



City of Fergus Falls Committee of the Whole Agenda

November 30, 2022

7:00 am

City Council Chambers

A. Call to Order

B. Roll Call

C. Discussion Items

1. Rental Registration Fees

Len Taylor

Requested Action: Recommendation to increase the rental unit fees for Standard Rental from \$20 per unit to \$25 per unit on the 2024 fee schedule

2. Garbage Truck Purchase

Len Taylor

Requested Action: Recommendation to the council to approve the purchase of a new garbage truck

3. Ordinance Related to THC Product Sales

Klara Beck

Requested Action: Recommendation to the council to direct the City Attorney to draft an ordinance addressing THC product sales and the first reading of the ordinance at the December 5 council meeting

4. Shoreline Management Ordinance

Klara Beck

Requested Action: Recommendation to the council to direct the City Attorney to draft an ordinance amending Chapter 154.060-154.074 Shoreline Management and the first reading of the ordinance at the December 5 council meeting

5. Airport Fuel System

Brian Yavarow

Requested Action: Recommendation to the council to approve the State Airport Grant for the Airport Fuel System

6. Professional Services Proposal Old Wastewater Treatment Plant

Brian Yavarow

Requested Action: Recommendation to the council to accept the professional

services proposal from McCoy Environmental for the Old Wastewater Treatment Plant ESA Phase 1

D. Additional Agenda Items

E. Announcements

December 5 5:30 pm City Council Meeting
6:00 pm (or later) 2023 Final Budget Presentation

Adjourn



Council Action Recommendation

Page 1 of 1

Meeting Date:

Committee of the Whole: November 30, 2022
Council Meeting: December 5, 2022

Subject:

Fee schedule increase "**Standard Rental Unit**" Fees \$5 per unit

Recommendation:

To increase rental unit fees for "**Standard Rental**" from \$20 per unit to \$25 per unit on the 2024 Fee Schedule.

Background/Key Points:

After a council work session in 2019 the rental registration ordinance was modified at the direction of council with the intent to gradually increase "standard practice fees." These fees have never been increased. The objective was to encourage landlords to utilize the "Best Practice" program, instead.

The purpose of the rental registration program is to help maintain the quality of the rental housing stock in the city and protect the city's neighborhoods. Inspections keeps renters healthy, protect the investments of homeowners and landlords, improve public safety, and preserve affordability in our community.

The "Best Practice" program goal is to be *proactive* in reducing life safety hazards in rental property. Best Practice fee incentivizes those who participate in the inspection program by charging only a unit fee and no building fee. The strategy of differing price points has successfully seen more rental units go to Best Practices and increased the percent of units inspected.

The city ordinances benefit both landlords and tenants by providing an effective program to eliminate problems with rental property. The ordinances provide a tool for the City of Fergus Falls to effectively resolve issues with rental property.

On a side note, staff is exploring software packages that will improve efficiency, functionality, and transparency of the program, including automated reporting options.

Budgetary Impact:

Originating Department: Public Works Department

Respectfully Submitted: April Schubert-Zumach, Code Enforcement Officer



Council Action Recommendation

Page 1 of 1

Meeting Date: 11/30/22

Subject: Refuse truck purchase

Recommendation:

Purchase a 2023 Freightliner M2 106 dual steer truck that is equipped with a Neway 24 yd ASL body (packer body and lift arm).

Background/Key Points:

According to the replacement schedule for refuse equipment, unit 226 is scheduled to be replaced.

Typically, we have traded in the truck that is being replaced. I propose the truck be kept in the fleet as a back-up truck. As we have mechanical break-downs, it is increasingly common that our wait time for parts (which many times had been same day or overnight) causes us to be creative in scheduling route completion, which often results in overtime costs.

Budgetary Impact:

The purchase will be made through the "Sourcewell" purchasing group, with funds coming from the Equipment enterprise fund.

Purchase price: \$322,856.72

Originating Department: Public Works-Fleet Div.

Respectfully Submitted: Len Taylor

Attachments: Truck quote



P.O. Box 55
West Fargo, ND
Phone: 701•281•8221

October 27, 2022

City of Fergus Falls -- Sourcewell #2221
Attn: Dan
1127 Washington Ave. East
Fergus Falls, MN 56537
Phone 218-332-5882
Fax 218-332-5888

Dan:

Source Well Quote For New 2023 Freightliner M2 106 Dual Steer, As Per Specifications
With New Way 24yd ASL Body.

