) is disclosed to the Receiving Party after the Effective Date by a third party who had the right to make such disclosure without any confidentiality restrictions; or (c) is, or through no fault of the Receiving Party becomes, generally available to the public. The Receiving Party may disclose the Confidential Information of the Disclosing Party if compelled or required to do so by law, or by a court of competent jurisdiction or other governmental entity having jurisdiction over the Receiving Party, provided that the Receiving Party provides the Disclosing Party with notice of such requirement and provides reasonable assistance to the Disclosing Party in any attempts to contest such disclosure or obtain a protective order or other applicable limitation with respect to such disclosure.

Section 14.3 is hereby amended to read:

14.3 Return of Confidential Information.

The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the request of the Disclosing Party or when such Confidential Information is no longer needed in connection with its performance under this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with the foregoing obligations. It is expressly agreed and understood that Customer may not be required to destroy any records or documents unless such destruction complies with Customer's Records Retention Schedule and is otherwise compliant with the requirements of Minnesota Statutes, section 138.17.

Section 16 is hereby removed.

BY EXECUTING THIS ADDENDUM CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES IN ADDITION TO ANY EXHIBITS AND PURCHASE AGREEMENTS AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

CARTEGRAPH: Cartegraph Systems LLC

By _____
(Signature)

Mitch Bradley

(Type or print name)

Title _ SVP of Sales & Marketing _____

Date _____

CUSTOMER: City of Golden Valley, MN

By _____
(Signature)

(Type or print name)

Title _____

Date _____

CARTEGRAPH SOLUTIONS AGREEMENT

Last Modified: 03/28/2018

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This Cartegraph Solutions Agreement (“Agreement”) is a contract between Cartegraph Systems LLC, a Delaware corporation, having its principal place of business at 3600 Digital Drive, Dubuque, Iowa 52003 (“Cartegraph”) and you, or if you represent an entity or other organization, that entity or organization, (in either case, the “Customer”). Cartegraph and Customer may be referred to in this Agreement collectively as the “parties” or individually as a “party.”

Cartegraph provides certain hosted operations management and asset management solutions (the “Cartegraph Solutions” or “Solutions”). Customer desires to purchase a subscription to access and use certain of the Cartegraph Solutions for Customer’s own internal use and operations.

This Agreement sets forth the terms and conditions under which Cartegraph will agree to provide Customer with a subscription to access and use those Solutions specified in written Purchase Agreements referencing this Agreement entered into by Cartegraph and Customer (each, a “Purchase Agreement”) and perform those services specified in each Purchase Agreement (the services provided by Cartegraph under this Agreement, including the services made available through the Solutions, the “Services”). All access to and use of the Solutions and the performance of all Services are subject to the terms of this Agreement.

This Agreement includes any Purchase Agreement entered into by the parties referencing this Agreement and any written Addendum attached to a Purchase Agreement, including descriptions of any Solutions or Services (each, an “Addendum”), all of which are hereby incorporated into and made a part of this Agreement. Unless you later enter into any other Agreement with Cartegraph regarding the Solutions and Services, this Agreement is the complete and exclusive statement of the agreement between the parties and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties, in relation to the subject matter of this Agreement. Terms used in this Agreement will have the definitions given in this Agreement or, if not defined in this Agreement, will have their plain English (US) meaning.

PLEASE CAREFULLY READ THIS AGREEMENT. BY ACCEPTING THIS AGREEMENT, THROUGH THE EXECUTION OF A PURCHASE AGREEMENT THAT REFERENCES THIS AGREEMENT, OR BY CLICKING A BOX THAT STATES THAT YOU ACCEPT OR AGREE TO THIS AGREEMENT, YOU AGREE THAT YOU

HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, OR DO NOT MEET THE QUALIFICATIONS INCLUDED IN THIS AGREEMENT OR ANY PURCHASE AGREEMENT, CARTEGRAPH IS NOT WILLING TO PROVIDE YOU, AS CUSTOMER, WITH ACCESS TO OR USE OF CARTEGRAPH SOLUTIONS OR SERVICES, AND YOU MUST NOT ACCESS OR USE CARTEGRAPH SOLUTIONS OR SERVICES. IF YOU ACCESS OR USE CARTEGRAPH SOLUTIONS OR SERVICES, YOU ACKNOWLEDGE THAT YOU MEET THE QUALIFICATIONS INCLUDED IN THIS AGREEMENT AND ANY PURCHASE AGREEMENT, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS HEREIN.

1. TERM.

The term of this Agreement shall begin upon the execution of an initial Purchase Agreement under this Agreement and, unless earlier terminated as permitted herein, shall continue for the period of time specified in that Purchase Agreement (“Initial Term”). The execution of any subsequently added Purchase Agreement under this Agreement shall not extend the Initial Term unless otherwise expressly stated in that Purchase Agreement. Unless otherwise stated in an applicable Purchase Agreement under this Agreement, the Initial Term of this Agreement shall automatically renew for successive additional 1 year renewal periods (each, a “Renewal Term”) unless either party provides the other party with written notice of its intent not to renew this Agreement at least 60 days before the end of the Initial Term or any such Renewal Term.

2. SOLUTIONS.

2.1 FUNCTIONALITY.

The Solutions will include the functionality described in the applicable Purchase Agreement or Addendum for each Solution. Cartegraph may from time to time update, change, or revise the functionality of the Solutions, provided the functionality of the Solutions is not materially decreased from that described in the applicable Purchase Agreement or Addendum to a Purchase Agreement.

2.2 SUBSCRIPTION.

Subject to the terms and conditions of this Agreement, during the term of this Agreement Cartegraph will provide Customer with a non-exclusive, non-transferable, and non-sublicensable subscription to allow employees and independent contractors of Customer (“Users”) to access and use the Solutions, solely for purposes of Customer’s own internal use and operations. If Customer has purchased a per-user subscription, as indicated in the applicable Purchase Agreement, only the finite

number of subscriptions indicated in each applicable Purchase Agreement have been purchased by Customer and only that finite number of Users may access and use the Solutions at any given time. If Customer has purchased an unlimited subscription, as indicated in the applicable Purchase Agreement, all Users associated with Customer are permitted to access and use the Solutions at any given time. In either case, the subscription applies only to the Users and does not allow access to or use of the Solutions by any affiliated entities or organizations, or any other entity unless approved in advance by Cartegraph in writing.

2.3 ACCESS.

Customer may access the Solutions solely through the account established for Customer (an "Account"). Customer will be permitted to establish user identifications and passwords through which individual Users may access the Solutions through Customer's Account ("User IDs"). Each User ID is issued to a specific User and may be used only by that User. Customer will ensure that all information about each User provided to Cartegraph in connection with establishing each User ID is accurate and complete and will maintain that information as accurate and complete throughout the term of this Agreement. Customer is and will remain solely responsible for all use of the Solutions by any User and for compliance by each User with the applicable terms of this Agreement. If Customer authorizes an independent contractor or consultant as a User, in addition to being responsible for such independent contractor's or consultant's actions as a User, Customer shall also require such independent contractor or consultant to agree to terms at least as protective of the Solutions as those contained in this Agreement prior to being granted access to the Solutions. Customer will ensure the security and confidentiality of each User ID and will use commercially reasonable efforts to prevent unauthorized access to or use of the Solutions. Customer will notify Cartegraph promptly of any such unauthorized access or use of the Solutions or if any User ID is lost, stolen, or otherwise compromised. Customer acknowledges that Customer is and will remain fully responsible for all costs, fees, liabilities, or damages incurred through any access to or use of the Solutions through Customer's Account or by any User (whether lawful or unlawful) and that any Services used or transactions facilitated through Customer's Account or under any User ID will be deemed to have been completed by Customer. In no event will Cartegraph be liable for the foregoing obligations or any failure by Customer to fulfill such obligations.

2.4 RESTRICTIONS.

The Solutions, the software, hardware, databases, and other technology used by or on behalf of Cartegraph to provide the Solutions (the "Cartegraph Technology"), and their structure, organization,

and underlying data, information, and source code, constitute valuable trade secrets of Cartegraph and its licensors. As a condition to the use of and access to the Solutions, Customer will not, and will not permit any User or other third party to: (a) access or use the Solutions except as expressly permitted by this Agreement; (b) access or use the Cartegraph Technology directly, except through the Solutions as expressly provided in this Agreement; (c) use the Solutions in any unlawful or illegal manner or in any other manner that could damage, disable, overburden or impair the Cartegraph Technology; (d) use automated scripts to collect information from or otherwise interact with the Cartegraph Technology; (e) alter, modify, reproduce, create derivative works of the Cartegraph Technology; (f) distribute, sell, resell, lend, loan, lease, license, sublicense, transfer, or otherwise make available the Solutions or any of Customer's rights to access or use the Solutions or any Service to any third party; (g) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or method of operation of or any trade secrets embodied in the Cartegraph Technology; (h) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Cartegraph Technology; (i) use the Cartegraph Technology for purposes of monitoring their availability, performance or functionality, or for any other benchmarking, business intelligence, data mining, or competitive purposes; or (j) interfere in any manner with the operation or hosting of the Cartegraph Technology.

2.5 THIRD PARTY OFFERINGS.

Customer agrees and acknowledges that certain portions of the Solutions may be provided by third party providers ("Third Party Offerings"). Customer's access to and use of any Third Party Offering is also subject to any other agreement separate from this Agreement that Customer may enter into (or may have entered into) relating to those Third Party Offerings ("Third Party Terms"). In addition to the terms of this Agreement, access to and use of each Third Party Offerings is also subject to the terms and conditions of any Third Party Terms applicable to that Third Party Offering. Except as set forth in this Agreement, any applicable Third Party Terms will control in the event of a conflict between the terms of this Agreement and those Third Party Terms. Except as expressly set forth in any Third Party Terms, You are granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Third Party Offerings.

3. SERVICES.

If Customer enters into a Purchase Agreement, including any applicable Addendum specifying any of the following Services, Cartegraph will use commercially reasonable efforts to provide those Services to Customer during the term of this Agreement. All such Services are provided subject to

the terms and conditions of this Agreement. Cartegraph has no obligation to provide any of the following Services unless specified in a Purchase Agreement or Addendum to this Agreement.

3.1 ON-SITE INSTALLATION SERVICES.

Cartegraph will provide Customer with deployment and installation Services for the Solutions if indicated in a Purchase Agreement (“On-Site Installation Services”). On-Site Installation Services will be subject to scheduling in cooperation with Customer. Customer will provide all equipment and hardware stated in such Purchase Agreement, and any additional equipment and hardware reasonably necessary for the operation of the Solutions. Customer shall be responsible for maintaining the equipment and hardware, which shall include providing sufficient resources (e.g., electricity, HVAC, or other resources) necessary for the equipment and hardware to properly operate. Cartegraph’s warranties and indemnification obligations contained in this Agreement shall be limited to the extent that such obligation arises from Customer’s equipment and hardware. Customer shall coordinate with Cartegraph to provide Cartegraph with the level of access to the equipment and hardware to perform On-Site Installation Services and any other Services as specified in a Purchase Agreement. If no level of access is specified in a Purchase Agreement, then all access by Cartegraph to the equipment and hardware shall be remote access. Unless otherwise specified in a Purchase Agreement, Cartegraph shall have no obligation to perform the On-Site Installation Services, or any other Services, on Customer’s premises. If Cartegraph determines that it is necessary to perform any Services on Customer’s premises, Cartegraph shall first receive approval from Customer prior to performing such Services on Customer’s premises. Cartegraph shall have no responsibility to Customer for any liability to the extent that such liability arises from Customer’s failure to provide Cartegraph sufficient or timely access to the equipment or hardware. Customer understands that Customer does not receive any rights to the Cartegraph Technology separate and apart from Customer’s right to access the Solutions installed on-site by Cartegraph as described in this Agreement. If Customer requires additional rights to access the Solutions, Customer shall obtain Cartegraph’s prior written consent. Upon termination or expiration of this Agreement, Customer will immediately either return to Cartegraph or, at Cartegraph’s discretion, destroy any Cartegraph Technology then in Customer’s possession or control and certify in writing signed by an officer of Customer that it has fully complied with the foregoing obligations.

3.2 SUPPORT SERVICES.

Cartegraph will provide Customer with support Services for the Solutions as specified in Addendum A if such Addendum is attached to a Purchase Agreement (“Support Services”).

3.3 FIELD SERVICES.

Cartegraph will provide Customer with the field implementation Services for the Solutions as specified in Addendum B if such Addendum is attached to a Purchase Agreement (“Field Services”). Field Services will be subject to scheduling in cooperation with Customer.

3.4 DATA SERVICES.

Cartegraph will provide Customer with the data collection Services for the Solutions as specified in Addendum C if such Addendum is attached to a Purchase Agreement (“Data Services”). Data Services will be subject to scheduling in cooperation with Customer.

3.5 PROFESSIONAL SERVICES.

Cartegraph will perform any additional professional Services relating to the Solutions (“Professional Services”) if specified in any written statement of work mutually agreed to by both parties under this Agreement. Cartegraph will perform all Professional Services at the rates for those Professional Services set forth in each applicable statement of work, or, if no rates are set forth in an applicable statement of work, at Cartegraph’s then-current rates for those Professional Services. Professional Services shall be performed during the working hours stated in the statement of work applicable to those Professional Services, or, if no working hours are stated, the Professional Services will be provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard or Central Daylight Time, whichever is applicable, Monday through Friday excluding holidays.

4. SOFTWARE.

Cartegraph may provide Customer with software in connection with the Solutions (“Software”). Unless any Software provided by Cartegraph in connection with the Solutions is subject to a license or other agreement separate from this Agreement that Customer has entered into (or may enter into) with Cartegraph (a “Software License Agreement”), Cartegraph grants Customer a limited, non-exclusive, non-transferrable, non-assignable, license solely to install and execute the Software in accordance with the instructions provided by Cartegraph for Customer’s own internal use and operations in connection with Customer’s access to and use of the Solutions. Except as expressly set forth in the foregoing sentence (or any applicable Software License Agreement), Customer is granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Software, and Customer may not modify, reproduce, perform, display, create derivative works from, republish, post, transmit, transfer, sell, distribute, or in any way exploit any Software without the prior written

permission of Cartegraph. Except as set forth in this Agreement, the terms of any Software License Agreement will control in the event of a conflict between the terms of this Agreement and that Software License Agreement. Customer agrees that use of the Software is limited as described in the Purchase Agreement, as either: (1) Browser Based User – Each browser based User is defined by User ID; or For Server Software – One copy of Software for each server. Customer agrees that Cartegraph may audit Customer's Software usage remotely or on-site upon reasonable notice and during standard business hours. Prevention of audit by Customer may be grounds for termination of this Agreement. Cartegraph and its licensors will not be responsible to Customer for loss of use of any Software or for any other liabilities arising from alterations, additions, adjustments, or repairs which are made to any Software by Customer or other third parties. Cartegraph reserves the right to terminate the licenses granted to any Software or any Services provided in connection with that Software upon written notice to Customer if any such alteration, addition, adjustment, or repair adversely affects Cartegraph's ability to render Services.

5. FEES AND PAYMENT.

5.1 FEES.

Customer agrees to pay Cartegraph all fees specified in any Purchase Agreement and as otherwise specified in this Agreement ("Fees").

5.2 PAYMENT.

All Fees will be invoiced in advance in accordance with the terms applicable to such Fees. If no terms for an applicable Fee are set forth in the applicable Purchase Agreement, such Fees will be invoiced on a monthly basis following the end of the month in which they were incurred. All Fees as set forth on each invoice issued by Cartegraph under this Agreement will be due and payable by Customer in immediately available U.S. funds within 30 days of the date of invoice. If Customer has not made payment within 30 days of the date of invoice, Customer shall be in default. Customer's default will constitute sufficient cause for Cartegraph to suspend Customer's access to the Solutions or any Services upon notice to Customer. All Fees will be non-refundable once paid to Cartegraph (including upon any termination or suspension of this Agreement). Until paid in full, all past due amounts will bear an additional charge of the lesser of 1½% per month or the maximum amount permitted under applicable law. If Cartegraph requires use of collection agencies, attorneys, or courts of law for collection on Customer's account, Customer will be responsible for those expenses. Customer will

be responsible for all use, sales, and other taxes imposed on the Services provided under this Agreement.

5.3 TAXES.

The Fees do not include any local, state, provincial, federal or foreign taxes, levies, assessments, duties, or other governmental charges of any kind or nature, including, without limitation, any value-added tax (VAT), stamp or other similar tax, social security (or local equivalent), state or regional tax, or income or other federal tax ("Taxes"). Customer is responsible for paying all Taxes that may be imposed by way of the performance of either party under this Agreement, excluding only Taxes based on Cartegraph's net income. If Cartegraph is found or deemed to have a legal obligation to pay or collect any Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Cartegraph with a valid tax exemption certificate authorized by the appropriate taxing authority.

5.4 FEE INCREASES.

Cartegraph may increase the Fees applicable to Customer to the then-current prices for the next Renewal Term by providing notice of such increase at least 60 days before the beginning of such Renewal Term. . If after receiving such notice Customer wishes not to renew the Agreement for the next Renewal Term, Customer must provide written notice to Cartegraph of Customer's intent not to renew this Agreement at least 60 days before the end of the Initial Term or any such Renewal Term.

5.5 EXPENSES.

Customer shall reimburse Cartegraph for reasonable expenses incurred during the provision of Services. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred. Estimated expenses shall be included in each Purchase Agreement. Cartegraph shall not exceed the estimated expenses without written approval from Customer.

6. TERMINATION.

6.1 TERMINATION FOR CAUSE.

Either party may terminate this Agreement immediately upon notice to the other party if the other party: (a) materially breaches this Agreement and fails to remedy such breach within 30 days after

receiving notice of the breach from the other party; (b) materially breaches this Agreement in a manner that cannot be remedied; or (c) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, or ceases to operate in the ordinary course of business.

6.2 SERVICE DISCONTINUANCE.

If Cartegraph at any time discontinues offering any Solutions or any Services to new customers, Cartegraph will give Customer reasonable advance notice of such discontinuation. Upon such date of discontinuation, Cartegraph will have the right to terminate this Agreement as to those Solutions or Services upon notice to Customer. As of the date of termination, Cartegraph will credit to Customer, on a pro-rated basis, any pre-paid Fees under this Agreement and Cartegraph shall have no further obligation to provide the Solutions or any Service under this Agreement.

6.3 SUSPENSION.

Without limiting Cartegraph's right to terminate this Agreement, Cartegraph may suspend Customer's access to the Solutions or any Services upon notice to Customer following any breach of this Agreement if deemed reasonably necessary by Cartegraph to prevent any damage, injury, or harm to Cartegraph, the Cartegraph Technology, any other Cartegraph customer, or any third party.

6.4 EFFECT OF TERMINATION.

All Purchase Agreements shall terminate immediately upon termination of this Agreement. Upon termination or expiration of this Agreement for any reason, and following any applicable Transition Period: (a) Cartegraph may cease providing access to all Solutions and Services under this Agreement; (b) all subscriptions and other rights and licenses granted to Customer under this Agreement will terminate; (c) Customer will immediately cease all use of and access to all Solutions and Services; (d) all Fees and other amounts then owed by Customer under this Agreement will become immediately due and payable to Cartegraph; (e) Customer will immediately either return to Cartegraph or, at Cartegraph's discretion, destroy any Cartegraph Data and Cartegraph Confidential Information (each as defined below) then in Customer's possession or control; and (f) Cartegraph will either return to Customer or, at Customer's discretion, destroy any Customer Data and Customer Confidential Information) then in Cartegraph's possession or control. The following Sections will survive termination or expiration of this Agreement for any reason: 5 (Fees and Payment), 6.4 (Effect of Termination), 7 (Ownership), 10 (Disclaimer), 11 (Indemnification), 12 (Limitation on Liability), 14

(Confidentiality), 15 (Governing Law), 16 (Non-Solicitation), 17 (Force Majeure), 18 (Notice), and 19 (Additional Terms).

6.5 TRANSITION SERVICES.

Except in the case of a termination under Section 6.1 by Cartegraph, at any time prior to the effective date of any termination or expiration of this Agreement, Customer may request that Cartegraph continue to provide Customer with any Services then provided under this Agreement for purposes of transitioning and migrating Customer off of the Solutions (“Transition Services”). Upon such request, the parties will develop a mutually agreed to transition plan describing the Transition Services and each party’s respective obligations in connection with the transition and migration of Customer off of the Solutions (“Transition Plan”). Cartegraph will provide the Transition Services for the period agreed to in the Transition Plan, such period not to exceed 180 days following termination or expiration of this Agreement (the “Transition Period”). Customer will compensate Cartegraph for all Transition Services at rates specified in the Transition Plan or, if no rates are agreed upon by the parties prior to the performance of the Transition Services, at Cartegraph’s then current rates for the Services. All Transition Services will otherwise be subject to the terms of this Agreement.

7. OWNERSHIP.

Cartegraph retains all right, title, and interest in and to the Solutions, Cartegraph Technology, Cartegraph Data, any additions, improvements, updates, new versions, or other modifications thereto created by either party, whether or not through the Services, alone, jointly, or with any third party, and all IPR (as defined below) therein and related thereto. Customer does not receive any ownership interest in or to any of the foregoing, and no right or license is granted to Customer to use any of the foregoing apart from Customer’s right to access and use the Solutions under this Agreement. Customer will perform all acts reasonably necessary to assist Cartegraph in perfecting and defending Cartegraph’s ownership interest in any of the foregoing. Without limiting the foregoing, Customer agrees to and does hereby make all assignments necessary to provide Cartegraph with the ownership rights set forth in this Section. All names and logos associated with the Solutions and other Services are trademarks of Cartegraph (or its third party providers) and no right or license is granted to Customer to use them. Any rights not expressly granted to Customer hereunder are reserved by Cartegraph. Customer will not remove or alter any proprietary rights legend on the Solutions, Cartegraph Technology, or Cartegraph Data. For purposes of this Agreement, “IPR” means any and all intellectual property and other proprietary rights throughout the world, including, all

copyrights, trademarks, service marks, trade secrets, patent rights, moral rights, rights in data and databases, and contract rights.

8. DATA.

8.1 CUSTOMER DATA.

As between Customer and Cartegraph, Customer retains ownership of all data, information, and other content provided to Cartegraph or through the Solutions by or on behalf of Customer (“Customer Data”). Customer is responsible for all Customer Data, including the accuracy, quality, integrity, legality, reliability, and appropriateness thereof. Customer will obtain and maintain all authorizations, approvals, permissions, and other rights necessary for Cartegraph to use and process all Customer Data in the performance of the Services and any other obligations of Cartegraph under this Agreement. Customer will maintain an adequate back-up of all Customer Data and, except for any express obligations of Cartegraph to maintain back-up copies of Customer Data, Cartegraph will not be responsible or liable for any deletion, correction, destruction, damage, loss, or failure to store or back-up any of Customer Data.

8.2 CARTEGRAPH DATA.

As between Cartegraph and Customer, Cartegraph retains ownership of all data, information, and other content provided to Customer through the Solutions and the other Services, excluding any Customer Data (“Customer Data”). Subject to the terms of this Agreement, Customer may access the Cartegraph Data without modification solely for Customer’s own internal business purposes in connection with Customer’s use of and access to the Solutions. Cartegraph uses commercially reasonable measures to ensure the accuracy and reliability of all Cartegraph Data, but except as expressly provided herein Cartegraph will not be responsible for any erroneous data, information, or content provided through the Solutions. Except as expressly provided in this Agreement, Customer is granted no rights in or to the Cartegraph Data.

8.3 DATA SECURITY.

Cartegraph shall establish and maintain during the term an information security policy providing for reasonable administrative, technical, physical safeguards and security measures designed to protect against the unintended or unauthorized destruction, loss, alteration, or access of any Customer Data in the possession or control of Cartegraph, which safeguards and measures are compliant with applicable federal, state, provincial, or local laws, rules, and regulations (“Laws”). Customer will

establish and maintain during the term reasonable and appropriate administrative, technical, and physical safeguards and security measures designed to protect against the unintended or unauthorized destruction, loss, alteration, or access of any Cartegraph Data in the possession or control of Customer, which safeguards and measures are consistent with applicable Laws. Each party will promptly notify the other party of any data security breach or similar incident that has, or might have, compromised the privacy or security of any Customer Data or, in the case of Customer, any Cartegraph Data in the possession or control of such party. Each party will indemnify and hold harmless the other party from and against any damages or losses asserted against or incurred by the other party arising out of or related to a breach of a party's data security obligations.

8.4 DATA PRIVACY.

Cartegraph may use and disclose data and information collected through the operation of the Solutions solely as described in this Agreement and in Cartegraph's then-current privacy policy applicable to the Solutions. Notwithstanding anything to the contrary in the privacy policy, Cartegraph will have the right to collect and analyze non-personal information (data or information that does not identify an entity or natural person as the source thereof) resulting from Customer's access to and use of the Solutions. To the extent any such non-personal information is collected or generated by Cartegraph, the data and information may be used by Cartegraph, or its permitted service providers, for any lawful business purpose, provided that the data and information is used only in an aggregated form, without directly identifying Customer, or any other User, as the source thereof.

9. REPRESENTATIONS AND WARRANTIES.

9.1 GENERAL.

Each party represents, warrants, and covenants to the other party that: (a) it has and will continue to have during the term hereof, all rights, power, and authority necessary to enter into this Agreement and perform all of its obligations under this Agreement; (b) the performance of its obligations under this Agreement does not and will not violate any Law applicable to such party's performance, any rights of any third party, or any agreement by which such party is bound; and (c) it will procure all rights, certificates, licenses, permits, or other approvals required for its performance under this Agreement.

9.2 PERFORMANCE.

During the term of this Agreement, Cartegraph represents and warrants to Customer that Cartegraph will use commercially reasonable efforts to maintain and verify that the Solutions operate in accordance with the applicable documentation for the Solutions provided to Customer by Cartegraph and in accordance with any other levels of performance specified in this Agreement or applicable Purchase Agreement. Cartegraph's sole obligation and Customer's sole and exclusive remedy in the event of any failure of the Solutions to comply with any such performance levels will be for Cartegraph to, at its option: (a) remedy the failure or re-perform the affected Services; or (b) refund Customer the portion of any Fees applicable to the portion of the Solutions subject to the failure.

9.3 NON-INFRINGEMENT.

Cartegraph represents and warrants to Customer that the use by Customer of the Solutions during the term and in accordance with this Agreement (the "Covered Services") will not infringe any third party U.S. patent or copyright or misappropriate any third party trade secret in existence under any Laws of any state within the U.S. As Cartegraph's sole obligation and Customer's sole and exclusive remedy for of any failure by Cartegraph to comply with the foregoing sentence, Cartegraph will defend Customer against any such failure as set forth in Section 11.2.

10. DISCLAIMER.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOLUTIONS AND ALL SERVICES UNDER THIS AGREEMENT, AND ALL CARTEGRAPH DATA PROVIDED THROUGH THE SOLUTIONS OR THOSE SERVICES, ARE PROVIDED TO CUSTOMER STRICTLY "AS IS" AND "AS AVAILABLE" AND CARTEGRAPH AND ITS PROVIDERS EXPRESSLY DISCLAIM, AND CUSTOMER DISCLAIMS ANY RELIANCE ON, ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD THERETO OR TO ANY OTHER SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AVAILABILITY OR ERROR-FREE OPERATION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CARTEGRAPH, ITS EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS WILL INCREASE THE SCOPE OF, OR CREATE ANY NEW WARRANTIES IN ADDITION TO, THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT.

11. INDEMNIFICATION.

11.1 GENERAL.

Each party (the “Indemnifying Party”) will defend the other party and its officers, directors, employees, and agents (its “Related Parties”) from and against any claim, allegation or action (any “Action”) brought against the other party or one of its Related Parties by a third party (other than by the other party itself or another of its Related Parties) to the extent relating to, resulting from, or arising out of the gross negligence or willful misconduct of the Indemnifying Party in the performance (or failure to perform) any of its obligations under this Agreement. The Indemnifying Party will further pay those losses, liabilities, damages, fees, expenses, and costs (including reasonable attorneys’ fees and court costs) (“Losses”) finally awarded against the other party or one of its Related Parties in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable.

11.2 NON-INFRINGEMENT.

Cartegraph will defend Customer from and against any Action brought against Customer by a third party (other than a Customer Related Party) that the use by Customer of the Covered Services infringes any U.S. patent, or copyright or misappropriates any trade secret in existence under any Laws of any state within the U.S. Cartegraph will pay those Losses finally awarded against Customer in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable. If Customer is, or Cartegraph reasonably believes Customer may be, enjoined from using any Covered Service due to an Action covered by this Section, Cartegraph may procure the right for Customer to continue using the Covered Service, replace or modify the Covered Service so that it becomes non-infringing, or terminate this Agreement and provide Customer a refund of any pre-paid amounts applicable to the Covered Service (if any). Cartegraph will have no obligation under this Section or otherwise with respect to any Action or Losses in the case of: (a) any use of any Covered Service other than by Customer; (b) any use of any Covered Service not under and in accordance with this Agreement; (c) any use of any Covered Service in combination with products, equipment, services, processes, software, data or information not supplied by Cartegraph; or (d) any modification of or enhancement to any Covered Service other than by Cartegraph. This Section constitutes Cartegraph’s sole and exclusive liability, and Customer’s sole and exclusive remedy, for any infringement or misappropriation of IPR or any other rights relating to the solutions.

11.3 BY CUSTOMER.

Customer will defend Cartegraph and its Related Parties from and against any Action brought against Cartegraph or one of its Related Parties by a third party (other than by Cartegraph or another Cartegraph Related Party) to the extent relating to, resulting from, or arising out of any: (a) any

violation of any Law caused by the use of or access to the Solutions by Customer; or (b) any claim or allegation by a User or other third party relating to use of or access to the Solutions or any Services by Customer. Customer will only pay those Losses finally awarded against Cartegraph in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable.

11.4 CONDITIONS.

All obligation of each party to defend or indemnify the other party or any Related Party under this Agreement are conditioned upon the party seeking defense or indemnification (the "Indemnified Party") providing the other party with: (a) prompt notice of any such claim for indemnification or defense after receiving notice thereof; (b) sole control over the defense and settlement of such claim, provided that any settlement that will require the other party to assume any liability other than the payment of monies will be subject to the other party's prior written consent; and (c) reasonable assistance in such defense or settlement (at the indemnifying or defending party's expense).

12. LIMITATION ON LIABILITY.

IN NO EVENT WILL CARTEGRAPH BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THIS AGREEMENT, INCLUDING THE USE OF OR ACCESS TO THE SOLUTIONS OR ANY SERVICES OR THE CARTEGRAPH TECHNOLOGY (OR ANY CARTEGRAPH DATA), EVEN IF CARTEGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING ANY LOSS OF DATA, OPPORTUNITY, LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE SERVICES. CARTEGRAPH'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOLUTIONS, AND ALL SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO CARTEGRAPH HEREUNDER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING CAUSE TO SUCH LIABILITY. CUSTOMER AGREES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGE THAT CARTEGRAPH WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, CARTEGRAPH'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

13. INSURANCE.

If Cartegraph will provide Services at Customer's location, Cartegraph will carry commercial general liability insurance with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit, business auto liability insurance with a limit of \$1,000,000 and workers compensation insurance with statutory coverage.

14. CONFIDENTIALITY.

14.1 PROTECTION.

Each party (the "Receiving Party") may from time to time receive or otherwise obtain data or information regarding the business, finances, services, or technology of the other party (the "Disclosing Party"), including, without limitation, technical, advertising, marketing, sales, financial, pricing, employee, customer, and planning information, or any other information that by its very nature the Receiving Party should know is confidential ("Confidential Information"). The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or permitted contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information in the same manner as the Receiving Party protects its own confidential information of a similar nature and with no less than reasonable care.

14.2 EXCEPTIONS.

The Receiving Party's obligations with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already lawfully known to the Receiving Party as of the Effective Date; (b) is disclosed to the Receiving Party after the Effective Date by a third party who had the right to make such disclosure without any confidentiality restrictions; or (c) is, or through no fault of the Receiving Party becomes, generally available to the public. The Receiving Party may disclose the Confidential Information of the Disclosing Party if compelled or required to do so by a court of competent jurisdiction or other governmental entity having jurisdiction over the Receiving Party, provided that the Receiving Party provides the Disclosing Party with notice of such requirement and provides reasonable assistance to the Disclosing Party in any attempts to contest such disclosure or obtain a protective order or other applicable limitation with respect to such disclosure. In any event, the Receiving Party will be entitled to receive payment of its expenses and costs actually incurred in

responding to such disclosure request and will disclose only such portion of any Confidential Information as it is legally compelled or required to disclose.

14.3 RETURN OF CONFIDENTIAL INFORMATION.

The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the request of the Disclosing Party or when such Confidential Information is no longer needed in connection with its performance under this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with the foregoing obligations.

15. GOVERNING LAW.

The interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any negotiations, arbitrations or other proceedings hereunder, will be governed in all respects exclusively by the laws of the state/province where the Customer has its principal place of business. Each party agrees that it will bring any action or proceeding arising from or relating to this Agreement exclusively in a federal or state/provincial court in the state/province where the Customer has its principal place of business, and each party irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts.

16. NON-SOLICITATION.

During the term of this Agreement and for a period of 12 months thereafter, Customer will not, directly or indirectly, for itself or on behalf of or in conjunction with any other third party, solicit, induce, hire, contract with, or engage the employment of an employee of Cartegraph, unless Customer: (1) obtains the prior written consent of Cartegraph, as applicable; and (2) pays Cartegraph as applicable a fee to be mutually agreed upon. If Customer directly employs or contracts with an employee of Cartegraph without the prior written consent of Cartegraph, Customer shall pay as damages 2 times the then yearly salary of the employee in question. The parties acknowledge and agree that the foregoing is not intended as a penalty of any kind but as reasonable and adequate compensation to Cartegraph in the event Customer should directly employ or contract with an employee of Cartegraph without the prior written consent of Cartegraph.

17. FORCE MAJEURE.

Neither party will be held responsible for failure or delay in the performance of any obligation under this Agreement, with the exception of the obligation to pay Fees, if such failure or delay is due to acts of God, war, terrorism, strikes, boycotts, labor disputes, fire or other loss of facilities, accident or any other cause beyond its control (each, a "Force Majeure"). If the performance of any obligation under this Agreement by either party is prevented, restricted or interfered with by reason of a Force Majeure event, the party whose performance is so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such Force Majeure event, provided that the party so affected will take all reasonable steps to avoid or remove such causes of non-performance and will continue performance hereunder with dispatch whenever such causes are removed.

18. NOTICE.

All notices, reports, consents, authorizations and approvals to be given by a party hereunder will be in writing and will either be via: (1) hand-delivery; (2) reputable overnight mail service; (3) facsimile transmission, provided that an original copy of a transmission will be delivered by some other means permitted under this Agreement; or (4) certified mail, return receipt requested, to the other party at its respective addresses set forth above. All notices will be effective upon receipt (or when delivery is refused), or 3 business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address for notice by giving notice of the new address to the other party.

19. ADDITIONAL TERMS.

Unless otherwise amended as provided herein, this Agreement will exclusively govern Customer's access to and use of the Solutions and all Services and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties. Except as expressly set forth in this Agreement, this Agreement may be modified or amended only in writing signed by both parties. If any provision of this Agreement is held to be unenforceable, that provision will be removed to the extent necessary to comply with the law, replaced by a provision that most closely approximates the original intent and economic effect of the original to the extent consistent with the law, and the remaining provisions will remain in full force. Neither this Agreement nor any rights or obligations of Customer hereunder may be assigned without the prior written approval of Cartegraph. Any assignment in violation of the foregoing will be null and void. Cartegraph may assign this Agreement to any party that assumes

Cartegraph's obligations hereunder, including by sale, merger, consolidation, or operation of law or otherwise. Cartegraph may subcontract its obligations under this Agreement, provided that Cartegraph remains responsible for compliance with the applicable terms of this Agreement as to those obligations. The words "include," "includes" and "including" means "include," "includes" or "including," in each case, "without limitation." All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. The preprinted terms of a purchase order or any other similar document will not apply to or modify this Agreement. The parties hereto are independent parties, not agents, employees or employers of the other or joint venturers', and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other. In the event of any litigation or other proceeding between the parties relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals, and other relief to which that party may be entitled. Customer gives Cartegraph permission to use Customer's name or logo for public press releases and customer stories. Cartegraph provides the Solutions, including related software and technology, for federal government end use as a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Solutions are provided to the Customer with only those restricted rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Cartegraph to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**ADDENDUM TO CARTEGRAPH SOLUTIONS AGREEMENT,
DATED MARCH 28, 2018**

THIS ADDENDUM is dated today', and contains terms intended to supersede and clarify the terms set forth in that certain Cartegraph Solutions Agreement, to which this Addendum is attached and incorporated by this reference.

Section 14.2 is hereby amended to read:

14.2 Exceptions.

Unless prohibited by law, the Receiving Party's obligations with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already lawfully known to the Receiving Party as of the Effective Date; (b) is disclosed to the Receiving Party after the Effective Date by a third party who had the right to make such disclosure without any confidentiality restrictions; or (c) is, or through no fault of the Receiving Party becomes, generally available to the public. The Receiving Party may disclose the Confidential Information of the Disclosing Party if compelled or required to do so by law, or by a court of competent jurisdiction or other governmental entity having jurisdiction over the Receiving Party, provided that the Receiving Party provides the Disclosing Party with notice of such requirement and provides reasonable assistance to the Disclosing Party in any attempts to contest such disclosure or obtain a protective order or other applicable limitation with respect to such disclosure.

Section 14.3 is hereby amended to read:

14.3 Return of Confidential Information.

The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the request of the Disclosing Party or when such Confidential Information is no longer needed in connection with its performance under this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with the foregoing obligations. It is expressly agreed and understood that Customer may not be required to destroy any records or documents unless such destruction complies with Customer's Records Retention Schedule and is otherwise compliant with the requirements of Minnesota Statutes, section 138.17.

Section 16 is hereby removed.



EXECUTIVE SUMMARY

Administrative Services

763-593-8013 / 763-593-3969 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. E. 2. Authorize Small Enterprise Agreement with Esri Geographic Information Systems

Prepared By

Adan Knauer, IT Supervisor

Sue Virnig, Finance Director

Summary

The City has made significant investments in its infrastructure, including mapping and data that support the physical infrastructure. Cartegraph is integrated with Esri Geographic Information Systems (GIS) to provide powerful spatial analysis and mapping capabilities.

