



## City of Fergus Falls Committee of the Whole Agenda

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November 2, 2022  
7:00 am  
City Council Chambers

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A. Call to Order

B. Roll Call

C. Discussion Items

1. Update on MPCA Memorandum of Understanding for PFAS Sampling at the Landfill and the Wastewater Treatment Plant  
Brian Yavarow
2. Update on Downtown Riverfront Project Phase II Ordinance  
Bill Sonmor
3. Zoning Update for THC Edibles, Beverages and Manufacturing  
Klara Beck  
Requested Action: Recommendation to the council directing the City Attorney to draft an amendments to Chapter 154 of the City Code as recommended by the Planning Commission
4. PI No. 9350 – 2022 Airport Automated Weather Observation System (AWOS) Relocation & Replacement Improvement Project  
Brian Yavarow  
Requested Action: Recommendation to the council to accept Minnesota State Grant Agreement (No. 1050807) for PI No. 9350
5. Otter Tail Power Utility Easement Request  
Brian Yavarow  
Requested Action: Recommendation to the council to authorize city staff and the City Attorney to execute Otter Tail Power's utility easement request
6. Gifting Art from the RTC to Otter Tail County Historical Society  
Andrew Bremseth  
Requested Action: Recommendation to the council authorizing staff to execute a deed gifting miscellaneous art from the RTC Campus to the Otter Tail County Historical Society

D. Additional Agenda Items

Work Session 8:00 am Strategic Planning Update

E. Announcements

November 2 Bagged leaf pick-up beginning at 6 am

November 7 5:30 pm City Council meeting

November 8 General Election. Polls open 7 am-8 pm

November 11 Veterans Day holiday. Most city offices and facilities closed (liquor stores open). Garbage and recycling normally picked up on Friday is moved to Thursday November 10. Thursday pickup is moved to Wednesday November 9

November 16 7:00 am Canvass General Election results followed by joint work session between the City Council and Fergus Falls School Board

F. Announcements

Adjourn

# Implementing the PFAS Monitoring Plan

Solid Waste / Hazardous Waste Landfills

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First Wave  
June 21, 2022

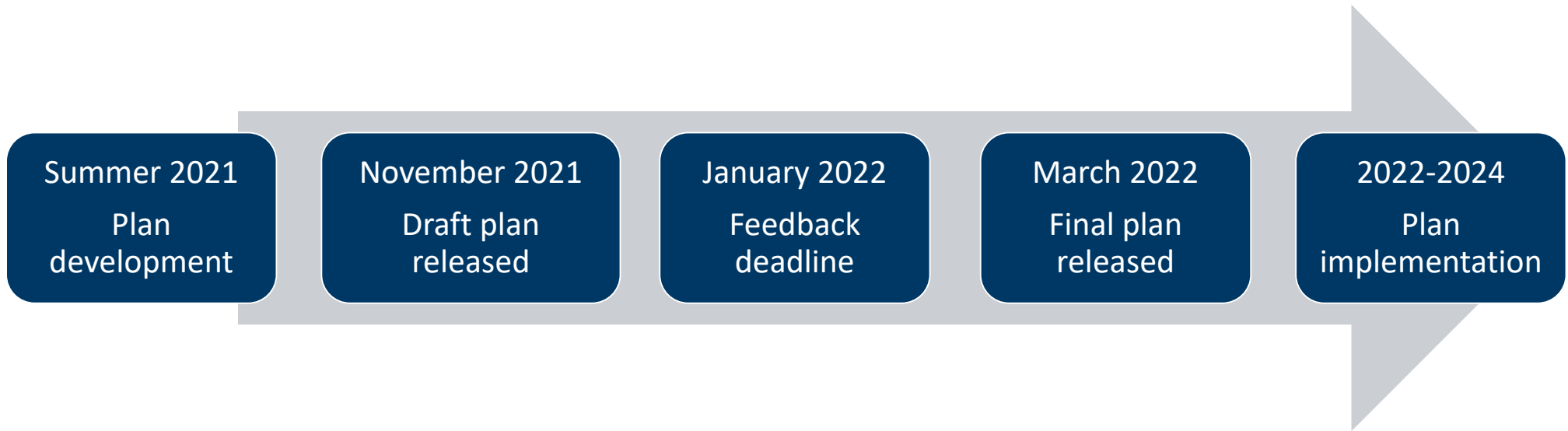


# Agenda

1. Where are we in the process?
2. What are PFAS?
3. Why do we care about landfills?
4. What can we do about it?
5. Monitoring Plan
6. Next Steps
7. Question and answer session



# PFAS Monitoring Plan Timeline



	Sample Request Notification	Implementation
Higher risk characteristics	2022	2023
Lower risk characteristics	2023	2024

# What are PFAS?

- Per- and poly-fluorinated alkyl substances

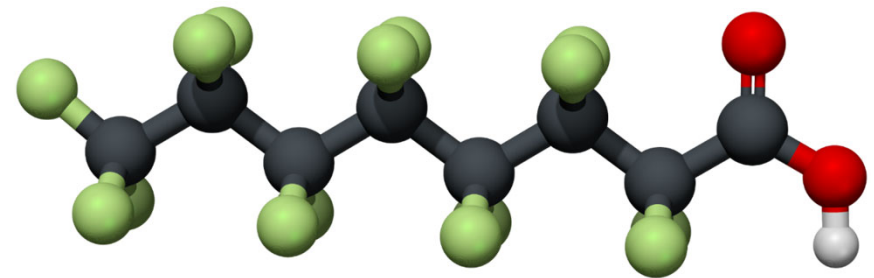
- Chains of carbon-fluorine bonds

- Useful traits:

- Repels oil and water, stable (even under extremely high heat), creates low-friction surfaces, suppresses oxidation and combustion (fluorine radical chemistry), foams...