- | | |
|--|---|
| ASL 24yd Can Bus (20 + 4 TG) Dump New Way Sidewinder Body | |
| *Hot Shift PTO Tandem Vane | *13,200 lb Pusher Axle W/Wheels & Tires |
| *3 Camera System | *Work Lights, 1) Hopper, 1) Facing Arm |
| *300 Gallon Gripper/Dual Pressure Switch | *Hydraulic Hopper Cover |
| *Undercoating Frame Rails Out | *Arm Rocker Switches Under Seat |
| *Pro Vision DVR | *Color White |

| | |
|------------------------------|----------------------------|
| Body Price | \$192,588.56 |
| Chassis Price, Sourced Goods | <u>\$130,268.16</u> |
| Total Cost | \$322,856.72 |

Sincerely,

Greg C. Krutsinger
Olympic Sale Inc.

Sourcewell #091219-NWY
* Chassis Supplier Will Invoice The Chassis When Delivered
* Chassis Subject To Sale
* Price Is Subject To Change



Memo

Page 1 of 1

Meeting Date:

November 30, 2022- COW

Subject:

City of Fergus Falls THC Ordinance

Recommendation:

Send to the City Attorney for drafting a new ordinance related to THC Product Sales.

Background/Key Points:

The City of Fergus Falls began discussion of THC products following the passage of updates to MN Laws 2022, Chapter 98, Article 13 in the summer of 2022. In an effort not to overregulate, the City first approached THC management from a zoning perspective. Decisions at the County level regarding a possible moratorium on sales of THC products have changed the discussion, and the City now feels the best way to serve its businesses and consumers is to codify broader regulation of THC products. The attached draft provides regulations to satisfy the following Otter Tail County Public Health priorities:

“In the absence of state licensing, cities that establish licensing and rules, sales management controls, checking identifications (ID’s), enforcement, compliance checks, license fees and address other regulatory issues may, by resolution of the city council, be exempt from this moratorium.”

The attached draft uses the City’s existing tobacco ordinance as a framework and derives direction from other communities grappling with similar updates to their ordinances to ensure compliance with State rules.

Budgetary Impact:

Publishing costs (tbd)

Originating Department:

Community Development

Respectfully Submitted:

Klara Beck, Community Development Manager

An Ordinance Amending the City Code of the City of Fergus Falls
Relating to Tetrahydrocannabinol Product Sales

Tetrahydrocannabinol Product Sales.

Subd. 1. Purpose and Intent. By enacting Laws 2022, Chapter 98, Article 13 the Minnesota Legislature amended Minnesota Statutes, Section 151.72 and legalized the sale and adult use of certain products containing tetrahydrocannabinol ("THC"). The purpose of this Section is to regulate the sale of products that contain THC and are intended for human or animal consumption, excluding "medical cannabis" as defined by Minn. Stat. § 152.22, Subd. 6, as the same may be amended from time to time, ("THC Product" or "licensed product") for the following reasons:

The Minnesota Legislature recognized the danger of cannabis use among youth by prohibiting the sale of any product containing cannabinoid or tetrahydrocannabinol (THC) extracted or otherwise derived from hemp to those under the age of 21 and requiring that edible cannabinoid products be packaged without appeal to children and in child-resistant packaging or containers, and;

1. A local regulatory system for THC product retailers is appropriate to ensure that retailers comply with THC product laws and business standards of the City of Fergus Falls to protect the health, safety, and welfare of our youth and most vulnerable residents, and;
2. State law requires THC product retailers to check the identification of purchasers to verify that they are at least 21 years of age, comply with certain packaging and labeling requirements to protect children and youth, and meet certain potency and serving size requirements, and;
3. State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and ensure the safety and compliance of commercially available THC products in the state of Minnesota, and;
4. State law does not preempt the authority of a local jurisdiction to adopt and enforce local ordinances to regulate THC product businesses including, but not limited to, local zoning and land use requirements and business license requirements, and;
5. A requirement for a THC product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC products to adults but will allow the City of Fergus Falls to regulate the operation of lawful businesses to discourage violations of state and local THC Product-related laws.

In making these findings and enacting this ordinance, the Fergus Falls City Council intends to ensure responsible THC product retailing, allow legal sale and access without promoting increases in use, and discourage violations of THC Product-related laws, especially those which prohibit or discourage the marketing, sale, distribution, possession, and use of THC products to or by youth under 21 years of age.