Financial Or Budget Considerations

The agreement is for three years from 2020-2023 and is \$25,000 per year. The 2020-2029 Street Capital Improvement Program (S-034) includes \$25,000 per year.

Recommended Action

Motion to authorize the Mayor and City Manager to execute the Small Enterprise Agreement with Esri and the City of Golden Valley in the form approved by the City Attorney for the next three years for a total of \$75,000.

Supporting Documents

- Small Enterprise Agreement County and Municipality Government (9 pages)
- Master Agreement Product and Services (25 pages)



December 27, 2019

Ms. Heather Hegi
City of Golden Valley
7800 Golden Valley Rd
Golden Valley, MN 55427

Dear Heather,

The Esri Small Municipal and County Government Enterprise Agreement (EA) is a three-year agreement that will grant your organization access to Esri® term license software on an unlimited basis including maintenance on all software offered through the EA for the term of the agreement. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise agreement.

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.
- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have. To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."** Have it signed by an authorized representative of the organization.
2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-EA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com fax
documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Nick Meyers



Quotation # Q-399685

Date: December 27, 2019

Customer # 156410 Contract #

City of Golden Valley
Finance Dept
7800 Golden Valley Rd
Golden Valley, MN 55427

ATTENTION: Heather Hegi
PHONE: 763-593-8036
EMAIL: hhegi@goldenvalleymn.gov

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 06-313-4175 CAGE Code: OAMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 12/27/2019 To: 3/26/2020

Material	Qty	Term	Unit Price	Total
168177	1	Year 1	\$25,000.00	\$25,000.00
Populations of 0 to 25,000 Small Government Term Enterprise License Agreement				
168177	1	Year 2	\$25,000.00	\$25,000.00
Populations of 0 to 25,000 Small Government Term Enterprise License Agreement				
168177	1	Year 3	\$25,000.00	\$25,000.00
Populations of 0 to 25,000 Small Government Term Enterprise License Agreement				

Subtotal:	\$75,000.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$75,000.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Nick Meyers	Email: nmeyers@esri.com	Phone: (909) 793-2853 x8305
<p>The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.</p>		

MEYERSN

This offer is limited to the terms and conditions incorporated and attached herein.

Esri Use Only:

Cust. Name _____
Cust. # _____
PO # _____
Esri Agreement # _____



**SMALL ENTERPRISE AGREEMENT
COUNTY AND MUNICIPALITY GOVERNMENT
(E214-1)**

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
List of Products**

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced
ArcGIS Desktop Standard
ArcGIS Desktop Basic
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise and Workgroup (Advanced and Standard)
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Engine
ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics
ArcGIS Runtime (Standard)
ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer*
Two (2) Esri CityEngine Single Use Licenses
50 ArcGIS Online Viewers
50 ArcGIS Online Creators
10,000 ArcGIS Online Service Credits
50 ArcGIS Enterprise Creators
2 Insights in ArcGIS Enterprise
2 Insights in ArcGIS Online

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	2
Number of Tier 1 Help Desk individuals authorized to call Esri	2
Maximum number of sets of backup media, if requested**	2
Self-Paced e-Learning	Uncapped
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package)	

* Maintenance is not provided for these items

**Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if

Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee before the annual anniversary date for each year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri's federal ID number is 95-2775-732.

- c. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer

the Products to Customer or uninstall, remove, and destroy all copies of the Products.

9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

Revised 10/18/19
IMPORTANT—READ CAREFULLY

Unless superseded by a signed license agreement between you and Esri, Esri is willing to provide Esri Offerings and Services to you only if you accept all terms and conditions contained in this Agreement as the sole and final agreement of the parties regarding your acquisition of these Esri Offerings and Services. Please read the terms and conditions carefully. You may not use the Esri Offerings unless you agree to the terms and conditions of the Agreement. Your access and use of Esri Offerings, or Services, constitutes your acceptance of the terms and conditions of this Agreement. If you do not agree, contact your local sales representative prior to making your purchase.

This Master Agreement ("**Agreement**") is between you ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [*Customer will insert the actual copyright date(s) from the source materials.*] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

2.0 SOFTWARE AND ONLINE SERVICES

2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. "**Anonymous Users**" means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.

- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
- d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. **"Dual Use License"** means the right to install Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
- j. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- k. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- l. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- m. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- n. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- o. **"Redistribution License"** means a license to reproduce and distribute Software provided that
 1. Customer reproduces and distributes the Software in its entirety;
 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 3. Customer reproduces all copyright and trademark attributions and notices; and
 4. Customer does not charge a fee to others for the use of the Software.
- p. **"Server License"** means a license to install and use Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- q. **"Service Credit(s)"** means a unit of exchange for consumption of services that can be used with an Online Services Subscription.
- r. **"Sharing Tools"** means publishing capabilities included with Online Services that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- s. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- t. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the

Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Software Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

2.3 Software Terms of Use

- a. Customer may
 1. Install, access, or store Software and Data on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use.
 4. Move Software in the licensed configuration to a replacement computer;
 5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
 6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
- c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
- d. Esri publishes Product-specific Software terms of use at <http://www.esri.com/legal/scope-of-use>.

2.4 Online Services Terms of Use

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <http://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in [Attachment B](#).
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.
- d. **Limits on Use of Online Services, Service Credits.** Each Online Services Subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75 percent of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

2.5 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

b. Value-Added Applications

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer's private data or content must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services, content, or data that has been published for shared access by Anonymous Users through the use of Sharing Tools included with Customer's authorized use of Software or Online Services.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer's private data or content. Value-Added Applications that enable access to Customer's private data or content must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

c. Anonymous Users. Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services, content, or data that has been published for shared access through the use of Sharing Tools included with Customer's authorized use of Software or Online Services.

2.6 Limited-Use Programs

- a. Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
- c. Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.

- d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

3.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online basemap services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

3.2 Permitted Uses

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups) for use in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.
- e. Esri does not acquire any rights in Customer Content under this Agreement.

3.3 Use Restrictions

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 2. Synchronized multivehicle routing; or
 3. Synchronized route optimization.

- e. *Business Analyst Data*. Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses*: If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data")*. Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

3.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

4.0 MAINTENANCE

4.1 US Customers. Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

4.2 Customers outside the United States. Customer may obtain maintenance services from their local Esri distributor under the distributor's own standard support policy.

5.0 PROFESSIONAL SERVICES

5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Invention(s)"** means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
- b. **"Inventor(s)"** means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.
- c. **"Professional Service Package(s)"** means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.

5.2 Permitted Uses. Customer may use, copy, and modify Deliverables solely in conjunction with Customer's authorized use of Products.

5.3 Task Orders and Project Schedule

- a. Esri will provide Professional Services and Deliverables as specified in the Task Order.
- b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.
- c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.
- d. Each party will identify, in writing, the project manager who is responsible for Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.
- e. Other than pricing and descriptions of Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order take precedence over conflicting terms in this Agreement.

5.4 Ownership of Deliverables and Inventions

- a. Esri or its licensors own and retain ownership of Deliverables.
- b. Each party will retain title to any Inventions made or conceived solely by its Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement. The parties will jointly own any Inventions made or conceived jointly by Inventors from both parties.

- c. The parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such Invention.

5.5 Acceptance

- a. **For Firm Fixed Price Task Orders.** Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:
 1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
 2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1 or a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2 or a.3, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

- b. **For Task Orders with Professional Service Packages.** Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.
- c. **For Time and Materials Task Orders.** Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

5.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of [Attachment B](#).

5.7 Changes. The parties may make changes within the general scope of a Task Order by mutual agreement. To document any agreed-to scope changes within the general scope of the Task Order that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

5.8 Customer Termination for Convenience. Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

5.9 Payment; Invoices

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding

month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.

- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.
- c. **For Time and Materials Task Orders**
 - 1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
 - 2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

5.10 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

6.0 ESRI MANAGED CLOUD SERVICES

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Esri Managed Cloud Services Environment"** means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services.
- b. **"Hosting"** means the business of housing and making accessible Customer Content via the Internet.

6.2 Provision of Esri Managed Cloud Services

- a. **General Terms.** Use of Esri Managed Cloud Services is subject to the Cloud Services terms found in Attachment B of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the Esri Managed Cloud Services to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the Esri Managed Cloud Services Environment. This paragraph does not apply to Esri Managed Cloud Services provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement).
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the Esri Managed Cloud Services Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.

- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.
- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

7.0 TRAINING

7.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
- c. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- d. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- e. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- f. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day training price throughout the Term of the Training Pass.

7.2 Permitted and Prohibited Uses

- a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the Training course for which the Training Materials are provided.
- b. Customer may reproduce copies of Training Materials for registered Students.
- c. Customer may not and may not permit any Student to (i) separate the component parts of Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

7.3 Esri's Responsibilities

Esri will

- a. Provide an instructor qualified to conduct Training;
- b. Provide all necessary Training Materials for Student; and
- c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date. Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

7.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations in Esri site classes with payment method information at least 15 business days before the scheduled start date;
- d. Provide the Esri Training Event Assistant with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;
- e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
- h. If the Esri Mobile Lab is used, Customer will
 1. Take delivery of the Esri Mobile Lab from the shipping agent, and keep it in a secure, locked area at all times;
 2. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the shipment; and
 3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession.

7.5 Student Registration and Training Event Change Policy

- a. Customer will provide advance written notice to Esri Customer Service at service@esri.com to reschedule or cancel any Esri Training Event or to substitute a student in a scheduled Esri Training Event.
- b. A replacement Student must be from the same Customer organization as the Student being replaced.
- c. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.
- d. If Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, Customer will be liable for the full Esri Training Event fee.
- e. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Esri Training Event without incurring any liability.
- f. *Termination of Agreement.* Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Esri Training Event, subject to the terms and conditions of this Agreement.

7.6 Invoicing; Prepaid Fees

- a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.
- b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume Training days. For a multiyear order, Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
- c. Training Pass redemption rates are described at <https://www.esri.com/training/training-for-organizations/>.

This paragraph does not apply to Training provided under the Advantage Program.

8.0 ADVANTAGE PROGRAM

8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
- b. **"Advantage Program"** means either Advantage Program, as described at www.esri.com/services/eeap/components, or the Advantage Program for Partners, as described at www.esri.com/partners/bpap/components.
- c. **"Authorized Contact"** means Customer's point of contact for the Advantage Program identified below.
- d. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses as described below.
- e. **"Premium Support Services" or "PSS"** means a prioritized incident management and technical support program further described at <http://support.esri.com/en/support/premium>.
- f. **"Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services such as advising Customer on GIS strategies, facilitating annual planning, and developing and coordinating a collaborative work plan under the Advantage Program.

8.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis and provides strategy and planning support in addition to a menu of items including Professional Services, Training, PSS, and Esri Managed Cloud Services that Customer can select to best meet its needs with guidance from Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

- a. **Advisor.** Customer will receive up to the number of Advisor hours ordered. Customer may elect to retain additional Advisor hours for a supplemental price.
- b. **Annual Planning Meeting.** A 1-day annual planning meeting is included.
- c. **Work Plan.** A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the applicable Advantage Program website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.
- e. **Technology Webcasts.** Esri will provide an email invitation to the Authorized Contact for webcasts presenting business and technical information related to enterprise GIS.
- f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

8.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact.

(to be completed by Customer):

Contact Name: _____

Address: _____

City, State, ZIP: _____

Email: _____

Telephone: _____

Fax: _____

8.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

8.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

8.6 Activity Descriptions for Esri Managed Cloud Services. The Activity Description for Esri Managed Cloud Services orders must include the following:

- a. **The Esri Managed Cloud Services Term.** The time period in which Esri provides the Esri Managed Cloud Services to Customer. The Esri Managed Cloud Services term does not begin until setup and deployment of the data and application are complete.
- b. **Targeted System Availability.** The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all EMCS offerings include a Targeted System Availability.
- c. **Number of Anticipated Requests.** A The number of requests made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the Esri Managed Cloud Services Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. **Amount of Data Storage.** The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
- e. **Learning and Services Credits Consumption.** The price for the Esri Managed Cloud Services in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

8.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Customer will use Learning and Services Credits for travel and per diem expenses.

8.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all its Learning and Services Credits.

8.9 Review of Proposed Activities. Any activities proposed to be completed under the Advantage Program will be subject to Esri's review and approval to ensure alignment with the intent of the program.

8.10 Invoicing

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Advisor services upon receipt of Customer's order.
- b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

8.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

- a. Services will end as of the expiration or termination date stated; and
- b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and Esri Managed Cloud Services.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("**Term**").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

"Training Materials" means digital or printed content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE B.1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms that require any part of the Esri Offering to be
 - 1. Disclosed in source code form to third parties;
 - 2. Licensed to third parties for the purpose of making derivative works; or
 - 3. Redistributable to third parties at no charge.
- l. Generate revenue by providing access to Software or Online Services through a Value-Added Application.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE B.2—TERM AND TERMINATION

B.2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

B.2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

B.2.3 Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS

B.3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

B.3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.

B.3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Specification or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

B.3.4 Disclaimers

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

B.3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE B.4—LIMITATION OF LIABILITY

B.4.1 Disclaimer of Liability. Neither Customer, Esri, nor any Esri distributor or licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri for the Esri Offerings or Services giving rise to the cause of action.

B.4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

B.4.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

B.4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE B.5—INDEMNIFICATIONS

B.5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Claim"** means any claim, action, or demand by a third party.
- b. **"Indemnitees"** means Customer and its directors, officers, and employees.
- c. **"Infringement Claim(s)"** means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
- d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

B.5.2 Infringement Indemnity

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

B.5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

B.5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

B.5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE B.6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 (US dollars) combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
 1. Premises and operations;
 2. Blanket contractual liability;
 3. Broad form property damage;
 4. Independent contractors;
 5. Personal injury, with employee exclusion deleted; and
 6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE B.7—SECURITY AND COMPLIANCE

B.7.1 Security. Esri publishes its security capabilities at <http://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

B.7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

B.7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any

necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

B.7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/privacy-gdpr>.

ARTICLE B.8—CLOUD SERVICES

B.8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Creates or transmits spam, spoofings, or phishing email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

B.8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

B.8.3 Customer Content

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either
 - (i) Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 - (ii) Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

B.8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

B.8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a

commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

B.8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE B.9—GENERAL PROVISIONS

B.9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

B.9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

B.9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

B.9.4 Restrictions on Solicitation. Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

B.9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

B.9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

B.9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

B.9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

B.9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement.

Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

B.9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

B.9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected. ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.

B.9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

B.9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

B.9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

B.9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

B.9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

ATTACHMENT C
SAMPLE TASK ORDER
Esri Agreement No. _____
Task Order No. _____

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. ("**Esri**"), and _____ ("**Customer**"), _____ ("**Customer Address**"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: *[As applicable, specifically identify and describe Deliverables including custom code, map data, technical data (including technical assistance), and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data) and place of delivery and location where technical assistance will be provided.]*

In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type: *[Firm Fixed Price (FFP) or Time and Materials (T&M)]*:
3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
4. Customer Address for the Receipt of Esri Invoices:
5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
6. Special Considerations:
7. Esri Project Manager: *[insert name, telephone, fax, and email address]*
Esri Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Project Manager: *[insert name, telephone, fax, and email address]*
Customer Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Accounts Payable Contact: *[insert name, telephone, fax, and email address]*

ACCEPTED AND AGREED:

[sample only—do not sign] _____
(Customer)

Signature: *[sample only—do not sign]* _____

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: *[sample only—do not sign]* _____

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE**

See Quotation for Pricing.



EXECUTIVE SUMMARY

Physical Development

763-593-8030 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. E. 3. Authorize 2020 Contract Extension for the Restoration and Maintenance of Native Plant Communities

Prepared By

Drew Chirpich, Environmental Specialist
Eric Eckman, Environmental Resources Supervisor

Summary

In 2018, Staff requested proposals from qualified native plant management contractors for professional services related to restoration and maintenance of native plant communities adjacent to Golden Valley's stormwater ponds, wetlands, and streams. The buffer areas maintained under this contract serve to improve water quality, ecological diversity, and provide habitat and food sources for wildlife, including pollinators like bees and butterflies.

The scope of work in the proposal includes performing controlled burns, dormant mowing, and integrated plant management. The contractor inspects each native buffer area monthly during the growing season and performs maintenance on an as-needed basis to ensure efficient and effective management of the buffer areas.

Following receipt of proposals in 2018, a contract was executed on February 20, 2018 with Minnesota Native Landscapes, Inc. for the 2018 calendar year. The terms of the contract allow for one-year extensions for up to three years from the original contract date by written mutual agreement.

Upon satisfactory completion of the 2018 and 2019 contracts, the City requested and Minnesota Native Landscapes, Inc. provided a proposal to extend services for an additional year under the extension terms of the original contract. The contract extension will run from February 18th 2020 to December 31st 2020 at a total cost of \$34,360. Staff reviewed the 2020 proposal form and found it to be accurate and in order.

Financial Or Budget Considerations

Funding for this work in the amount of \$34,360 is included in the 2020 Budget, Storm Sewer Utility, Native Buffer Zone Maintenance for Ponds, \$50,000 (7303.6340).

Recommended Action

Motion to authorize the Mayor and City Manager to execute 2020 Amendment to the 2018 Restoration and Maintenance of Naïve Plant Communities with Minnesota Native Landscapes, Incorporated.

Supporting Documents

- Location Map (36 page)
- Amendment to the Contract between City of Golden Valley and Minnesota Native Landscapes, Incorporated (1 pages)
- Original Agreement with Minnesota Native Landscapes, Incorporated (5 pages)

Vegetated Buffer Maintenance

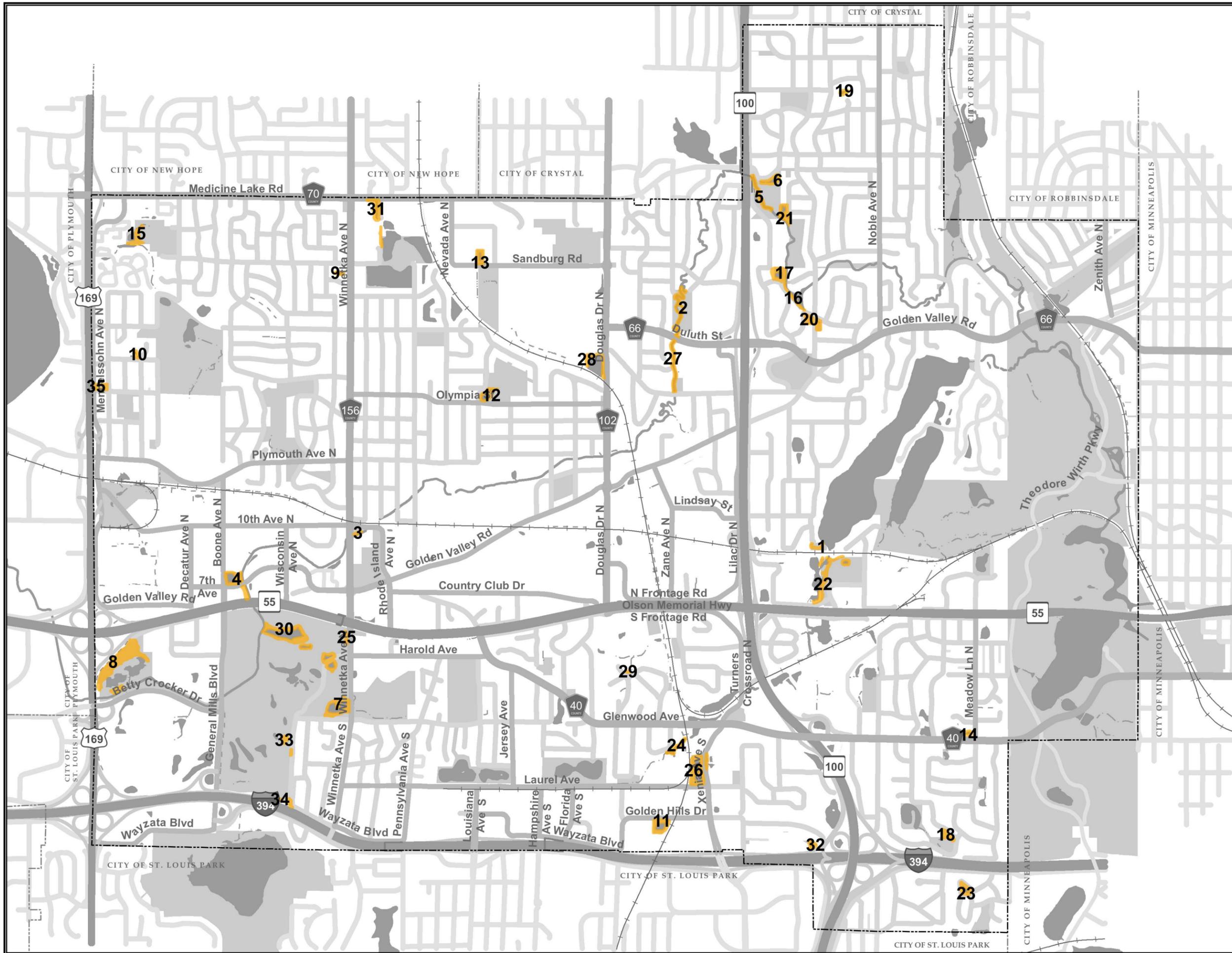
Managed Buffer

ID Name

- 1 Adeline Nature Area
- 2 Bassett Creek Nature Area
- 3 Bassett Creek and Winnetka
- 4 Boone Ave Pond and Berm
- 5 Briarwood Nature Area
- 6 Briarwood-Dawnview Pond
- 7 Brookview Park Ponds
- 8 General Mills Nature Preserve
- 9 Golden Meadows Pond
- 10 Golden Ridge Pond
- 11 Golden Hills Pond
- 12 Hampshire Pond
- 13 Madison Pond
- 14 Meadow Lane Woods Pond
- 15 Medley Park
- 16 Minnaqua Pond and Creek
- 17 Minnaqua Wetland
- 18 North Tyrol Park
- 19 Perry Ave Pond
- 20 Regent and Westbend
- 21 Scott Ave Pond
- 22 Schaper Park
- 23 South Tyrol Pond
- 24 Sweeney Branch Streambank
- 25 Winnetka and Hwy 55
- 26 Xenia Avenue Pond and Wetland
- 27 St Croix Trail
- 28 Honeywell Pond
- 29 Paisley Park Rain Garden
- 30 Brookview Ponds N and O
- 31 The Liberty
- 32 Talo Pond
- 33 Brookview Community Center
- 34 Brookview Driving Range
- 35 Olympia Filtration Basin

Print Date: 12/26/2019
 Sources:
 -Hennepin County Surveyors Office for Property Lines (2019).
 -City of Golden Valley for all other layers.

0 900 1,800 3,600 Feet





Adeline Ln

0.17 acres



Buffer Maintenance, Site 1
Adeline Nature Area
planted in 2014

Sources: Print Date: 12/26/2019
 -Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
 -City of Golden Valley for all other layers.






Buffer Maintenance, Site 2
Bassett Creek Nature Area
planted in 2007

Sources: Print Date: 12/26/2019
 -Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
 -City of Golden Valley for all other layers.

0 60 120 240 Feet





10th Ave N

Winnetka Ave N

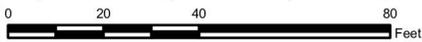
0.13 acres



Buffer Maintenance, Site 3
Bassett Creek and Winnetka
planted in 2012

Sources: Print Date: 12/26/2019

-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





Boone Ave N

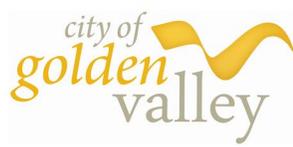
Boone Ave N

1.18 acres

7th Ave N

Golden Valley Rd

State Hwy 55



Buffer Maintenance, Site 4
Boone Ave Pond and Berm
planted in 2005

Sources: Print Date: 12/26/2019
 -Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
 -City of Golden Valley for all other layers.






0.36 acres

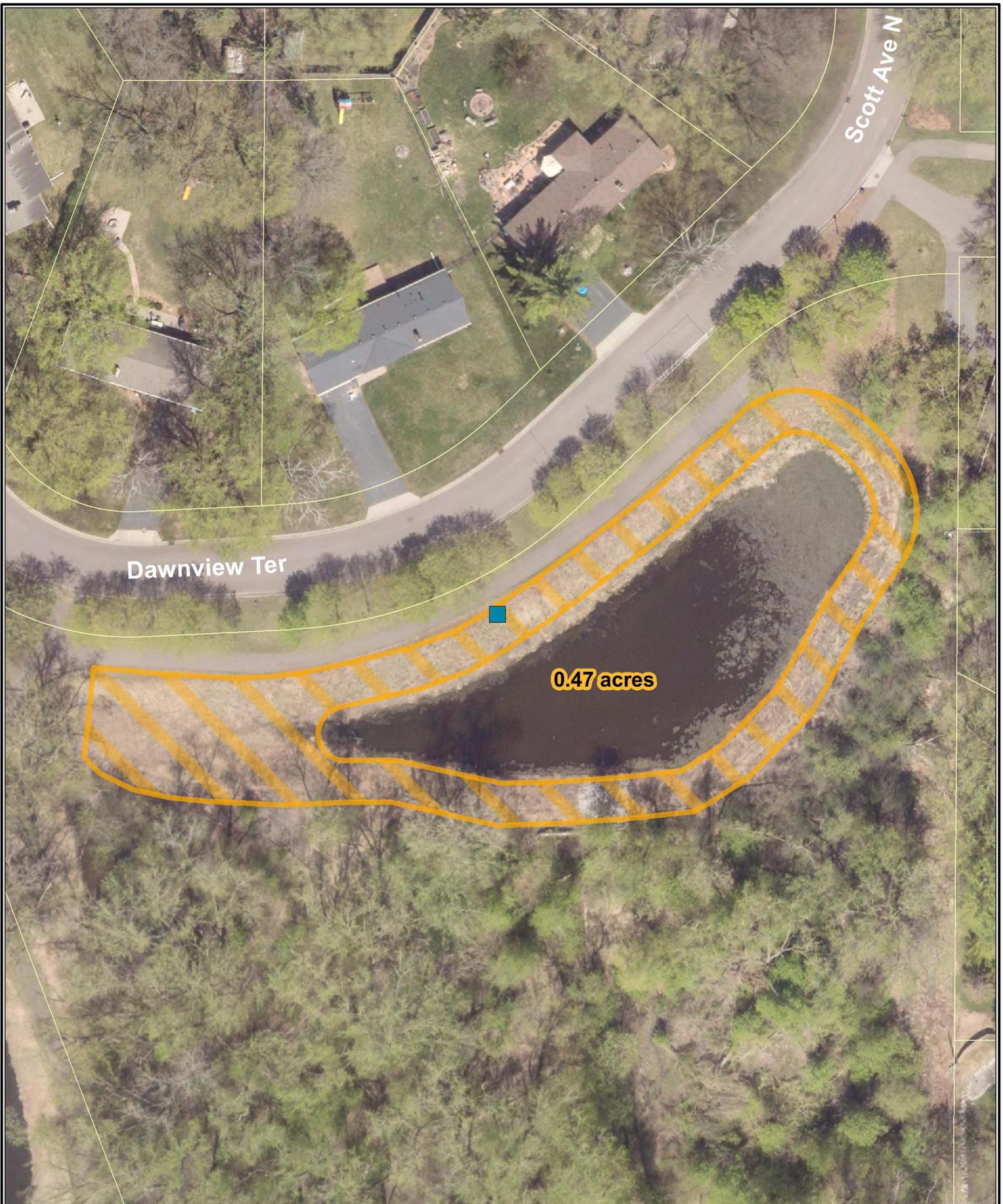


Buffer Maintenance, Site 5
Briarwood Nature Area
planted in 2011

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 50 100 200 Feet





Buffer Maintenance, Site 6
Briarwood-Dawnview Pond
planted in 2014

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 30 60 120
Feet





Buffer Maintenance, Site 7
Brookview Park Ponds
planted in 2003

Sources: Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
-City of Golden Valley for all other layers.

Print Date: 12/26/2019

0 75 150 300 Feet





4.80 acres



Buffer Maintenance, Site 8
General Mills Nature Preserve
planted in 2005

Sources: Print Date: 12/26/2019
 -Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
 -City of Golden Valley for all other layers.

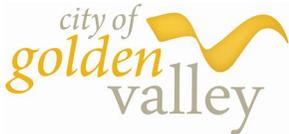
0 75 150 300 Feet





0.13 acres

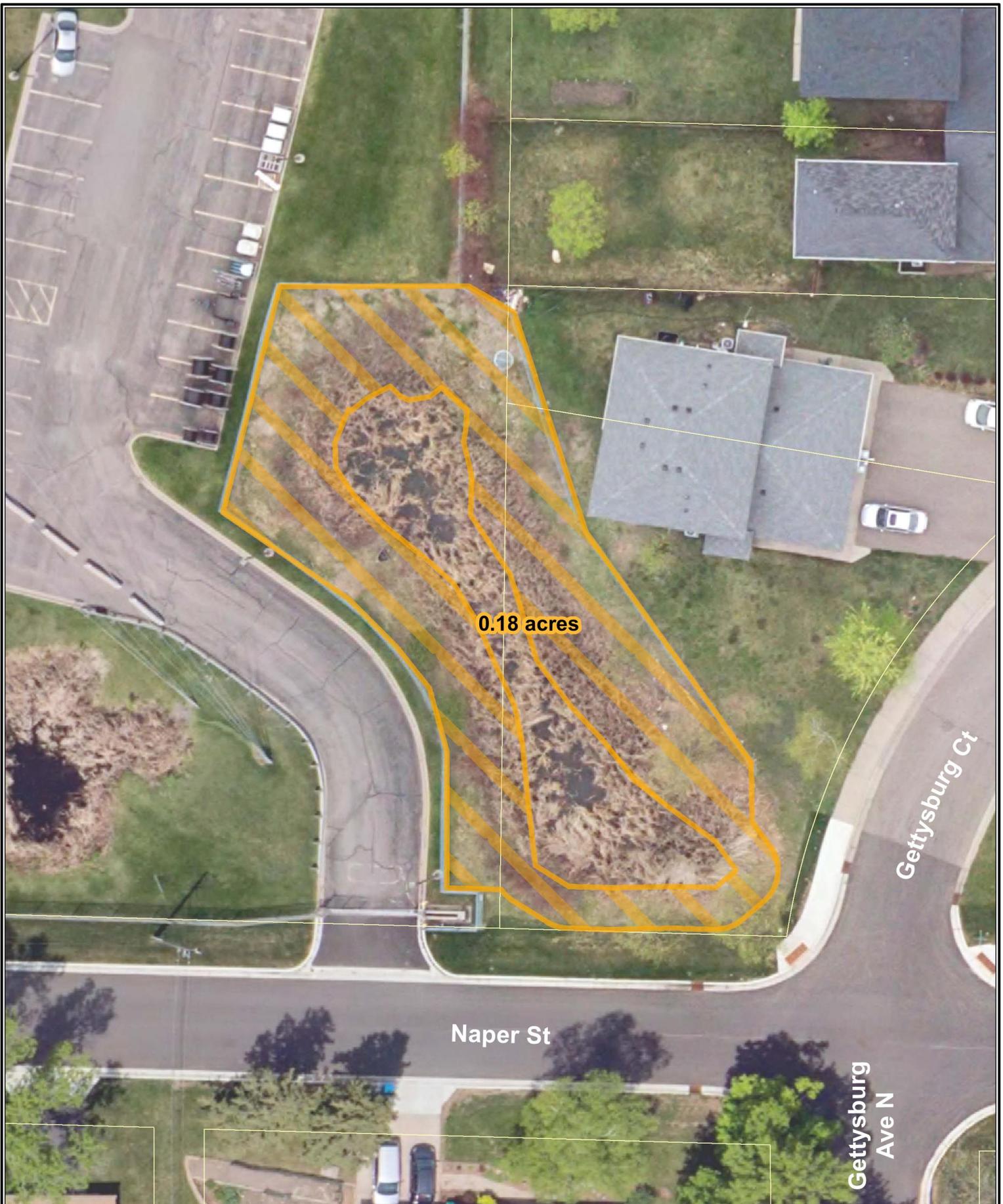
Valders Ct



Buffer Maintenance, Site 9
Golden Meadows Pond
planted in 2003

Sources: *Print Date: 12/26/2019*
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





0.18 acres

Naper St

Gettysburg Ct

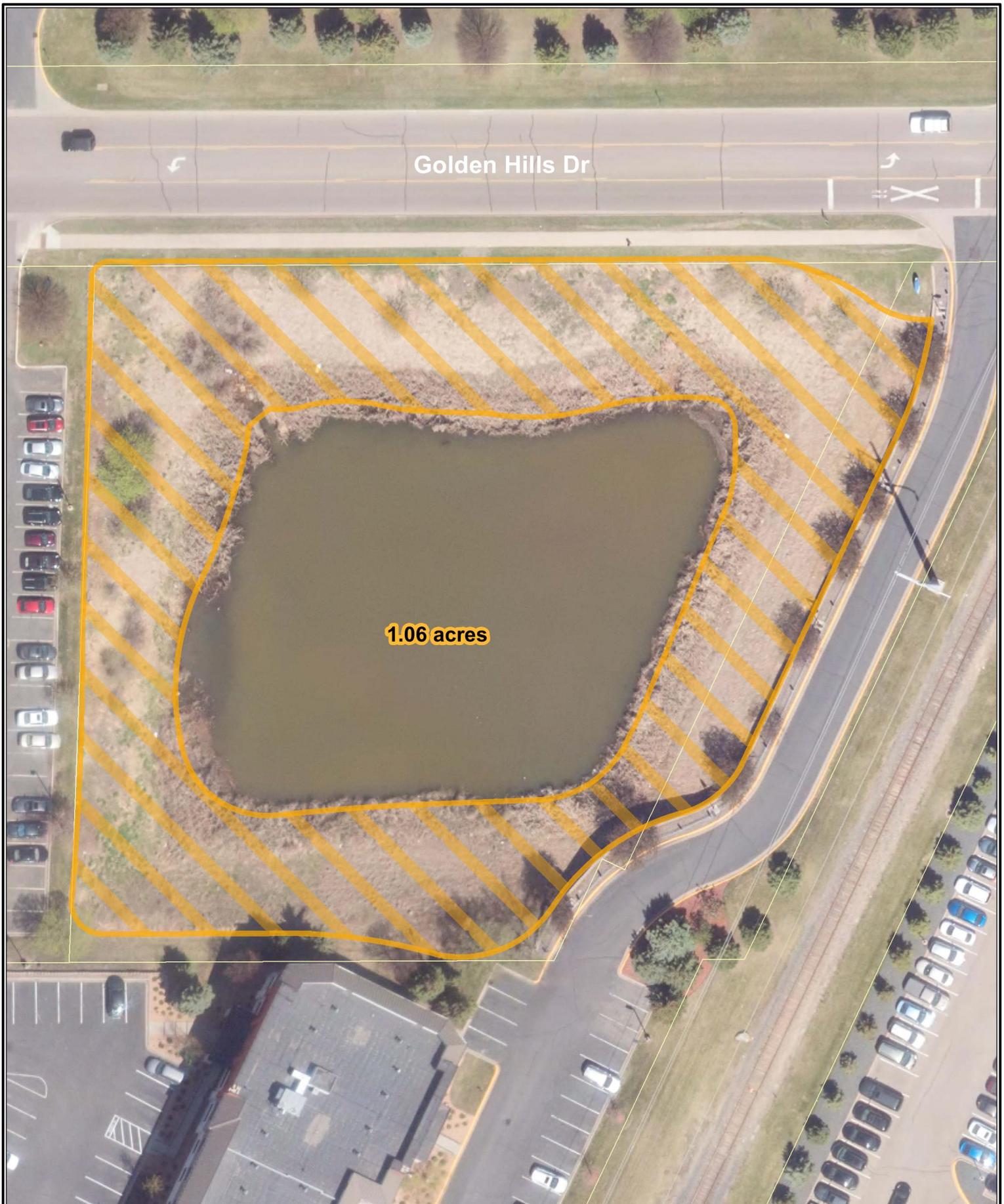
Gettysburg Ave N



Buffer Maintenance, Site 10
Golden Ridge Pond
planted in 2005

Sources: *Print Date: 12/26/2019*
-Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
-City of Golden Valley for all other layers.