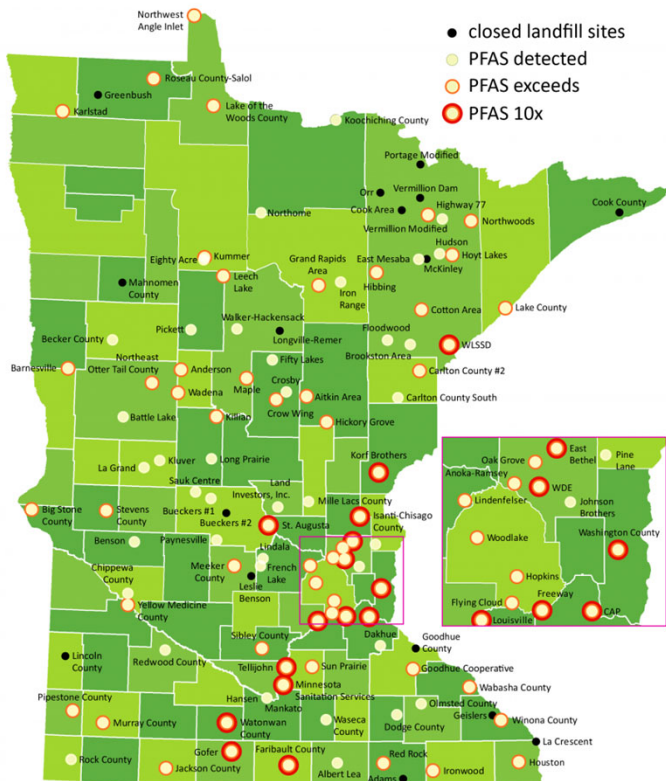
- Found in:

- Paper and food packaging, upholstery, carpeting, clothing, firefighting foam, construction materials (varnishes, paints, adhesives)



# Why do we care about landfills?

97% of assessed closed landfills have PFAS contamination



- Landfills have limited options for managing PFAS inputs
  - Waste includes a composite of historic and modern materials
- MPCA Closed Landfill Program
  - 101 landfills sampled for PFAS
  - 98 landfills (97%) with PFAS detections
  - 59 landfills (58%) with PFAS levels above MDH standards
- State of Michigan
  - Identified 48 high priority landfill sites (46 sampled)
  - 32 landfills (70%) with PFAS levels above Michigan groundwater cleanup criteria

# What can we do about it?



## 1 – Prevent

PFAS pollution wherever possible



## 2 – Manage

PFAS pollution when prevention is not feasible or pollution has already occurred



## 3 – Clean up

PFAS pollution at contaminated sites



# What are the goals of PFAS Monitoring Plan?

1. Gather Minnesota-specific information in order to craft effective policies around PFAS and their incorporation into MPCA programs
2. Identify areas of particular concern that warrant quick action
3. Gather data that galvanizes support for PFAS source reduction and pollution prevention



Drinking water



Fishing



Eating game



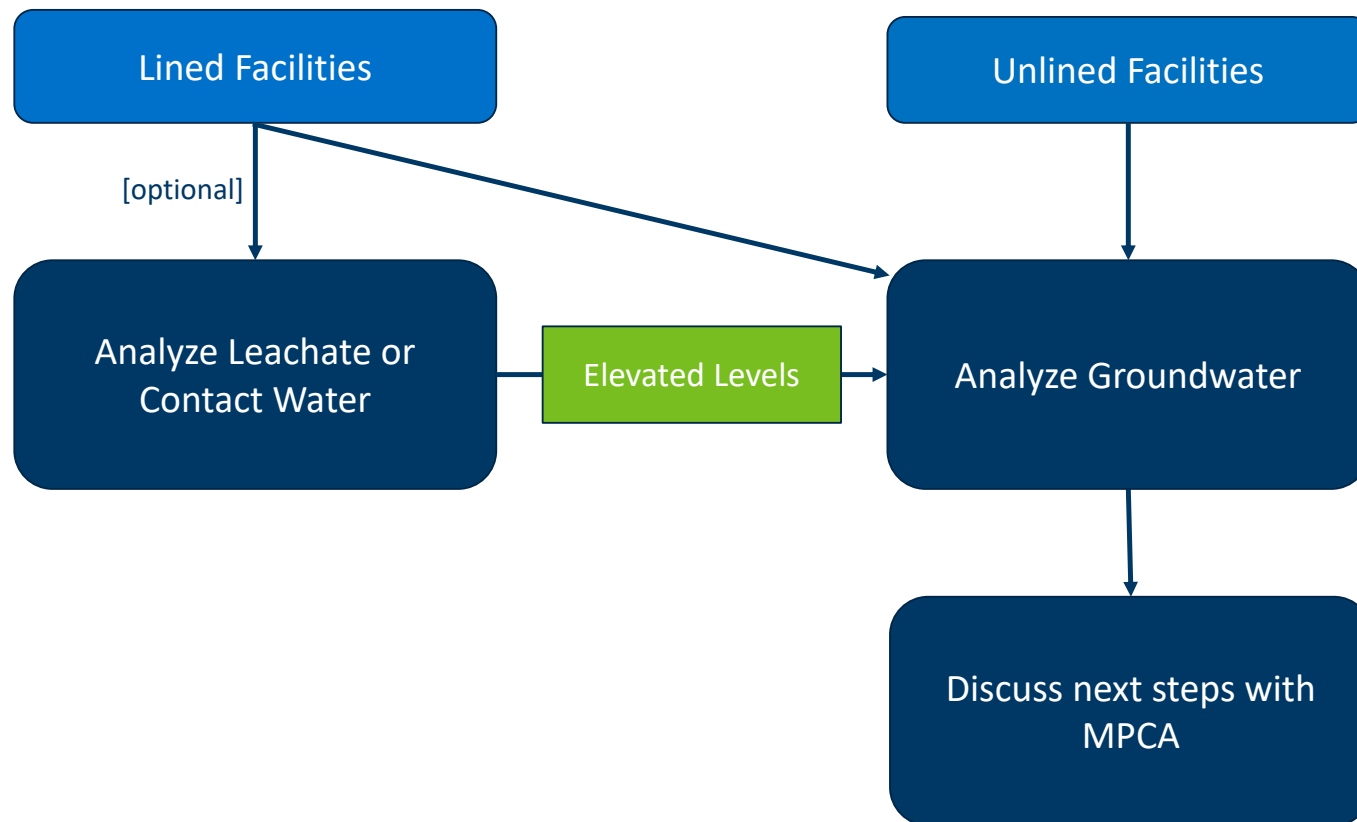
Consuming other foods

# How were facilities prioritized for sampling?

- Facilities were prioritized based on risk to human health and the environment:
  - 1) Landfills with drinking water advisories
  - 2) Facilities with land application of leachate
  - 3) Landfills with unlined areas and the following risk characteristics:
    - Identified contaminant releases
    - Proximity of downgradient receptors
  - 4) Compost facilities
  - 5) Lined land disposal facilities