Subd. 2. Definitions. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following words, terms, and

phrases, when used in this Section, shall have the meanings ascribed to them in this Subdivision:

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase licensed products for educational, research and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to licensed products.

License: A license issued under this section.

Licensed Product or THC Product: Any product that contains more than trace amounts of tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72, as the same may be amended from time to time. Licensed Product and THC Product does not include Medical Cannabis.

Medical Cannabis: Medical cannabis shall have the meaning provided in Minn. Stat. § 152.22, Subd. 6, as the same may be amended from time to time.

Moveable Place of Business: Any form of business operated out of a kiosk, truck, van, automobile, trailer, or other type of vehicle or transportable shelter and is not a fixed address storefront or other permanent type of structure authorized for sales transactions.

Retail Establishment: Any place of business where licensed products are available for sale to the general public.

Restaurant: The term "restaurant" shall have the meaning given in Minn. Stat. § 157.15, Subd. 12, as the same may be amended from time to time.

Sale: Any transfer of goods for money, trade, barter, or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of licensed products in any manner where any person shall have access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed product between the customer and the licensee or employee. **SELF-SERVICE SALES** are interpreted as being any sale where there is not an actual physical exchange between the clerk and the customer.

Subd. 3. License.

(A) License required. No person shall sell or offer to sell THC product without first having obtained a license to do so from the city.

(B) Application. An application for a license to sell shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought,

Certification of liability insurance that covers the applicant's sales of THC products, and any additional information the City deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) Action. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Administrator shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) Term. All licenses issued shall be valid for one calendar year from the date of issue.

(E) Revocation or suspension. Any license issued may be revoked or suspended.

(F) Transfers. All licenses issued shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

(G) Moveable place of business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed.

(H) Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

(I) Renewals. The renewal of a license issued under this chapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days, but no more than 60 days, before the expiration of the current license.

(J) Zoning Ordinance Applies. No license shall be issued for a location not zoned for the sales proposed by the applicant

(K) Issuance as privilege and not a right. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

FEES.

No license shall be issued under this chapter until the appropriate license fee is paid in full. The fee shall be established by the city's fee schedule and may be amended from time to time.

Background Check. Upon receipt of an application for a license under this section, the City shall conduct a background investigation on all new applications and applications to transfer a license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the mistake, and the City shall provide the licensee with a notice of revocation, along with information on the right to appeal.

BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:

- (1) The applicant is under the age of 21 years;
- (2) The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to licensed products;
- (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application;
- (4) The applicant fails to provide any information required on the application or provide false or misleading information; and
- (5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding a license.

(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

(C) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter.

Procedure upon Denial, Suspension, Non-Renewal, or Revocation of License. A determination by the City to deny, suspend, revoke, or not renew any license under this section may be appealed to the City Council of Fergus Falls by filing with the City Administrator a written Notice of Appeal within fifteen (15) days of the date on which notice of the City's denial, suspension, or revocation is mailed to the licensee. In that event, the appeal will be heard by the Council at its next meeting occurring at least fifteen (15) days but not more than 45 days after the filing of the Notice of Appeal. At any appeal of a determination by the City under this Ordinance, the licensee or applicant, or an attorney representing said party, may appear and make a presentation to the City Council. The licensee or applicant shall present to the City Council the basis for the determination being appealed, and the City Council may receive and consider any evidence it deems relevant to the issue. After the hearing, the Council may uphold, reverse, or modify the prior decision based upon the provisions of this Ordinance and upon the protection of the public health, safety, or general welfare. The City Council shall issue written findings and determination within thirty-one (31) days of the hearing, unless the Council extends that time for good cause. A decision of the City Council made following an appeal as set forth herein may be appealed by Writ of Certiorari to the Court of Appeals of the State of Minnesota pursuant to its Rules of Civil Appellate Procedure and Minnesota Statutes.

Prohibited Acts.

In general. No person shall sell, donate, give away, or otherwise dispense or distribute any licensed product, or offer to do so:

- By means of any type of vending machine.
- By means of self-service merchandising, provided, however that self-service merchandising is permitted in a licensed establishment where entry to the premises is restricted to persons of age 21 or older.
- By any other means, to any other person, on in any other manner or form prohibited by state or other local law, ordinance provision, or other regulation.