Golden Hills Dr

1.06 acres

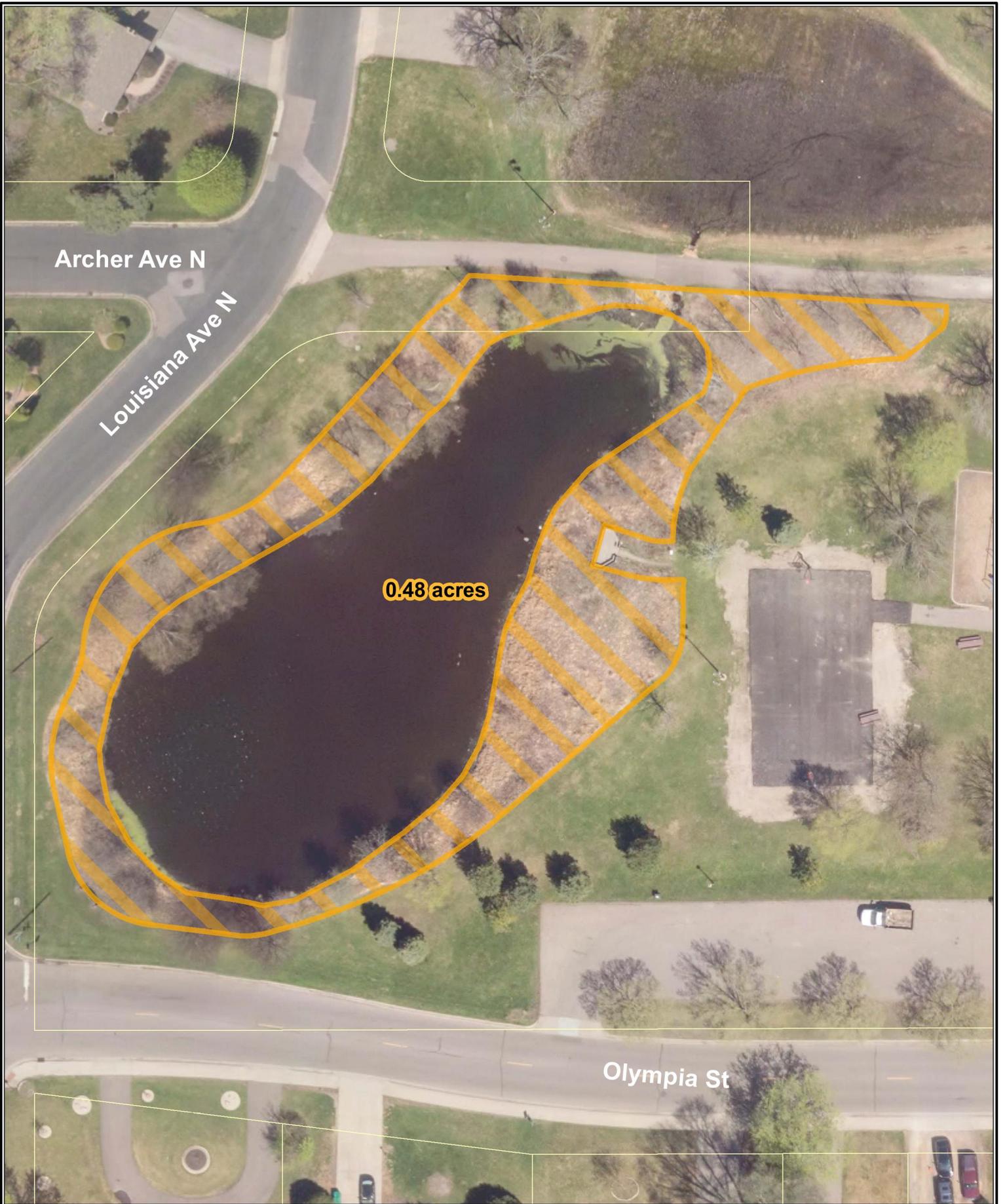


Buffer Maintenance, Site 11
Golden Hills Pond
planted in 1996

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 25 50 100 Feet





Archer Ave N

Louisiana Ave N

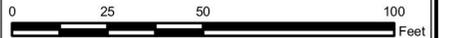
0.48 acres

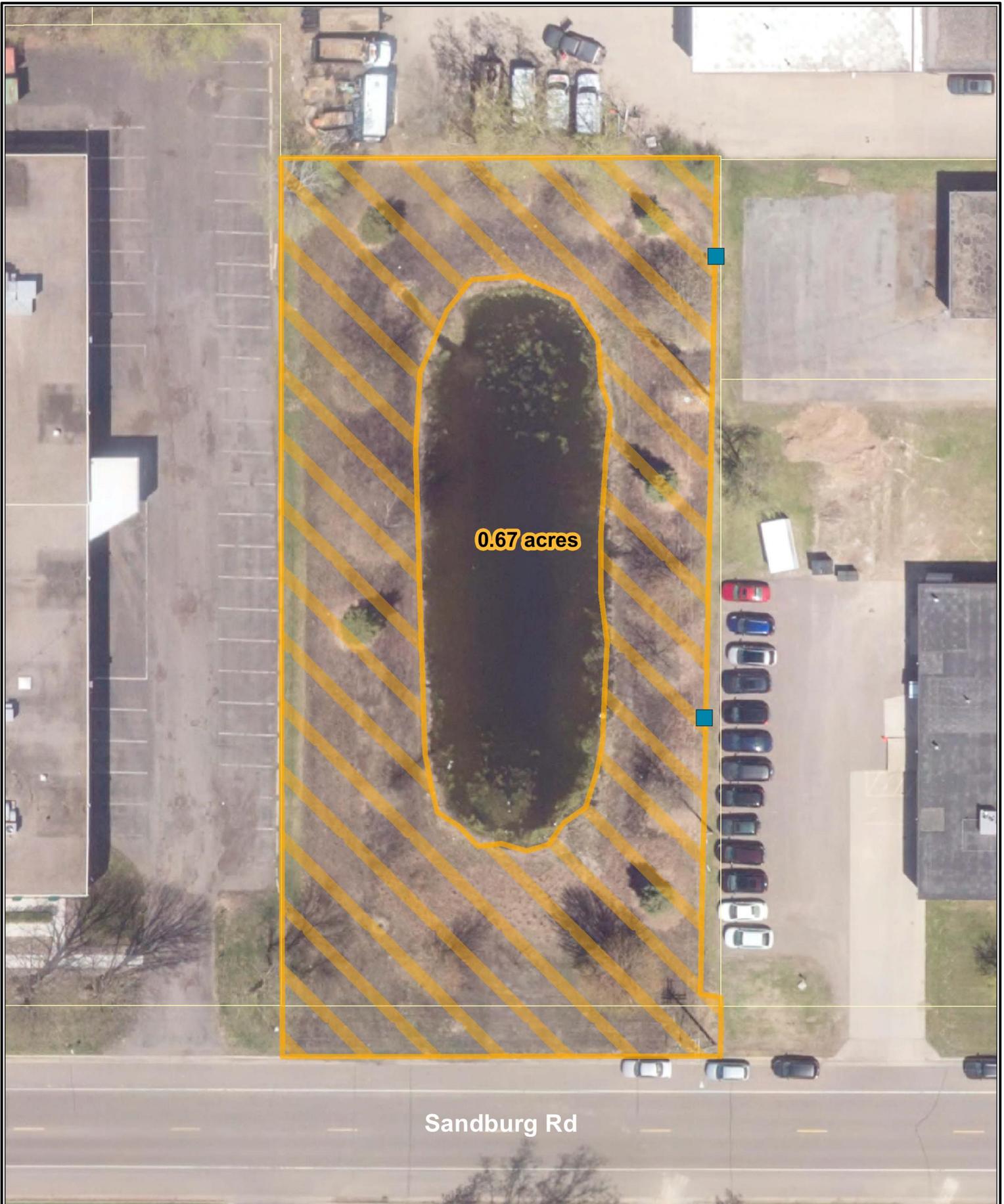
Olympia St



Buffer Maintenance, Site 12
Hampshire Pond
planted in 2000

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





0.67 acres

Sandburg Rd



Buffer Maintenance, Site 13
Madison Pond
planted in 1999

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.



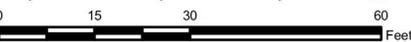


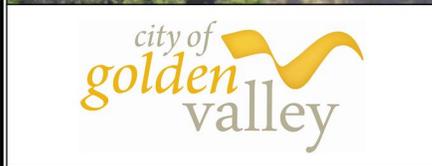
0.12 acres



Buffer Maintenance, Site 14
Meadow Lane Woods Pond
planted in 2013

Sources: *Print Date: 12/26/2019*
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





Buffer Maintenance, Site 15
Medley Park
planted in 2006

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 25 50 100 Feet





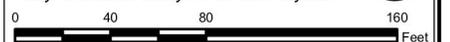
0.27 acres

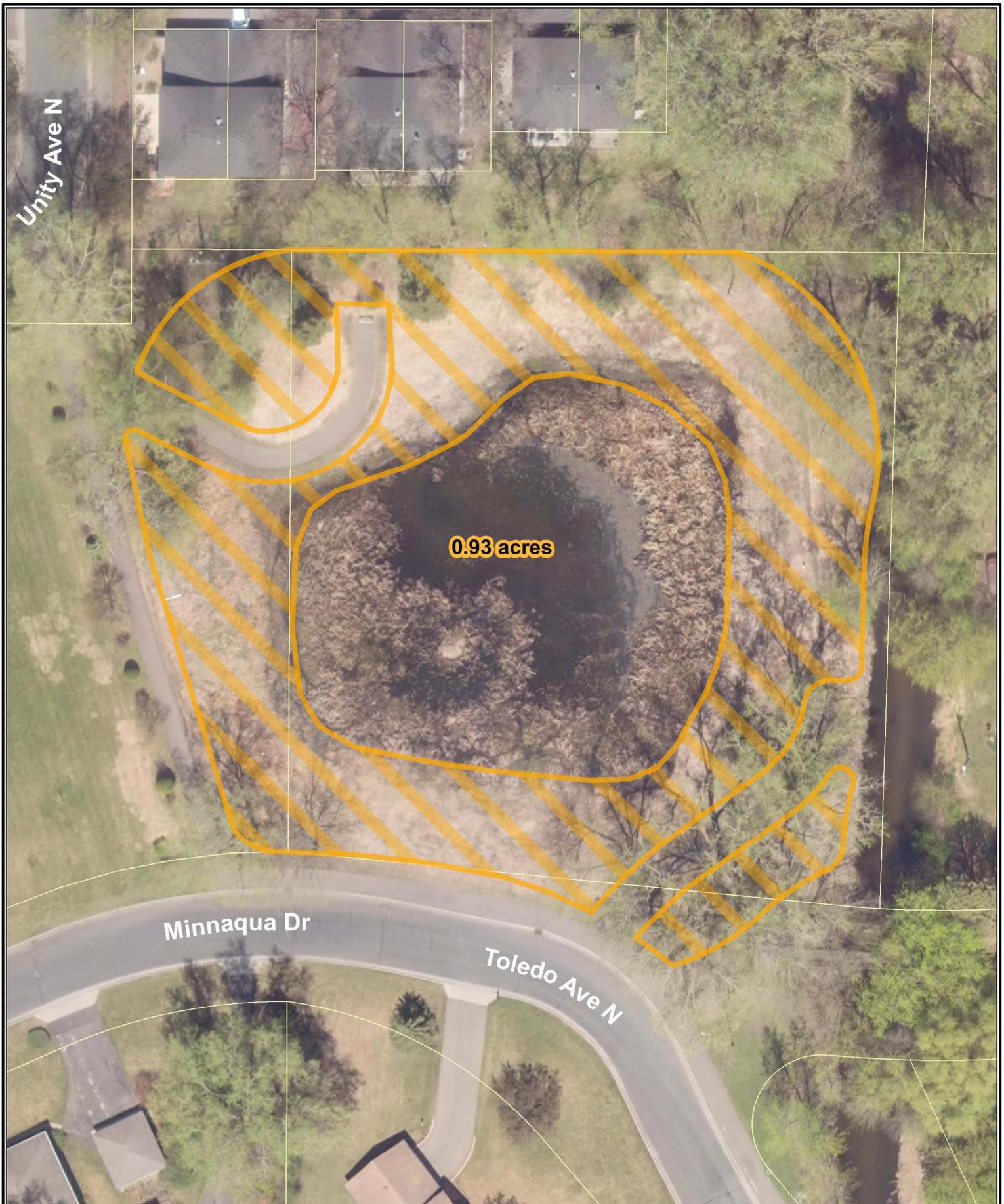


Buffer Maintenance, Site 16
Minnaqua Pond and Creek
planted in 2008

Sources: Print Date: 12/26/2019

- Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
- City of Golden Valley for all other layers.





0.93 acres

Unity Ave N

Minnaqua Dr

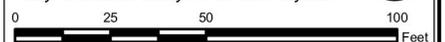
Toledo Ave N



Buffer Maintenance, Site 17
Minnaqua Wetland
planted in 2008

Sources: Print Date: 12/26/2019

- Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
- City of Golden Valley for all other layers.





0.59 acres

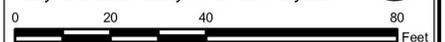


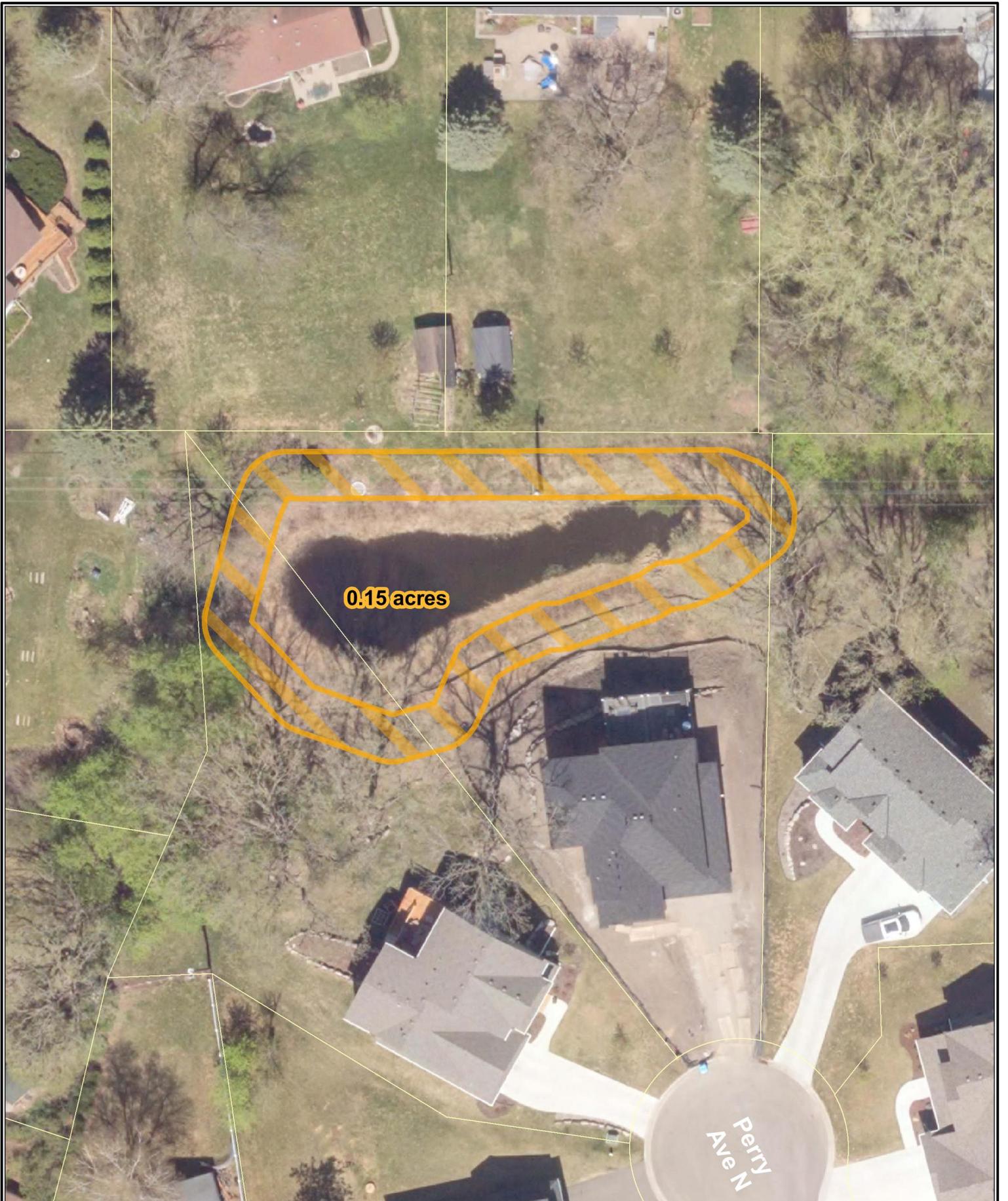
Buffer Maintenance, Site 18
North Tyrol Park
planted in 2013

Sources: Print Date: 12/26/2019

-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).

-City of Golden Valley for all other layers.





0.15 acres

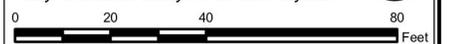
Perry Ave N

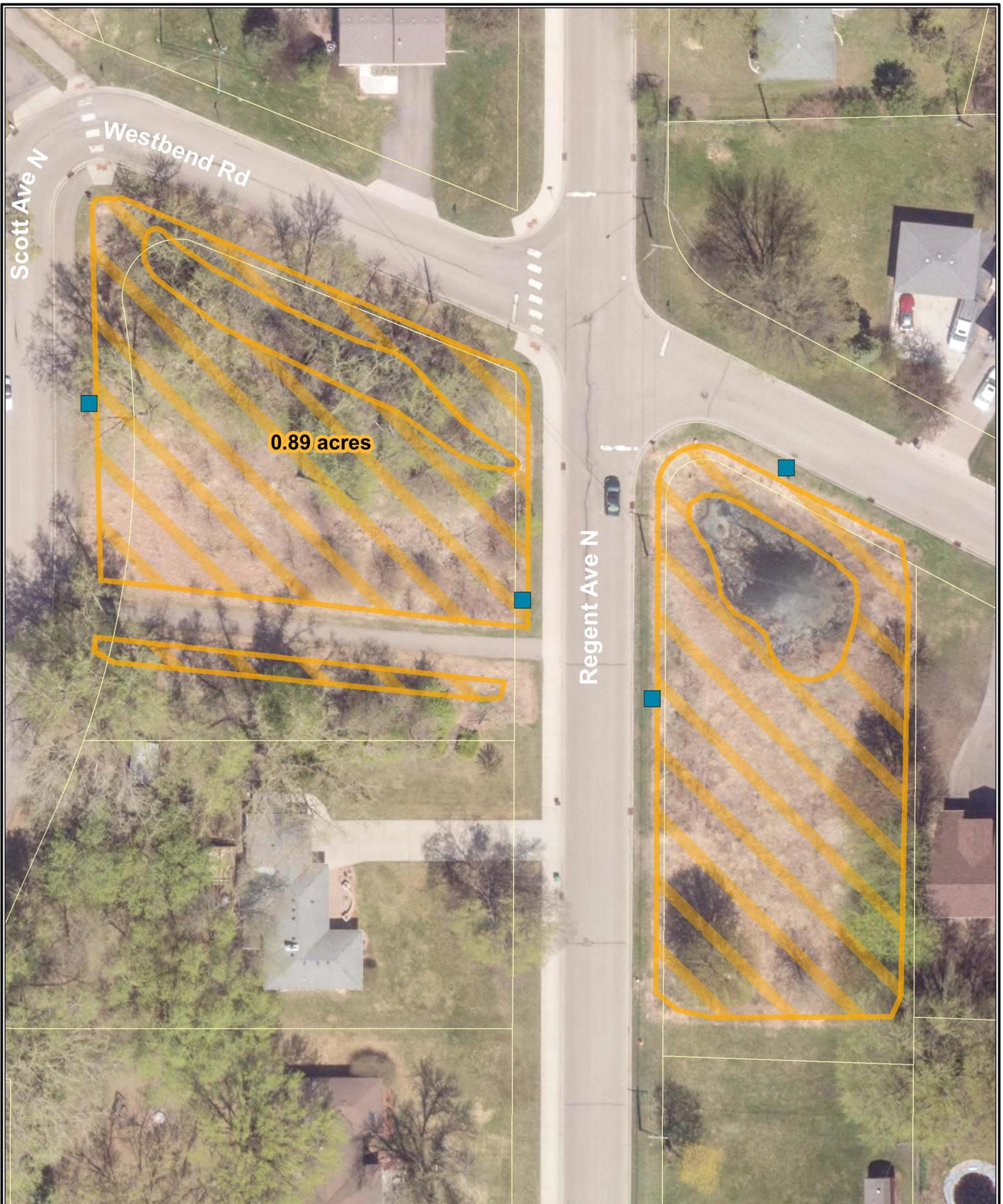


Buffer Maintenance, Site 19
Perry Ave Pond
planted in 2013

Sources: Print Date: 12/26/2019

-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





0.89 acres



Buffer Maintenance, Site 20
Regent and Westbend
planted in 2009

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 25 50 100 Feet





0.73 acres

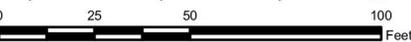
Scott Ave N

Hampton Rd



Buffer Maintenance, Site 21
Scott Ave Pond
planted in 2010

Sources: *Print Date: 12/26/2019*
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





1.48 acres

Olson Memorial Hwy

Schaper Rd

State Hwy 55

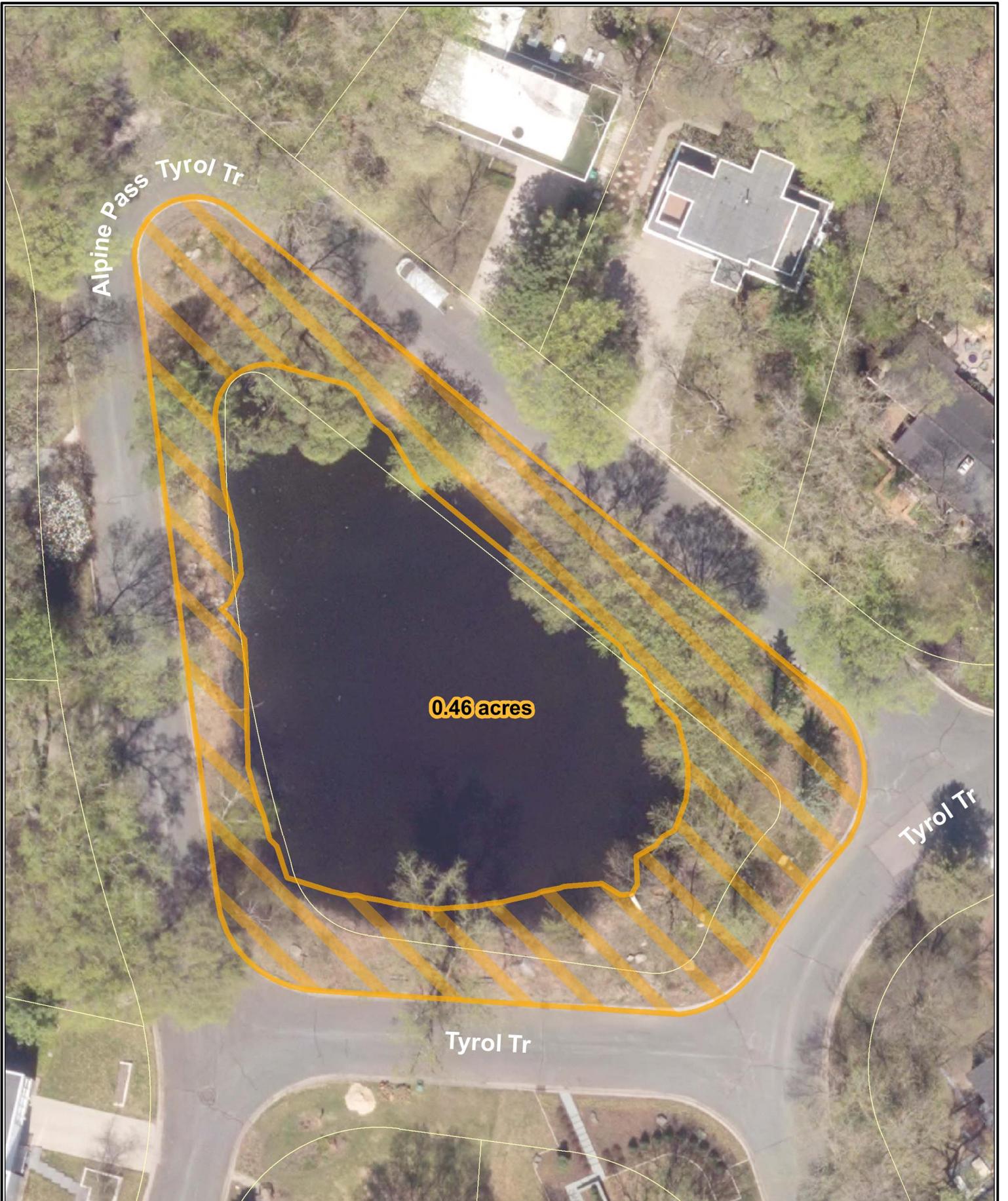
State Hwy 55



Buffer Maintenance, Site 22
Schaper Park
planted in 1998

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





Alpine Pass Tyrol Tr

0.46 acres

Tyrol Tr

Tyrol Tr



Buffer Maintenance, Site 23
South Tyrol Pond
planted in 2002

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.






King Creek Rd

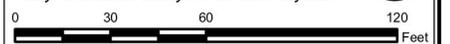
0.41 acres

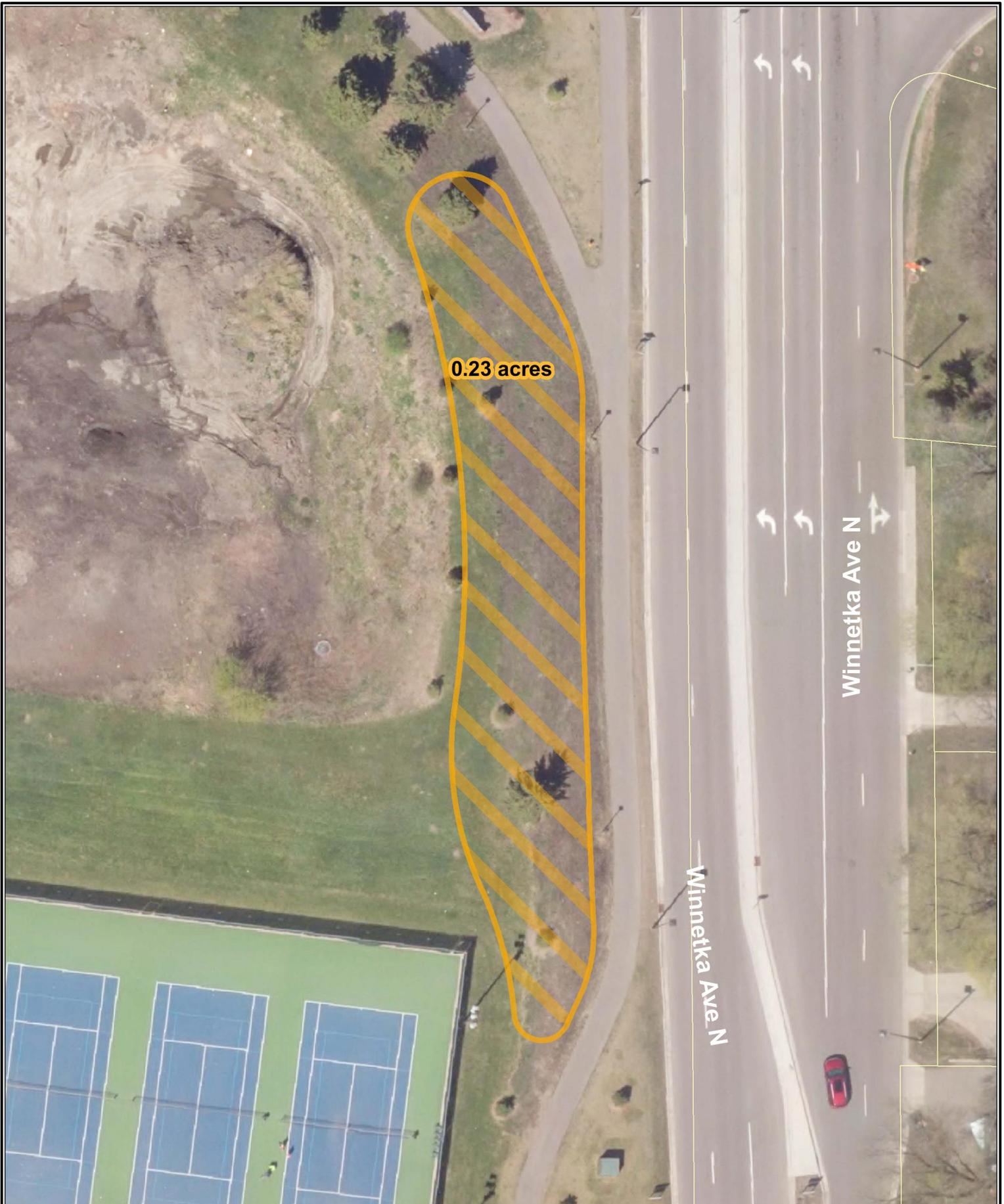


Buffer Maintenance, Site 24
Sweeney Branch Streambank
planted in 2008

Sources: Print Date: 12/26/2019

-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

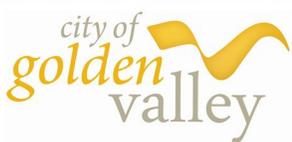




0.23 acres

Winnetka Ave N

Winnetka Ave N

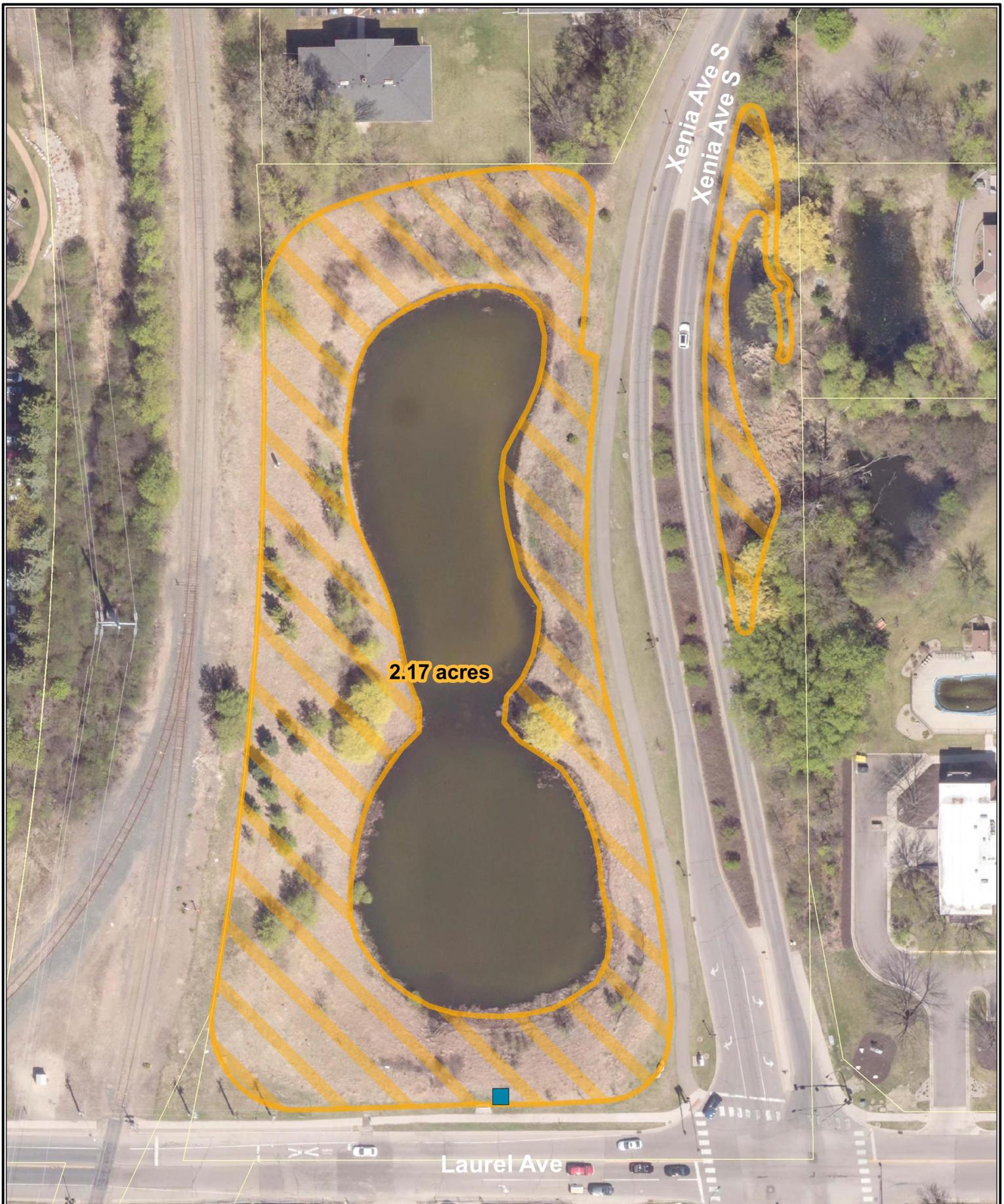


Buffer Maintenance, Site 25
Winnetka and Hwy 55
planted in 2015

Sources: Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
-City of Golden Valley for all other layers.

Print Date: 12/26/2019





2.17 acres

Xenia Ave S
Xenia Ave S

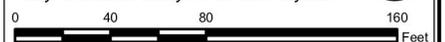
Laurel Ave

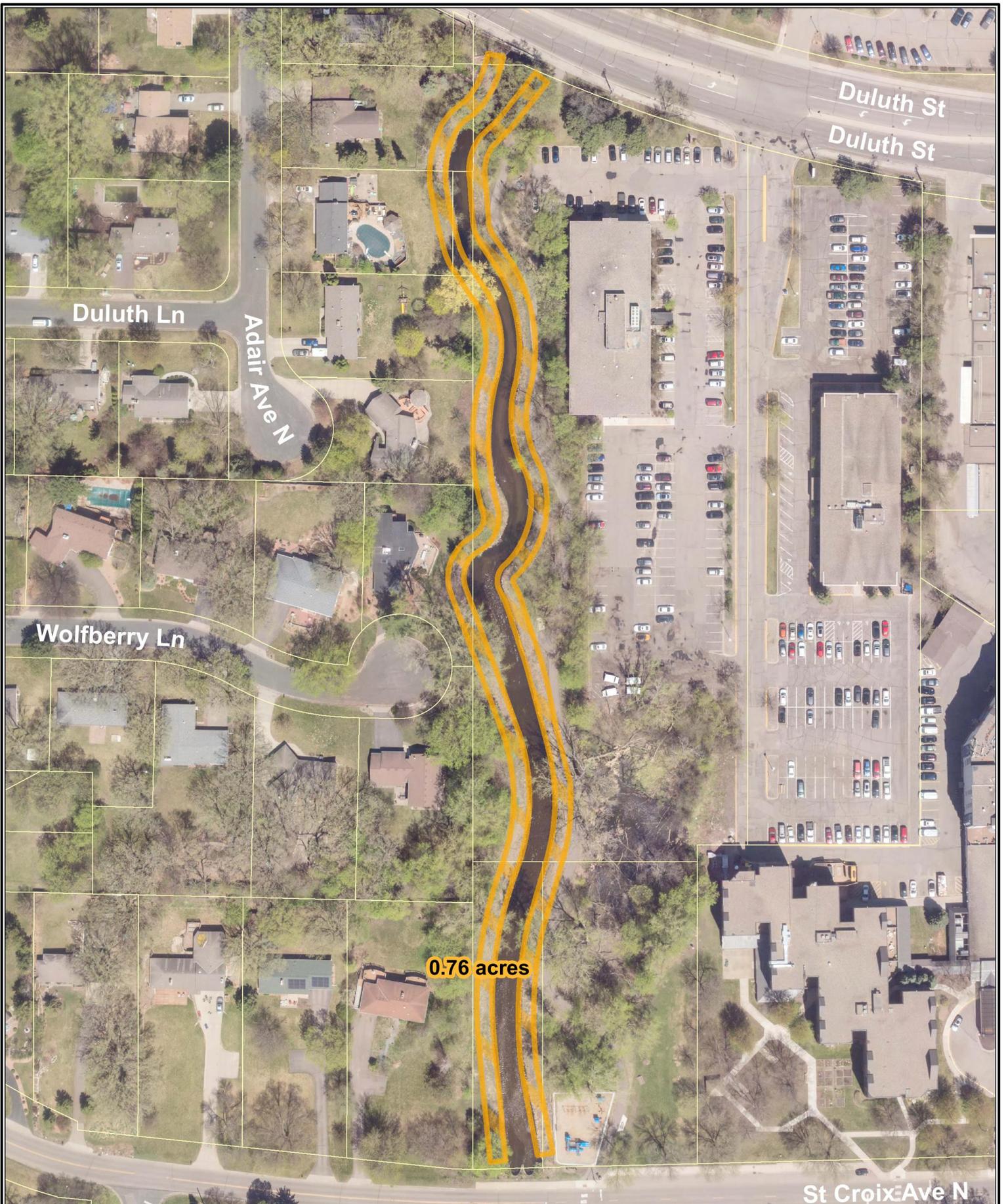


Buffer Maintenance, Site 26
Xenia Avenue Pond and Wetland
planted in 1999

Sources: Print Date: 12/26/2019

- Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
- City of Golden Valley for all other layers.



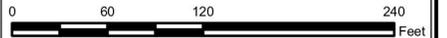


0.76 acres



Buffer Maintenance, Site 27
St Croix Trail
planted in 2016

Sources: Print Date: 12/26/2019
 -Hennepin County Surveyors Office for
 Property Lines (2019) and Aerial
 Photography (2018).
 -City of Golden Valley for all other layers.





0.55 acres

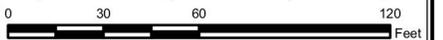
Douglas Dr N

Douglas Dr N



Buffer Maintenance, Site 28
Honeywell Pond
planted in 2016

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

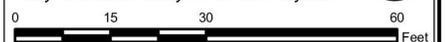




Buffer Maintenance, Site 29
Paisley Park Rain Garden
planted in 2010

Sources: Print Date: 12/26/2019

-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





State Hwy 55
State Hwy 55

2.18 acres



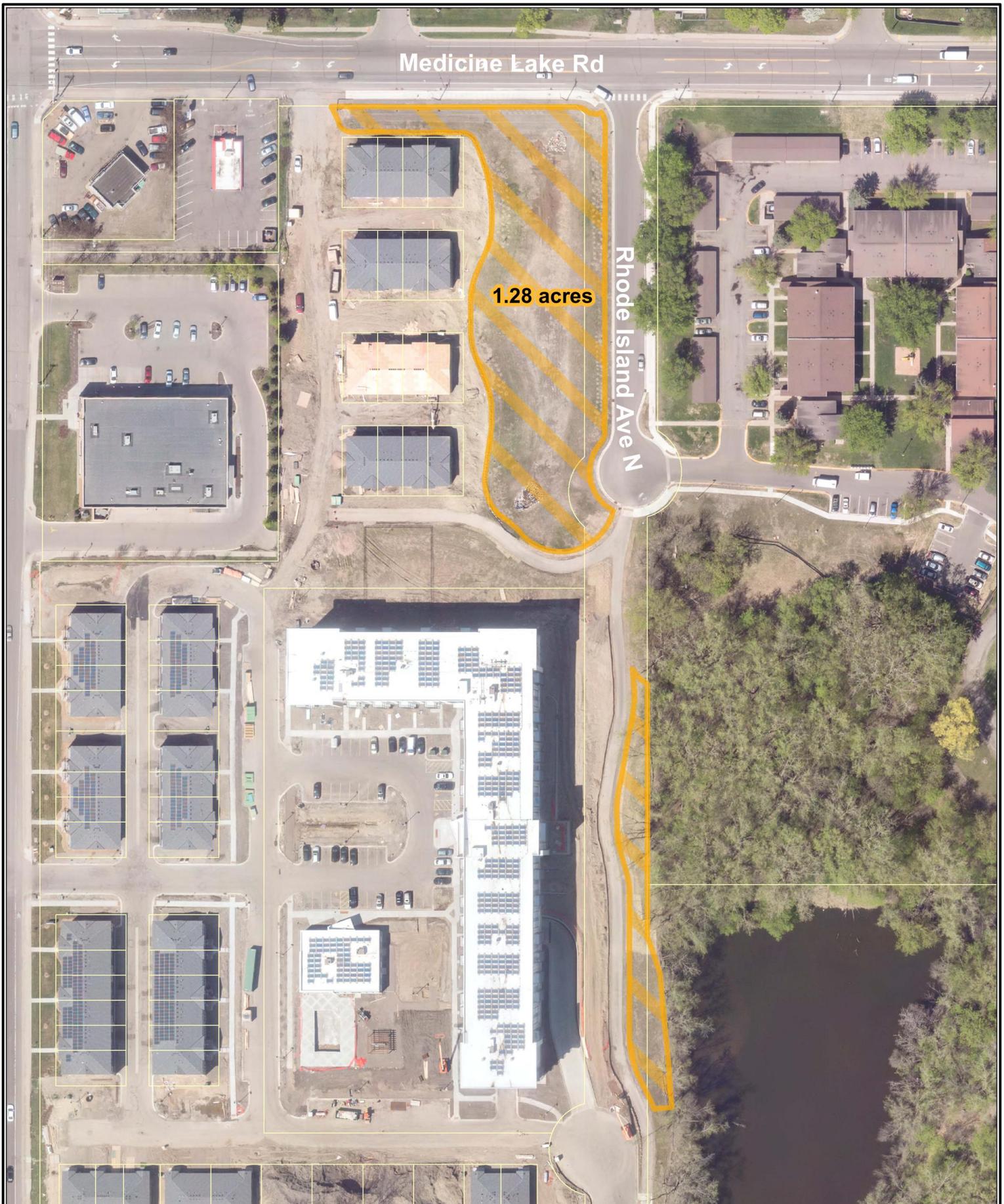
Buffer Maintenance, Site 30
Brookview Ponds N and O
planted in 2014

Sources: Print Date: 12/26/2019

-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.