# How will monitoring be implemented?



# How will the MPCA use these data?

Primary goals are to:

- 1) Protect human health and the environment.
- 2) Determine where reduction efforts should be prioritized.
- 3) Facilitate development of an agency-wide regulatory strategy for PFAS.



# What's next?

- Receive site-specific communication
- Meeting with MPCA site team to discuss implementation
- Revise and submit Sampling and Analysis Plan (SAP)
- Begin monitoring as soon as practical



# Available Resources

- State of Minnesota PFAS Blueprint
  - <https://www.pca.state.mn.us/waste/minnesotas-pfas-blueprint>
- MPCA PFAS Monitoring Plan
  - <https://www.pca.state.mn.us/waste/mpca-pfas-monitoring-plan>
- Minnesota Department of Health
  - <https://www.health.state.mn.us/communities/environment/hazardous/topics/pfcs.html>
- Interstate Technology and Regulatory Council (ITRC) PFAS Guidance Document
  - <https://pfas-1.itrcweb.org/>



# Thank you!

**Laura Pugh**

**Solid Waste Permitting Hydro**

*[laura.pugh@state.mn.us](mailto:laura.pugh@state.mn.us)*

651-757-2313

**Cliff Shierk**

**Solid Waste Permitting Engineer**

*[clifford.shierk@state.mn.us](mailto:clifford.shierk@state.mn.us)*

651-757-2371



## Council Action Recommendation

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Page 1 of 1

**Meeting Date:** November 2, 2022

**Subject:** Downtown Riverfront Project - Phase 2 Bond Ordinance

**Recommendation:** Approve an ordinance to expand the bonding authority of the Fergus Falls Port Authority for an additional \$700,000 for the Downtown Riverfront Project – Phase 2.

**Background/Key Points:** The Fergus Falls Port Authority issued \$1,460,000 General Obligation Bonds, Series 2021A for the construction of the Downtown Riverfront Project - Phase 1 improvements. The City Council adopted Ordinance No. 16, Eighth Series, providing the Fergus Falls Port Authority authorization to issue bonds up to \$3,000,000 to finance the Downtown Riverfront improvements. This ordinance was effective on August 22, 2021.

The City Council awarded the contract for the construction of the Downtown Riverfront Project - Phase 2 on September 19, 2022. Bonds will need to be issued by the Fergus Falls Port Authority to finance a portion of the construction and fundraising to be received for the years 2024 – 2027. The Phase 2 bonds are estimated to be \$2,125,000.

The original \$3,000,000 bonding authority needs to be expanded to \$3,700,000 (proposed ordinance authority of \$700,000) to provide capacity to finance the receipt of donations for the years 2024 – 2027.

**Budgetary Impact:** Adoption of the ordinance will authorize the Fergus Falls Port Authority to issue bonds for the project. The bonds are anticipated for a term of 15 years. The annual property tax levy for debt service on the bonds is estimated to be \$140,000.

**Originating Department:** Finance

**Respectfully Submitted:** Bill Sonmor, Finance Director

**Attachments:**

Proposed Ordinance



**CHARTER**

**ORDINANCE NO. [ ] , [ ] SERIES**

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$700,000 GENERAL OBLIGATION BONDS BY THE FERGUS FALLS PORT AUTHORITY; PROVIDING FOR THE FORM AND DETAILS THEREOF; AND AUTHORIZING THE FERGUS FALLS PORT AUTHORITY TO PLEDGE THE FULL FAITH, CREDIT AND RESOURCES OF THE CITY OF FERGUS FALLS FOR THE SECURITY AND PAYMENT OF SAID BONDS.

THE CITY OF FERGUS FALLS DOES ORDAIN:

**Section 1.** Recitals.

(a) the Fergus Falls Port Authority (the "Port Authority") has the powers described in Minnesota Statutes, Section 469.075, including the powers of a housing and redevelopment authority under Minnesota Statutes, Sections 469.001 through 469.047, or other law, and the powers of a port authority pursuant to Minnesota Statutes, Section 469.049, or other law; and

(b) the Port Authority proposes to finance projects related to the construction of a downtown riverfront corridor improvement project to include a river market, public arts space, interactive water components, and related publicly owned infrastructure and amenities, in addition to the construction of trails and plaza areas (the "Downtown Riverfront Project") in the exercise of its legal powers and in furtherance of its goals and purposes, and requires financing for the Project; and

(c) the City adopted Ordinance No. 16, Eighth Series (the "2021 Ordinance") on August 2, 2021, with an effective date of August 22, 2021, which authorized the Port Authority to issue and sell general obligation bonds in the aggregate principal amount not to exceed \$3,000,000, for the purpose of providing funds to assist in financing the Downtown Riverfront Project; and

(d) the Port Authority issued its \$1,460,000 General Obligation Bonds, Series 2021A, dated October 21, 2021, as the date of original issue (the "Series 2021 Bonds"), pursuant to Minnesota Statutes, Chapter 475 and Minnesota Statutes, Section 469.060, to provide moneys to finance the first phase of the Downtown Riverfront Project; and

(e) the City is undertaking the construction of the second phase of the Downtown Riverfront Project, and the City and the Port Authority believe that it is desirable and necessary to authorize that additional general obligation bonds in the amount of \$700,000 be issued, together with the remaining authority of \$1,540,000 authorized by the 2021 Ordinance, to provide funds to assist in the financing of the Downtown Riverfront Project.