- That is not packaged in strict compliance with state laws, rule, and regulations.
- From any location other than a fixed place of business that is a licensed premises. Delivery of licensed products from a licensee to a purchaser who is located off the licensed premises is strictly prohibited.
- By any form of internet/online transaction.

Controlled Substances. No person shall sell, offer to sell, or otherwise provide any licensed products containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances not authorized by state or federal law.

Legal Age.

Age to Sell. No person under the age of 18 shall sell any licensed product to any person.

Age to Purchase. No person, regardless of license status, shall sell any licensed product to any person under the age of 21.

iii. **Age verification.** Licensees, including their employees and representatives, shall verify by means of government issued photographic identification that the purchaser is at least 21 years of age.

iv. **Signage.** All licensees shall post and display in plain view of the general public on the licensed premise, a sign supplied by the City of Fergus Falls, which shall state that it is illegal to sell licensed products to anyone under the age of 21 years and that the possession and use of such items by anyone under the age of 21 is also illegal under state, federal, and/or local law. Said signs shall be issued to the licensee along with their license.

Samples Prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. Sampling is prohibited on any licensed premises.

Other Prohibitions. No person shall sell, offer to sell, or otherwise provide, dispense, or distribute any licensed products by any means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Possession on the premises by the licensee of any licensed product in a package indicating that the contents do not comply with the requirements of state laws, rules, or regulations shall be prima facie evidence that the contents of the package violate this ordinance. It shall be the licensee's burden to prove, by a preponderance of the evidence, that the contents do comply.

Sales to Obviously Intoxicated or Impaired Persons. No person shall sell, give, furnish, dispense, distribute, or in any way procure for another person any licensed products for use by an obviously intoxicated person or a person who is obviously impaired by or under the influence of licensed products or any controlled or intoxicating substance.

On-Site Consumption Prohibited. No licensed product may be sold, given, distributed, dispensed, or otherwise furnished for consumption or use on any premises that holds a license issued under this section.

Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Ordinance:

A **Illegal Possession.** It shall be a violation of this ordinance for any person under the age of 21 to have any THC product in his or her possession: This subdivision shall not apply to persons under the age of 21 who are lawfully involved in a compliance check or to employees of a licensee who are at least 18 years of age and are acting in the course and scope of their employment for a licensee.

Illegal Use. It shall be a violation of this ordinance for any person under the age of 21 to consume or otherwise use any licensed product.

Illegal Procurement. It shall be a violation of this ordinance for any person under 21 years of age to purchase or attempt to purchase or otherwise obtain any licensed product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a person under 21 years of age. It shall further be a violation for any person to coerce or attempt to coerce a person under 21 years of age to illegally purchase or otherwise obtain or use any licensed product. This subpart shall not apply to persons under 21 years of age who are lawfully involved in a compliance check.

Use of False Identification. It shall be a violation of this ordinance for any person under 21 years of age to attempt to disguise his or her true age by the use of any form of false identification, including but not limited to an identification card of another real or fictional person and one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Tampering with Package. No licensee shall directly or through any other person alter or tamper with the contents of any original package so as to change its composition or THC content while in the original package. Possession on the premises by the licensee of any licensed product in a package differing in composition or THC content in the product when received from the manufacturer or wholesaler from whom it was purchased, shall be prima facie evidence that the contents of the original package has been changed or tampered with. It shall be the licensee's burden to prove, by the preponderance of the evidence, that the contents have not been tampered with.

Restrictions on Consumption and Use. No person shall consume or possess licensed products on a public street, highway, sidewalk, park, public or private school property, or in any public facility, on any form of public transportation or transit, at any other public place, or at any location where medical cannabis possession and use are prohibited by Minn. Stat.

§ 152.23, as the same may be amended from time to time. Provided, however, that nothing herein shall prohibit any person from possessing licensed product while using a public street, highway, or sidewalk, to travel directly from the point of a lawful purchase to a place of lawful use.

Subd. 9. Storage. Unless the licensee restricts access to the entire licensed premises to persons age 21 or older, all licensed products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

RESPONSIBILITY.

Any person licensed under this chapter shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law or other applicable law or regulation.

Subd. 11. Compliance Checks and Inspections.

All licensed premises shall be open to inspection by law enforcement or other authorized city official during regular business hours. The city shall conduct compliance checks in accordance to state law by engaging, with the written consent of their parents or guardians, minors over the age of 15 years, but less than 18 years, to enter the licensed premise to attempt to purchase licensed products. Minors used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Minors used for compliance checks shall not be guilty of illegal possession when those items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes, or required for the enforcement of a particular state or federal law. Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

Subd. 12. Violations and Penalty.