0 75 150 300 Feet



Medicine Lake Rd

Rhode Island Ave N

1.28 acres



Buffer Maintenance, Site 31
The Liberty
planted in 2017

Sources: *Print Date: 12/26/2019*
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





0.24 acres



Buffer Maintenance, Site 32
Talo Pond
planted in 2017

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 20 40 80
Feet





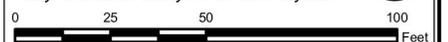
0.30 acres

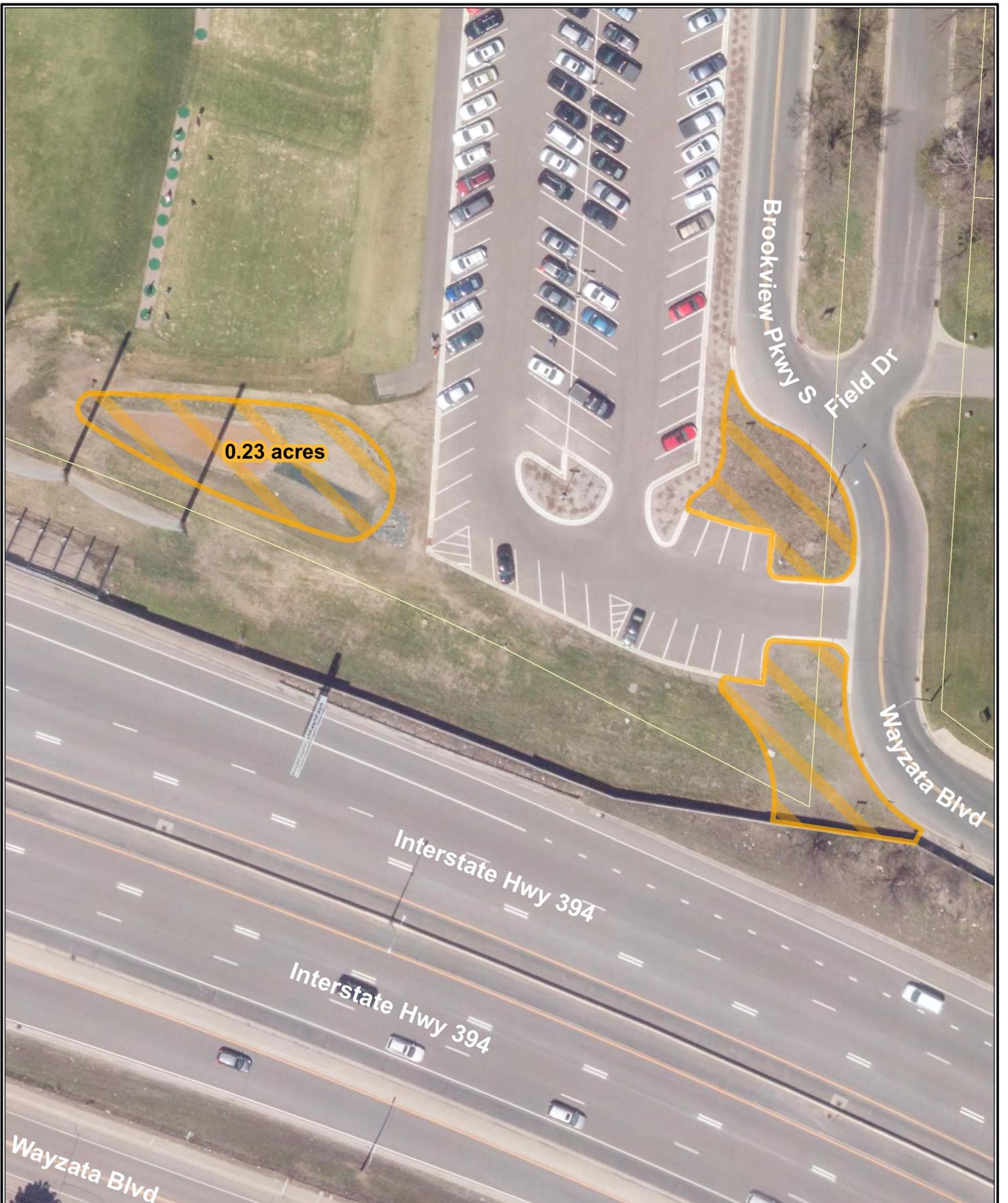
Brookview Pkwy S



Buffer Maintenance, Site 33
Brookview Community Center
planted in 2018

Sources: *Print Date: 12/26/2019*
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.





0.23 acres

Interstate Hwy 394

Interstate Hwy 394

Brookview Pkwy S

Field Dr

Wayzata Blvd

Wayzata Blvd

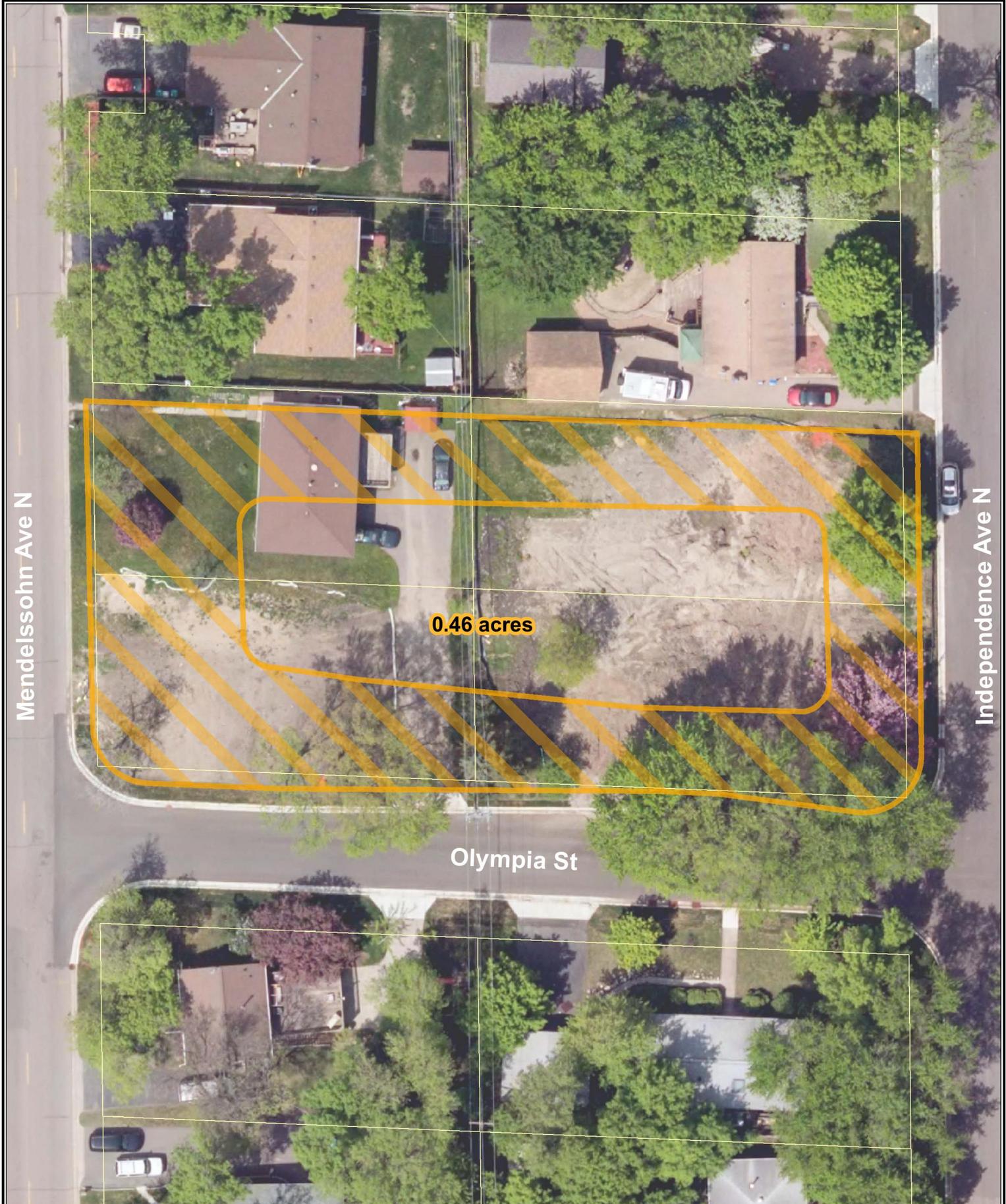


Buffer Maintenance, Site 34
Brookview Driving Range
planted in 2018

Sources: Print Date: 12/26/2019
-Hennepin County Surveyors Office for
Property Lines (2019) and Aerial
Photography (2018).
-City of Golden Valley for all other layers.

0 25 50 100 Feet





Mendelssohn Ave N

Independence Ave N

Olympia St

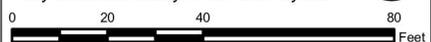
0.46 acres



Buffer Maintenance, Site 35
Olympia Filtration Basin
planted in 2019

Sources: Print Date: 12/26/2019

- Hennepin County Surveyors Office for Property Lines (2019) and Aerial Photography (2018).
- City of Golden Valley for all other layers.



**AMENDMENT TO RESTORATION MAINTENANCE OF
NATIVE PLANT COMMUNITIES**

This amendment ("Amendment") to the 2018 Restoration Maintenance of Native Plant Communities, City Project No 18-09 (the "Agreement") is made by and between the City of Golden Valley (the "City") and Minnesota Native Landscapes, Incorporated ("Contractor").

WHEREAS, on January 23, 2018 the City issued a Request for Proposals for the Golden Valley Restoration and Maintenance of Native Plant Communities; and

WHEREAS, Contractor submitted a proposal in response to the RFP and the City selected Contractor's proposal; and

WHEREAS, on February 20, 2018 the Parties entered into the Agreement under which Contractor agreed to provide restoration and maintenance of native plant communities as provided in the Agreement; and

WHEREAS, the term of the Agreement was one year, from February 20, 2018 through December 31, 2018, and the Agreement contemplates additional one year extensions for up to three years from the original contract date by mutual written; and

WHEREAS, the parties extended the Agreement for one additional year from February 5, 2019 to December 31, 2019;

WHEREAS, the parties wish to extend the Agreement for an additional year from February 4, 2020 through December 31, 2020.

NOW, THEREFORE, the parties hereto agree as follows:

1. Except to the extent modified by this Amendment, the Agreement is hereby ratified in all respects.
2. The Agreement is extended for an additional one-year period from February 18, 2020 to December 31, 2020.
3. The total annual payment for 2020 contract services shall be \$34,360.
4. Attached hereto as Exhibit A is the Proposal Form for services to be provided in 2020. This Proposal Form shall replace and supersede any and all previous proposal forms.
5. All Work provided pursuant to this Amendment shall per commenced no later than March 15, 2020 and shall be completed on or before December 31, 2020.

IN WITNESS WHEREOF the parties sign below.

CITY OF GOLDEN VALLEY

**MINNESOTA NATIVE
LANDSCAPES, INCORPORATED**

Shepard Harris, Mayor

Date: _____

By:
Its:

Date: _____

Timothy J. Cruikshank, City Manager

Date: _____

**CONTRACT FOR THE 2018 RESTORATION AND MAINTENANCE OF
NATIVE PLANT COMMUNITIES
PROJECT NO. 18-09**

THIS AGREEMENT (the "Agreement"), entered into the 21st day of February, 2018 between the City of Golden Valley (the "City"), a municipal corporation, existing under the laws of the State of Minnesota, and Minnesota Native Landscapes, Incorporated a Corporation under the laws of Minnesota ("Contractor").

ARTICLE 1. The Contract Documents. The Contract Documents consist of: this Agreement, the Proposal and Bid of the Contractor, Special Conditions and any supplementary conditions, drawings, plans, specifications, addenda issued prior to execution of this Agreement, other documents listed herein or in any of the foregoing documents, and Modifications of the same issued after execution of this Agreement (collectively the "Contract" or "Contract Documents"). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Engineer.

ARTICLE 2. The Work. Contractor, for good and valuable consideration the sufficiency of which is hereby acknowledged, covenants and agrees to furnish all materials, all necessary tools and equipment, and to do and perform all work and labor necessary for 2018 Restoration and Maintenance of Native Plant Communities (18-09) (the "Project") according to the Plans and Specifications and all of the Contract Documents (the "Work").

Contractor shall commence and conclude the Work in accordance with the Contract Documents. Time is of the essence in this Agreement. Accordingly, Contractor shall complete the Work in accordance with the time schedule for commencement and completion of the Work set forth in the Contract Documents. Contractor shall complete the Work in every respect to the satisfaction and approval of the City.

ARTICLE 3 The City's Responsibilities. In consideration of the covenants and agreements stated above, the City shall pay Contractor the sum stated in Contractor's proposal or Bid (the "Contract Price"). Installment payments, if any, on account of the Work shall be made in accordance with the provisions of the General Conditions. Final payment shall be due and payable on or before ten (10) days after receipt of; (a) a Certificate of Substantial Completion issued by the City Engineer confirming that the Work has been fully completed and the Contract fully performed by Contractor and; (b) an opinion of the City Attorney that the City is obligated to pay the sum contracted for herein.

ARTICLE 4. Acceptance of the Work. The City, through its authorized agents, shall be the sole and final judge of the fitness of the Work and its acceptability, and no payment shall be made to Contractor hereunder until the Work shall have been accepted by the City and a certificate of substantial completion shall have been issued.

ARTICLE 5. Records. Contractor shall keep as complete, exact and accurate an account of the labor and materials used in the execution of the Work as is possible, and shall submit and make this information available as maybe requested by the City.

ARTICLE 6. Payment. All payments to Contractor shall be made payable to the order of Minnesota Native Landscapes, Incorporated, and the City does not assume and shall not have any responsibility for the allocation of payments or obligations of the Contractor to third parties.

ARTICLE 7. Cancellation prior to Execution. The City reserves the right, without liability, to cancel the award of the Contract at any time before the execution of the Contract by all parties.

ARTICLE 8. Termination. The City may by written notice terminate the Contract, or any portion thereof, when (1) it is deemed in the best public, state or national interest to do so; (2) the City is unable to adequately fund payment for the Contract because of changes in state fiscal policy, regulations or law; or (3) after finding that, for reasons beyond Contractor's control, Contractor is prevented from proceeding with or completing the Work within a reasonable time.

In the event that any work is terminated under the provisions hereof, all completed items or units of work will be paid for at Contract Quote Prices. Payment for partially completed items or units of work will be made in accordance with the procedure on the attached Exhibit A and as otherwise mutually agreed.

Termination of the Contract or any portion thereof shall not relieve Contractor of responsibility for the completed Work, nor shall it relieve Contractor's Sureties of their obligations for and concerning any just claims arising out of the Work.

IN WITNESS WHEREOF, both parties hereto have caused this Contract to be signed on their respective behalves by their duly authorized offices and their corporate seals to be hereunto affixed the day and year first above written.

CONTRACT NO. 18-09

THE CITY OF GOLDEN VALLEY, MINNESOTA

BY Shepard M. Harris
Shepard M. Harris, Mayor

BY [Signature]
Timothy J. Cruikshank, City Manager

CONTRACTOR

BY Larry Schaffer

ITS President

BY _____

ITS _____

EXHIBIT A

Elimination of Work

Should any Contract items be eliminated from the Contract or any work be deleted or should the City order termination on a Contract item before completion of that unit, Contractor shall be reimbursed for all costs incurred prior to notification that are not the result of unauthorized work. Compensation will be made on the following basis:

- (1) Accepted quantities of Work completed in accordance with the Contract will be paid for at the Contract prices.**
- (2) For materials that have been ordered but not incorporated in the Work, reimbursement will be made in accordance with the procedure set out below for Surplus Material.**
- (3) For partially completed items, accepted Work shall be paid for on the basis of a percentage of the Contract bid price equal to the percentage of actual accomplishment toward completion of the item. In arriving at this percentage, the value of materials incorporated in the partially completed items will be considered to be the actual purchase price of the materials, plus transportation costs, to which will be added fifteen percent (15%) of the sum thereof.**
- (4) Contractor shall also be reimbursed for such actual expenditures for equipment, mobilization, and overhead as the City considers directly attributable to the eliminated work and that are not recovered as part of the direct payment for the Work.**

Payment for completed Work at the Contract prices and for partially completed Work and materials in accordance with the above provisions, together with such other allowances as are made for fixed costs, shall constitute final and full compensation for the Work related to those Contract items that have been partially or totally eliminated from the Contract.

Payment for Surplus Material

Payment for materials that have been ordered in furtherance of the Work, but that are not to be used because (1) of cancellation of the Contract or a portion thereof; (2) of an order to terminate the Work before completion of the entire unit; or (3) the quantity ordered by the Engineer was in excess of the quantity needed, will be made in accordance with the following provisions, unless Contractor or one of Contractor's suppliers elects to take possession of the surplus material without expense to the City:

- (1) Payment for surplus materials that have been purchased and shipped or delivered to the Project will be made at the Contract bid price when the pay item covers the furnishing and delivering of the material only.**

- (2) When the Contract bid price covers the furnishing and placing of the material, the City will take possession of the surplus materials that have been purchased and shipped or delivered to the Project, or will order the material returned to the supplier for credit and will pay the Contractor the actual purchase price of the material plus transportation costs, to which will be added fifteen percent (15%) of the total thereof, and from which will be deducted any credits received by the Contractor for materials returned.
- (3) Materials that have been ordered but have not been consigned for shipment shall be paid for upon delivery the same as materials in transit or delivered only when the supplier is unwilling to cancel or modify the order such as in the case of materials requiring special manufacture, fabrication, or processing so as to be unsuitable for general use.

In no case shall payment for surplus materials exceed the Contract Price for the materials complete in place. Contractor shall furnish invoices or an affidavit showing the purchase price and transportation charges on materials to be taken over by the City.

Surplus materials that are taken over by the City shall be delivered to the storage sites designated by the Engineer.

Except as above provided, no payment shall be made to Contractor for any materials that are not incorporated in the Work. Materials shall be ordered in the quantities needed unless a specific quantity is to be furnished by direct order of the Engineer.

No payment shall be made for surplus materials that have not been inspected, tested, and accepted for use, nor will any payment be made for accepted materials that have not been properly preserved, stored, and maintained to the date on which they are delivered to the City.



EXECUTIVE SUMMARY

Physical Development

763-593-8030 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. E. 4. Authorize Mill and Overlay of 26th Avenue North Cooperative Agreement with the City of Robbinsdale

Prepared By

Jeff Oliver, PE, City Engineer

Summary

In the spring of 2019, staff from the City of Robbinsdale contacted Golden Valley staff regarding a sanitary sewer replacement project on 26th Avenue North, which is the border street between the two communities. Robbinsdale was including a mill and overlay of its half of the roadway between Xerxes Avenue North and Byrd Avenue North and asked if Golden Valley was interested in including its half of the roadway in the project. Staff determined there was interest in participating and the project was planned accordingly. Golden Valley prepared a cooperative agreement between Golden Valley and sent to Robbinsdale for review and execution. The agreement was not returned to Golden Valley and the project proceeded with the Golden Valley portion of 26th Avenue included in the mill and overlay.

In December of 2019, staff received an invoice from Robbinsdale for the Golden Valley portion of the project. Golden Valley staff requested a signed copy of the cooperative agreement for the work prior to payment of the invoice. The signed agreement has been received. Payment to Robbinsdale will occur following approval by Council of the cooperative agreement.

Financial Or Budget Considerations

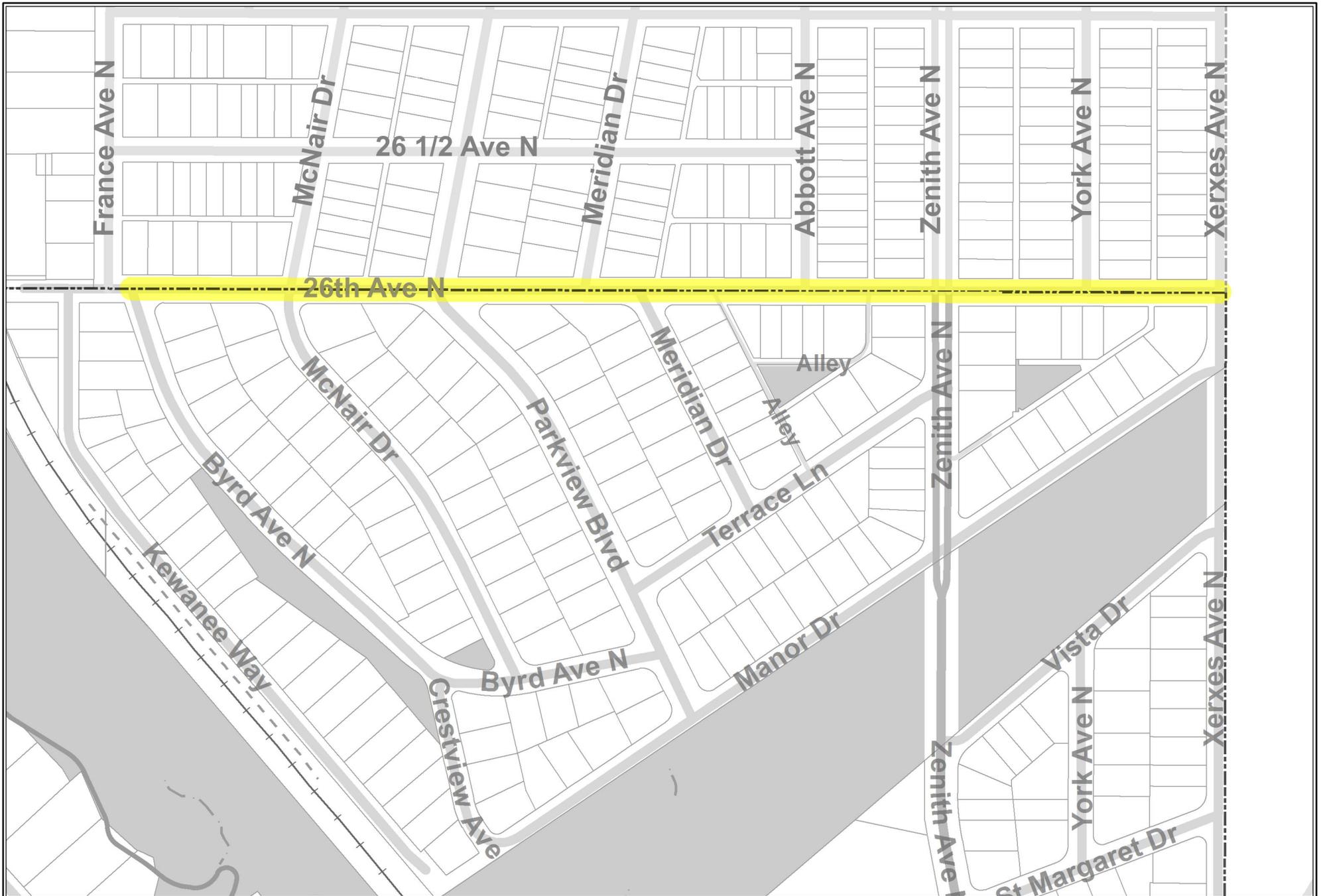
Funding is available for the payment to Robbinsdale in the 2020 Capital Improvement Plan, Project S-013, Pavement Management Overlays, with a budgeted amount of \$500,000.

Recommended Action

Motion to authorize the Mayor and City Manager to execute the Mill and Overlay of 26th Avenue North Cooperative Agreement with the City of Robbinsdale in the form approved by the City Attorney in the amount of \$31,527.77.

Supporting Documents

- Location Map (1 page)
- Invoice from the City of Robbinsdale (1 pages)
- Mill and Overlay of 26th Avenue North Cooperative Agreement with the City of Robbinsdale (6 pages)

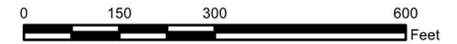


26th Ave N
Byrd Ave N to Xerxes Ave N

Print Date: 2/11/2020

Sources:

- Hennepin County Surveyors Office for Property Lines (2019) & Aerial Photography (2018).
- City of Golden Valley for all other layers.





City of Robbinsdale

4100 Lakeview Avenue North
Robbinsdale, Minnesota 55422-1898
Phone: (763) 537-4534
Fax: (763) 537-7344

Remit To:
CITY OF ROBBINSDALE
4100 LAKEVIEW AVE N
ROBBINSDALE MN 55422

Billing Address: 115576
CITY OF GOLDEN VALLEY
ATTN: BRIAN ERICKSON
200 BROOKVIEW PARKWAY
GOLDEN VALLEY MN 55426

INVOICE

10247

Invoice Date 2/13/2020

Due Date 3/14/2020

Page: 1

<u>Item</u>	<u>Remark</u>	<u>Amount</u>
001	26TH AVE MILL & OVERLAY GOLDEN VALLEY PORTION	31,527.77
	Total Amount Invoiced	31,527.77
	Balance Due	31,527.77

MILL & OVERLAY OF 26TH AVENUE NORTH
COOPERATIVE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into effective as of the 29th day of May, 2019, by and between the City of Robbinsdale, a municipal corporation under the laws of the State of Minnesota (“Robbinsdale”), and the City of Golden Valley, a municipal corporation under the laws of the State of Minnesota (“Golden Valley”) (collectively referred to as the “Cities” and individually as a “City”).

WHEREAS, the Cities have been negotiating to bring about the improvement of 26th Avenue North from Xerxes Avenue North to Byrd Avenue North (the “Project”); and

WHEREAS, the Project straddles the border of the Cities, each City having a right of way interest in and maintenance responsibility for its respective portion of the Project; and

WHEREAS, the Cities wish to cooperate to complete a 4 foot edge mill and 2 inch overlay of the Project area (the “Work”); and

WHEREAS, the scope of the Work has been negotiated between the Cities and is outlined in the cost estimate incorporated herein and attached hereto as **Exhibit A** (the “Scope of Work”); and

WHEREAS, Robbinsdale has prepared plans and specifications, advertised for bids and awarded a contract to complete the Work to the low bidder, Northwest Asphalt, Inc.; and

WHEREAS, the complete Project plans, specifications and bids are on file with the City of Robbinsdale; and

WHEREAS, the Golden Valley City Engineer has reviewed and approved the Scope of Work; and

WHEREAS, Robbinsdale has agreed to administer and supervise the Work;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. Project Administration

Robbinsdale shall administer all aspects of the Project and shall inspect all completed Work. The Golden Valley City Engineer shall cooperate with the Robbinsdale City Engineer and their staff upon request to aid in the administration of the Project but shall have no responsibility for the supervision of any of the Work.

II. Additional Work

Robbinsdale may, in its sole discretion, make changes to the Scope of Work so long as all changes are reasonably necessary to complete the Work and are conceptually consistent with the original Scope of Work. Robbinsdale may carry out the changes authorized by this paragraph by entering into change orders or supplemental agreements with the contractor(s). Robbinsdale may contract for the performance of any and additional or new work that is not contemplated by the original Scope of Work, provided that Robbinsdale gives Golden Valley timely notice of any new or additional work along with an estimate of any increase to Golden Valley's financial contribution to the Project, and provided that Golden Valley consents to the proposed new or additional work, which consent shall not be unreasonably withheld.

III. Apportionment of Cost

The estimated cost of Golden Valley's portion of the Work is \$31,807.77 (the "Estimated Cost"). The total cost of Golden Valley's portion of the Work (the "Final Cost") shall be determined when the project is complete based on actual quantities used of the items outlined in the Scope of Work. The Cities understand and agree that the Estimated Cost is an estimate only. The Final Cost shall be based on the unit prices set forth in the contract with the Contractor and the final quantities as measured by the Robbinsdale City Engineer, which measurements shall govern in computing the Final Cost.

IV. Payment

Within sixty (60) days after the execution of this Agreement by both Parties, Golden Valley shall deposit with the Robbinsdale Director of Finance ninety percent (90%) of Golden Valley's share of the Estimated Cost. Upon completion of the Work, Robbinsdale shall submit to Golden Valley a copy of the Robbinsdale City Engineer's final cost report, which shall show Golden Valley's share of the Final Cost. All remaining amounts due from Golden Valley, including any amounts resulting from change orders or other changes or additions to the Work shall be paid to Robbinsdale within 60 days of final completion of the Work.

Upon payment by Robbinsdale of the final amount due to the Contractor, any amount paid by Golden Valley above its agreed upon share of the Final Cost shall be returned to Golden Valley.

V. Traffic Control

If detouring of traffic is necessary during the Work, the detour routes shall be mutually agreed upon by the Cities. Robbinsdale shall ensure that the Contractor furnishes, installs and maintains all guide signs, regulatory signs and pavement markings. Robbinsdale shall not be responsible for any damage caused by increased traffic on any municipal streets located in Golden Valley that arise out of or relate to the Work.

VI. Cooperative Activity

To the fullest extent permitted by law, all activities by the Cities under this Agreement are intended to be and shall be construed as a "cooperative activity," and it is the intent of the Cities that they shall be deemed a "single governmental unit" for the purposes of liability, as set forth in Minnesota Statutes, section 471.59, subd. 1a(a). For purposes of that statute, each City expressly declines responsibility for the acts or omissions of the other City. The Cities are not

liable for the acts or omissions of the other City except to the extent they have agreed in writing to be responsible for the acts or omissions of the other City.

VII. Insurance & Indemnity

The Cities shall carry policies of liability insurance in at least the amounts specified as the extent of their individual liability under Minn. Stat. § 466.04, as amended. Nothing herein shall be deemed to waive any statutory limits of liability granted to the Cities. The liability limitations established in Minn. Stat. § 466.04 shall apply to undertakings pursuant to this Agreement. Each City agrees to defend, indemnify and hold harmless the other, their elected officials, officers, agents and employees from any liability, claims, demands, damages, personal injury, costs, judgments or expenses arising from the fault of its own actions in design, development, or supervision of the Work. Defense of any action or proceeding shall be at the expense of the indemnifying Party by counsel reasonably satisfactory to the indemnified Party.

Neither City shall be required to pay to the other City any amount as indemnification under this Agreement, whether arising pursuant to this Agreement, expressly, by operation of law or otherwise, in excess of the limits of liability applicable to the indemnifying City under Minnesota Statutes Chapter 466, or in the event that Minnesota Statutes Chapter 466 does not apply, the maximum amount of insurance coverage available to the indemnifying City. In those instances in which a City is directly liable for damages as well as for indemnification to the other City, the combined liability of the indemnifying City shall not exceed the limits of liability under Minnesota Statutes Chapter 466 or, in the event that Minnesota Statutes Chapter 466 does not apply, the maximum amount of insurance coverage available to the indemnifying City.

VIII. Employees; Worker's Compensation

Any and all employees of each City and all other persons engaged by that City in the performance of the Work or any other work or services required or contemplated by this

Agreement shall not be considered employees of the other City. Any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Minnesota on behalf of said employees while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged shall in no way be the obligation or responsibility of the other City.

IX. Discrimination

The provisions of Minn. Stat. § 181.59 and of any applicable local ordinance relating to civil rights and discrimination shall be considered a part of this Agreement as though fully set forth herein.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

CITY OF GOLDEN VALLEY

By: _____

Shepard M. Harris

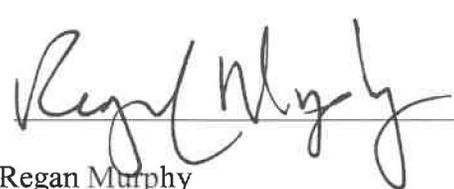
Its: Mayor

By: _____

Timothy J. Cruikshank

Its: Manager

CITY OF ROBBINSDALE

By:  _____

Regan Murphy

Its: Mayor

By:  _____

Marcia Glick

Its: Manager

Exhibit A: Scope of Work

2019 Mill & Overlay 26th Avenue from Xerxes Avenue to Byrd Avenue Golden Valleys Portion Based on As Bid prices from Northwest Asphalt

Item	Unit	Unit Price	Quantity	Total
Mobilization	Lump Sum	\$ 19,500.00	0.05	\$ 975.00
Traffic Control	Lump Sum	\$ 6,720.00	0.05	\$ 336.00
4' Edge Mill	SY	\$ 1.86	1140	\$ 2,120.40
Adjust Gate Valve	Each	\$ 35.00	10	\$ 350.00
Type SP 9.5 Wear	SY	\$ 6.97	4021	\$ 28,026.37
Total				\$ 31,807.77

Possible additional costs if needed

Adjust Manhole Casting	Each	\$ 150.00
Common Excavation 12" Depth	SY	\$ 7.65
Aggregate Base Class V, 8" Depth	SY	\$ 4.20
Bituminous Patch 4" Thick	SY	\$ 23.00

Final costs will be based on actual quantities used.

Width is 1/2 of existing pavement

	Length	Width	Total SF	Total SY
West side of York to East side of Byrd	2210	14	30940	3438
West side of York to East side of Xerxes	350	15	5250	583
Total				4021



EXECUTIVE SUMMARY

Public Works

763-593-8030 / 763-593-3988 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. E. 5. Approve Contract for Hauling and Disposal of 10th Avenue Fill

Prepared By

Tim Kieffer, Public Works Director

Summary

The initial phase of a multi-year plan to remove the dirt berm and install sectional concrete panels on the south side of the 10th Avenue storage yard is scheduled for 2020. Public Works has been stockpiling excess dirt from water main breaks, street sweeping, and other maintenance operations for several years. The 10th Avenue storage yard has become increasingly full, to the point where contract trucking and disposal of the unwanted material is needed to make space.

Installing sectional concrete panels will act as visual screening and create more storage because they require less surface area than the existing berm used for screening. Additionally, panels can be used to create bins to keep different materials separated. The panels are modular and able to be relocated or repurposed if future needs change.

Staff solicited quotes to transport and dispose of the material. The results are as follow:

M.B.E., Inc.	\$12.49 per cubic yard
Dispatch Trucking, LLC	\$12.56 per cubic yard

Financial Or Budget Considerations

The 2020 Buildings Capital Improvement Program (CIP) includes \$50,000 for the hauling and disposal of fill (B-048).

Recommended Action

Motion to approved contract with M.B.E., Inc. for the hauling and disposal of fill.

Supporting Documents

- Contract for Hauling and Disposal of Fill (9 pages)
- M.B.E., Inc Quote (1 page)
- Dispatch Trucking, LLC Quote (1 page)

**CONTRACT FOR
HAULING AND DISPOSAL OF FILL**

THIS AGREEMENT is made this 18th day of February, 2020 (“Effective Date”) by and between M.B.E., INC. a Minnesota corporation located at 530 River Street South, Delano, MN 55328 (“Contractor”), and the City of Golden Valley, Minnesota, a Minnesota municipal corporation located at 7800 Golden Valley Road, Golden Valley, MN 55427 (the “City”):

RECITALS

- A. Contractor is engaged in the business of transporting, delivering, and disposing of aggregate.
- B. The City desires to hire Contractor to transport and dispose of common fill.
- C. Contractor represents that it has the professional expertise and capabilities to provide the City with the requested work.
- D. The City desires to engage Contractor to provide the work described in this Agreement and Contractor is willing to provide such work on the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions expressed herein, the City and Contractor agree as follows:

AGREEMENT

1. **The Work.** Contractor shall perform the work more fully described in the attached **Exhibit A** (the “Work”). The Work includes all work and services required by this Agreement, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor’s obligations. All Work shall be completed according to the specifications set forth in the attached **Exhibit B**.
2. **Time for Completion.** The Contractor shall proceed diligently and shall complete the Work to the satisfaction and approval of the City on or before May 1, 2020 (the “Contract Time”). Contractor shall notify the City in writing of any cause of delay of the Work within 24 hours after such cause of delay arises. If Contractor fails to complete the Work by the Contract Time, the City may immediately, or at any time thereafter, proceed to complete the Work at the Contractor’s expense. If Contractor gives written notice of a delay over which Contractor has no control, the City may, at its discretion, extend the Contract Time.
3. **Consideration.** The consideration, which the City shall pay to Contractor, shall not exceed \$50,000. The consideration shall be for both the Work performed by Contractor and the expenses incurred by Contractor in performing the Work. Contractor shall submit statements to the City containing a detailed list of project labor and hours, rates, titles, and amounts undertaken by Contractor during the relevant billing period. The City shall pay Contractor within thirty (30) days after receiving a statement from Contractor.
4. **Extra Work.** Unless approved by the City in writing, Contractor shall make no claim for extra work done or materials furnished, nor shall Contractor do any work or furnish any materials not covered by the

plans and specifications of this Agreement. Any such work or materials furnished by Contractor without written City approval shall be at Contractor's own risk and expense. Contractor shall perform any altered plans ordered by the City; if such alteration reduces the cost of doing such work, the actual amount of such reduction shall be deducted from the contract price for the Work.