**Section 2.** Bonding Authorization. Pursuant to and in accordance with the provisions of this Ordinance and the provisions of Minnesota Statutes, Sections 469.060 and 469.075 and

Chapter 475, the consent of the City Council is hereby given to the Port Authority to issue and sell the Port Authority's general obligation bond or bonds to which the full faith, credit and resources of the City may and shall be pledged as payment and security therefor, in one or more series, in fully registered form, and in the aggregate principal amount not to exceed \$700,000 (the "Bonds"), in addition to the remaining authority of \$1,540,000 authorized by the 2021 Ordinance, for the purpose of providing additional funds to assist in financing the Downtown Riverfront Project, together with such costs of issuance and related costs as may be incidental to the issuance of the Bonds. The Port Authority shall set the date, denominations, place of payment, form, and details of the Bonds, and the City Council hereby consents to the issuance and details of said Bonds, as so determined by the Port Authority. The City Council hereby gives specific consent to the pledge of the City's full faith, credit, and resources to the payment and security of the Bonds. The issuance of the Bonds shall be further subject to the consent and approval of the City Council by resolution as to the form, content, and specific details of the Bonds and their rate or rates of interest.

Section 3. Effective Date. The effective date of this Ordinance shall be the \_\_\_ day of \_\_\_\_, 2022 following the date of its publication in the official newspaper of the City and Port Authority.

THIS ORDINANCE was introduced on the 7th day of November, 2022, and adopted by the City Council of the City of Fergus Falls, Minnesota, on the 21st day of November, 2022, by the following vote:

AYES:

NAYS:

ATTEST:

APPROVED:

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City Administrator

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Mayor

Published in the Fergus Falls Daily Journal on November \_\_, 2022.



# City Council Action Recommendation

Page 1 of 2

**Meeting Date:**

November 2, 2022- COW

**Subject:**

Zoning update for THC Edibles, beverages, and manufacturing

**Recommendation:**

Direct City Attorney to draft amendments to Chapter 154 of City Code as recommended by Planning Commission.

**Background/Key Points:**

By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minn. Stat. § 151.72 to allow for the sale of certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp. Municipalities across the state have responded in various ways to the legislation. In Fergus Falls, Council requested that Planning Commission work to update City zoning code to account for the legislative change.

Planning Commission suggests the following changes to City Code:

- Define Hemp-derived Tetrahydrocannabinol (THC) edibles and beverages, hemp processing/ manufacturing, and hemp/ industrial hemp
- Restrict the sale of THC edibles & beverages to B-3, B-5, and B-6 zones
- Amend § 154.038 B-3, GENERAL BUSINESS DISTRICT, Section (B) Permitted uses to include "Retail establishments selling THC edibles & beverages."
- Allow for manufacturing of THC edibles & beverage products in zone I-2 (and by extension I-3).
- Amend § 154.041 I-1, PLANNED INDUSTRIAL DISTRICT, Section (B) Permitted uses to include "Hemp Processing or manufacturing."
- Permit "Hemp Processing or manufacturing" by CUP in I-1, B-3, B-5 AND B-6

§ 154.002 Definitions may be amended to include:

- **Hemp-derived Tetrahydrocannabinol (THC) edibles and beverages:** Any product that is intended to be eaten or consumed as a beverage by humans and contains THC in combination with food ingredients.
- **Hemp Processing or manufacturing.** "Processing" means rendering by refinement hemp plants or hemp plant parts from their natural or original state after harvest. Processing includes but is not limited to decortication, devitalization, chopping, crushing, extraction, combining cannabinoid(s) with food ingredients, and packaging. Processing does not include typical farm operations such as sorting, grading, baling, and harvesting.
- **Hemp or Industrial hemp.** "Industrial hemp" means the plant Cannabis sativa L. and any part of the plant, whether growing or not, including the plant's seeds, and all the plant's derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Industrial hemp is not marijuana as defined in Minnesota Statutes section 152.01, subdivision 9.

If Planning Commission's suggestions are approved, a first reading of the ordinance update may occur on November 7.

**Budgetary Impact:**

Publishing costs (TBD)

**Respectfully Submitted:**

Klara Beck  
Community Development Manager



# Council Action Recommendation

**Meeting Date:**

November 2, 2022 – Committee of the Whole  
November 7, 2022 – City Council

**Subject:**

PI No. 9350 – 2022 Airport Automated Weather Observation System (AWOS) Relocation & Replacement Improvement Project

**Recommendation:**

- Accept the Mn State Grant Agreement (No. 1050807) for PI No. 9350

**Background/Key Points:**

In June, this Council awarded the construction services contract to Neo Electrical Solutions contingent on receipt of a State Grant offer. Since the awarding and submission of the grant application, the power source to serve this the new site was altered due to ongoing discussion between the FAA and State Aeronautics. The initial planned electrical service route, requested by MnDOT Aeronautical Operations, consisted of installing a new transformer at the new AWOS location as quoted. However, the FAA responding by requiring an updated “Exhibit A” for the airport due to the addition of a new utility easement. This would be time consuming and costly therefore, we requested a price from the Neo Electric to install the power service from the existing Glide Slope transformer.

The final State Grant Agreement before you reflects the revised power feed net increase amount of \$40,000.00 approximate. A change order will be issued to reflect this contract revision.

**Budgetary Impact:**

This estimated final cost shares are:

	Estimated Total Cost	MnDOT	Local
		State Eligible Amount (70/30)	Local Eligible Amount (70/30)
Construction Contract - NEO Electric	\$ 139,320.00	\$ 97,524.00	\$ 41,796.00
Eng. Final Design & CA - SEH	\$ 25,800.00	\$ 18,060.00	\$ 7,740.00
Total Estimated Cost	\$ 165,120.00	\$ 115,584.00	\$ <b>49,536.00</b>

Sufficient Fund 456 funds are available to accept the State’s final offer to proceed with this project.