PENALTY.

(A) Violations.

(1) Notice. A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within 15 business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) Hearings.

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within 15 business days of the issuance of the citation and delivered to the City Administrator or other designated city officer. Failure to request a hearing within 15 business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The City Administrator or other designated city officer shall set the time and place for the hearing within 45 days from receipt of the request. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least 15 business days prior to the hearing.

(3) Hearing Officer. The City Council shall designate a Hearing Officer. The Hearing Officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) Decision. A decision shall be issued by the Hearing Officer within 30 business days. If the Hearing Officer determines that a violation of this chapter did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed under division (B) below, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the Hearing Officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable. The decision of the Hearing Officer is final.

(5) Appeals. Appeals of any decision made by the Hearing Officer shall be filed in the district court for the city in which the alleged violation occurred.

(6) Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) Administrative penalties.

(1) Licensees. Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$100 for a first violation; \$200 for a second offense at the same licensed premises within a 24-month period; and \$400 for a third or subsequent offense at the same location within a 24-month period. In addition, upon a third violation, the license shall be suspended for not less than five consecutive days and up to 60 days. Upon a fourth violation, the license shall be revoked.

(2) Other individuals. Other individuals, other than persons regulated by § 111.03(C) of this chapter, found to be in violation of this chapter shall be charged an administrative fine consistent with the administrative fine schedule.

(3) Underage persons. Any person under the age of 21 years found in unlawful possession of or who unlawfully purchase or attempt to purchase licensed products shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by the City Council upon consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may be established by ordinance and may be amended from time to time.

(4) Statutory penalties. If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the higher penalties shall prevail.

(C) Misdemeanor prosecution. Nothing in this chapter shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter.



Memo

Page 1 of 1

Meeting Date:

November 30- COW

Subject:

Required Shoreland Management Ordinance Update

Recommendation:

Accept updates to § 154.060- § 154.074 regarding shoreland management for an ordinance update required to be completed by December 21, 2022 and send on to the City Attorney's office to be drafted for a first reading.

Background/Key Points:

In late 2021, the DNR informed the City that it must amend its shoreland ordinance to include waterbodies within its municipal boundaries following annexations. In reviewing the City's current ordinance, staff determined that no substantial update had been made in decades. Per Minnesota Statutes Section 103F.221, Subd. 1, the City must be in substantial compliance with municipal shoreland management standards and criteria established by the State. Staff therefore suggest that the changes indicated in the attached draft be approved by City Council and sent to the City Attorney's office for appropriate drafting. The changes accomplish the following:

- Includes all water bodies over a certain size within current City limits.
- Updates the height limit of buildings to 30 ft to match elsewhere in zoning code
- Designates part of the river known as the Pisgah Reservoir as General Development, reducing required setback area
- Adds density requirements to PUDs within the Shoreland Management area.

Budgetary Impact:

Publishing costs (TBD)

Originating Department:

Community Development

Respectfully Submitted:

Klara Beck, Community Development Manager

Attached:

Dec 2021 Letter from DNR

Draft ordinance language



Division of Ecological and Water Resources
1509 1st Avenue North
Fergus Falls, MN 56537

December 20, 2021

Ben Schierer, Mayor
Fergus Falls
112 W Washington Avenue
Fergus Falls, 56537

Re: Notice to Amend Shoreland Management Ordinance Due to Annexation

Dear Mayor Schierer,

On behalf of the Department of Natural Resources (DNR), I am writing to inform you that, due to a recent annexation, the City of Fergus Falls will need to amend its shoreland ordinance.

The DNR recently received correspondence from the Minnesota Office of Administrative Hearings - Municipal Boundary Adjustments Unit, approving annexation of land to the City of Fergus Falls (OA-1801-1). This annexation was passed by the Fergus Falls City Council on April 28, 2021 and approved by the State of Minnesota on May 20, 2021.

The DNR has determined that the annexed land includes shoreland areas. The annexed shoreland areas include lands adjacent to unnamed basins 56081500 and 56082800, which are not referenced in the city’s current shoreland ordinance. In addition, other water bodies already in the City of Fergus Falls are also not listed in this ordinance. Minnesota Statutes Section 414.033, Subd. 11, requires communities that have recently annexed such areas to be in compliance with Minnesota Statutes 103F. Minnesota Statutes, Section 103F.221, Subd. 1 requires any municipality to adopt an ordinance that is substantially compliant with the shoreland standards and criteria **within one year of this notification**. As such, the city must amend its shoreland ordinance to include these waterbodies.