5. **Expense Reimbursement.** Contractor shall not be compensated separately for necessary incidental expenses. All expenses of Contractor shall be built into Contractor's fixed compensation rate, unless reimbursement is provided for an expense that received the prior written approval of the City, which approval may be provided via electronic mail.

6. **Approvals.** Contractor shall secure the City's written approval before making any expenditures, purchases, or commitments on the City's behalf beyond those listed in the Work. The City's approval may be provided via electronic mail.

7. **Protection of Persons and Property.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- a. Persons performing the Work and other persons who may be affected by the Work;
- b. The Work and materials and equipment to be incorporated therein; and
- c. Other property at the site or adjacent to the site, such as trees, shrubs, lawns, walks, pavement, roadways, structures and utilities.

Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor or any of its subcontractors, agents, or anyone directly or indirectly employed by any of them.

8. **Termination.** This Agreement shall remain in force and effect commencing from the effective date and continuing until the completion of all of the parties' obligations hereunder, unless terminated by the City or amended pursuant to the Agreement. Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:

- a. The parties, by mutual written agreement, may terminate this Agreement at any time;
- b. Contractor may terminate this Agreement in the event of a breach of the Agreement by the City upon providing thirty (30) days' written notice to the City;
- c. The City may terminate this Agreement at any time at its option, for any reason or no reason at all; or
- d. The City may terminate this Agreement immediately upon Contractor's failure to have in force any insurance required by this Agreement.

In the event of a termination, the City shall pay Contractor for Work performed to the date of termination and for all costs or other expenses incurred prior to the date of termination.

9. **Amendments.** No amendments may be made to this Agreement except in a writing signed by both parties.

10. **Remedies.** In the event of a termination of this Agreement by the City because of a breach by Contractor, the City may complete the Work either by itself or by contract with other persons or entities, or any combination thereof. These remedies provided to the City for breach of this Agreement by

Contractor shall not be exclusive. The City shall be entitled to exercise any one or more other legal or equitable remedies available because of Contractor's breach.

11. **Records/Inspection.** Pursuant to Minnesota Statutes § 16C.05, subd. 5, Contractor agrees that the books, records, documents, and accounting procedures and practices of Contractor, that are relevant to this Agreement or transaction, are subject to examination by the City and the state auditor or legislative auditor for a minimum of six years. Contractor shall maintain such records for a minimum of six years after final payment. The parties agree that this obligation will survive the completion or termination of this Agreement.

12. **Indemnification.** To the fullest extent permitted by law, Contractor, and Contractor's successors or assigns, agree to protect, defend, indemnify, save, and hold harmless the City, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; and costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Contractor's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct by Contractor, or arising out of Contractor's failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled. The parties agree that these indemnification obligations shall survive the completion or termination of this Agreement.

13. **Insurance.** Contractor shall maintain reasonable insurance coverage throughout this Agreement. Contractor agrees that before any work related to the approved project can be performed, Contractor shall maintain at a minimum:

- a. Worker's Compensation Insurance as required by Minnesota Statutes, section 176.181;
- b. Business Auto Liability covering vehicles owned by Contractor and non-owned vehicles used by Contractor, with policy limits not less than \$1,000,000.00 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of such motor vehicles, along with any statutorily required automobile coverage;
- c. Commercial General Liability in an amount of not less than \$1,000,000.00 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 for products-completed operations hazard, providing coverage for claims including:
 - i. Damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
 - ii. Personal and advertising injury;
 - iii. Damages because of physical damage to or destruction of property, including loss of use of such property;
 - iv. Bodily injury or property damage arising out of completed operations; and
 - v. Contractor's indemnity obligations under this Agreement.

To meet the Commercial General Liability and Business Auto Liability requirements, Contractor may use a combination of Excess and Umbrella coverage. Prior to commencement of the Work, Contractor shall provide the City with a current certificate of insurance including the following language: "The City of

Golden Valley is named as an additional insured with respect to the commercial general liability, business automobile liability and umbrella or excess liability, as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages.” Such certificate of liability insurance shall list the City as an additional insured and contain a statement that such policies of insurance shall not be canceled or amended unless 30 days’ written notice is provided to the City, or 10 days’ written notice in the case of non-payment.

14. **Compliance with State Withholding Tax.** Before final payment is made for the Work on this project, Contractor must make a satisfactory showing that it has complied with the provisions of Minnesota Statutes, section 290.92 requiring the withholding of State Income Tax for wages paid employees on this project by providing to the City Engineer a Certificate of Compliance from the Commissioner of Taxation. Contractor is advised that before such Certificate can be issued, Contractor must first place on file with the Commissioner of Taxation an affidavit, in the form of an IC-134, that Contractor has complied with the provisions of Minnesota Statutes Section 290.92.

15. **Assignment.** Neither the City nor Contractor shall assign this Agreement or any rights under or interest in this Agreement, in whole or in part, without the other party’s prior written consent. Any assignment in violation of this provision is null and void. Neither the City nor Contractor shall assign, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in the Agreement without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and subcontractors, as it may deem appropriate to assist it in the performance of the Work required by this Agreement. Any instrument in violation of this provision is null and void.

16. **Independent Contractor.** Contractor is an independent contractor. Contractor’s duties shall be performed with the understanding that Contractor has special expertise as to the Work which Contractor is to perform and is customarily engaged in the independent performance of the same or similar work for others. Contractor shall provide or contract for all required equipment and personnel. Contractor shall control the manner in which the Work is performed; however, the nature of the Work and the results to be achieved shall be specified by the City. The parties agree that this is not a joint venture and the parties are not co-partners. Contractor is not an employee or agent of the City and has no authority to make any binding commitments or obligations on behalf of the City except to the extent expressly provided in this Agreement. All Work provided by Contractor pursuant to this Agreement shall be provided by Contractor as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers’ compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.

17. **Compliance with Laws.** Contractor shall exercise due professional care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the Effective Date. Contractor’s guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by the City’s policies prohibiting sexual harassment and tobacco, drug, and alcohol use as defined on the City’s Tobacco, Drug, and Alcohol Policy, as well as all other reasonable work rules, safety rules, or policies, and procedures regulating the conduct of persons on City property, at all times while performing duties pursuant to this Agreement. Contractor agrees and understands that a

violation of any of these policies, procedures, or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City.

18. **Entire Agreement.** The Contract Documents shall constitute the entire agreement between the City and Contractor, and supersede any other written or oral agreements between the City and Contractor.

19. **Third Party Rights.** The parties to this Agreement do not intend to confer any rights under this Agreement on any third party.

20. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

21. **Conflict of Interest.** Contractor shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of the City. In the event of a conflict of interest, Contractor shall advise the City and, either secure a waiver of the conflict, or advise the City that it will be unable to provide the requested Work.

22. **Agreement Not Exclusive.** The City retains the right to hire other professionals, contractors and service providers for this or other matters, in the City's sole discretion.

23. **Data Practices Act Compliance.** Any and all data provided to Contractor, received from Contractor, created, collected, received, stored, used, maintained, or disseminated by Contractor pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Contractor agrees to notify the City within three business days if it receives a data request from a third party. This paragraph does not create a duty on the part of Contractor to provide access to public data to the public if the public data are available from the City, except as required by the terms of this Agreement. These obligations shall survive the termination or completion of this Agreement.

24. **No Discrimination.** Contractor agrees not to discriminate in providing the Work under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Contractor agrees to comply with Americans with Disabilities Act as amended ("ADA"), section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Contractor agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorneys' fees and staff time, in any action or proceeding brought alleging a violation of these laws by Contractor or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors. Upon request, Contractor shall provide accommodation to allow individuals with disabilities to participate in all Work under this Agreement. Contractor agrees to utilize its own auxiliary aid or service in order to comply with ADA requirements for effective communication with individuals with disabilities.

25. **Authorized Agents.** The City's authorized agent for purposes of administration of this contract is Tim Kieffer, or designee. Contractor's authorized agent for purposes of administration of this contract is Dan Zimmerman, or designee who shall perform or supervise the performance of all Work.

26. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:

CONTRACTOR
Dan Zimmerman
530 River Street South
Delano, MN 55328
danz@mbemn.com

THE CITY
City of Golden Valley
7800 Golden Valley Road
Golden Valley, MN 55427
tkieffer@goldenvalleymn.gov

or such other contact information as either party may provide to the other by notice given in accordance with this provision.

27. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.

28. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.

29. **Payment of Subcontractors.** Contractor agrees to pay all laborers employed and all subcontractors furnishing material to Contractor in the performance of this Agreement. If Contractor fails to pay any claims and demands for labor and materials, the City may apply the monies due to Contractor toward paying and satisfying such claims and demands. The City has the right to apply monies due to Contractor towards paying any accrued indebtedness or any claim which may hereafter come due against Contractor. The amount of such payments shall be deducted from the balance due to the Contractor; provided that nothing herein nor any variation from the amounts and timing of the installments shall be construed as impairing the right of the City or of those to whose benefit the bond herein agreed upon shall insure, to hold Contractor or surety liable on the bond for any breach of the conditions of the same nor as imposing upon the City any obligation to laborers, materialmen, contractors, or sureties to pay or to retain for their benefit any monies coming to the contractor hereunder.

Pursuant to Minnesota Statutes, Section 471.425, Subdivision 4(a), Contractor must pay any subcontractor within ten (10) days of Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. Contractor must pay interest of one and one-half percent (1½%) per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

30. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.

31. **Signatory.** Each person executing this Agreement (“Signatory”) represents and warrants that they are duly authorized to sign on behalf of their respective organization. In the event Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of Contractor, described in this Agreement, personally.

32. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted by electronic mail in portable document format (pdf) and signatures appearing on electronic mail instruments shall be treated as original signatures.

33. **Recitals.** The City and Contractor agree that the Recitals are true and correct and are fully incorporated into this Agreement.

IN WITNESS WHEREOF, the City and Contractor have caused this Independent Contractor Agreement to be executed by their duly authorized representatives in duplicate on the respective dates indicated below.

By: _____
Name: _____
Title: _____

CITY OF GOLDEN VALLEY:
By: _____
Shepard M. Harris, Mayor

By: _____
Timothy J. Cruikshank, City Manager

**EXHIBIT A
SCOPE OF WORK**

1. **Loading.** City shall provide equipment and operator to load Materials using the highest standard of care for safety. Over-weight loads are the responsibility of the City loading the trucks.
2. **Transporting.** Contractor shall transport and unload the Materials using the highest standard of care for safety. Contractor shall ensure that no portion of the Materials are lost during transport. Should any Materials be spilled or drift during transport, Contractor agrees to immediately take all necessary steps to clean up said Materials.
3. **Disposal.** Contractor shall provide trucks and drivers to haul the materials indicated below (the "Materials") to the disposal sites indicated below.

MATERIAL	DISPOSAL SITE
Common Fill	3730 Chaska Blvd, Chaska, MN 55318
Common Fill	11899 West River Road, Watertown, MN 55388

4. **Dirt Accepted "As Is" Without Warranty Or Representation.** Contractor reserves the right to reject any and all Materials during the disposal process if the parties determine that the Materials are contaminated by a hazardous substance. Contractor may inspect the Materials for hazardous substances by visual inspection or smell. If additional testing is required to determine whether the Materials are contaminated, the City shall bear the cost of testing. Contractor also reserves the right to reject asphalt or concrete rubble encountered at the site. Any rejected Materials remain the responsibility of the City. Once Contractor accepts Materials, Contractor expressly assumes all risks, known and unknown, from the loading, transport, unloading and use of the accepted Materials and accepts all such Materials "as is" without warranty, promise or representation as to its composition, quality, or lack of contamination.
5. **Other Responsibilities.** Contractor is a for hire motor carrier and shall be solely responsible for assigning drivers to drive Contractor's trucks. Contractor shall be solely responsible for the employment, training, and supervision of its drivers and for the operation, maintenance and repair of its trucks, and any other equipment. Contractor shall have current registration and permits for all trucks and equipment, and shall be responsible for all operating expenses associated with the operation of the trucks or other equipment during this agreement. All drivers used by Contractor for performing its work under this agreement shall have the qualifications and licenses required by the state of Minnesota and all applicable Federal Motor Carrier Safety Regulations. Contractor shall not use an unqualified or disqualified driver for any of the Work under any circumstances.

EXHIBIT B
SPECIAL CONDITIONS

1. **Hours of Operation.** Work shall occur Monday through Friday from 7:00 a.m. to 3:00 p.m. excluding holidays.
2. **DOT Compliance.** All of Contractor's drivers performing work for the City must be in compliance with DOT requirements related to holding a Commercial Driver's License (CDL). Contractor shall be responsible for ensuring its own compliance with all applicable DOT regulations and requirements, including but not limited to DOT regulations related to drug testing and the maintenance of drug testing records. Contractor shall indemnify and hold harmless the City for any fines incurred as a result of Contractor's failure to comply with DOT requirements as set forth above. It shall be Contractor's responsibility to comply and provide evidence to the City of DOT compliance upon request.
3. **Risk of Loss.** Contractor acknowledges that it will bear all risk of loss with regard to its performance under this Agreement, including without limitation, cost on losses caused by delays attributable to Contractor, breakdowns of trucks, equipment and the acts or omissions of Contractor's employees. Contractor acknowledges that the City owns trucks and equipment for similar work and has employees for operating such trucks and equipment. Contractor agrees that the City may utilize its trucks, equipment and employees in any manner that it wishes and that the City is not obligated to order work from Contractor unless it chooses not to use its own trucks and equipment.



M.B.E., INC.
 530 RIVER STREET SOUTH
 DELANO, MN 55328
 (763) 972-9233

BID

PROJECT: GOLDEN VALLEY STOCKPILE 2020

BID PREPARED FOR:

CITY OF GOLDEN VALLEY
 7800 GOLDEN VALLEY ROAD
 GOLDEN VALLEY, MN 55427
 MARSHALL

BID PREPARED BY:

FROM: DAN ZIMMERMAN
 MOBILE: (612) 716-8921
 DATE: 01/10/2020
 PAGES: 1

- NON-PREVAILING WAGE
 PREVAILING WAGE
 SIDE DUMPS
 DUMP TRUCKS

DESCRIPTION	TOTAL	SALES TAX RATE	TOTAL W/ TAX
EXPORT CLEAN FILL - BEFORE MAY 1ST 2020	\$12.49/CY LV 17CY LOADS SIDE DUMPS	N/A	\$12.49
EXPORT CLEAN FILL - AFTER MAY 1ST 2020	\$13.86/CY LV 17CY LOADS SIDE DUMPS	N/A	\$13.86
ADD FOR DUMP TRUCKS	\$1.50/CY	N/A	\$1.50

OVER-WEIGHT LOADS ARE THE RESPONSIBILITY OF THE CONTRACTOR LOADING THE TRUCKS.
 THERE IS A SHORTAGE OF O/O DUMP TRUCKS, HOWEVER WE WILL DO OUR BEST TO FILL THE NECESSARY NUMBER OF TRUCKS NEEDED.
 MN STATE AND LOCAL TAXES INCLUDED
 PREVAILING TRUCK RENTAL RATES NOT INCLUDED.
 NOT WITHSTANDING ANY PROVISION TO THE CONTRARY, WE WILL TAKE ALL STEPS REASONABLY NECESSARY TO PRESERVE ITS LIEN AND BOND RIGHTS.
 BID INCLUDES HAULING AND DISPOSAL OF COMMON FILL FROM 10TH AVE YARD. CITY OF GOLDEN VALLEY IS RESPONSIBLE FOR LOADING TRUCKS
 PRICING GOOD THROUGH APRIL 2020

MBE INC, IS A DBE / SBE / MBE CONTRACTOR

TERMS: NET 30 DAYS. 1.50% PER MONTH SERVICE CHARGE WILL BE ASSESSED ON OUTSTANDING BALANCES. ACCOUNTS MUST BE CURRENT BEFORE MBE IS ABLE TO DISPATCH TRUCKS. BOND NOT INCLUDED. NO RETAINAGE, PAYMENT IN FULL.

THE PRICES QUOTED ARE BASED ON AN AVERAGE OF YARDS PER HOUR. THIS QUOTE DOES NOT GUARANTEE ANY MINIMUM QUANTITY OF TRUCKS OR EQUIPMENT. AVERAGE YARDS PER HOUR MAY VARY BASED ON THE AVAILABILITY OF TRUCKS. WHEN HAULING BY THE TON, YARD, OR LOAD, STANDBY TIME WILL BE BILLED AT OUR APPLICABLE HOURLY TRUCK RATE AFTER 5 CONSECUTIVE MINUTES ON YOUR SITE. THIS QUOTE WILL BE HONORED FOR NO MORE THAN 10 DAYS UNLESS WE ARE NOTIFIED OF YOUR INTENT TO COMMIT TO OUR SERVICES. CONTRACTOR IS RESPONSIBLE FOR ALL ILLEGAL LOADS LEAVING THE PROJECT. SOIL MUST BE FREE OF ANY CONTAMINATION UNLESS OTHERWISE NOTED. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED AGREES TO PAY ALL COSTS OF COLLECTION, INCLUDING REASONABLE ATTORNEY FEES AND LEGAL EXPENSES, INCURRED BY MBE..

ACCEPTED: _____
 CONTRACTOR

DATE: _____



1974 Pond View Dr SE Lonsdale, MN 55046
 Phone: 952-736-8125
 Fax: 952-461-5878

A DBE Certified Company

EIN: 05-0555109

Quote#

Revised 3075

Customer: City of Golden Valley

Attn: Marshall
 Office: 763-593-8085

Project: Excess pile

Fax:
 Mobile:

Date: 1/10/2020

Product	Qty	Unit	Delivered Tractor/Trailer
Hauling to or from Project			
Tris with dump fee		CY	\$14.47
Quads with dump fee		CY	\$14.47
Quints with dump fee		CY	\$13.40
Tractor/Trailer with dump fee		CY	\$12.56

Notes / Exclusions:

- *Per Load / Ton Is for fully loaded combination truck & trailer unless otherwise noted.
- *Prices are good for project as long as the quote is signed and returned **before** job starts.
- *Delays exceeding 5 minutes will be charged back at \$1.94 per minute on both the load end and dump end.
- * If road conditions are bad trucking will be charged at a hourly rate plus dumping fee.
- *Pricing excludes bonding of any type, and **no retainage** will be held.
- ***Overweight:** The truckers are responsible for overweight tickets when hauling over a scale. Contractor is responsible for overweight tickets when loading the trucks without a scale.
- ***Payment Terms:** Payment will begin within 30 days of the start of the job, and shall be made at least every 30 days after that. No unpaid balance can go over 45 days.
- *Pricing may not be valid during **Spring Road Restrictions**.
- ***No testing** or responsibility of materials e.g. contamination, compaction, or compactibility.
- *Pricing is based on **availability** of trucks at the time of job.
- ***Partial loads** subject to minimum haul charges
- *Prices may not be valid for **night and weekend loading**.
- *Prices subject to change with major **fuel increases** or road closures due to **flooding**.
- *Prices subject to **Transit Improvement Tax** and Additional **Aggregate Tax** Increase
- *All prices subject to **sales tax** unless a signed tax exempt certificate is on file.
- ***Prevailing Wage:** The above stated rates ensure that all employees are receiving the prevailing wage that is in place as of February.2018

Customer Name: _____

Quote by: Shawn Hearn
 Office: 952-736-8125
 Mobile: 612-328-1261
 Fax: 952-461-5878

Job: _____

Accepted By: _____

Date

shawn@dispatchtrucking.net



EXECUTIVE SUMMARY

Human Resources

763-593-3989 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. F. Approve Pay Equity Report

Prepared By

Kirsten Santelices, Human Resources Director

Summary

In 1984, the Minnesota Legislature passed the Local Government Pay Equity Act (LGPEA) to address the perceived wage disparity between government jobs predominantly held by male employees and those held by predominantly female employees. To ensure compliance with this law, each local government jurisdiction is required to submit a Pay Equity Implementation report every three years.

The City submitted the 2019 Pay Equity Implementation report to the Minnesota Management and Budget (MMB) prior to its deadline of January 31, 2020. The attached report shows that the City is in compliance with the Pay Equity Act.

Financial Or Budget Considerations

None

Recommended Action

Motion to approve the 2019 Pay Equity Report.

Supporting Documents

- Pay Equity Compliance Report (1 page)

Compliance Report

Jurisdiction: Golden Valley
7800 Golden Valley Road

Golden Valley, MN 55427

Report Year: 2020
Case: 3 - 2019 Data (Submitted)

Contact: Kirsten Santelices

Phone: (763) 593-3989

E-Mail: ksantelices@goldenvall
eymn.gov

For more detail on each test, refer to the Guide to Pay Equity Compliance and Computer Reports.

I. GENERAL JOB CLASS INFORMATION

	Male Classes	Female Classes	Balanced Classes	All Job Classes
# Job Classes	50	32	8	90
# Employees	157	58	53	268
Avg. Max Monthly Pay per employee	6275.74	5780.81		5679.18

II. STATISTICAL ANALYSIS TEST

A. Underpayment Ratio = 120 *

	Male Classes	Female Classes
a. # At or above Predicted Pay	35	24
b. # Below Predicted Pay	15	8
c. TOTAL	50	32
d. % Below Predicted Pay (b divided by c = d)	30.00	25.00

*(Result is % of male classes below predicted pay divided by % of female classes below predicted pay.)

B. T-test Results

Degrees of Freedom (DF) = 213	Value of T = -3.831
-------------------------------	---------------------

a. Avg. diff. in pay from predicted pay for male jobs = 63

b. Avg. diff. in pay from predicted pay for female jobs = 750

III. SALARY RANGE TEST = 97.46 (Result is A divided by B)

A. Avg. # of years to max salary for male jobs = 4.02

B. Avg. # of years to max salary for female jobs = 4.13

IV. EXCEPTIONAL SERVICE PAY TEST = 0.00 (Result is B divided by A)

A. % of male classes receiving ESP = 4.00 *

B. % of female classes receiving ESP = 0.00

*(If 20% or less, test result will be 0.00)



EXECUTIVE SUMMARY

City Administration

763-593-8006 / 763-593-8109 (fax)

Golden Valley City Council Meeting February 18, 2020

Agenda Item

3. G. Appointments to Board/Commission and Rising TIDES Task Force

Prepared By

Tim Cruikshank, City Manager

Summary

As openings on boards and/or commissions and task forces arise, the City Council conducts interviews with individuals who have applied to serve on them. After interviews are conducted, the Council may decide to make appointments.

Financial Or Budget Considerations

Not applicable

Attachment

- Current Boards/Commissions and Rising TIDES Task Force Vacancies (1 page)

Current Boards/Commissions and Rising TIDES Task Force Vacancies

Rising TIDES Task Force

Rising TIDES Task Force

Rising TIDES Task Force

Human Rights Commission (Vacancy through 2022)

Human Services Commission (Vacancy through 2022-
Business and/or non-profit organization member)

Open Space and Recreation Commission (Vacancy
through 2021)



EXECUTIVE SUMMARY

Physical Development

763-593-8030 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. H. Approval of One Year Extension for Recording of Plat for Anderson Addition

Prepared By

Jason Zimmerman, Planning Manager

Summary

The owners of the property located at 1345 Natchez Avenue South have requested an extension of the time allowed to record the approved plat (Anderson Addition) with the County Recorder. The City Council approved the final plat of a lot consolidation of this property with adjacent excess right-of-way on June 18, 2019. Due to complications regarding an old mortgage on the property, the owners are in need of additional time to resolve the issue and record the approved plat.

Staff supports this request and recommends the City Council grant the extension.

Financial Or Budget Considerations

None

Recommended Action

Motion to approve an extension until August 17, 2020, to record the plat for the Anderson Addition.

Supporting Documents

- Location Map (1 page)
- Email from Jess Anderson, dated February 13, 2020 (1 page)

February 13, 2020

Dear Members of the City Council,

I am writing to request an extension on the time allowed for us to record our plat. There is an old mortgage that requires "consent to plat" from the lender, US Bank. We are now in contact with the appropriate bank representative and the issue should be resolved shortly.

Sincerely,

Paul and Jess Anderson



EXECUTIVE SUMMARY

Physical Development

763-593-8030 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

3. I. Receive and File Northwest Crossing/Bottineau Development Guide

Prepared By

Marc Nevinski, Physical Development Director

Summary

In 2019 Hennepin County Community Works, in partnership with GreaterMSP, hired design firm Perkins + Will to develop a vision plan for the Bottineau LRT corridor summarizing all the plans, data, and assets that exist in the corridor with the goal of retaining and attracting investment in the corridor. Perkins + Will have prepared a final draft of the Northwest Crossing/Bottineau Development Guide. The guide's target audience are businesses and developers. Council is welcome to provide comments on the guide at this time, but it is intended to be a living document that can be updated periodically as investment occurs along the corridor.

The development guide includes information on each station area along the corridor, including development opportunities, demographic and market information, housing statistics, employment numbers, amenities, connectivity to trails and transit, and local contacts. The guide begins with a brief overview of the corridor. Each station is then summarized in a one-page narrative followed with graphical data about each station.

Financial Or Budget Considerations

None

Recommended Action

Motion to receive and file the Northwest Crossing/Bottineau Development Guide.

Supporting Documents

- Link to [Northwest Crossing/Bottineau Development Guide](#)



EXECUTIVE SUMMARY

City Administration

763-593-8006 / 763-593-8109 (fax)

Golden Valley City Council Meeting February 18, 2020

Agenda Item

3. J. Amendment to the Proclamation, Resolution and Letter of Support Policy

Prepared By

Tim Cruikshank, City Manager

Summary

At the April 19, 2016 City Council meeting, the Council approved the Proclamation, Resolution and Letter of Support Policy. There is interest in a minor amendment to the policy. The amendment is shown in the stricken and underlined document language that is attached.

Financial Or Budget Considerations

Non Applicable

Recommended Action

Motion to adopt Resolution amending the Proclamation, Resolution and Letter of Support Policy.

Attachments

- Proclamation, Resolution and Letter of Support Policy with underline-overstrike language (3 pages)
- Resolution amending the Proclamation, Resolution and Letter of Support Policy (3 pages)

GOLDEN VALLEY
~~PROCLAMATIONS, RESOLUTIONS AND~~
~~LETTERS~~

PROCLAMATION & CERTIFICATE
OF SUPPORT RECOGNITION POLICY

I. PURPOSE AND NEED FOR POLICY

The purpose of this policy is to proscribe guidelines and procedures for issuing proclamations and certificates of recognition (collectively, "Proclamations and Certificates"). The City of Golden Valley issues Proclamations and Certificates to encourage public awareness and acknowledge events, achievements, and activities, and causes that are significant to the community of Golden Valley, through recognition by the City Council. This policy also defines events, achievements, and activities that will not be considered for recognition. The proclamation, resolution, or letter of support will be issued community. Proclamations and Certificates are intended to acknowledge the effort and commitment of the organization or individual but should not be interpreted as an endorsement by either the Council of the City of Golden Valley. Conversely, in making these observances the Council does not wish to offend or promote any other particular point of view. Proclamations are strictly honorary and are issued as a courtesy. They are not legally binding. To help assure that proclamations are considered in the context, the following policy and procedure is established. Golden Valley-based organizations and individuals.

II. POLICY

- A. ~~A.~~ The City ~~of Golden Valley~~ will issue ~~proclamations~~ Proclamations and Certificates at no charge to ~~individual(s)~~ individuals and ~~organization(s)~~. ~~However, the organizations.~~ The City will not incur any expenses relating to the advertising ~~of~~ Proclamation or Certificate unless a City department initiates the ~~proclamation~~ Proclamation or Certificate. Recipients are responsible for organizing related activities and for all associated costs.
- B. ~~B.~~ — Proclamations and Certificates will not be issued for commercial purposes, such as the opening of a new business, a new product, or a new professional service. This includes business anniversaries that are less than 50 years.
- C. ~~C.~~ — Proclamations and Certificates will not be issued for deceased persons, retirements, birthdays, weddings, or family reunions.
- D. ~~D.~~ — Individuals or organizations seeking ~~proclamations~~ Proclamations or Certificates in successive years must annually request the

~~proclamation~~ Proclamation or Certificate and provide new information ~~for the~~ ~~proclamation~~ each year. Proclamations and Certificates are not automatically renewed each year and are limited to one recipient per event, per calendar year.

E. E.— ~~It is best if a~~ Individuals and organizations that request a Proclamation or Certificate should designate at least one representative ~~from the sponsoring organizations is at~~ to attend the Council meeting at which ~~the time the~~ ~~proclamation~~ Proclamation or Certificate is ~~adopted~~ issued.

E. No organization or individual has an exclusive ~~rights~~ right to ~~the~~ receive a Proclamation or Certificate on a particular day, week or month ~~of the~~ ~~proclamation~~. The City will determine the timing of all Proclamations and Certificates.

G. G.— The City Council will only consider ~~only proclamations, resolutions, and letters of support which~~ Proclamations and Certificates that relate to City government business, Golden Valley-based organizations or Golden Valley residents. Proclamations, ~~resolutions,~~ and ~~letters of support shall be directed through the City Manager's office and~~ Certificates should:

~~—not conflict with other activities or programs in the City~~

- enhance civic ~~appeal i.e. honor~~ engagement, for example, by honoring persons or groups that have provided a civic service, ~~hence~~ thereby encouraging others to do the same;
- ~~help~~ promote charitable and non-profit organizations, including arts, athletic, and cultural celebrations; to help increase public awareness of their programs and activities;
- affirm individuals who have achieved national or international distinction, or whose significant contribution to the community ~~demands~~ merits recognition;
- ~~observe~~ acknowledge extraordinary events, accomplishments, and causes ~~of interest~~ affecting a broad range of citizens; or
- ~~help~~ promote service clubs in their furtherance of benevolent programs.

~~—Proclamations and Certificates shall be directed through the City Manager's office.~~ If the request falls outside this policy, the City Manager may consult with the City Council for direction.

H. H.— Proclamations, ~~resolutions, or letters of support will~~ and Certificates shall not ~~be issued for:~~

- ~~matters of political controversy, ideological or religious beliefs, or individual conviction~~ conflict with other activities or programs in the City;
- support causes espousing hatred, violence, racism, or having a negative impact on others' civil rights;

- relate to campaigns or events contrary to City policies
- support events, causes, individuals, or organizations with no relationship to the City of Golden Valley; or

~~I. The City reserves the right, to approve or reject any request for a proclamation, to modify the text for any requested proclamation, and to read a summarized version of the proclamation if time constrains warrant. All requests~~

- be issued for matters of political controversy, ideological or religious beliefs, or individual conviction, unless the Proclamation or Certificate is issued in furtherance of a policy directive officially adopted by the City Council at its annual goal setting session and is in line with the City's vision, mission, values, and welcome statement.

I. Proclamations and Certificates are reviewed on a case-by-case basis. The City also reserves the right to vary from the exact provisions of this policy when it finds it to be in the public interest to do so.

J. J.—All requests for ~~proclamations, resolutions, and letters of support~~Proclamations and Certificates must be submitted on the appropriate form to the Golden Valley City Clerk at least 10 business days in advance of the date needed.

Adopted April 19, 2016
Amended August 21, 2018
Amended _____, 2020

RESOLUTION NO. 20-18

RESOLUTION AMENDING THE PROCLAMATION, RESOLUTION
AND LETTER OF SUPPORT POLICY

WHEREAS, In April 2016, the City Council passed Resolution Number 16-23 establishing the Golden Valley Proclamation, Resolution and Letter of Support Policy; and

WHEREAS, the purpose of this policy is to encourage public awareness and acknowledge events, achievements, and activities that are significant to the community of Golden Valley, through recognition by the City Council; and

WHEREAS, the Proclamation, Resolution and Letter of Support Policy will be amended to also include Golden Valley residents for the consideration within the guideline of the policy; and

NOW THEREFORE BE IT RESOLVED, that the City Council for the City of Golden Valley amends the Proclamation, Resolution and Letter of Support Policy attached hereto as Exhibit A.

Adopted by the City Council of Golden Valley, Minnesota this 18th day of February, 2020.

Shepard M. Harris, Mayor

ATTEST:

Kristine A. Luedke, City Clerk

Exhibit A

GOLDEN VALLEY
PROCLAMATION & CERTIFICATE
OF RECOGNITION POLICY

I. PURPOSE AND NEED FOR POLICY

The purpose of this policy is to proscribe guidelines and procedures for issuing proclamations and certificates of recognition (collectively, "Proclamations and Certificates"). The City of Golden Valley issues Proclamations and Certificates to encourage public awareness and acknowledge events, achievements, activities, and causes that are significant to the Golden Valley community. Proclamations and Certificates are intended to acknowledge the effort and commitment of Golden Valley-based organizations and individuals.

II. POLICY

- A. The City will issue Proclamations and Certificates at no charge to individuals and organizations. The City will not incur any expenses relating to the advertising or promotion of a Proclamation or Certificate unless a City department initiates the Proclamation or Certificate. Recipients are responsible for organizing related activities and for all associated costs.
- B. Proclamations and Certificates will not be issued for commercial purposes, such as the opening of a new business, a new product, or a new professional service. This includes business anniversaries that are less than 50 years.
- C. Proclamations and Certificates will not be issued for deceased persons, retirements, birthdays, weddings, or family reunions.
- D. Individuals or organizations seeking Proclamations or Certificates in successive years must annually request the Proclamation or Certificate and provide new information each year. Proclamations and Certificates are not automatically renewed each year and are limited to one recipient per event, per calendar year.
- E. Individuals and organizations that request a Proclamation or Certificate should designate at least one representative to attend the Council meeting at which the Proclamation or Certificate is issued.
- F. No organization or individual has an exclusive right to receive a Proclamation or Certificate on a particular day, week or month. The City will determine the timing of all Proclamations and Certificates.

G. The City will only consider Proclamations and Certificates that relate to City government business, Golden Valley-based organizations or Golden Valley residents. Proclamations and Certificates should:

- enhance civic engagement, for example, by honoring persons or groups that have provided a civic service, thereby encouraging others to do the same;
- promote charitable and non-profit organizations, including arts, athletic, and cultural celebrations to help increase public awareness of their programs and activities;
- affirm individuals who have achieved national or international distinction, or whose significant contribution to the community merits recognition;
- acknowledge extraordinary events, accomplishments, and causes affecting a broad range of citizens; or
- promote service clubs in their furtherance of benevolent programs.

Proclamations and Certificates shall be directed through the City Manager's office. If a request falls outside this policy, the City Manager may consult with the City Council for direction.

H. Proclamations and Certificates shall not:

- conflict with other activities or programs in the City;
- support causes espousing hatred, violence, racism, or having a negative impact on others' civil rights;
- relate to campaigns or events contrary to City policies
- support events, causes, individuals, or organizations with no relationship to the City of Golden Valley; or
- be issued for matters of political controversy, ideological or religious beliefs, or individual conviction, unless the Proclamation or Certificate is issued in furtherance of a policy directive officially adopted by the City Council at its annual goal setting session and is in line with the City's vision, mission, values, and welcome statement.

I. Proclamations and Certificates are reviewed on a case-by-case basis. The City also reserves the right to vary from the exact provisions of this policy when it finds it to be in the public interest to do so.

J. All requests for Proclamations and Certificates must be submitted on the appropriate form to the Golden Valley City Clerk at least 10 business days in advance of the date needed.

Adopted April 19, 2016
Amended August 21, 2018
Amended _____, 2020



EXECUTIVE SUMMARY

Physical Development

763-593-8030 / 763-593-8109 (fax)

**Golden Valley City Council Meeting
February 18, 2020**

Agenda Item

4. A. Public Hearing – Amend Conditional Use Permit (CU-119) Modifying the Condition Regarding the Use of Boone Avenue North

Prepared By

Jason Zimmerman, Planning Manager

Summary

The operators of the adult day care located at 800 Boone Avenue North are requesting an amendment to the current Conditional Use Permit (CUP) in order to modify a condition that prohibits the use of Boone Ave for loading, unloading, and parking of vehicles related to the adult day care business. This item was considered at the December 9, 2019, and January 27, 2020, Planning Commission meetings. The Commission voted to recommend approval of the amendment on a split vote (4-3).

Financial Or Budget Considerations

None

Background

The existing CUP was amended by the City Council in November of 2018. At that time, based on concerns regarding safety and visibility along Boone Avenue, a condition was approved that requires all loading, unloading, and parking of vans and buses to take place in the parking lot and not on Boone Avenue.

In September of 2019, staff observed buses parked on the east side of Boone Ave and loading and unloading clients of the adult day care. A letter was sent to the property owner reiterating the condition that had been approved. In response, the operators of the adult day care indicated they were unaware of this restriction and had not been notified or included in the decision when it was made. Due to what they see as a critical aspect of their site operations, they have applied for a CUP amendment in order to revise the condition and to allow loading and unloading to continue along the east side of Boone Ave only

Evaluation

Staff supports the request by the applicant to continue loading and unloading on the east side of Boone Ave, with the caveat that future restrictions may be imposed in light of the pending conversation around on-street bicycle lanes. Absent those changes, staff believes continuing operations as they have been conducted over the past 12 years would not present any additional safety concerns to those using the public right-of-way.

Staff conducted a site visit on January 21, toured the inside of the facility, and observed the parking lot conditions. The significant amount of growth of the adult day care operations over the last 12 years (from a license for 70 clients in 2007 to an expanded license for up to 350 clients in 2019) has created new daily challenges for the operator. Therefore, staff is recommending a cap on the number of clients be included as a condition of approval in order to ensure any proposal for future growth include clearly identified upgrades to the logistics of moving hundreds of clients onto and off of the site daily.