**Originating Department:**

Engineering Department

**Respectfully Submitted:**

Brian Yavarow, P.E. - City Engineer

**Attachments:**

Mn State Grant Agreement No. 1050807

**STATE OF MINNESOTA  
STATE AIRPORTS FUND  
GRANT AGREEMENT**

This agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), and the City of Fergus Falls, 112 West Washington Ave, Fergus Falls, MN 56537 ("Grantee").

## RECITALS

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1. Minnesota Statutes Chapter 360 authorizes State to provide financial assistance to eligible airport sponsors for the acquisition, construction, improvement, marketing, maintenance, or operation of airports and other air navigation facilities.
2. Grantee owns, operates, controls, or desires to own an airport ("Airport") in the state system, and Grantee desires financial assistance from the State for an airport improvement project ("Project").
3. Grantee represents that it is duly qualified and agrees to perform all services described in this agreement to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, Grantee agrees to minimize administrative costs as a condition of this agreement.

## AGREEMENT TERMS

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### 1 Term of Agreement, Survival of Terms, and Incorporation of Exhibits

- 1.1 **Effective Date.** This agreement will be effective on the date the State obtains all required signatures under [Minn. Stat.§16B.98](#), Subd. 5. As required by [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to Grantee until this agreement is fully executed. Grantee must not begin work under this agreement until this agreement is fully executed and Grantee has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration Date.** This agreement will expire on June 30, 2026, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this agreement, including, without limitation, the following clauses: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 11. Workers Compensation; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.
- 1.4 **Plans, Specifications, Descriptions.** Grantee has provided the State with the plans, specifications, and a detailed description of the Project (State Project A5601-54), which are on file with the State's Office of Aeronautics and are incorporated into this Agreement by reference.
- 1.5 **Exhibits.** Exhibit A (Credit Application Form) is attached and incorporated into this agreement.

### 2 Grantee's Duties

- 2.1 Grantee will complete the Project in accordance with the plans, specifications, and detailed description of the Project, which are on file with the State's Office of Aeronautics. Any changes to the plans or specifications of the Project after the date of this Agreement will be valid only if made by written change order signed by the Grantee and the State. Subject to the availability of funds, the State may prepare an amendment to this Agreement to reimburse the Grantee for the allowable costs of qualifying change orders.
- 2.2 If the Project involves construction, Grantee will designate a registered engineer to oversee the Project work. If, with the State's approval, the Grantee elects not to have such services performed by a registered engineer, then the Grantee will designate another responsible person to oversee such work.
- 2.3 Grantee will notify State's Authorized Representative in advance of any meetings taking place relating to the Project.
- 2.4 Grantee will comply with all required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
- 2.5 **Asset Monitoring.** If Grantee uses funds obtained by this agreement to acquire a capital asset, the Grantee is required to use that asset for a public aeronautical purpose for the normal useful life of the asset. Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this agreement without the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this agreement, or their successors in office.



**2.6 Airport Operations, Maintenance, and Conveyance.** Pursuant to Minnesota Statutes Section 360.305, subdivision 4 (d) (1), the Grantee will operate the Airport as a licensed, municipally-owned public airport at all times of the year for a period of 20 years from the date the Grantee receives final reimbursement under this Agreement. The Airport must be maintained in a safe, serviceable manner for public aeronautical purposes only. Without prior written approval from the State, Grantee will not transfer, convey, encumber, assign, or abandon its interest in the airport or in any real or personal property that is purchased or improved with State funds. If the State approves such a transfer or change in use, the Grantee must comply with such conditions and restrictions as the State may place on such approval. The obligations imposed by this clause survive the expiration or termination of this Agreement.

**3 Time**

3.1 Grantee must comply with all the time requirements described in this agreement. In the performance of this grant agreement, time is of the essence.

**4 Cost and Payment**

4.1 **Cost Participation.** Costs for the Project will be proportionate and allocated as follows:

<u>Item Description</u>	<u>Federal Share</u>	<u>State Share</u>	<u>Grantee Share</u>
New AWOS Foundation - Design	0%	70%	30%
New AWOS Foundation - Construction	0%	70%	30%

Federal Committed:	\$	<u>0.00</u>
Federal Multiyear:	\$	<u>0.00</u>
State:	\$	<u>115,584.00</u>
Grantee:	\$	<u>49,536.00</u>

The federal multiyear amount is an estimate only. These funds are not committed and are only available after being made so by the U.S. Government. Federal funds for the Project will be received and disbursed by the State. In the event federal reimbursement becomes available or is increased for the Project, the State will be entitled to recover from such federal funds an amount not to exceed the state funds advanced for this Project. No more than 95% of the amount due under this Agreement will be paid by the State until the State determines that the Grantee has complied with all terms of this Agreement and furnished all necessary records.

4.2 **Blank.**

4.3 **Sufficiency of Funds.** Pursuant to Minnesota Rules 8800.2500, the Grantee certifies that (1) it presently has available sufficient unencumbered funds to pay its share of the Project; (2) the Project will be completed without undue delay; and (3) the Grantee has the legal authority to engage in the Project as proposed.

4.4 **Total Obligation.** The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed \$ 115,584.00.

4.5 **Payment**

4.5.1 **Invoices.** Grantee will submit invoices for payment by email. Exhibit A, which is attached and incorporated into this agreement, is the form Grantee will use to submit invoices. The State’s Authorized Representative, as named in this agreement, will review each invoice against the approved grant budget and grant expenditures to-date before approving payment. The State will promptly pay Grantee after Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices will be submitted timely and according to the following schedule: Reimbursement request schedule: continuous as needed.

4.5.2 **All Invoices Subject to Audit.** All invoices are subject to audit, at State’s discretion.

4.5.3 **State’s Payment Requirements.** State will promptly pay all valid obligations under this agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Grantee’s invoices for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected invoice, State will pay Grantee within 30 days of receipt of such invoice.

4.5.4 **Grantee Payment Requirements.** Grantee must pay all contractors under this agreement promptly. Grantee will make undisputed payments no later than 30 days after receiving an invoice. If an invoice is

incorrect, defective, or otherwise improper, Grantee will notify the contractor within ten days of discovering the error. After Grantee receives the corrected invoice, Grantee will pay the contractor within 30 days of receipt of such invoice.

**4.5.5 Grant Monitoring Visit and Financial Reconciliation.** During the period of performance, the State will make at least annual monitoring visits and conduct annual financial reconciliations of Grantee's expenditures.

4.5.5.1 The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided notice prior to any monitoring visit or financial reconciliation.

4.5.5.2 Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.

4.5.5.3 At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.

**4.5.6 Closeout.** The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.

**4.5.7 Closeout Deliverables.** At the close of the Project, the Grantee must provide the following deliverables to the State before the final payment due under this Agreement will be released by the State: (1) Electronic files of construction plans as a PDF and in a MicroStation compatible format; and (2) Electronic files of as-builts as a PDF and in a MicroStation compatible format. (3) Electronic files of planning documents (Airport Layout Plans – ALP) and Airport Zoning as a PDF and in a MicroStation compatible format and in GIS.

**4.6 Contracting and Bidding Requirements.** Prior to publication, Grantee will submit to State all solicitations for work to be funded by this Agreement. Prior to execution, Grantee will submit to State all contracts and subcontracts funded by this agreement between Grantee and third parties. State's Authorized Representative has the sole right to approve, disapprove, or modify any solicitation, contract, or subcontract submitted by Grantee. All contracts and subcontracts between Grantee and third parties must contain all applicable provisions of this Agreement. State's Authorized Representative will respond to a solicitation, contract, or subcontract submitted by Grantee within ten business days.

## 5 Conditions of Payment

All services provided by Grantee under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law. In addition, Grantee will not receive payment for Airport's failure to pass periodic inspections by a representative of the State's Office of Aeronautics.

## 6 Authorized Representatives

6.1 The State's Authorized Representative is:

Daniel Boerner, Central Region Airport Engineer, 395 John Ireland Blvd, St Paul MN, 55155-1800, Phone 612-427-3858, dan.boerner@state.mn.us, or his/her successor. State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 Blank

6.3 Grantee's Authorized Representative is:

Brian Yavarow, City Engineer, 112 West Washington Ave, Fergus Falls MN, 56537, (218) 332-5413, brian.yavarow@ci.fergus-falls.mn.us. If Grantee's Authorized Representative changes at any time during this agreement, Grantee will immediately notify the State.

## 7 Assignment Amendments, Waiver, and Grant Agreement Complete

**7.1 Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.

- 7.2 **Amendments.** Any amendments to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- 7.4 **Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.
- 7.5 **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 7.6 **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.

## 8 **Liability**

In the performance of this agreement, and to the extent permitted by law, Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by Grantee or Grantee's agents or employees. This clause will not be construed to bar any legal remedies Grantee may have for the State's failure to fulfill its obligations under this agreement.

## 9 **State Audits**

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this grant agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Grantee will take timely and appropriate action on all deficiencies identified by an audit.

## 10 **Government Data Practices and Intellectual Property Rights**

10.1 **Government Data Practices.** Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either Grantee or the State. If Grantee receives a request to release the data referred to in this section 10.1, Grantee must immediately notify the State. The State will give Grantee instructions concerning the release of the data to the requesting party before the data is released. Grantee's response to the request shall comply with applicable law.

### 10.2 **Intellectual Property Rights.**

10.2.1 **Intellectual Property Rights.** State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this agreement. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Grantee, its employees, agents and subcontractors, either individually or jointly with others in the performance of this agreement. Works includes Documents. "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Grantee, its employees, agents or subcontractors, in the performance of this agreement. The Documents will be the exclusive property of State, and Grantee upon completion or cancellation of this agreement must immediately return all such Documents to State. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." Grantee assigns all right, title and interest it may have in the Works and the Documents to State. Grantee must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

### 10.2.2 **Obligations**

10.2.2.1 **Notification.** Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Grantee, including its employees and subcontractors, in the performance of this agreement, Grantee will immediately give State's Authorized Representative written notice thereof and must promptly furnish State's Authorized Representative with complete information and/or disclosure thereon.

10.2.2.2 **Representation.** Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State and that neither Grantee nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Grantee's expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Grantee's or State's opinion is likely to arise, Grantee must, at State's discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of State will be in addition to and not exclusive of other remedies provided by law.

## 11 Workers Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## 12 Publicity and Endorsement

12.1 **Publicity.** Any publicity regarding the subject matter of this agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant agreement. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the Grantee's website when practicable.

12.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

## 13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## 14 Termination; Suspension

14.1 **Termination by the State.** The State may terminate this agreement at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 **Termination for Cause.** The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if:

14.3.1 It does not obtain funding from the Minnesota Legislature; or

14.3.2 If funding cannot be continued at a level sufficient to allow for the payment of the services covered

here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

**14.4 Suspension.** The State may immediately suspend this agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Grantee during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

## 15 Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

**16 Fund Use Prohibited.** The Grantee will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project. For a list of disqualified or debarred vendors, see [www.mmd.admin.state.mn.us/debarredreport.asp](http://www.mmd.admin.state.mn.us/debarredreport.asp).

**17 Discrimination Prohibited by Minnesota Statutes §181.59.** Grantee will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

**18 Limitation.** Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. The State may provide technical advice and assistance as requested by the Grantee, however, the Grantee will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Grantee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.

**19 Telecommunications Certification.** By signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.

20 **Title VI/Non-discrimination Assurances.** Grantee agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: [https://edocs-public.dot.state.mn.us/edocs\\_public/DMResultSet/download?docId=11149035](https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035). Grantee will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Grantee's compliance with this provision. The Grantee must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Grantee staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

21 **Additional Provisions**  
[Intentionally left blank.]