Staff and the Planning Commission have evaluated the proposed CUP amendment in this light and offer the following findings:

Factor	Finding
<p>1. Demonstrated Need for Proposed Use</p>	<p>Standard met. The applicant has demonstrated that there is a need for adult day care by successfully operating two facilities in Golden Valley.</p>
<p>2. Consistency with the Comprehensive Plan</p>	<p>Standard met. The Future Land Use Map guides the site for long-term light industrial use. Adult day care centers, through a conditional use permit, are consistent with that land use designation.</p>
<p>3. Effect upon Property Values</p>	<p>Standard met. The modification of the existing permit condition would likely not negatively impact property values in the area.</p>
<p>4. Effect on Traffic Flow and Congestion</p>	<p>Standard conditionally met. Clients utilizing the daycare generally arrive via bus or van, reducing the number of individual trips made to and from the facility. However, in order to maintain a smooth flow of traffic, buses and vans should be prohibited from parking, loading, or unloading along the west side of Boone Avenue.</p> <p>Daily operations observed directly by City staff indicate a complicated sequence of activities on a site operating at near capacity. Expanding the adult day care to serve additional clients would be challenging without additional attention being paid to improved site circulation.</p>
<p>5. Effect of Increases in Population and Density</p>	<p>Standard met. The regular increase in population is limited to the site during typical</p>

	business hours and is not expected to significantly impact the surrounding area.
6. Compliance with the City’s Mixed-Income Housing Policy	Not applicable.
7. Increase in Noise Levels	Standard met. Minimum noise is generated by the buses and vans transporting clients. Past complaints of noise generated by large events and evening and nighttime use of the property have been mitigated by recent conditions included in the permit.
8. Generation of Odors, Dust, Smoke, Gas, or Vibration	Standard met. No such problems are expected.
9. Any Increase in Pests or Vermin	Standard met. No such problems are expected.
10. Visual Appearance	Standard met. There are no proposed changes to the exterior of the building or to the front yard.
11. Other Effects upon the General Public Health, Safety, and Welfare	Standard conditionally met. Impacts to the City and its residents, in the form of traffic conflicts and public safety concerns on Boone Avenue, could reasonably be mitigated by limited the use of the right-of-way to the east side only.

Staff and the Planning Commission recommend approval of Conditional Use Permit 119, Amendment #4, modifying the condition regarding the use of Boone Avenue North. The approval of the Conditional Use Permit is subject to the following conditions:

1. The adult day care shall be limited to 350 clients, as specified by the Minnesota Department of Human Services license issued August 1, 2019.
2. All necessary licenses obtained from the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. Subject to all posted traffic and parking regulations, as amended from time to time, vans and buses may be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses shall be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the

building along the drive aisle, or along the east side of Boone Avenue. The City reserves the right to modify the traffic and parking regulations on Boone Avenue at any time.¹

6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.
8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

Failure to comply with one of more of the above conditions shall be grounds for revocation of the CUP. Consistent with State statute, a certified copy of the CUP must be recorded with Hennepin County.

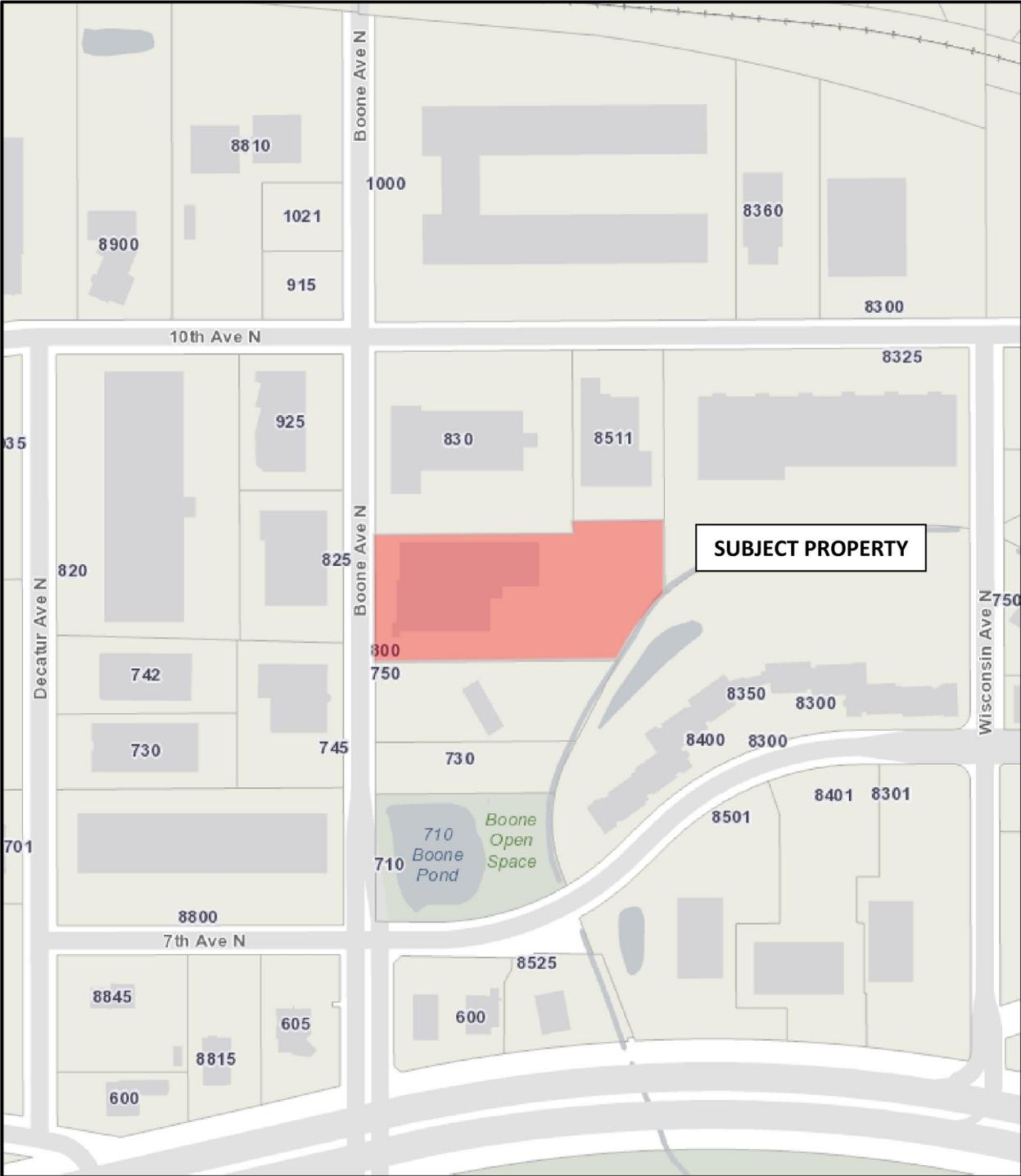
Recommended Action

Motion to adopt Ordinance #677, Approval of Conditional Use Permit 119, Amendment #4, modifying the condition regarding the use of Boone Avenue North.

Supporting Documents

- Location Map (1 page)
- Memo to the Planning Commission dated December 9, 2019 (6 pages)
- Planning Commission Minutes dated December 9, 2019 (4 pages)
- Memo to the Planning Commission dated January 27, 2020 (6 pages)
- Planning Commission Minutes dated January 27, 2020 (6 pages)
- Project Narrative submitted February 10, 2020 (11 pages)
- Plans Submitted January 21, 2020 (2 pages)
- Conditional Use Permit 119, Amendment #3 (2 pages)
- Ordinance #677, Approval of Conditional use Permit Number 119, Amendment #4 800 Boone Avenue North, Health Care Plus, Inc. (2 pages)

¹ The Planning Commission suggested slightly different wording for condition 5. The Planning Commission's suggested wording can be found on page 7 of the Planning Commission minutes dated January 27, 2020. Staff recommends adding the phrases "as may be amended from time to time" and "the City reserves the right to modify the traffic and parking regulations on Boone Avenue at any time." These changes are intended to clarify that the City may change parking and traffic regulations along Boone Avenue in the future, and that any such changes would apply to the property regardless of the CUP.





MEMORANDUM

Planning Department

763-593-8095 / 763-593-8109 (fax)

Date: December 9, 2019
To: Golden Valley Planning Commission
From: Jason Zimmerman, Planning Manager
Subject: Informal Public Hearing – Amend Conditional Use Permit (CU-119) Modifying the Condition Regarding the Use of Boone Avenue North

Property address: 800 Boone Avenue North

Applicant: Home Health Care Plus, Inc.

Zoning District: Light Industrial

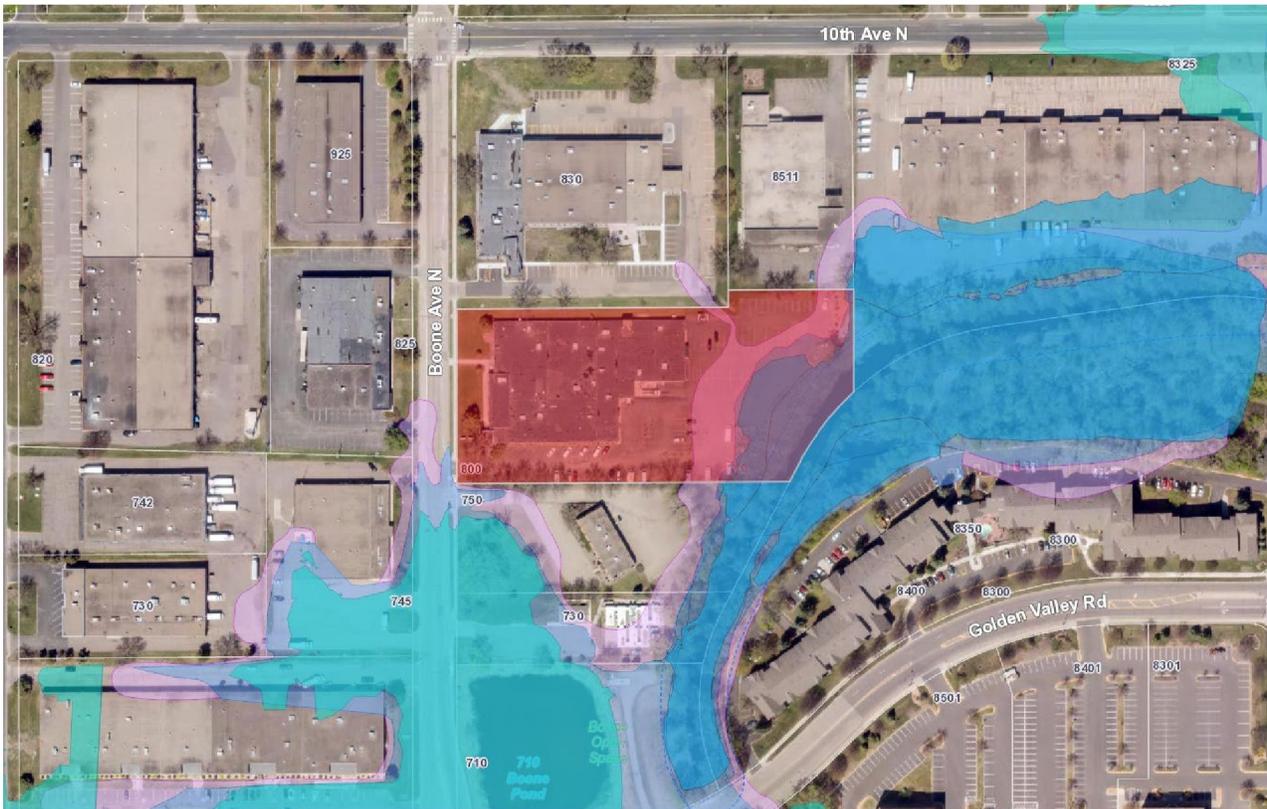
Current uses: Adult day care, home health care

Adjacent uses: Industrial, light industrial, office (north, west, south); multi-family residential (east)

Property owner: ProPartners Group, LLC

Lot size: 151,713 sq. ft. (3.5 acres)

Future Land Use: Light Industrial



2018 aerial photo (Hennepin County)

Summary

The operators of the adult day care located at 800 Boone Avenue North are requesting an amendment to the current Conditional Use Permit (CUP) in order to modify a condition that prohibits the use of Boone Ave for loading, unloading, and parking of vehicles related to the adult day care business.

Background

The existing CUP was amended by the City Council in November of 2018. At that time, based on concerns regarding safety and visibility along Boone Avenue, a condition was approved that requires all loading, unloading, and parking of vans and buses to take place in the parking lot and not on Boone Avenue.

In September of 2019, staff observed buses parked on the east side of Boone Ave and loading and unloading clients of the adult day care. A letter was sent to the property owner reiterating the condition that had been approved. In response, the operators of the adult day care indicated they were unaware of this restriction and had not been notified or included in the decision when it made. Due to what they see as a critical aspect of their site operations, they have applied for a CUP amendment in order to revise the condition and to allow loading and unloading to continue along the east side of Boone Ave.

Proposal

The adult day care facility operates from 8 am to 4:30 pm on weekdays. In addition to on-site services, two busses and 22 vans transport individuals to and from their homes daily as well as to and from other locations in the surrounding communities. When these busses and vans are not in use, they park in the parking lot located to the south and east of the building. This lot not only serves the adult day care, but also provides 77 spaces for the home health care business that operates out of the north portion of the building. Two busses and five to ten vans typically remain in the parking lot overnight.

The applicant has indicated that there are three groups of clients that utilize different portions of the property. Two groups of roughly 175 individuals enter and depart from the front (west) entrance on Boone Avenue. There are typically 65-67 trips per day that use this entrance. A third group of 66 individuals utilizes a side (southeast) entrance within the parking lot. There are typically 20-22 trips per day that use this entrance.

Because of the lack of accessible accommodations at the southeast entrance, its smaller size, and where—within the building—the three groups are located for the rest of their day, the applicant has stressed the importance of maintaining the use of Boone Ave for loading and unloading rather than conducting this activity on-site as the current condition requires.

Boone Ave is scheduled to be modified for on-street bike lanes in 2020. Installation of these bicycle facilities would require the removal of on-street parking on both sides of the road. In response to this challenge, the applicant has offered two possible modifications to the front yard

in order to allow loading and unloading of clients to take place without interfering with the bike lanes.

Option A would consist of an “indented curb” that would allow busses and vans to wait alongside of the travel lanes of Boone Ave – the paved surface would be extended into the front yard of the property. Option B would create an “onsite drive” that would require two additional curb cuts but would allow busses and vans to pull up closer to the front entrance to the building. Both options would introduce new impervious surfaces to the front yard of the property. (See attached plans for diagrams of both options.)

Zoning Considerations

Parking

Based on the number of clients the adult day care is licensed to serve and the square footage of the home health care offices that share the building, it appears the parking lot in its current configuration has a sufficient number of parking spaces to meet the minimum requirements of the City Code. [Sec 113-151, Subdiv (c)]

Use	Requirement	Existing Conditions	Spaces Required
Adult Day Care	1 space per 5 clients	350 clients	70
Office	1 space per 250 sq ft	16,605 sq ft	67
		Total Required	137
		Existing Spaces	155

Staff also believes there are inefficiencies in the layout of the parking lot and it is likely additional parking spaces could be created with the implementation of a new circulation and parking plan.

Setbacks

In a Light Industrial zoning district, the City Code requires that the front yard setback (the first 35 feet from the street right-of-way) be maintained as a landscaped green area. No parking or drive aisles (except for driveway access from the street) is permitted within this area. [Sec 113-151, Subdiv (b)(9)(a)(1)]

Engineering Considerations

The Engineering Division has reviewed the application and has the following comments and concerns:

Traffic Conflicts

Staff has concerns regarding potential conflicts with users of Boone Ave (vehicles, bicycles, and pedestrians), due to the offsets of adjacent driveways as well as the large volume of vehicles potentially pulling off of and onto Boone Ave during peak hours. Both proposed options create the possibility of excessive queueing that could result in busses and/or vans spilling out beyond the “indented curb” or “onsite drive” and creating issues within the travel lanes.

Stormwater Management

A majority of the property is covered by impervious surfaces and currently has no runoff volume control, rate control, or water quality treatment. There are properties and infrastructure in this area of Bassett Creek that are at risk of flooding. Staff has concerns about adding more impervious surfaces to this site without addressing runoff and stormwater management.

Maintenance

Staff has concerns regarding the long term maintenance of the “indented curb” option as it would require coordination with the City in terms of street sweeping and snow removal.

Evaluation

Staff is not supportive of either proposed option to modify the front yard of the property to provide off-street loading and unloading of clients for the adult day care. The removal of landscaped green area would be in violation of the requirements of the zoning chapter, would create additional impervious surfaces that would likely amplify existing flood risks along Bassett Creek, and would create potential traffic conflicts with others using Boone Ave.

Given the planned removal of parking from Boone Ave with the installation of on-street bike lanes in 2020, staff believes that the applicant would best be served by providing an area to load and unload on-site – likely directly to the south of the building. While there appear to be parking spaces in excess of what is required by City Code, concerns raised by the applicant over the loss of spaces could likely be alleviated with a reexamination of the existing circulation and parking patterns.

In opposing the suggested changes to the CUP that would allow loading, unloading, and parking on Boone Ave, staff finds that the modifications to the existing CUP would create additional impacts that could not be satisfactorily mitigated. Staff offers the following findings opposing the amended CUP:

Factor	Finding
1. Demonstrated Need for Proposed Use	Standard met. The applicant has demonstrated that there is a need for adult day care by successfully operating two facilities in Golden Valley.
2. Consistency with the Comprehensive Plan	Standard met. The Future Land Use Map guides the site for long-term light industrial use. Adult day care centers, through a conditional use permit, are consistent with that land use designation.

3. Effect upon Property Values	Standard met. The removal of the existing permit condition would likely not negatively impact property values in the area.
4. Effect on Traffic Flow and Congestion	Standard not met. Clients utilizing the daycare generally arrive via bus or van, reducing the number of individual trips made to and from the facility. However, the proposal to allow loading, unloading, and parking on Boone Avenue poses problems related to traffic flow and congestion that cannot be adequately mitigated.
5. Effect of Increases in Population and Density	Standard met. The use does not significantly impact the general population of the area, though the adult day care business does temporarily impact the daytime population.
6. Compliance with the City’s Mixed-Income Housing Policy	Not applicable.
7. Increase in Noise Levels	Standard met. Minimum noise is generated by the busses and vans transporting clients. Past complaints of noise generated by large events and evening and nighttime use of the property have been mitigated by conditions included in permit.
8. Generation of Odors, Dust, Smoke, Gas, or Vibration	Standard met. No such problems are expected.
9. Any Increase in Pests or Vermin	Standard met. No such problems are expected.
10. Visual Appearance	Standard not met. Removal of landscaped green space within the front yard setback in order to construct off-street queueing areas for busses and vans would negatively impact the appearance of the property and could not be adequately mitigated.
11. Other Effects upon the General Public Health, Safety, and Welfare	Standard not met. Impacts to the City and its residents, in the form of new traffic conflicts and an increased risk of flooding due to

	additional impervious surfaces, would be anticipated under an amended permit.
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Recommended Action

Based on the finding that three of the eleven standards for evaluating a CUP would not be met, staff recommends denial of an amended Conditional Use Permit 119 modifying the condition regarding the use of Boone Avenue North.

Attachments

- Location Map (1 page)
- Conditional Use Permit No. 119, Amendment #3 (2 pages)
- Project Narrative (3 pages)
- Plan Set submitted October 25, 2019 (5 pages)

Planning Commission

December 9, 2019 – 7 pm

Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

REGULAR MEETING MINUTES

Call to Order

The meeting was called to order at 7 pm by Chair Blum.

Roll Call

Commissioners present: Rich Baker, Ron Blum, Andy Johnson, Lauren Pockl, Ari Prohofsky, Ryan Sadeghi, and Chuck Segelbaum

Commissioners absent: Adam Brookins

Staff present: Planning Manager Jason Zimmerman and Planner Myles Campbell

Council Liaison present: Steve Schmidgall

Approval of Agenda

MOTION made by Johnson, seconded by Baker, to approve the agenda of December 9, 2019, as submitted and the motion carried unanimously.

Approval of Minutes

MOTION made by Pockl, seconded by Johnson, to approve the November 25, 2019, minutes as submitted and the motion carried 5-0 with Commissioner Segelbaum abstaining.

Public Hearing – CUP Amendment

Applicant: Home Health Care Plus, Inc.

Address: 800 Boone Avenue North

Purpose: To modify an existing condition that limits the use of Boone Ave for loading, unloading, and parking of buses and vans

Zimmerman introduced the request which involved revising an existing condition on Conditional Use Permit No. 119 for an adult day care at 800 Boone Ave N. He stated that a condition was added at the end of 2018 that prohibited the adult day care business from loading, unloading, and parking vans or buses on Boone Avenue. In September of 2019, the business was observed to be in violation of this condition. Staff sent a notice and was contacted by the operator who stated that they had never been informed of the condition and needed to utilize Boone Avenue for their clients for loading and unloading. Staff indicated that the only way to do that was to apply for a CUP amendment to remove or modify the condition.

Zimmerman reminded the Commissioners that loading, unloading, and parking of vans and buses on Boone Avenue had been restricted on the west side of the road due to safety concerns around visibility while exiting driveways, but that the Commission had decided to restrict all activity on both sides of the street and require it to be conducted entirely on-site. He highlighted the way the site was being used by



This document is available in alternate formats upon a 72-hour request. Please call 763-593-8006 (TTY: 763-593-3968) to make a request. Examples of alternate formats may include large print, electronic, Braille, audiocassette, etc.



the adult day care, with approximately 175 clients using the west (front) entrance over roughly 65 trips in an average day. Some additional trips are taken via a southeast entrance to the building within the parking lot. He noted that bike lanes are being planned for Boone Avenue in 2020, likely requiring parking restrictions along the street regardless of any conditions associated with the CUP.

Zimmerman highlighted the concerns the applicant had raised with moving activity off of Boone Avenue to the southeast entrance, which included: a lack of accessible accommodations at that entrance, the entrance being smaller in size, and the resulting longer trip through the building for clients. He noted that two options has been proposed by the applicant as potential ways to accommodate continuing to use Boone Avenue, including bumping in the east curb line to create a dedicated loading area or constructing a horseshoe drive that would bring clients closer to the front door. He demonstrated the various distances clients would need to walk to access the building under various scenarios.

Zimmerman pointed out that there are a conforming number of parking spaces within the existing parking lot to meet the zoning code, and that front yard restrictions prohibit parking or drive aisles within the front yard setback without a variance. He stated the Engineering staff had concerns about traffic conflicts, queueing, the amount of impervious surfaces, and maintenance under either of the potential solutions proposed by the applicant.

Zimmerman reviewed the findings necessary to approve a CUP and stated that staff did not feel three of them had been met and therefore was recommending denial.

Baker asked if the parking analysis took into account the other businesses in the building. Zimmerman said that the calculations were based on the square footage requirements listed in the zoning code. Johnson asked if the property owner should be the applicant rather than the business operator. Zimmerman replied the owner signed the application, but that the business operator was the one who was asking for the modification to the condition. Johnson then asked about the number of clients that are being served. Zimmerman replied that they are allowed to have as many as the MN Department of Human Services allows, which in this case is up to 300. Johnson then asked if this was the property where vegetation was removed along Bassett Creek without a permit. Zimmerman said that it was but that the property owner had worked with the City to prepare a plan to reestablish vegetation beginning in the spring.

Segelbaum asked for clarification about how parking spaces are assigned to various users of a property. Zimmerman explained that staff evaluates if there are enough spaces to meet code, but does not delve into the details of which users occupies which spaces. Segelbaum asked if there had been any discussions about adding pervious surfaces to offset the impact of paving a portion of the front yard. Zimmerman said no, but that it would likely be a condition of approval of any variance by the Board of Zoning Appeals. Sadeghi asked if staff were aware of the actual percentage of the site that was impervious. Zimmerman said that amount had not been provided.

Pockl asked if parking along Boone Avenue would be prohibited if bike lanes were installed. Zimmerman replied that it would be likely if the project moved forward, but that making that decision would not

happen until outreach occurred in the late spring of 2020. Baker asked if there were other recent situations in which decisions were made in part based on future bike lane installations. Zimmerman replied that it was discussed with respect to a recent action by Borton Volvo, but ultimately it did not play a role in the site plan approval.

Blum asked if there had previously been a revocation of the CUP. Zimmerman explained that the City Council had voted to revoke the CUP if no agreement could be reached regarding changes to the approved conditions, but that the Planning Commission worked with the property owner and did agree on new permit language so the revocation never took effect.

Baker questioned how the business operator could not have been aware of the restrictions in the CUP. Zimmerman indicated that the property owner was aware of the conditions, but that it was up to them to share the conditions with the tenants of the building.

Christine Eid, attorney representing the applicant, addressed the Planning Commission along with Innessa Marinov, applicant, and Randy Engel, Buetow 2 Architects. They explained there were actually three businesses operating within the building, including a rehabilitation business, and that Home Health Care Plus had been in operation at the location for over 10 years. Eid conveyed that the operator was not aware of the Boone Avenue restrictions and had not been knowingly engaging in a violation. They stated that it would be extremely difficult to have clients travel through the building to reach the adult day care area and that using Boone Avenue was critical.

Engel stated that he worked with the property owner to obtain the original CUP and had worked through the recent amendment regarding after hours activities. He agreed that providing access for clients through the building would be very difficult and pointed out that entrances to the southwest and northeast were not accessible entrances. He disputed the staff findings that three of the factors of evaluation for the CUP were found not to be met. He said that there have been no issues with traffic congestion or accidents, that buses do not queue but arrive in a staggered fashion, that landscaping could be added to offset the addition of a paved area in the front yard, and that any flooding could be addressed by adding a drain to the storm sewer.

Segelbaum asked who would bear the cost of these proposed changes. Engel said there would need to be an arrangement between the City and the property owner. Engel also claimed that the City had previously granted approval to the owner to utilize Boone Avenue for drop-offs and pick-up and that the introduction of bike lanes was unfairly impacting the business.

Johnson asked who is the owner of the property; Engel replied that Pro Partners owns the property. Johnson asked who runs the business; Marinov replied that she operates Health Care Plus. Eid clarified that the property owner was not present. Blum asked if there was any shared interest between the property owner and any of the businesses in the building. Marinov replied that she did not believe so.

Sahdegi asked if buses park on Boone Avenue. Marinov said no, they only load and unload on Boone. Pockl asked for clarification regarding the unloading of buses. Marinov said the buses arrive every five

minutes to drop off clients and that there are additional trips out during the day that depart from Boone Avenue.

Sahdegi asked if the applicant had looked at any interior modifications to provide better access. Engel said no, they did not believe there were any realistic options. Baker asked if the northeast entrance could be utilized. Engel replied that because it leads to a different business it is not possible. Segelbaum stated that it appeared to be less expensive to enhance the southwest entrance or enhance the walk along the west side of the building than to install a new driveway, with or without drainage.

Engel reiterated that internal modifications were not possible and apologized for not having a complete floor plan available. Johnson pointed out that using one of the other entrances would get clients indoors more quickly. Engel replied that using the other entrances would require walking through other business areas and would be disruptive and would not really work.

Pockl pointed out that the spaces south of the building were off limits to parking for buses. Segelbaum clarified with the applicant that no buses or vans were currently being parked in those spaces.

Blum asked Eid if she had background in evaluating the abilities of the elderly in terms of commenting on their ability to travel through the interior of the building. She replied no. Blum asked Engel if he had engineering expertise in order to evaluate the drainage situation in the front yard of the property. He replied that he did not but that he has experience looking at similar situations. Eid added that denial of a CUP must be based on facts and that the City would need to provide an analysis if they were recommending denial based on those assertions.

Blum asked Marinov to clarify the ownership structure of each of the businesses within the building and the owner of the property and building as well.

Blum opened the public hearing. Seeing no one wishing to comment, Blum closed the public hearing.

Segelbaum asked if all of the factors of the CUP evaluation needed to be met in order to recommend approval. Blum stated that he believed that was the case and Zimmerman agreed. Segelbaum stated that he believed the factor dealing with visual impact had failed to be resolved by the applicant. Baker pointed out that the owner of the building would need to undertake any modifications to the property and without the owner present he did not feel an evaluation could adequately be carried out. Segelbaum stated that given the miscommunication surrounding the last permit amendment, it appeared to be important to have both the owner and the operator present. Johnson agreed, and added that a full evaluation of the costs of all of the various options would be worthwhile.

Baker recommended the agenda item be continued in order to allow the property owner to attend a future meeting and discuss all of the options before making a decision. Segelbaum agreed.

MOTION made by Baker, seconded by Segelbaum, to continue the agenda item to the January 13, 2020, Planning Commission meeting and the motion carried unanimously.



MEMORANDUM

Planning Department

763-593-8095 / 763-593-8109 (fax)

Date: January 27, 2020
To: Golden Valley Planning Commission
From: Jason Zimmerman, Planning Manager
Subject: Informal Public Hearing – Amend Conditional Use Permit (CU-119) Modifying the Condition Regarding the Use of Boone Avenue North

Property address: 800 Boone Avenue North

Applicant: Home Health Care Plus, Inc.

Zoning District: Light Industrial

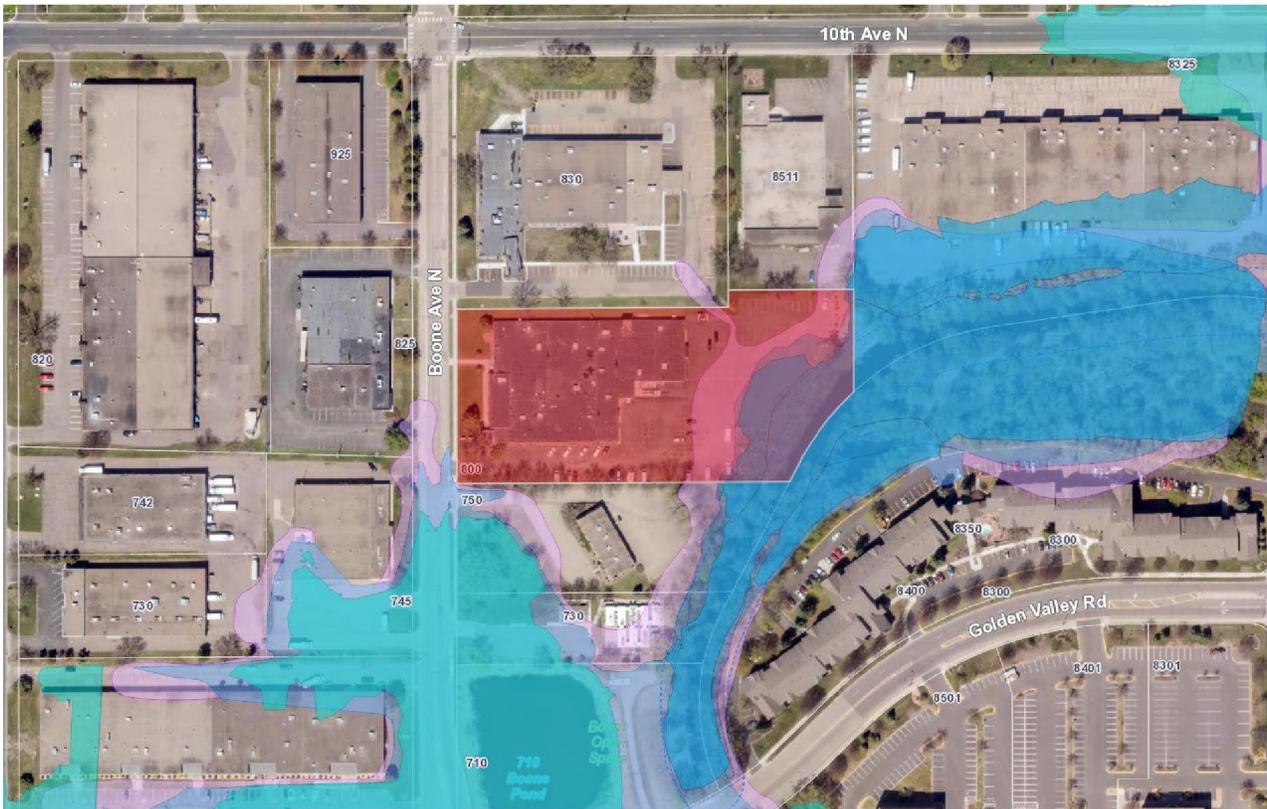
Current uses: Adult day care, home health care

Adjacent uses: Industrial, light industrial, office (north, west, south); multi-family residential (east)

Property owner: ProPartners Group, LLC

Lot size: 151,713 sq. ft. (3.5 acres)

Future Land Use: Light Industrial



2018 aerial photo (Hennepin County)

Summary

The operators of the adult day care located at 800 Boone Avenue North are requesting an amendment to the current Conditional Use Permit (CUP) in order to modify a condition that prohibits the use of Boone Ave for loading, unloading, and parking of vehicles related to the adult day care business. This item was continued from the December 9, 2019, and January 13, 2020, Planning Commission meetings.

Background

The existing CUP was amended by the City Council in November of 2018. At that time, based on concerns regarding safety and visibility along Boone Avenue, a condition was approved that requires all loading, unloading, and parking of vans and buses to take place in the parking lot and not on Boone Avenue.

In September of 2019, staff observed buses parked on the east side of Boone Ave and loading and unloading clients of the adult day care. A letter was sent to the property owner reiterating the condition that had been approved. In response, the operators of the adult day care indicated they were unaware of this restriction and had not been notified or included in the decision when it made. Due to what they see as a critical aspect of their site operations, they have applied for a CUP amendment in order to revise the condition and to allow loading and unloading to continue along the east side of Boone Ave.

The applicant has produced an updated license for the business from the Minnesota Department of Human Services, issued August 1, 2019, that allows 350 clients to be served on site.

Proposal

The adult day care facility operates from 8 am to 4:30 pm on weekdays. In addition to on-site services, two buses and 22 vans transport individuals to and from their homes daily as well as to and from other locations in the surrounding communities. When these buses and vans are not in use, they park in the parking lot located to the south and east of the building. This lot not only serves the adult day care, but also provides 77 spaces for the home health care business that operates out of the north portion of the building. Two buses and five to ten vans typically remain in the parking lot overnight.

The applicant has indicated that 26 buses/vans arrive on Boone Avenue in the morning over a period of about an hour (7:50 am to 8:55 am). The timing is staggered so that only two vehicles arrive at a time; it takes 5-10 minutes to unload each vehicle. In the afternoon, 20 buses/vans arrive between 1:40 and 2:45 pm to pick up clients. During the day, approximately 8 vehicles depart and return between the hours of 10:00 am and 12:30 pm; in the summer, additional field trips occur between 10:00 am and 1:30 pm. Each of these individual trips require a bus or van to be parked on Boone Avenue for approximately 30 minutes.

Because of the challenging circulation conditions within the parking lot, the lack of accessible accommodations at the southeast entrance, the smaller size of this entrance, and where—within the building—the clients are located for the rest of their day, the applicant has stressed the

importance of maintaining the use of Boone Ave for loading and unloading rather than conducting this activity on-site as the current condition requires.

Boone Ave is scheduled to be modified for on-street bike lanes in 2020. Installation of these bicycle facilities would likely require the removal of on-street parking on both sides of the road. The applicant has agreed that should the bike lane installation move forward as planned, a separate conversation would need to take place with City staff about the specific needs of the business. Those options are not being considered as part of this CUP amendment.

Zoning Considerations

Planning staff has reviewed the application and has the following comments and concerns:

Parking

Based on the number of clients the adult day care is licensed to serve and the square footage of the home health care offices that share the building, it appears the parking lot in its current configuration has a sufficient number of parking spaces to meet the minimum requirements of the City Code. [Sec 113-151, Subdiv (c)]

Use	Requirement	Existing Conditions	Spaces Required
Adult Day Care	1 space per 5 clients	350 clients	70
Office	1 space per 250 sq ft	16,605 sq ft	67
		Total Required	137
		Existing Spaces	155

Staff also believes there are inefficiencies in the layout of the parking lot and it is likely additional parking spaces could be created with the implementation of a new circulation and parking plan.

Engineering Considerations

Engineering staff has reviewed the application and has the following comments and concerns:

Traffic Conflicts

Staff has concerns regarding potential conflicts with users of Boone Ave (vehicles, bicycles, and pedestrians), due to the offsets of adjacent driveways as well as the large volume of vehicles utilizing Boone Ave during peak hours. At a minimum, buses and/or vans should be prohibited from parking, dropping off, or picking up along the west side of the street.

Evaluation

Staff supports the request by the applicant to continue loading and unloading on the east side of Boone Ave, with the caveat that future restrictions may be imposed in light of the pending conversation around on-street bicycle lanes. Absent those changes, staff believes continuing operations as they have been conducted over the past 12 years would not present any additional concerns.

Given the likely removal of parking from Boone Ave with the installation of on-street bike lanes in 2020, staff believes that the applicant would best be served by providing an area to load and

unload on-site – likely directly to the south of the building. While there appear to be parking spaces in excess of what is required by City Code, concerns raised by the applicant over the loss of spaces could likely be alleviated with a reexamination of the existing circulation and parking patterns.

Until parking on Boone Ave is prohibited, staff believes a condition that restricts drop-offs and pick-ups to the east side of the street is sufficient to allow the business to continue to operate while ensuring the safety of those using the public right-of-way.

Staff conducted a site visit on January 21 and toured the inside of the facility and observed the parking lot conditions. It is clear that the growth of the adult day care operations (from a license for 70 clients in 2007 to an expanded license for 350 clients in 2019) is straining the capacity of the site and the ability of the operator to successfully manage the complex machinations that take place daily. Therefore, staff is recommending a cap on growth be included as a condition of approval in order to ensure any proposal for future growth include clearly identified upgrades to the logistics of moving hundreds of clients onto and off of the site daily.

Staff has evaluated the proposed CUP amendment in this light and offers the following findings:

Factor	Finding
1. Demonstrated Need for Proposed Use	Standard met. The applicant has demonstrated that there is a need for adult day care by successfully operating two facilities in Golden Valley.
2. Consistency with the Comprehensive Plan	Standard met. The Future Land Use Map guides the site for long-term light industrial use. Adult day care centers, through a conditional use permit, are consistent with that land use designation.
3. Effect upon Property Values	Standard met. The modification of the existing permit condition would likely not negatively impact property values in the area.
4. Effect on Traffic Flow and Congestion	Standard conditionally met. Clients utilizing the daycare generally arrive via bus or van, reducing the number of individual trips made to and from the facility. However, in order to maintain a smooth flow of traffic, buses and vans should be prohibited from parking, loading, or unloading along the west side of Boone Avenue.