**[The remainder of this page has intentionally been left blank.]**

**STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15 and § 16C.05.*

Signed: \_\_\_\_\_

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

SWIFT Contract/PO No(s). \_\_\_\_\_

**GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

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

**DEPARTMENT OF TRANSPORTATION  
OFFICE OF FINANCIAL MANAGEMENT – GRANT UNIT**

By: \_\_\_\_\_

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

**DEPARTMENT OF TRANSPORTATION  
CONTRACT MANAGEMENT**

By: \_\_\_\_\_

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

MINNESOTA DEPARTMENT OF TRANSPORTATION  
 OFFICE OF AERONAUTICS  
 222 EAST PLATO BOULEVARD  
 ST. PAUL, MINNESOTA 55107-1618  
 TELEPHONE NUMBER: (651) 234-7200

Airport Name \_\_\_\_\_

State Project No. \_\_\_\_\_

Federal Project No. \_\_\_\_\_

Mn/DOT Agreement No. \_\_\_\_\_

## CREDIT APPLICATION

TO THE DIRECTOR, OFFICE OF AERONAUTICS:

Itemized statement of cash expenditures for which credit is claimed:

For period beginning \_\_\_\_\_, 20\_\_\_\_; ending \_\_\_\_\_, 20\_\_\_\_.

Warrant Number	Date Issued	Name or Description	Unit	Rate	Total Time or Quantity	Amount
Total Expenditures						

**\*FINAL/PARTIAL (CIRCLE ONE)**

**NOTE:** PLEASE SEPARATE ENGINEERING COSTS FROM OTHER COSTS.

Municipality \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

\*FOR ALL ITEMS INCLUDED IN THIS AGREEMENT

(Complete Form On Reverse Side)



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that he/she is the \_\_\_\_\_ of the Municipality of \_\_\_\_\_, in the County of \_\_\_\_\_, State of Minnesota; that he/she has prepared the foregoing Credit Application, knows the contents thereof, that the same is a true and accurate record of disbursements made, and that the same is true of his/her own knowledge; and that this application is made by authority of the municipal council (or board) of said Municipality.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**RESOLUTION**

**AUTHORIZATION TO EXECUTE  
MINNESOTA DEPARTMENT OF TRANSPORTATION  
GRANT AGREEMENT FOR AIRPORT IMPROVEMENT  
EXCLUDING LAND ACQUISITION**

It is resolved by the City of Fergus Falls as follows:

1. That the state of Minnesota Agreement No. 1050807,  
"Grant Agreement for Airport Improvement Excluding Land Acquisition," for  
State Project No. A5601-54 at the Fergus Falls Municipal Airport is accepted.
2. That the \_\_\_\_\_ and \_\_\_\_\_ are  
(Title) (Title)  
authorized to execute this Agreement and any amendments on behalf of the  
City of Fergus Falls.

**CERTIFICATION**

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

I certify that the above Resolution is a true and correct copy of the Resolution adopted by the

\_\_\_\_\_  
(Name of the Recipient)

at an authorized meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
as shown by the minutes of the meeting in my possession.

Signature: \_\_\_\_\_  
(Clerk or Equivalent)

CORPORATE SEAL

/OR/

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



# Council Action Recommendation

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Page 1 of 1

**Meeting Date:**

November 2, 2022 – Committee of the Whole  
November 7, 2022 – City Council

**Subject:**

Otter Tail Power Utility Easement Request

**Recommendation:**

- 1) Authorize the City Staff and City Attorney to execute Otter Tail Power's easement request

**Background/Key Points:**

Otter Tail Power (OTP) Co. is requesting an easement from the City that is generally located north of Pisgah Dam and south of BNSF Railroad on City owned property primarily utilized as access into the abandoned Wastewater Treatment Plant. OTP's work plan consists of installing three (3) new electric power poles with guy wire supports and overhead electric line(s) as part of OTP's Express Feeder Project.

To support this request, a permanent utility easement is needed to facilitate construction. The attached exhibit illustrates the proposed easement (0.045 acres total) on City owned lot legally described as Sec. 05, T132N, R043W, all of Govt. Lots 1, 2 & 3 lying N. of Ottertail River excluding BNSF R/W and except tracts.

Although an existing City owned watermain lies within this pending easement, adequate separation can be achieved. The new overhead lines will also maintain 20 feet of clearance from the overhead conductors to the access road existing grade. Staff recommends approving this request.

**Budgetary Impact:**

There is no fee associated with this request other than general staff time to process. Otter Tail Power Company will pay for all recording fees.

**Originating Department:**

Engineering Department

**Respectfully Submitted:**

Brian Yavarow, P.E. – City Engineer

**Attachments:**

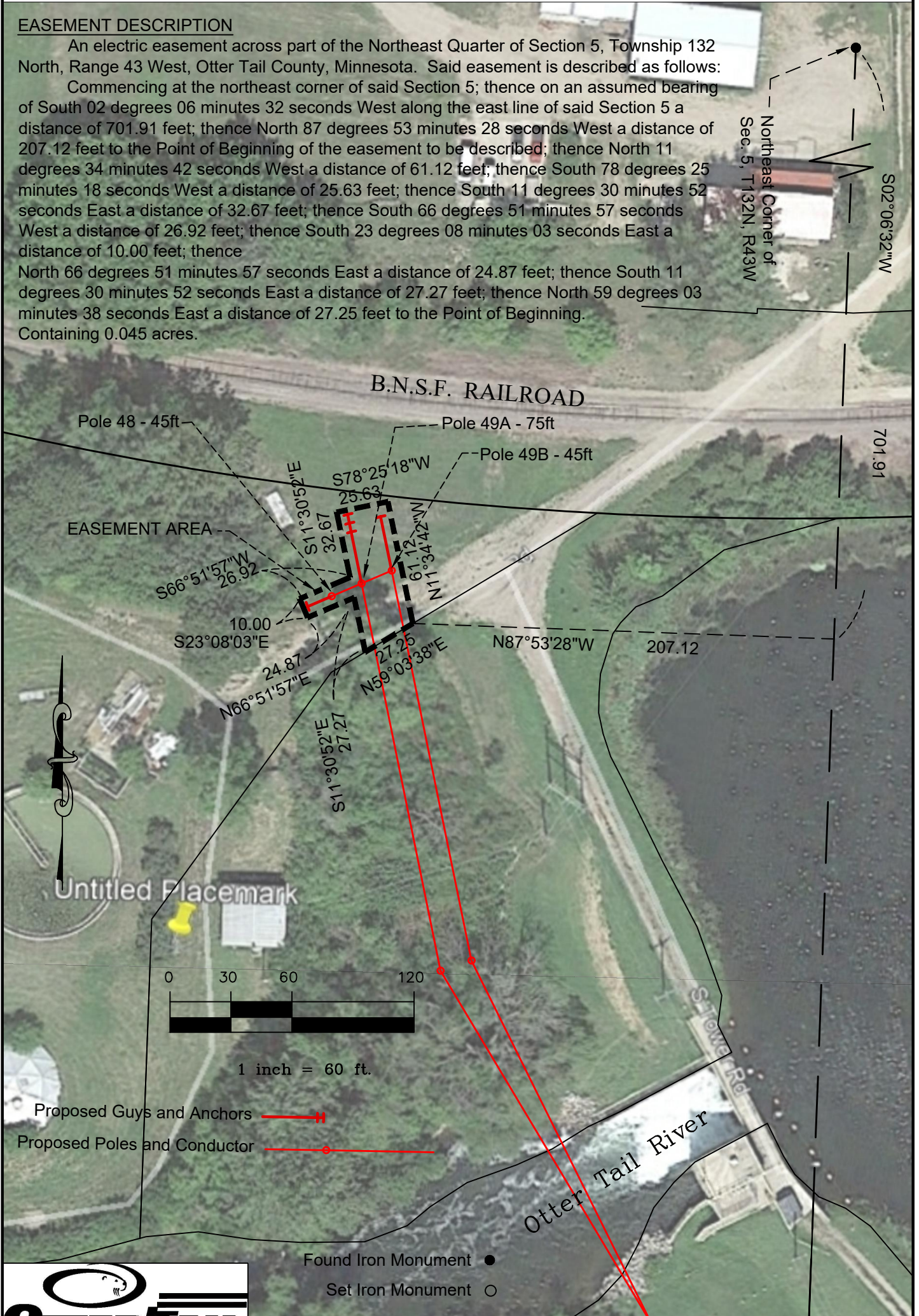
Easement Exhibit

# EXHIBIT A: Electric Easement in City of Fergus Falls Across Part of the NE 1/4 of Sec.5, T132N, R43W, Otter Tail County, Minnesota

## EASEMENT DESCRIPTION

An electric easement across part of the Northeast Quarter of Section 5, Township 132 North, Range 43 West, Otter Tail County, Minnesota. Said easement is described as follows:

Commencing at the northeast corner of said Section 5; thence on an assumed bearing of South 02 degrees 06 minutes 32 seconds West along the east line of said Section 5 a distance of 701.91 feet; thence North 87 degrees 53 minutes 28 seconds West a distance of 207.12 feet to the Point of Beginning of the easement to be described; thence North 11 degrees 34 minutes 42 seconds West a distance of 61.12 feet; thence South 78 degrees 25 minutes 18 seconds West a distance of 25.63 feet; thence South 11 degrees 30 minutes 52 seconds East a distance of 32.67 feet; thence South 66 degrees 51 minutes 57 seconds West a distance of 26.92 feet; thence South 23 degrees 08 minutes 03 seconds East a distance of 10.00 feet; thence North 66 degrees 51 minutes 57 seconds East a distance of 24.87 feet; thence South 11 degrees 30 minutes 52 seconds East a distance of 27.27 feet; thence North 59 degrees 03 minutes 38 seconds East a distance of 27.25 feet to the Point of Beginning. Containing 0.045 acres.



Northeast Corner of  
Sec. 5, T132N, R43W

S02°06'32\"W

701.91

B.N.S.F. RAILROAD

Pole 48 - 45ft

Pole 49A - 75ft

Pole 49B - 45ft

EASEMENT AREA

S11°30'52\"E

S78°25'18\"W

S66°51'57\"W

N34°42'11\"W

S23°08'03\"E

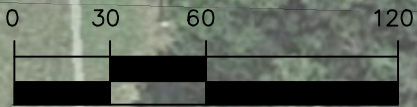
N87°53'28\"W

N66°51'57\"E

S11°30'52\"E

N59°03'38\"E

Untitled Placemark



1 inch = 60 ft.

- Proposed Guys and Anchors —+—
- Proposed Poles and Conductor —●—

- Found Iron Monument ●
- Set Iron Monument ○





## Council Action Recommendation

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Page 1 of 2

**Meeting Date:**

11/2/22 Committee, 11/7/22 Council

**Subject:**

Giftng drawings and art from RTC to Otter Tail County Historical Society

**Recommendation:**

Resolution authorizing staff to execute a deed gifting miscellaneous art from the RTC Campus to the Otter Tail County Historical Society

**Background:**

In March 2021, City Staff was giving a tour of the Memorial Building to a potential developer and located a large pile of drawings and artwork stashed in the top of a closet on the upper floor. Staff contacted Chris Schuelke to see if the Otter Tail County Historical Society could identify any of the patients or artists and provide additional information about any of the art. The museum was able to identify the patient whose work it was.

The Museum is now wondering if the City is willing to donate these items to the Historical Society. It is the opinion of staff that the museum is more equipped to handle and care for this artwork and would provide more opportunities for the public to view and enjoy them than the City could. If the Council agrees, we will sign a deed of gift over to the Historical Society and they will become part of their collection.

There are other miscellaneous (art/project) items from the RTC that the City has stored over the years that could be included, if the museum is interested.

Chris did indicate that he would be happy to share more information about the work and host a viewing if staff or Council were interested.

**Budgetary Impact:**

No Budgetary Impact

**Originating Department:**

Administration

**Respectfully Submitted:**

Andrew Bremseth, City Administrator

**Attachments:**