	Daily operations observed directly by City staff indicate a complicated sequence of activities on a site operating at near capacity. Expanding the adult day care to serve additional clients would be challenging without additional attention being paid to improved site circulation.
5. Effect of Increases in Population and Density	Standard met. The use does not significantly impact the general population of the area, though the adult day care business does temporarily impact the daytime population.
6. Compliance with the City’s Mixed-Income Housing Policy	Not applicable.
7. Increase in Noise Levels	Standard met. Minimum noise is generated by the buses and vans transporting clients. Past complaints of noise generated by large events and evening and nighttime use of the property have been mitigated by recent conditions included in the permit.
8. Generation of Odors, Dust, Smoke, Gas, or Vibration	Standard met. No such problems are expected.
9. Any Increase in Pests or Vermin	Standard met. No such problems are expected.
10. Visual Appearance	Standard met. There are no proposed changes to the exterior of the building or to the front yard.
11. Other Effects upon the General Public Health, Safety, and Welfare	Standard conditionally met. Impacts to the City and its residents, in the form of traffic conflicts and public safety concerns on Boone Avenue, could reasonably be mitigated by limited the use of the right-of-way to the east side only.

Recommended Action

Based on the findings above, staff recommends approval of the amended Conditional Use Permit 119 allowing for an adult day care center at 800 Boone Avenue North, subject to the following conditions:

1. The adult day care shall be limited to 350 clients, as specified by the Minnesota Department of Human Services license issued August 1, 2019.
2. All necessary licenses obtained by the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. Subject to any additional posted traffic regulations, all vans and buses shall be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.
6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.
8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

Failure to comply with one of more of the above conditions shall be grounds for revocation of the CUP. Consistent with State statute, a certified copy of the CUP must be recorded with Hennepin County.

Attachments

Location Map (1 page)

Conditional Use Permit No. 119, Amendment #3 (2 pages)

Revised Project Narrative (5 pages)

Revised Plan Set submitted January 21, 2020 (4 pages)

the Planning Commission but that the final language was. Johnson restated that he disagreed with providing the draft language as that is policy related and not Planning Commission related. As a result, the following section was added for clarity:

Commissioner Johnson asked if the City has already approved licensing changes related to tobacco sales and Campbell responded affirmatively and reminded the commissioners the information is in their agenda packet. Based on the fact that the license and ordinance changes were approved, Johnson asked why the redlined draft document was presented to the Planning Commission. Campbell responded that he added the draft so the commissioners could see what the old language was and what the new approved language is. He expanded that the Planning Commission is not approving any language changes in the licensing or the ordinance. Johnson made a final comment that the group was not presently discussing the changes in the ordinance or the licensing requirements.

MOTION made by Commissioner Brookins, seconded by Commissioner Pockl to approve the January 13, 2019, minutes after edits and the motion carried.

4. Continued Informal Public Hearing – CUP Amendment

Applicant: Health Care Plus, Inc.
Address: 800 Boone Avenue North
Purpose: To modify an existing condition that limits the use of Boone Ave for loading, unloading, and parking of buses and vans

Jason Zimmerman, Planning Manager, reminded the Commission that the following presentation and conversation is a continuation of one started in December 2019. By way of background, the operators are requesting an amendment to the current CUP in order to modify a condition that prohibits the use of Boone Ave for loading, unloading, and parking of vehicles related to the adult day care business. This amendment to the CUP occurred in 2018, due to safety concerns, and required loading, unloading, and parking of vans and buses to take place in the parking lot.

Zimmerman continued that after a tour and conversations, the applicant has stressed the need for Boone Ave access to continue due to restrictions imposed by the parking lot and the building access point from the lot. The applicant has indicated that 26 buses/vans arrive on Boone Avenue in the morning over a period of about an hour (7:50 am to 8:55 am). The timing is staggered so that only two vehicles arrive at a time; it takes 5-10 minutes to unload each vehicle. In the afternoon, 20 buses/vans arrive between 1:40 and 2:45 pm to pick up clients. During the day, approximately 8 vehicles depart and return between the hours of 10:00 am and 12:30 pm; in the summer, additional field trips occur between 10:00 am and 1:30 pm. Each of these individual trips require a bus or van to be parked on Boone Avenue for approximately 30 minutes.

After laying out zoning and engineering considerations, **Zimmerman** stated staff supports the request to continue loading and unloading on the east side of Boone Ave, with the caveat that future restrictions may be imposed in light of the pending conversation around on-street bicycle lanes. In 2020 it is likely

parking will be removed from Boone because on-street bike lanes will be added and staff believes it's advantageous to the applicant to plan for an area to load/unload on site.

Based on the findings, staff recommends approval of the amended CUP, subject to the following conditions:

1. The adult day care shall be limited to 350 clients, as specified by the Minnesota Department of Human Services license issued August 1, 2019.
2. All necessary licenses obtained by the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. Subject to any additional posted traffic regulations, all vans and buses shall be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.
6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.
8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

Failure to comply with one of more of the above conditions shall be grounds for revocation of the CUP.

Commissioner Baker asked when the CUP amendment with the modified condition regarding loading and unloading was added. **Zimmerman** responded in October/November of 2018. **Baker** followed up with asking if staff now thought that amendment was a mistake. **Zimmerman** responded that in 2018 staff recommended limiting loading and unloading to the east side of Boone and the Commission adopted the broader parking lot restriction. **Baker** reiterated his question and **Zimmerman** responded in the affirmative and without findings of a safety issue, staff recommends approval of the current amendment.

Commissioner Segelbaum mentioned previous confusion on if the applicant was the business owner or the property owner. He followed up by asking if the CUP should more clearly state which owner is responsible for the conditions. **Zimmerman** responded that in a situation where a building has multiple

tenants, either the property or business owner can apply. Both the property owner and the operator are present for the CUP Amendment agenda item.

Zimmerman continued on to specific conditions mentioned by the commissioner and gave examples of amended word choices to assist in clarification.

Segelbaum followed up by asking if the operator were to leave, would the CUP follow the operator or the property. **Zimmerman** stated that the CUP is filed with the county so it'll stay at the property. In the event that there is a violation, the property owner is responsible.

If the business owner is the one to apply for a CUP, then the property owner signs it, stating acknowledgement. Therefore either entity can apply but the property owner is responsible for violations to the CUP.

The discussion continued into the cap for the number of clients at the facility and who determines that number. Staff reminded the commissioners that previous conditions stated the Department of Human Services would determine that client cap as they're issuing the operating license. The cap on the operator's current license is 350 clients; staff said they hadn't considered reducing that cap to then create the city's own limit, but rather looked into further enforcing the current cap. This conversation evolved to addressing the operating hours; the city's condition is a weekday window of 7:30-5:30 and the operator is choosing to operate from 8-4:30 weekdays.

Chair Blum invited the applicant and operator to make comments.

Christine Eid, attorney on behalf of Healthcare Plus, introduced herself and then introduced Inessa Marinov from Healthcare Plus, and Randy Engel, the architect for the same company. **Eid** reminded the commissioners that they were before the Commission in December 2019 and after a series of poignant questions raised, they accepted a continuance to collect the necessary information to reappear. **Eid** thanked staff for their work through this process and the report presented before the Commission. **Eid** went on to address the discussed violation to the CUP granted in 2007 to allow for an adult daycare facility in the 800 Boone Ave building. **Eid** went on to read Golden Valley City Code as it pertains to adult daycare facilities and concluded that all clients at this operation qualify without further evaluation. Part of the daily accommodations include providing the most accessible and shortest path from the buses to their daily activities. This accommodation necessitates utilizing the east side of Boone for bus drop offs and pick-ups.

Eid went on to address the violation to the CUP granted in 2007. This was not an operator violation, but lead to an amendment in 2018 to prohibit drop-off/pick-up on the east side of Boone, which did directly and negatively impact the operator. **Eid** addressed the conditions listed in the staff presentation and their team agrees to work with city staff and the planning commission to cap the cliental at 350. The team would like to amend condition number five due to its broad nature and would like to participate in conversations with the city to ensure a bike lane may co-exist with regular drop-offs and pick-ups.

Randy Engel, Healthcare Plus Architect, presented a map of the 800 Boone building and listed minimal physical characteristics for an adult day care facility. **Engel** elaborated on the building structure and its split between businesses, he added that not every door to the building equates direct access to Healthcare Plus. **Engel** went on to explain the space requirements to accommodate the current cliental as well as the space options already considered by the operator in order to accommodate future possible clients.

Commissioner Segelbaum asked if the team has discussed edits to the fifth condition with city staff and how they concluded the line item “Subject to any additional posted traffic regulations,” meant removal of vehicle access due to a bike lane. **Eid** responded that while she doesn’t specifically know that is what it means, she understands a bike lane on Boone is being discussed and would like her team to be part of that conversation. **Eid** went on to state that she knows the City has full right to the right of way but currently she would like to see that condition item be silent.

Commissioner Brookins asked what the future intent is for the number of people being served. The operator responded that the intent is to serve the cap number of people, per the license granted by the Department of Human Services. The company has the staff, space, and met requirements to meet the needs to serve 350 people. Currently the organization serves 241 clients.

Blum noted that the required public hearing for this item occurred in December of 2019 and at the time of this meeting, attendees of the meeting consisted of: City staff, Commissioners, Applicant and team, and City Council Member. **Segelbaum** made a motion to open the floor for a public hearing and at 8:19 pm, **Chair Blum** formally opened the floor for a public hearing. No comments were made and the hearing was closed.

Segelbaum commented that originally tabling this item was so the applicant and City staff could come to a compromise. He believes the applicant has a point about the condition they addressed and commented that the City Attorney may be the best person to address it. With that in mind, **Segelbaum** believes it may be premature for the Planning Commission to address the agenda item. Baker and Brookins echoed Segelbaum. **Segelbaum** asked for the time limit on responding to the applicant and **Zimmerman** responded that it needed to be to City Council by February 22nd or the applicant would need to agree to an extension in writing. **Brookins** commented that he’d like to make a determination today and that will give staff time to make recommendations when this item is presented to City Council. **Commissioner Pockl** echoed this statement. **Commissioner Baker** commented that putting a transition plan in place for the applicant when a bike lane occurs may be beneficial.

The conversation continued on to the possibility of capping the clients at a number below the cap provided by the MN Dept. of Human Services. Concerns about this Commission’s authority to override the Dept. of Health’s client cap was raised. **Commissioner Sadeghi** pointed out that the concern for this committee was traffic related and therefore instead of capping the client number, could client transportation be reconfigured so the number of drop-offs could be capped. Staff replied that it’s possible but there is concern about who would enforce that cap on vehicles.

This conversation moved on to condition five, as addressed by the applicant. The applicant/operator chimed in and added that during the architect’s presentation, he showed that open space for new clients is in the back of the building. Therefore, any addition of clients, will be loaded and unloaded in the parking lot by way of following the operator’s policy of providing the most accessible and shortest path from the buses to their daily activities. An increase in clients will not cause a direct impact on Boone Ave. **Blum** stated that based on the drawing provided, it appears the capacity will increase in the front of the building, directly accessible by Boone Ave.

Commissioner Johnson stated that according to the Secretary of State Website, all the organizations in 800 Boone Ave are related to one another. Because of that, it's disingenuous for the applicant to assert that there's nothing to be done, internally, to accommodate the conditions. **Johnson** added that it seems within the purview of the Planning Commission to discuss condition five and if the City Attorney determines that's inaccurate, then the Commission should be given a finding to support that.

Zimmerman asked the Commission to address the two questions posed:

1. If the Commission was interested in amending the condition to allow or not allow use of the east side of Boone for loading and unloading.
2. Regardless of that choice, is there any consideration for a cap on the number of clients to be served, even if it's lower than the current number of clients allowed on their residence.

Regardless of the choice there should be reasonable findings to support the decision.

Baker stated he's opposed to revising condition five as requested by the applicant. **Blum** is concerned about loading and unloading on the west side of the street, crossing the street for this cliental is inherently dangerous. It's reasonable to restrict loading/unloading to the east side of the street. **Pockl** echoed Blum's statement and added that the loading/unloading may occur on the street but to encourage use of the parking lot.

Commissioners continued their conversation on if they should cap the number of clients aside from the current DHS license the applicant holds. The conversation moved back to the impact of loading and unloading of vehicles on Boone and what the impact of the city is and evolved on to if a traffic study would help create a solution. **Pockl** circled back to the original recommendation and stated that the commission still hasn't shown findings to support forbidding loading/unloading on Boone. **Brookins** added that car dealerships are not allowed to load and unload on the street in front of the business. **Blum** noted a parking restriction on Boone based on its proximity to Hwy 55 is reasonable.

MOTION made by **Baker**, to accept the recommendations of city staff with the exception that condition five is not included; to prohibit loading and unloading on Boone. Motion was seconded by **Brookins**, with an amendment to return some language from the 2007 CUP regarding client numbers to be determined by DHS and approved by the City. **Brookins** suggested that cap be determined at 350. **Baker** accepted that amendment to his motion. **Zimmerman** added that the commission can't strike condition five but can choose to not accept the amended language to condition five.

Johnson suggested to remove the first sentence in the condition and change no parking on the west side of Boone to say entirety of Boone. **Baker** withdrew his motion. **Blum** asked for a new motion.

MOTION made by **Johnson** to accept the recommendations made by staff, regarding the CUP, with the exception of condition 5, to then look like this:

5. ~~Subject to any additional posted traffic regulations, all vans and buses shall be loaded and unloaded along the east side of Boone Avenue.~~ No vans or buses shall be loaded, unloaded, or parked along the ~~west side~~ **entirety** of Boone Avenue. No vans or buses

may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.

Brookins seconded this motion. Approval of the motion went to vote and was failed 3-4.

Ayes: Baker, Brookins, Johnson

Nays: Blum, Pockl, Sadeghi, Segelbaum

Based on that denial, **Blum** asked for a further motion.

MOTION made by **Blum** to accept staff recommendation and approve the CUP application and to not amend condition 1 but to amend condition 2 to replace the word “by” with “from”. Condition five is accepted with edits, so condition five reads:

5. Subject to any additional posted traffic regulations, all vans and buses ~~shall~~ **may** be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses may be parked in the angled parking stalls, ~~or~~ in the first 21 perpendicular stalls located south of the building along the drive aisle, **or on the east side of Boone Ave.**

Segelbaum seconded this motion and the motion was approved 4-3.

Ayes: Blum, Pockl, Sadeghi, Segelbaum

Nays: Baker, Brookins, Johnson

Zimmerman stated the February 18th City Council meeting will receive this information.

5. DISCUSSION – Narrow Lots

Jason Zimmerman, Planning Manager, presented a summary of the public forum held at Golden Valley City Hall, on January 16th, 2020.

Zimmerman listed the specific items City Council directed to the Planning Commission.

- Investigate possible modifications to the City Code for narrow lot development
- Focus on lots 50’ wide or less but note ideas that might apply more broadly
- Involve outside experts – realtors, architects, and builders
- Solicit resident feedback
- Aim to bring forward recommendations before the spring building season

Zimmerman followed with a list of items already addressed and presented the Commission with a revised timeline of events. City Council will hold a public hearing on this topic on April 7th.

Public Forum Summary:

February 10, 2020

City of Golden Valley
Attn: City Councilmembers
7800 Golden Valley Road
Golden Valley, MN 55427

Sent via e-mail to JZimmerman@goldenvalleymn.gov

Re: Health Care Plus, Inc.'s, application for an Amendment to the Conditional Use Permit regarding the property located at 800 Boone Avenue N., Golden Valley, MN

Dear City Councilmembers:

Please accept this letter on behalf of Health Care Plus, Inc. ("HCP") in support of HCP's request for an amendment to an existing conditional use permit (the "CUP") that permits HCP to operate an adult day care center ("HCP's Center") at the property located at 800 Boone Avenue North, Golden Valley, Minnesota (the "Property"). The proposed amended CUP would allow HCP to continue to engage in an essential component of its operations: the use the east side of Boone Avenue for the dropping off and picking up of the clients with special needs and disabilities ("Adult Clients") who rely on HCP's Center for daily support, services and community.

A. Description of HCP's Center, Clients and Services

HCP's Center is located within a one-story building on the Property. HCP is a tenant of the building along with five other tenants. The other tenants operate a physical rehab facility, home health care, and staffing business, respectively. The leased premises of each tenant is shown on the attached Site Plan on Exhibit A (the "Site Plan").

HCP's Center is licensed by the Minnesota Department of Human Services ("DHS") and falls under the category of an "adult day care center" under Section 113-1 of the City of Golden Valley's Zoning Code (the "Code"). Section 113-1 defines an adult day care center as:

A facility licensed by the State that provides adult day care to functionally impaired adults on a regular basis for periods of less than 24 hours a day in a setting other than a participant's home or the residence of the facility operator. The term "functionally impaired adult" means an adult having a condition that includes:

(1) Having substantial difficulty in carrying out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working,

(2) Having a disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; and

(3) Requiring support to maintain independence in the community.

Indeed, all of HCP's Adult Clients are nursing home certifiable and therefore have physical and/or mental limitations.

The services provided at HCP's Center are critical to the community as they allow a growing population of vulnerable adults to "age in place" and do so in a dignified manner. HCP's Center provides to its Adult Clients a secure and safe environment, offers enjoyable and educational activities, healthy meals, as well as meaningful social interaction that can improve both mental and physical health and help to prevent or delay cognitive decline.

HCP's Center is currently in compliance with state regulations and license requirements. It is highly regulated by the DHS, and DHS regularly performs inspections and evaluations of the Property to determine whether HCP's Center is operating in compliance with state regulations as well as to assess the number of Adult Clients may attend the subject facility. Currently, HCP's license permits up to 350 seniors to attend HCP's Center, a number that is determined by DHS after assessing the square feet of usable space and the interior configuration of HCP's Center. HCP's Center is currently under capacity as it is attended by approximately 240 Adult Clients.

In addition to providing essential services and programming for those with physical and mental limitations, HCP's Center serves clients from three diverse and historically marginalized groups—Hispanic, East Asian and Eastern European—each with their own cultural identity and heritage. It provides care and services that are tailored to the language and culture of each ethnic group. To balance the needs of its diverse clients with physical and mental limitations, maximize the quality of care, and minimize stress to its Adult Clients, HCP provides services to each ethnic group in separate areas of HCP's Center, as depicted on the Site Plan.

Each client group accesses HCP's Center using a handicap accessible entrance that is closest to the area of HCP's Center serving that client group. The East Asian group, which is the largest group at HCP's Center, attends activities in the front of the building, which is the west side of the building. Therefore, the East Asian Adult Clients are dropped off and picked up on the east side of Boone Avenue and enter HCP's Center using the entrance on the Boone Avenue (the "Boone Avenue Entrance"). The activities and services for the Hispanic and Eastern European groups take place in the east side of the building, near the rear parking lot. The Hispanic and Eastern European clients are therefore dropped off at and picked up at HCP's Center's east entrance (the "East Entrance")

HCP's East Asian clients have always accessed HCP's Center from Boone Avenue. Most, if not all, of HCP's Adult Clients are transported to and from HCP's Center by small buses and vans. Since 2007, HCP has lawfully used Boone Avenue to park its vehicles and to load and unload

Adult Clients from vans and buses for direct access to the portion of HCP's Center serving its East Asian clients. The loading and unloading on Boone Avenue and the use of the Boone Avenue Entrance has always been and continues to be essential to the operations of HCP's Center.

B. Background of the Conditional Use Permit

The Property is located in the City's Industrial Zoning District (the "District"). HCP's Center is located in a multi-tenant building located on the Property. Pursuant to Section 113-94(f)(17) of the Code, an adult day care is conditional use in the District. In 2007, the City issued the CUP that authorized the operation of HCP's Center from the Property.

There have been several amendments to the original CUP since 2007. Most relevant here, on December 18, 2018, the City Council approved an amendment to the CUP, imposing, in part, an unlawful condition that prohibits not only the parking, but the loading and unloading of vehicles, on Boone Avenue (the "2018 Amendment"). The 2018 Amendment was prompted by a prior violation of the CUP that is unrelated to traffic or safety concerns on Boone Avenue. Specifically, the Property Owner used the Property as a reception hall during the evening hours, and responding to noise and nuisance complaints from neighboring property owners, the City Council imposed hours on the building's activities. While considering a solution to the noise issues, the City added the parking restrictions based on one unsubstantiated complaint about buses and vans parked on Boone Avenue.

Although the owner of the Property was privy to the 2018 Amendment, HCP, as a tenant, was unaware of the 2018 Amendment's Boone Avenue restrictions until it received a violation notice from the City in September 2019. Because unloading and loading of vans and buses on the east side of Boone Avenue is essential for HCP's operations and has not caused actual safety and traffic problems on Boone Avenue, HCP now requests an amendment to the CUP to allow HCP to continue use Boone Avenue for its operations.

HCP's application for an amendment to the CUP went before the Planning Commission for consideration on January 27, 2020. The Planning Commission voted to support the recommendation of permitting unloading and loading of buses and vans on the east side of Boone Avenue, subject to signs and other traffic controls that may be implemented in the future. On behalf of HCP, we respectfully request that the City Council approve HCP's request for an amendment to the existing CUP with the following revision to condition number 5:

No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. Vans and buses transporting clients of the adult day care may park on the east side of Boone Avenue for the purpose of loading and unloading clients of the adult day care. No vans or buses may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.

C. The Proposed Amendment to the CUP Satisfies the City's 10-Factor Test for Evaluating Conditional Use Permits

As set forth below, the City Council must approve HCP's application for an amendment to a CUP because HCP's proposed use of the Property satisfies the City's 10-factor test under Section 113-30 of the Golden Valley Zoning Code for evaluating conditional use permits.

Randy Engel of Buetow Architects, on behalf of HCP, explains in HCP's revised narrative, dated January 21, 2020, how each of these factors is satisfied here. We include these explanations in italics below, and we add additional explanation, as necessary.

(1) Demonstrated need for the proposed use.

Adult Day Care services and their facilities in Minnesota have been found to be essential to certain groups of adults who reside in Minnesota and to serve a critical and growing need in allowing adults to age in place (Le., staying in their home) for as long as possible. It has also been found that adult day care programs are beneficial to those adult residents who are able to participate in those programs.

One unique aspect of the Adult Day Care Program offered by this facility is that it provides its essential services to three diverse groups each with their own cultural identity and heritage: Hispanic, Asian (Chinese and Vietnamese) and Eastern European.

Most of the adults who are brought to and picked up from this Adult Day Care Facility by this facility's own buses and minivans, are either aged, infirm, vulnerable or do not have a self-provided means of transportation. These adults greatly depend upon the daily service programs, invigorating care, therapy services and healthy meals that are currently provided at this Adult Day Care Facility. Thus, it is readily apparent that these adults greatly depend upon this transportation service and that this transportation service is necessary for the continued participation of these adults in the services offered by this Adult Day Care Facility.

Furthermore, these adults physically require a ground-level building entrance that provides a direct entry into and exit from the building. That entry should be located as directly as possible to the area of the building in which these adults are served and should allow them to readily and safely utilize the provided bus and van transportation especially in inclement weather. These adults also require that building entry to be close to the street, handicapped accessible and without the presence of stairs or steps.

The Boone Avenue entrance is utilized twice daily (morning and afternoon) by 175 of these adults and the East entrance is utilized by twice daily 66 adults. This facility is licensed by the State of Minnesota for 350 adults, so it is estimated that approximately 210 adults will be utilizing the Boone Avenue entrance at some future time. 60% of the Adult Day Care Facility's State-licensed capacity is currently being utilized.

The continued utilization of the east side of Boone Avenue and the Boone Avenue Entrance is necessary to HCP's operations.

The Adult Clients who attend HCP's Center have considerable physical and/or mental limitations and are dependent on the transportation offered by HCP. They are unable to drive themselves to the Property and most do not have a reliable alternative source

of transportation. HCP's use of vans and buses in transporting individuals is therefore essential to HCP's continued operation of an adult day care center at the Property.

HCP has a legal obligation to provide accessible routes from the vans and buses to the areas of the building in which each of the respective group's activities take place.¹ The Adult Clients require a ground-level building entrance that provides a direct entry into and exit from the building. The entries must be located as directly as possible to the area of the building in which the Adult Clients are served and should allow them to readily and safely utilize the provided bus and van transportation especially in inclement weather. These adults also require that building entry to be close to the street, handicapped accessible and without the presence of stairs or steps.

Due to the configuration of the building, handicap accessibility constraints, and the presence of other tenants in the building, HCP is limited to using the Boone Avenue Entrance and the East Entrance for its drop-offs and pick-ups of Adult Clients. Because of the special needs and cultural and linguistic differences between the ethnic groups of the Adult Clients, it is not possible to channel HCP's East Asian clients through the East Entrance without greatly disrupting the care and services for the Hispanic and Eastern European clients. The East Asian clients must use the Boone Avenue Entrance, and the Hispanic and Eastern European clients must use the East Entrance.

Forcing all of HCP's Adult Clients to enter the East Entrance, rather than the Boone Avenue Entrance, would create an insurmountable barrier for a large number of the Adult Clients, specifically of East Asian descent. East Asian clients would have to travel much farther, through a series of confusing hallways within the building, to reach their daily activities. They would have to be corralled, by HCP personnel, through a room full of hundreds of people who speak different languages, which would cause confusion and stress for the clients with mental and physical disabilities. Moreover, HCP's personnel would have the increased burden of physically assisting every Adult Client to their activities, which would take substantial time and resources away from providing quality care and support for their clients.

Finally, the parking lot configuration at the Property does not support the increased traffic that the additional buses and vans would create. Not only would the buses and vans interfere with the rights of the other tenants to use the parking lot, but the increase in volume of buses and vans using one entrance would undoubtedly result in the Adult Clients waiting on the vehicles for extended periods of time.

Therefore, to be able to continue to provide the services for its Adult Clients, HCP must be able to continue to use Boone Avenue for the drop-off and pick-up of its clients.

¹ Minnesota's Accessibility Code 1104.5 states that "accessible routes shall be the shortest route possible and coincide with a primary use general circulation path. Where the circulation path is interior, the accessible route shall also be interior. Where the circulation path is within a tenant space in a multitenant facility, the accessible route shall also be within the tenant space. Where only one accessible route is provided, the accessible route shall not pass through kitchens, storage rooms, restrooms, closets, or similar spaces." Furthermore, Section 1104.1 applies the accessibility standard to passenger loading zones. "Accessible routes within the site shall be provided from . . . accessible passenger loading zones."

(2) Consistency with the Comprehensive Plan of the City.

The City's 2040 Comprehensive Plan identifies the property that this Adult Day Care Facility occupies as 'Light Industrial'. This property is also designated as 'Light Industrial' in the current City Zoning Map.

This property is utilized as a Light Industrial' use (permitted by a Conditional Use Permit).

The Office portion of this building is considered by the City as a 'Permitted Use' and occupies approximately 40% of the building's floor area.

The Adult Day Care portion of this building is considered by the City as a 'Conditional Use' and occupies approximately 60% of the building's floor area.

(3) Effect upon property values in the neighboring area.

Surrounding and adjacent land uses are zoned 'Industrial' or 'Light Industrial, are of industrial character with sites and buildings that house fully enclosed office, manufacturing, assembly and storage functions. Those functions and their respective land values do not depend upon views of surrounding and adjacent properties nor are they concurrently negatively affected (visually or aesthetically) by how the street, grounds, and buildings of surrounding and adjacent properties are utilized.

Similarly, the functions and land values of surrounding and adjacent land uses are not affected by the site and public street operations of this Adult Day Care Facility.

(4) Effect of any anticipated traffic generation upon the current traffic flow and congestion in the area.

The current bus and van traffic that drops-off and picks-up the adult clients who are served by this Adult Day Care Facility do not adversely affect the street traffic generated on Boone Avenue.

Also, that drop-off and pick-up traffic is provided outside of typical morning and afternoon "rush-hour" traffic that occurs in the immediate area.

It is understood that there have not been any reports made to the City or to the Owner of this Property of incidents of excessive traffic volumes or of blocked traffic lanes in connection with the drop-offs and pick-ups on the East side of Boone Avenue.

The City's prohibition of loading and unloading of vehicles on Boone Avenue is not a valid condition to the CUP and must be eliminated because it was not based on sufficient factual findings.

Whether a condition imposed by a conditional use permit is valid depends on whether the condition is reasonable, based on concrete evidence in the factual record, and related to an ordinance standard for conditional use permits. Minn. Stat. § 462.3595, subd. 1; *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 78 (Minn. 2015); League of Minnesota Cities, Land Use Conditional Use Permits Information Memo at 3.

As stated above, HCP has historically used Boone Avenue for parking, unloading and loading. A review of the record shows that there have been no legitimate safety or traffic concerns with HCP's use of the east side of Boone Avenue, and the concerns arising from HCP's use of the west side of Boone Avenue are tenuous at best. Though the City's right to prohibit the parking on the east and west side of Boone Avenue is questionable, HCP has agreed to limit the use of Boone Avenue by its vans and buses to drop-offs and pick-ups on the east side of Boone Avenue.

The City's conditional use ordinance requires the City to consider the "effect of any anticipated traffic generation upon the current traffic flow and congestion in the area" and "any other effect upon the general public health, safety, and welfare of the City and its residents" when making a decision regarding a conditional use permit. City Code 113-30, subd. (d)(4), (11). Any findings as to adverse traffic problems must be supported by independent analysis by the City and facts in the record and cannot be "speculative predictions on how traffic will impact residents." *Yang v. County of Carver*, 660 N.W.2d 828, 835 (Minn. Ct. App. 2003).

The City's basis in 2018 for the prohibition of the use of the east side of Boone Avenue for dropping-off and picking-up Adult Clients was based on one unsubstantiated complaint and general speculation regarding traffic concerns on Boone Avenue, rather than concrete facts and analysis of actual traffic and safety problems.

Moreover, the City was only able to reconsider the CUP in 2018 because the property owner violated the CUP by using the building for events that prompted complaints from neighboring residents. The use of the property for events prompted the revisions to the CUP conditions; traffic and safety concerns on Boone Avenue did not prompt the revisions. The City risks making the same error again if it denies HCP's request for the right to use the east side of Boone Avenue for drop-offs and pick-ups.

The City Must Not Consider a Hypothetical Bike Lane in Deciding Whether to Grant an Amendment to the CUP.

When the Planning Commission reviewed HCP's proposed amendment to the CUP, the Planning Commission discussed the potential for the construction of a bike lane on Boone Avenue and questioned if HCP's use of Boone Avenue was therefore viable and appropriate. As set forth above, a City cannot base a land use decision, such as imposing a condition on a CUP, on mere speculation. *See Yang*, 660 N.W.2d at 835. The City stated in its December 9, 2019 Memorandum that "Boone Ave is scheduled to be modified for on-street bike

lanes in 2020," but it does not include any concrete information regarding the bike lane. For instance, the City does not address whether the bike lane will actually be constructed in 2020, the precise location of the bike lane, the design and width of the bike lane, or whether the City has funding for the bike lane. To provide a sufficient basis for its denial of the CUP amendment, the City must include specific facts that support the City's decision that the proposed amendment to the CUP cannot be reconciled with the bike lane.

(5) Effect of any increases in population and density upon surrounding land uses.

If this question refers to future increases in the population of adults who would desire to utilize this Adult Day Care Facility, the response is that this facility currently serves 60% of the total number of adults for which it is licensed by the State of Minnesota (241/350).

There is sufficient space allocated within this facility to serve the full amount of adults for which it is currently licensed.

It is believed that any effect upon the surrounding industrially-zoned land uses would be negligible.

(6) Compliance with the City's Mixed-Income Housing Policy (if applicable to the proposed use).

Not relevant to this facility.

(7) Increase in noise levels to be caused by the proposed use.

The sounds of Buses and minivans arriving at and leaving from this site are observed to be similar to the sounds of passing vehicle traffic on Boone Avenue and certainly less than the sounds of passing semi tractor-trailers that use Boone Avenue to serve adjacent sites.

It is believed that there are not any noise level increases that will develop to disturb adjacent areas.

(8) Any odors, dust, smoke, gas, or vibration to be caused by the proposed use.

The vehicle traffic of this proposed use does not generate odors, dust, smoke or vibration any more than that generated by the typical daily vehicle traffic on Boone Avenue that passes by this facility.

(9) Any increase in pests, including flies, rats, or other animals or vermin in the area to be caused by the proposed use.

There would not be any such occurrences since trash is placed in enclosed exterior receptacles that are contained within an onsite walled trash enclosure.

(10) Visual appearance of any proposed structure or use.

There is not any effect on visual appearance. The exterior of this building is not being altered nor is there any proposed alteration planned for Boone Avenue, existing curbing, sidewalks or onsite paving.

The current landscaping features and amount of pervious land areas are not planned to be altered.

Storm water runoff would not be altered or increased.

To date, the movements and passage of buses and minivans that transport Adults served by this facility have not interfered or modified the appearance or maintenance standards of the current building exterior or of its grounds or that of directly adjacent public paving and land areas.

D. The City Has an Obligation to Comply with the ADA

HCP's proposed amendment to the CUP is necessary to accommodate the physical and/or mental limitations of its Adult Clients. Similarly, under Title II of the Americans with Disabilities Act of 1990 (the "ADA"), the City must implement its zoning regulations in a manner that does not treat disabled individuals differently from nondisabled individuals. 42 U.S.C. § 12132; Patricia E. Salkin, 1 Am. Law Zoning § 3:4 (5th ed. May 2019). A city has an "affirmative obligation to make reasonable accommodations to make reasonable accommodations for disabled individuals." 1 Americans with Disab.: Pract. & Compliance Manual § 2:88. A city discriminates in violation of the ADA if it refuses to modify its zoning policies, practices and procedures when such an accommodation may be necessary to afford a disabled person equal opportunity to use and enjoy services. 28 C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability"). An accommodation is "necessary" if the desired accommodation will affirmatively enhance a disabled person's quality of life by improve the effects of the disability.

During the Planning Commission's discussion of this matter, the Planning Commission members proposed alternative paths of access by the Adult Clients to the building, including all Adult Clients using the East Entrance and requiring the Adult Clients to be dropped off at the nearest side street and walk over 120 feet to the Boone Avenue Entrance. Although removing parking and the loading and unloading of vehicles from Boone Avenue would not create a material burden for abled-bodied persons, it would create a substantial burden on disabled persons requiring the services of HCP. The alternative routes are not reasonably feasible for disabled persons based on distance of HCP's Center from the alternative building entrances and the operation of other businesses between the alternative building entrances and HCP's Center within the building. The Adult Clients using either of the aforementioned options cannot reasonably access their activities in HCP's Center. As such, the City will likely violate the ADA if it refuses to permit dropping off and picking up on the east side of Boone Ave.

February 10, 2020

Page 10

Conclusion

The loading and unloading of buses and vans on the east side of Boone Avenue has operated seamlessly since 2007 and is essential to the continued operation of HCP's Center. HCP has shown that the amendment to the CUP is warranted under the City's Code. Accordingly, HCP respectfully requests that the City Council approve HCP's amendment to the CUP and expressly permit the loading and unloading of vans and buses on the east side of Boone Avenue.

Sincerely,

/s/ Christine L. Eid

Christine L. Eid

cc: Tom Sanders
Innessa Marinov
David Olshansky



A EXISTING SITE PLAN
 1" = 20'-0" N

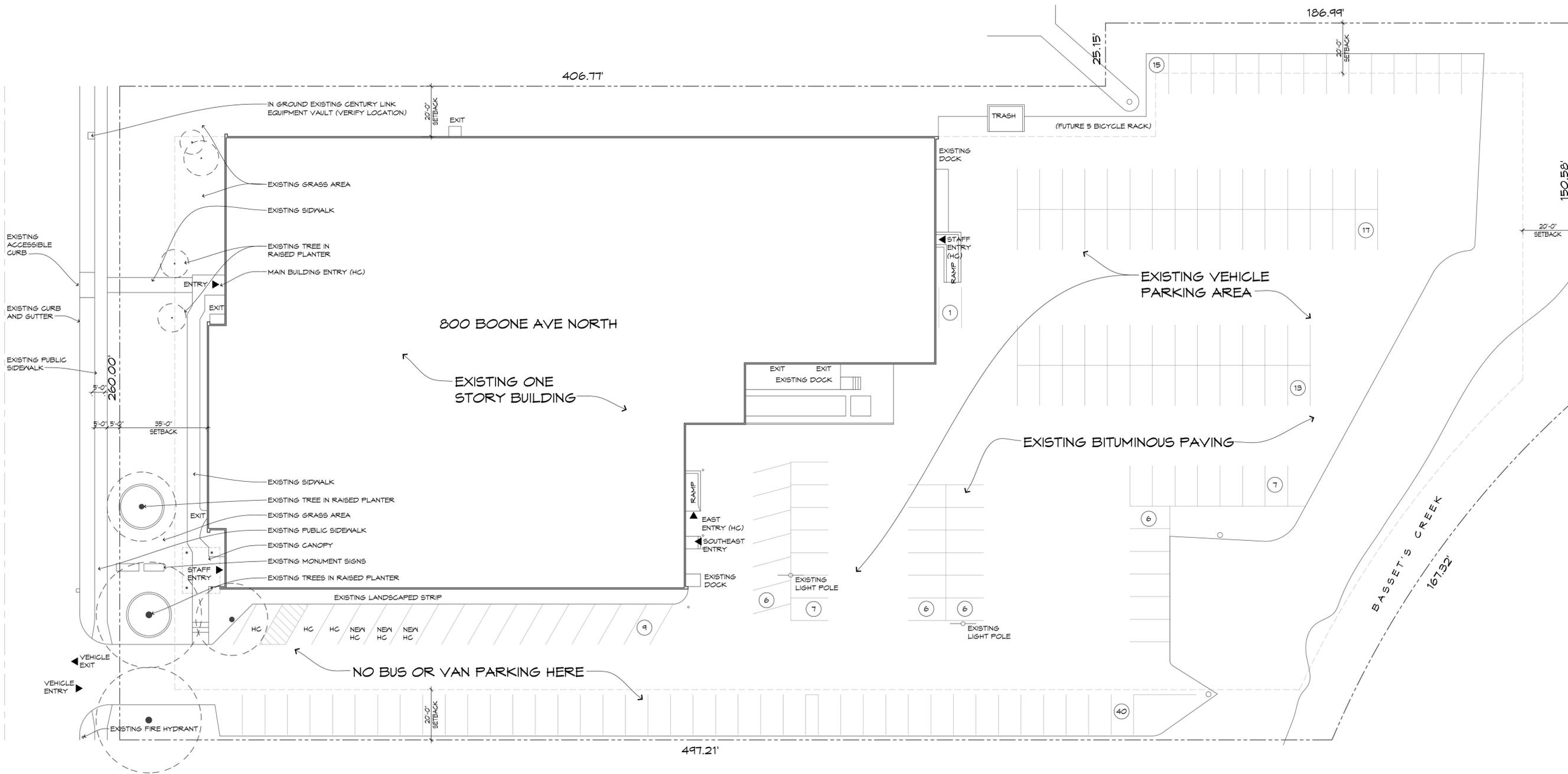
BOUWMEESTER VAN BUREN & BACHMEYER, INC.
 I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY
 ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM
 A LICENSED PROFESSIONAL ARCHITECT UNDER THE LAWS OF THE
 STATE OF MINNESOTA.
 Remy L. Enghel
 REGISTRATION NUMBER: 11331
 DATE:

B I BUETOW 2 ARCHITECTS, INC.
 2905 DEAN PARKWAY, SUITE A
 MINNEAPOLIS, MINNESOTA 55416
 (612) 455-2626

NO.	DATE	REVISION

OCTOBER 16, 2019
 Improved Bus and Van Drop-Off/Pick-Up
 for DRAM Properties
 800 Boone Avenue North
 Golden Valley, Minnesota
B2#1923

BOONE AVENUE NORTH



2 EXISTING SITE PLAN
1" = 20'-0"

EXISTING SITE DATA	
SITE:	<ul style="list-style-type: none"> LAND AREA: 3.48 ACRES OR 151,693 SF BUILDING FOOTPRINT: 42,655 SF (28%) PERVIOUS AREA: 30,340± SF (25%) ZONING= LIGHT INDUSTRIAL LAND USE= OFFICE (PERMITTED USE) ADULT DAYCARE (CONDITIONAL USE)
MINIMUM PARKING REQUIREMENTS	<ul style="list-style-type: none"> OFFICE: 16,600 SF/250± = 66 SPACES ADULT DAYCARE= 350/5± = 10 SPACES TOTAL= 136 SPACES
PARKING PROVIDED=	169 SPACES (163 STANDARD AND 6 HC)
BUILDING:	<ul style="list-style-type: none"> TOTAL FLOOR AREA= 42,655 SF ADULT DAYCARE= 26,055 SF(60%) OFFICE= 16,600 SF (40%)
ADULT DAYCARE LICENSED FOR 350 CLIENTS	CURRENT NUMBER OF CLIENTS= 241
CURRENT USE OF ENTRANCES=	<ul style="list-style-type: none"> MAIN 175 CLIENTS EAST 66 CLIENTS
PROBABLE FUTURE USE OF ENTRANCES=	<ul style="list-style-type: none"> MAIN 230 CLIENTS EAST 10 CLIENTS

(Top 3 inches reserved for recording data)

**CITY OF GOLDEN VALLEY
CONDITIONAL USE PERMIT
No. 119, Amendment #3**

Date of Approval: December 18, 2018, by the City Council in accordance with Section 113-55 (b) and Section 113-93 of City Code

Issued To: DRAM Properties (David Olshansky)

Approved Location: 800 Boone Avenue North, Golden Valley, MN

Approved Conditional Use: To allow for an adult daycare use in the Light Industrial Zoning District

Legal Description: Lot 9, except the North 350 feet of the East 186.69 feet thereof and further excepting the North 375.15 feet of said Lot 9 lying West of the East 186.69 feet thereof; Also that part of Lot 11, lying North of a line parallel with and distant 635.15 feet south of the North line of said Lot 9, aforesaid; All in Busch's Golden Valley Acres, Hennepin County, Minnesota

Check here if all or part of the described real property is Registered (Torrens)

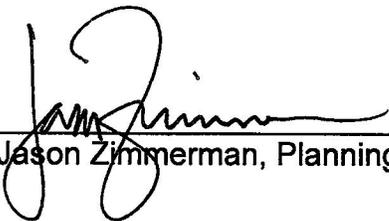
Conditions of Approval:

1. The adult day care shall be limited to the number of clients specified by the Minnesota Department of Human Services.
2. All necessary licenses obtained by the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. All vans and buses shall be loaded, unloaded, and parked in the parking lot and shall not be loaded, unloaded, or parked on Boone Avenue. No vans or buses

- may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.
- 6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
- 7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.
- 8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
- 9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
- 10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

This permit does not exempt the property owner or occupant from compliance with all provisions of city code, or any other applicable regulations, laws, and ordinances.

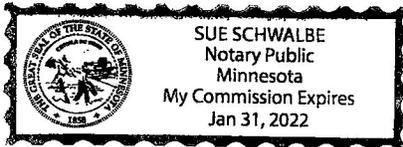
City of Golden Valley, a Minnesota municipal corporation

By: 
 Jason Zimmerman, Planning Manager

State of Minnesota)
)
 County of Hennepin) ss

This instrument was acknowledged before me on January 2, 2019, by Jason Zimmerman Planning Manager of the City of Golden Valley, a municipal corporation.

(Stamp)




 (signature of notarial officer)

My commission expires: January 31, 2022
 (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
 City of Golden Valley
 7800 Golden Valley Road
 Golden Valley, MN 55427
 (763) 593-8000

ORDINANCE NO. 677
AN ORDINANCE AMENDING THE CITY CODE
Approval of Conditional Use Permit Number 119, Amendment #4
800 Boone Avenue North
Health Care Plus, Inc. (Innessa Marinov), Applicant

The City Council for the City of Golden Valley hereby ordains as follows:

Section 1. Ordinance No. 390, 2nd Series, is hereby rescinded in its entirety and of no further force and effect.

Section 2. Ordinance No. 466, 2nd Series, is hereby rescinded in its entirety and of no further force and effect.

Section 3. Ordinance No. 649, 2nd Series, is hereby rescinded in its entirety and of no further force and effect.

Section 4. City Code Chapter 113 entitled "Zoning" is amended in Section 113-55, Subd. b, and Section 113-93, by approving a Conditional Use Permit Amendment for a certain tract of land located at 800 Boone Avenue North, thereby allowing for an adult daycare use in the Light Industrial Zoning District.

This Conditional Use Permit is approved based on the application materials and plans submitted by the applicant, staff memos, public comments and information presented to the Planning Commission and City Council, and findings recommended by the Planning Commission, this Conditional Use Permit is approved pursuant to City Code Section 113-30, Subd. g, and adopted by the City Council on February 18, 2020.

This Conditional Use Permit is subject to all of the terms of the permit to be issued including, but not limited to, the following specific conditions:

1. The adult day care shall be limited to 350 clients, as specified by the Minnesota Department of Human Services license issued August 1, 2019.
2. All necessary licenses obtained from the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. Subject to any additional posted traffic regulations, vans and buses may be loaded and unloaded along the east side of Boone Avenue. No vans or buses shall be loaded, unloaded, or parked along the west side of Boone Avenue. No vans or buses may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle, or along the east side of Boone Avenue.
6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.

8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

Section 4. The tract of land affected by this ordinance is legally described as follows:

Lot 9, except the North 350 feet of the East 186.69 feet thereof and further excepting the North 375.15 feet of said Lot 9 lying West of the East 186.69 feet thereof; Also that part of Lot 11, lying North of a line parallel with and distant 635.15 feet south of the North line of said Lot 9, aforesaid; All in Busch's Golden Valley Acres, Hennepin County, Minnesota

Section 5. City Code Chapter 1 entitled "General Provisions" and Sec. 1-8 entitled "General Penalty; Continuing Violations" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 6. This ordinance shall take effect from and after its passage and publication as required by law.

Adopted by the City Council this 18th day of February 18, 2020.

/s/Shepard M. Harris
Shepard M. Harris, Mayor

ATTEST:

/s/ Kristine A. Luedke
Kristine A. Luedke, City Clerk



EXECUTIVE SUMMARY

Physical Development

763-593-8030 / 763-593-8109 (fax)

Golden Valley City Council Meeting February 18, 2020

Agenda Item

4. B. Public Hearing – Rezone I-394 Mixed Use Properties to Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional

Prepared By

Jason Zimmerman, Planning Manager

Summary

Staff is requesting that 62 properties north of I-394 be rezoned in order to come into conformance with the land use map in the 2040 Comprehensive Plan. This item was considered at the January 13, 2020, Planning Commission meeting. The Commission voted unanimously to recommend approval of the rezoning for all properties.

Financial Or Budget Considerations

None

Background

On February 4, 2020, the City Council adopted the City's 2040 Comprehensive Plan. The approved Future Land Use Map included in this plan modifies the guiding land uses for a number of the I-394 Corridor properties, redirecting many of them away from mixed use and towards other designations.

State statute requires that all zoning designations be updated to be consistent with the land uses identified in the Comprehensive Plan within nine months of adoption. The I-394 Corridor properties are the first to be rezoned; other parts of the city will follow over the first half of 2020.

On September 3, 2019, the City Council approved a zoning text amendment that updated the existing I-394 Mixed Use zoning district, revising many regulations and renaming it the Mixed Use zoning district. The new district updates the zoning subdistricts, defining them by use and intensity rather than by the maximum height of buildings allowed. As a result, even properties that will continue to be zoned mixed use must be "rezoned" to reflect the new subdistricts.

Analysis

Of the 62 properties currently zoned mixed use and involved in the rezoning efforts, 21 will remain zoned mixed use. 23 additional properties are currently within a Planned Unit Development (PUD). In these locations, the requirements of the PUD trump those of the underlying zoning district so no change is anticipated even though the zoning designation will be modified.

18 properties will be rezoned from I-394 Mixed Use to Commercial (14 properties), Institutional (2 properties), Office (1 property), or Medium Density Residential (1 property). More detailed descriptions of these properties and their current uses are listed below:

Address	Current Use	Proposed Zoning
Unassigned	Commercial – Lupient inventory storage	Commercial
850 Louisiana Ave S	Commercial – Benihana	Commercial
6920 Wayzata Blvd	Commercial – Perkins	Commercial
721 Hampshire Ave S	Commercial – Borton Volvo	Commercial
905 Hampshire Ave S	Commercial – Borton Volvo	Commercial
6660 Wayzata Blvd	Commercial – Burger King	Commercial
6620 Wayzata Blvd	Commercial – Taco Bell	Commercial
900 Florida Ave S	Commercial – Collision Center	Commercial
850 Florida Ave S	Commercial – 3 rd Lair	Commercial
6480 Wayzata Blvd	Commercial – multi-tenant building	Commercial
6440 Wayzata Blvd	Commercial – vacant restaurant	Commercial
6400 Wayzata Blvd	Commercial – JJ’s Clubhouse	Commercial
6300 Wayzata Blvd	Commercial – Ramada	Commercial
6105 Golden Hills Dr	Office – Preferred One	Office
6075 Golden Hills Dr	Open Space – Golden Hills Pond	Institutional (I-4)
6051 Golden Hills Dr	Commercial – Holiday Inn Express	Commercial
5050 Wayzata Blvd	Open Space – stormwater pond	Institutional (I-4)
7400 Laurel Ave	Office - Workabilities	Residential (R-3)

Should the City choose not to rezone any of these properties, an amendment to the Future Land Use Map would then be required with the Met Council – modifying the recently-adopted 2040 Comprehensive Plan – in order to maintain consistency between guided land use and zoning.

In addition to the public comments noted at the Planning Commission public hearing, staff fielded inquiries from approximately a dozen property owners in or near the I-394 Corridor. Commercial property owners were generally interested in if the proposed rezonings would impact their current businesses; residents were generally interested in if the proposed rezonings would result in more intense development in the area.

Any property that is rezoned would maintain its current use and site layout as legally nonconforming.

Recommended Action

Motion to adopt Ordinance #678, Rezoning All Properties in the I-394 Corridor Zoned I-394 Mixed Use to Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional Zoning Districts.

Supporting Documents

- Memo to the Planning Commission dated January 13, 2020 (3 pages)
- Planning Commission Minutes dated January 13, 2020 (3 pages)
- Existing Zoning Designations (1 page)
- Proposed Zoning Designations (1 page)
- Zoning Descriptions (2 pages)
- List of Affected Properties (2 pages)
- Ordinance #678, Property Rezoning – All Properties in the I-394 Corridor Zoned I-394 Mixed Use to Mixed Use, Commercial, Office Medium Density Residential, High Density Residential, and Institutional Zoning Districts (1 page)



MEMORANDUM

Planning Department

763-593-8095 / 763-593-8109 (fax)

Date: January 13, 2020

To: Golden Valley Planning Commission

From: Jason Zimmerman, Planning Manager

Subject: Informal Public Hearing – Rezone I-394 Mixed Use Properties to Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional

Summary

Staff is requesting that 62 properties north of I-394 be rezoned in order to come into conformance with the land use map in the 2040 Comprehensive Plan.

Background

Over the last four to five years, the Planning Commission has had a number of discussions about the mixed use zoning designation north of I-394, which was applied early in 2008. After years of evaluation, and in concert with the creation of the City's 2040 Comprehensive Plan, a new Mixed Use zoning district was created to replace the I-394 Mixed Use zoning district. This zoning text amendment was approved by the City Council on September 3, 2019, and became effective on January 1, 2020.

The new Mixed Use district updates the zoning subdistricts, defining them by use and intensity rather than by the maximum height of buildings allowed. It creates more nuanced regulations around building setbacks and surface parking, and caps the amount of "non-structure coverage" on each property.

At this time, all properties currently zoned I-394 Mixed Use must be rezoned since the subdistricts associated with both the old and the new mixed use districts are not directly compatible. In addition, the Future Land Use Map included in the 2040 Comprehensive Plan modifies the guiding land uses for a number of the I-394 Corridor properties, redirecting many of them away from mixed use and towards other designations.

State statute requires that all zoning designations be updated to be consistent with the land uses identified in the Comprehensive Plan within nine months of adoption. The I-394 Corridor properties are the first to be rezoned; other parts of the city will follow over the first half of 2020.

Below is a summary of the process that was followed to approve and adopt the 2040 Comprehensive Plan:

Meeting Date	Action
November 13, 2018	Planning Commission reviewed the final draft of the City’s proposed 2040 Comprehensive Plan and unanimously recommended it be approved
December 4, 2018	City Council held a public hearing and voted to approve the plan
January 2, 2019	City Council directed staff to submit the plan to the Metropolitan Council for final review
January 22, 2020	Metropolitan Council expected to vote to approve Golden Valley’s plan
February 4, 2020	City Council expected to adopt the 2040 Comprehensive Plan and to approve the rezoning of the I-394 Mixed Use properties

Analysis

Of the 62 properties currently zoned mixed use and involved in the rezoning efforts, 22 will remain zoned mixed use. 23 additional properties are currently within a Planned Unit Development (PUD). In these locations, the requirements of the PUD trump those of the underlying zoning district so no change is anticipated even though the zoning designation will be modified.

17 properties will be rezoned from I-394 Mixed Use to Commercial (14 properties), Office (1 property) or Institutional (2 properties). More detailed descriptions of these properties and their current uses are listed below:

Address	Current Use	Proposed Zoning
Unassigned	Commercial – Lupient inventory storage	Commercial
850 Louisiana Ave S	Commercial – Benihana	Commercial
6920 Wayzata Blvd	Commercial – Perkins	Commercial
721 Hampshire Ave S	Commercial – Borton Volvo	Commercial
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6660 Wayzata Blvd	Commercial – Burger King	Commercial
6620 Wayzata Blvd	Commercial – Taco Bell	Commercial
900 Florida Ave S	Commercial – Collision Center	Commercial
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6480 Wayzata Blvd	Commercial – multi-tenant building	Commercial

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6400 Wayzata Blvd	Commercial – JJ’s Clubhouse	Commercial
6300 Wayzata Blvd	Commercial – Ramada	Commercial
6105 Golden Hills Dr	Office – Preferred One	Office
6075 Golden Hills Dr	Open Space – Golden Hills Pond	Institutional (I-4)
6051 Golden Hills Dr	Commercial – Holiday Inn Express	Commercial
5050 Wayzata Blvd	Open Space – stormwater pond	Institutional (I-4)

Should the City chose not to rezone any of these properties, an amendment to the Future Land Use Map would then be required with the Met Council – modifying the soon-to-be-adopted 2040 Comprehensive Plan – in order to maintain consistency between guided land use and zoning.

Recommended Action

Staff recommends approval of amendments to the Zoning Map to rezone the properties currently zoned I-394 Mixed Use to the various designations in the attached document, including Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional.

Attachments

- I-394 Corridor: Existing Zoning Designations (1 page)
- I-394 Corridor: Proposed Zoning Designations (1 page)
- I-394 Corridor: Zoning Descriptions (2 pages)
- List of Affected Properties (2 pages)

Informal Public Hearing – Zoning Map Amendments

Applicant: City of Golden Valley
Address: I-394 Corridor Mixed Use Properties
Purpose: To rezone properties located in the I-394 Corridor from I-394 Mixed Use to a variety of other zoning designations including Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional, as documented in the City's 2040 Comprehensive Plan

Jason Zimmerman, Golden Valley Planning Manager, reminded the board that the I-394 Mixed Use zoning designation was approved in late 2019 and took effect at the start of 2020. This rezoning has different subdistricts and has designations by scale and intensity; i.e. Community Mixed Use or Neighborhood Mixed Use. Golden Valley's 2040 Comprehensive Plan is scheduled to be adopted on February 4, 2020. Part of that Comp Plan is an updated Future Land Use Map and state statute requires consistency between land use and zoning.

Zimmerman displayed a map showing the exact location of discussion. He then displayed the 2040 Future Land Use Map and explained that this map guides the rezoning.

Zimmerman gave a history of the rezoning conversation and how it began in 2016 at an open house at City Hall. The conversation progressed in to 2017 at a Planning Commission meeting then in 2018 was part of the 2040 Comp Plan that was recommended for approval. In 2019 City Council directed staff to submit the approved plan to Met Council and in 2020 they are expected to approve. In February of 2020, City Council is expected to adopt the 2040 Comp Plan and the I-394 rezoning is part of that approval.

Zimmerman went in more detail on the property types:

- 21 properties to remain mixed use
- 23 properties are part of a PUD (Planned Unit Development)
- 18 properties rezoned away from mixed use
 - 14 to Commercial
 - 2 to Institutional
 - 1 to Office
 - 1 to Medium-Density Residential (R-3)

Zimmerman reiterated that the rezoning was done in an effort to more closely align the properties with their current use, not to prepare for a proposed project. He stated that businesses would be allowed to continue with current uses and site layouts under a legally non-conforming status. He continued that if the City chooses not to rezone any of these properties, the Future Land Use Map would need to be amended with the Met Council.

Commissioner Segelbaum asked Zimmerman what would happen if the use on the rezoned PUDs changed. **Zimmerman** stated that the underlying zoning generally reflects what's happening on site and the rezoning will more closely align with current uses. The PUD itself dictates more detail and if that

were to change, the PUD would need to be amended or revoked; then the zoning would govern further use.

Commissioner Johnson asked about the distinction between rezoning a property and changing a land use. **Zimmerman** replied that it's almost the same thing but the land use map is suggesting a particular zoning and the zoning of property implements regulatory language.

PUBLIC HEARING

Greg Hayes, Lupient Auto Group, asked if there would be a more detailed explanation of the difference between commercial and residential zoning.

Mike Baskfield 675 Rhode Island Ave S, asked for clarity on what the rezoning means for his commercial business.

Susan Myer, 510 Pennsylvania Ave, all summer the cars go through the stop sign on Laurel and Pennsylvania. If more apartments are to be added, then a roundabout or another stop sign should be added.

Don Taylor, 5120 Circle Down, living in a currently high density living area and would like clarity on definitions between neighborhood and community. Mentioned wanting to see retail buildings put in the rezoned areas that will add value aside from high density living buildings.

Joanna Hyman, 95 Oregon Ave S, is curious about the impact of more high density residential and the resulting overcrowding at Meadowbrook Elementary. She also stated that she supports mixed use properties that provide retail/commercial on the first floor and high density residential on the upper levels. Requested a more clear definition of what mixed-use means.

John Bean, 501 Radisson Road, Requesting clarification and what the rezoning means, and if it will be easier for more buildings to be built.

Chair Blum, closed the public hearing section at 7:30 pm

Chair Blum addressed the questions from the public hearing and asked staff to point residents to definitions of the zoning changes.

Zimmerman responded that the packet definitions were general but the zoning code for Golden Valley is accessible to the public and has a detailed descriptions of each zoning classification. **Zimmerman** went on to state that when the re-zoning was approved, part of the equation was to encourage small-scale neighborhood services in the mixed-use properties. Addressing other questions, **Zimmerman** reiterated that the rezoning wasn't done with a building plan in place but done rather to encourage projects as the market creates opportunities. He also reiterated that this rezoning is not allowing for more high density housing but actually scaling back on that in this particular area.

Chair Blum mentioned that residents should read the city code, accessible through the City of Golden Valley website, as well as look at past meeting videos and minutes.

Zimmerman addressed the difference between Neighborhood Mixed Use and Community Mixed Use. Neighborhood Mixed Use are those with more neighborhood amenities and with modest building height regulations. Community Mixed Use has less modest building height regulations, development can be a larger scale, parking was addressed, and pedestrian friendly amenities. **Zimmerman** echoed the Chair's suggestion to view past meeting videos and read previous minutes. He also stated that this rezoning process did not include a traffic study and therefore there wasn't immediate data for the stop sign on Laurel, per the resident inquiry. Contact information for the City's engineering department was shared as well as an invitation to connect with other questions.

In regards to the overcrowding at Meadowbrook, the Commission and staff discussed that enrollment projections are part of the City Comp Plan and the City has no jurisdiction over the school's enrollment cap. As of today, Meadowbrook's cap is at 800 students.

Chair Blum asked staff what the expected date is for the City Council to take action. **Zimmerman** responded that it will occur on February 4th, 2020, the same meeting that the Comp Plan will be considered for adoption.

MOTION made by **Commissioner Brookins** to recommend City Council approval of the presented rezoning of the I-394 Corridor Mixed Use Properties. Seconded by **Commissioner Johnson** and passed unanimously.

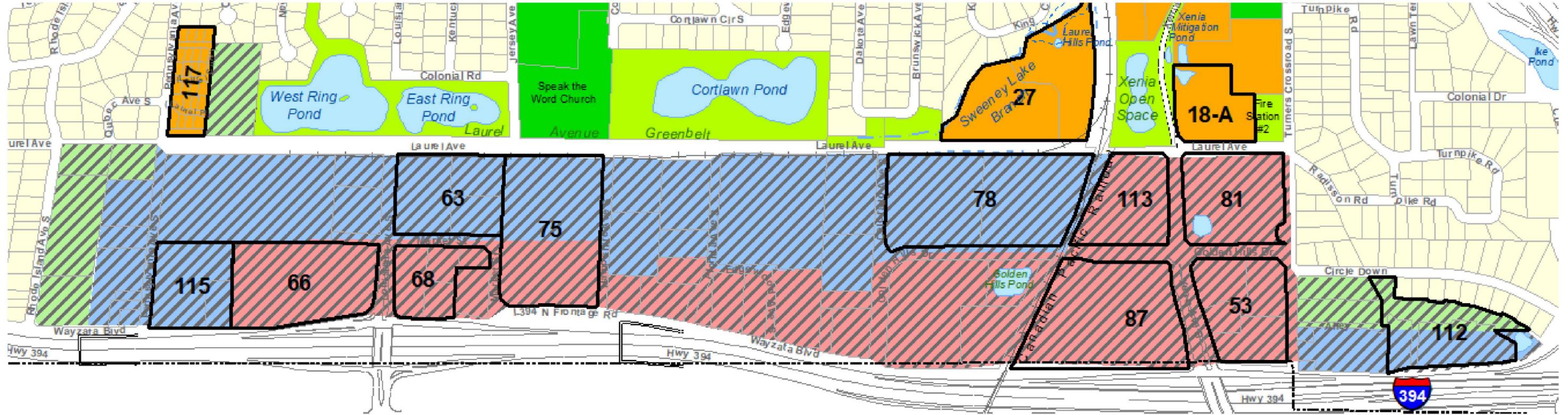
DISCUSSION – Tobacco Sales Restrictions

Myles Campbell, Golden Valley Planner, gave a presentation on tobacco sales zoning regulations that the City Council requested the Planning Commission to consider. Amendments to the handling of tobacco sales were first raised as potential work items through the City Council's 2019 goal setting process. Tobacco licensing was amended and approved in October of 2019 and previous conversations occurred at three other meetings in 2019.

Campbell presented the commission with an extensive list of licensing changes and explained the 3 goals of amending the zoning code in conjunction with those changes.

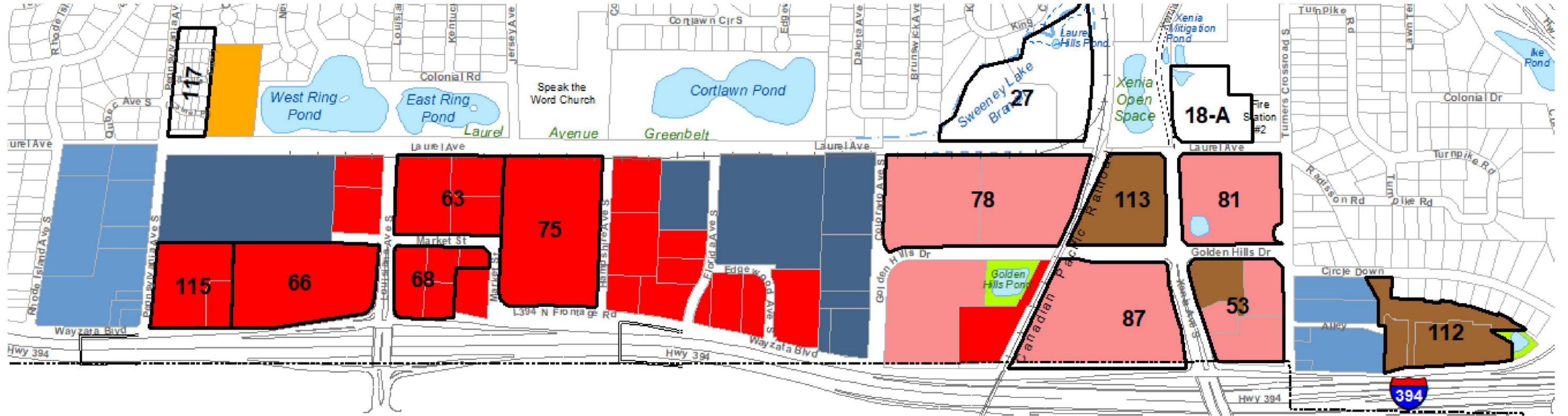
- Restrictions placed on tobacco licenses are extremely effective at creating a safer tobacco sales environment, but are still linked to the license itself and deal mostly in the operation of the retailer.
- Zoning can be used to place restrictions applicable to all commercially zoned land, and can be more effective at combatting retailer density or accessibility to youth consumers.
- A combination of both zoning and licensing controls gives the city a more comprehensive procedure to mitigate the negative public health impacts posed by tobacco retailers.

I-394 Corridor: Existing Zoning Designations



- (R-1) Residential
- (R-2) Moderate Density
- (R-3) Medium Density
- (R-4) High Density
- I-394 Mixed Use
 - Subdistrict A
 - Subdistrict B
 - Subdistrict C
- (C) Commercial
- (LI) Light Industrial
- (I) Industrial
- (O) Office
- (I-1) Churches & Schools
- (I-2) Libraries, Museums, Colleges
- (I-3) Rest Homes, Nursing Homes, Sanitariums
- (I-4) Golf Courses, Parks, Playgrounds, City Offices
- (I-5) Cemeteries
- Planned Unit Development

I-394 Corridor: Proposed Zoning Designations



- (R-1) Residential
- (R-2) Moderate Density
- (R-3) Medium Density
- (R-4) High Density
- (C) Commercial
- (MU-N) Mixed Use - Neighborhood
- (MU-C) Mixed Use - Community
- (LI) Light Industrial
- (I) Industrial
- (O) Office
- (I-1) Churches & Schools
- (I-2) Libraries, Museums, Colleges
- (I-3) Rest Homes, Nursing Homes, Sanitariums
- (I-4) Golf Courses, Parks, Playgrounds, City Offices
- (I-5) Cemeteries
- Planned Unit Development

I-394 Corridor: Zoning Descriptions

I-394 Mixed Use: The purpose of the I-394 Mixed Use Zoning District is to improve the cohesiveness, attractiveness, and sustainability of the I-394 Corridor and to implement the following principles and recommendations of the I-394 Corridor Study:

- a. Enable the corridor to evolve toward a diverse mix of land uses, including residential as well as commercial and industrial.
- b. Maximize integration rather than separation of land uses, where appropriate.
- c. Maintain the corridor as an employment center.
- d. Improve the visual coherence and attractiveness of the corridor.
- e. Improve connectivity for all modes of transportation.
- f. Foster neighborhood-serving retail and services.
- g. Maintain or improve the functioning of intersections and highway interchanges.
- h. Foster sustainable development and a balance between urban and natural systems.

Subdistrict A: Buildings and structures up to three stories

Subdistrict B: Buildings and structures up to six stories

Subdistrict C: Buildings and structures up to 10 stories

Mixed Use: The purpose of the Mixed Use Zoning District is to implement the following principles:

- (1) Implement the policies of the Comprehensive Plan.
- (2) Enable appropriate locations within the City to evolve towards a diverse mix of compatible uses.
- (3) Maximize integration rather than separation of uses.
- (4) Improve connectivity for all modes of transportation.
- (5) Provide a context suitable for high-frequency transit.
- (6) Foster neighborhood-serving retail and service uses.

Neighborhood: This subdistrict allows a mix of uses including medium-density residential and medium-scale commercial, office, and institutional uses. Properties zoned for Neighborhood Mixed Use typically sit adjacent to County Roads or other roads classified as arterials or collectors and are accessible via a variety of transportation modes. The target market is the surrounding neighborhood. The built environment could incorporate freestanding businesses, religious or civic institutions, and attached housing options including small apartment buildings. These areas allow for both vertical and horizontal mixed use and do not require a mix of uses within every building.

Community: This subdistrict allows a mix of uses including high-density residential and commercial, office, and institutional uses. Properties zoned for Community Mixed Use typically sit adjacent to State Highways or Interstates and are accessible through frequent transit service. Target markets encompass the surrounding neighborhoods, the broader community, and even the wider region. The built environment could include freestanding businesses, shopping areas, employment centers, and apartment buildings. Envisioned as compact urban development areas that serve as gateways to the city and as activity centers for the community, they allow for both vertical and horizontal mixed use and do not require a mix of uses within every building

Commercial: The purpose of the Commercial Zoning District is to provide for the establishment of commercial and service activities which draw from and serve customers in the community and are located in areas which are well served by collector and arterial streets.

Office: The purpose of the Office Zoning District is to provide areas for the offices, clinics, day care centers, financial institutions, and other compatible uses that serve local and regional needs. The District fosters employment opportunities and encourages transitions between land uses. The District is not intended to serve as an area for the sale of or handling of goods, wares, merchandise, or commodities.

Institutional: The purpose of the Institutional Zoning District is to establish areas where both public and private institutional uses such as schools, hospitals, parks, golf courses, nursing homes, and public buildings may be located.

I-4: Parks, playgrounds, City offices, fire stations, and other lands incidental to the operation of the City

Medium Density Residential (R-3): The purpose of the Medium Density Residential (R-3) Zoning District is to provide for medium density housing (up to 10 units per acre with potential for 12 units per acre with density bonuses) along with directly related and complementary uses. Senior and disability housing is permitted to a density of 20 units per acre or up to five stories or 60 feet in height with a conditional use permit.

High Density Residential (R-4): The purpose of the High Density Residential (R-4) Zoning District is to provide for high density housing (up to 50 units per acre for multifamily dwellings and up to 70 units per acre for senior and disability housing) along with directly related and complementary uses. Multifamily dwellings and senior and disability housing is permitted to a density of 100 units per acre with a conditional use permit.

AFFECTED PROPERTIES

BUILDING NO.	STREET NAME	CURRENT ZONING	SUBDISTRICT	PROPOSED ZONING	SUBDISTRICT
675	RHODE ISLAND AVE S	I-394 MIXED USE	A	MIXED USE	NEIGHBORHOOD
825	RHODE ISLAND AVE S	I-394 MIXED USE	A	MIXED USE	NEIGHBORHOOD
700	PENNSYLVANIA AVE S	I-394 MIXED USE	A	MIXED USE	NEIGHBORHOOD
750	PENNSYLVANIA AVE S	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
850	PENNSYLVANIA AVE S	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
1040	PENNSYLVANIA AVE S	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
7500	WAYZATA BLVD	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
7550	WAYZATA BLVD	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
7600	WAYZATA BLVD	I-394 MIXED USE	A/B	MIXED USE	NEIGHBORHOOD
7400	LAUREL AVE	I-394 MIXED USE	A	MEDIUM DENSITY RESIDENTIAL	
701	PENNSYLVANIA AVE S	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
7100	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
7300	WAYZATA BLVD	I-394 MIXED USE	B	COMMERCIAL	
7400	WAYZATA BLVD	I-394 MIXED USE	B	COMMERCIAL	
28	ADDRESS UNASSIGNED	I-394 MIXED USE	B	COMMERCIAL	
850	LOUISIANA AVE S	I-394 MIXED USE	B	COMMERCIAL	
901	LOUISIANA AVE S	I-394 MIXED USE	C	COMMERCIAL	
6925	MARKET ST	I-394 MIXED USE	C	COMMERCIAL	
6955	MARKET ST	I-394 MIXED USE	C	COMMERCIAL	
6920	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
6944	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
705	LOUISIANA AVE S	I-394 MIXED USE	B	COMMERCIAL	
801	LOUISIANA AVE S	I-394 MIXED USE	B	COMMERCIAL	
6901	LAUREL AVE	I-394 MIXED USE	B	COMMERCIAL	
6800	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
721	HAMPSHIRE AVE S	I-394 MIXED USE	B	COMMERCIAL	
905	HAMPSHIRE AVE S	I-394 MIXED USE	B	COMMERCIAL	
700	FLORIDA AVE S	I-394 MIXED USE	B	MIXED USE	COMMUNITY
850	FLORIDA AVE S	I-394 MIXED USE	B	COMMERCIAL	
900	FLORIDA AVE S	I-394 MIXED USE	C	COMMERCIAL	
6620	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
6660	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
6400	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
6440	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
6480	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
715	FLORIDA AVE S	I-394 MIXED USE	B	MIXED USE	COMMUNITY
700	COLORADO AVE S	I-394 MIXED USE	B	MIXED USE	COMMUNITY
800	COLORADO AVE S	I-394 MIXED USE	B	MIXED USE	COMMUNITY
900	COLORADO AVE S	I-394 MIXED USE	B	MIXED USE	COMMUNITY
6210	WAYZATA BLVD	I-394 MIXED USE	C	MIXED USE	COMMUNITY
6250	WAYZATA BLVD	I-394 MIXED USE	C	MIXED USE	COMMUNITY
6300	WAYZATA BLVD	I-394 MIXED USE	C	COMMERCIAL	
5900	GOLDEN HILLS DR	I-394 MIXED USE	B	OFFICE	
6100	GOLDEN HILLS DR	I-394 MIXED USE	B	OFFICE	
770	XENIA AVE S	I-394 MIXED USE	C	HIGH DENSITY RESIDENTIAL	

6051	GOLDEN HILLS DR	I-394 MIXED USE	C	COMMERCIAL	
6075	GOLDEN HILLS DR	I-394 MIXED USE	C	INSTITUTIONAL	I-4
6105	GOLDEN HILLS DR	I-394 MIXED USE	C	OFFICE	
5701	GOLDEN HILLS DR	I-394 MIXED USE	C	OFFICE	
701	XENIA AVE S	I-394 MIXED USE	C	OFFICE	
901	XENIA AVE S	I-394 MIXED USE	C	HIGH DENSITY RESIDENTIAL	
5500	WAYZATA BLVD	I-394 MIXED USE	C	OFFICE	
5500	WAYZATA BLVD	I-394 MIXED USE	C	OFFICE	
28	ADDRESS UNASSIGNED	I-394 MIXED USE	C	OFFICE	
5411	CIRCLE DOWN	I-394 MIXED USE	A/B	MIXED USE	NEIGHBORHOOD
1201	TURNERS CROSSROAD S	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
5050	WAYZATA BLVD	I-394 MIXED USE	B	INSTITUTIONAL	I-4
5100	WAYZATA BLVD	I-394 MIXED USE	B	HIGH DENSITY RESIDENTIAL	
5150	WAYZATA BLVD	I-394 MIXED USE	A/B	HIGH DENSITY RESIDENTIAL	
5200	WAYZATA BLVD	I-394 MIXED USE	B	HIGH DENSITY RESIDENTIAL	
5410	WAYZATA BLVD	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD
5426	WAYZATA BLVD	I-394 MIXED USE	B	MIXED USE	NEIGHBORHOOD

ORDINANCE NO. 678
AN ORDINANCE AMENDING THE CITY CODE CHAPTER 113
Property Rezoning

All Properties in the I-394 Corridor Zoned I-394 Mixed Use to Mixed Use, Commercial, Office,
Medium Density Residential, High Density Residential, and Institutional Zoning Districts

The City Council for the City of Golden Valley hereby ordains:

Section 1. City Code chapter 113 entitled “Zoning” is amended in Section 113-55 Subd. (b) by changing the zoning designation of certain tracts of land as follows:

Properties in the I-394 Corridor zoned I-394 Mixed Use (see map below) will be rezoned from I-394 Mixed Use to a variety of other zoning designations including Mixed Use, Commercial, Office, Medium Density Residential, High Density Residential, and Institutional. The properties to be rezoned include all properties located east of Rhode Island Avenue South, north of I-394, west of Turners Crossroad, south and west of Circle Down (not including single-family residential properties), and south of Laurel Avenue, and includes one property north of Laurel Avenue, east of Pennsylvania Avenue south, and west of the West Ring Pond.



Section 2. City Code Chapter 1 entitled “General Provisions” and Sec. 1-8 entitled “General Penalty; Continuing Violations” are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall take effect from and after its passage and publication as required by law.

Adopted by the City Council this 18th day of February, 2020.

/s/Shepard M. Harris
Shepard M. Harris, Mayor

ATTEST:

/s/ Kristine A. Luedke
Kristine A. Luedke, City Clerk