These waterbodies and their associated shoreland classifications are:

| Water Body Name | Public Waters ID Number | DNR Classification |
|-----------------|-------------------------|---------------------|
| Unnamed | 56081500 | Natural Environment |
| Unnamed | 56082800 | General Development |
| Unnamed | 56083000 | Natural Environment |
| unnamed | 56086600 | Natural Environment |
| Chautauqua | 56078000 | Natural Environment |
| Unnamed | 56086100 | Natural Environment |

| | | |
|---------------|----------|---------------------|
| Unnamed | 56083200 | Natural Environment |
| Unnamed | 56148000 | Natural Environment |
| Unnamed | 56086300 | Natural Environment |
| Unnamed | 56082100 | Natural Environment |
| Pelican River | | Agriculture |

In addition to these listed basins, there are 11 water basins at least 10 acres in size that have some amount of shoreland in Fergus Falls and are not shoreland classified. The City may want to assign a shoreland classification to unclassified basins when amending the ordinance.

The process for preparing and submitting a shoreland management ordinance for DNR approval is detailed at http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/adopt-amend-ordinances.html. If there are other portions of your shoreland ordinance you would like to address during this amendment process, we recommend you reference suggested language from the Shoreland Management Model Ordinance. There is a link to the model ordinance at the top of the web page. Please submit your draft ordinance and completed checklist to ordinance.review.dnr@state.mn.us and copy me at julie.aadland@state.mn.us. I will be available to answer any questions you may have regarding your shoreland ordinance, or any other DNR water- related programs or permits.

Sincerely,

Julie Aadland

Julie Aadland
Area Hydrologist

Attachments: Map of Shoreland Boundaries, Fergus Falls

c: Andrew Bremseth, City Administrator
Karin Flom, City Planner
Erik Anthonisen, EWR Region 1 South District Manager
ordinance.review.dnr@state.mn.us

SHORELAND MANAGEMENT OVERLAY DISTRICT

§ 154.060 STATUTORY AUTHORIZATION AND POLICY.

(A) Statutory authorization. This subchapter is adopted pursuant to the authorization and policies contained in M.S. Ch. 105, as it may be amended from time to time, Minn. Rules parts 6120.2500 through 6120.3900 and planning and zoning enabling legislation in M.S. Ch. 462, as it may be amended from time to time.

(B) Policy. The uncontrolled use of shorelands in the city affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The legislature of the state has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the city.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.061 JURISDICTION.

The provisions of this subchapter shall apply to the shorelands of the public water bodies as classified in § 154.068 of this chapter. Pursuant to Minn. Rules parts 6120.2500 through 6120.3900, no lake, pond or flowage less than ten acres in size in municipalities need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the Council, be exempt from this subchapter.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.062 COMPLIANCE.

(A) General. The use of any shoreland of public waters, the size and shape of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area, the cutting of shoreland vegetation and the subdivision of land shall be in full compliance with the terms of this subchapter and other application regulations. In considering variance

requests, the Board of Adjustment must consider whether existing sewage treatment systems on the property need upgrading before additional development is approved.

(B) Notifications to the Department of Natural Resources.

(1) Copies of all notices of any public hearings to consider variances, amendments or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

(2) A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls, must be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten days of final action.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.063 ENFORCEMENT.

The City Engineer is responsible for the administration and enforcement of this subchapter. Violations of this subchapter can occur regardless of whether or not a permit is required for a regulated activity.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.064 INTERPRETATION.

In their interpretation and application, the provisions of this subchapter shall be held to be minimum requirements and shall be liberally construed in favor of the Council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.065 ABROGATION AND GREATER RESTRICTIONS.

(A) It is not intended by this subchapter to repeal, abrogate or impair any existing easements, covenants or deed restrictions.

(B) However, where this subchapter imposes greater restrictions, the provisions of this subchapter shall prevail.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.066 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All distances, unless otherwise specified, shall be measured horizontally.

ACCESSORY STRUCTURE OR FACILITY. Any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

BLUFF. A topographic feature such as a hill, cliff or embankment having the following characteristics (an area with an average slope of less than 18% over a distance of 50 feet or more shall not be considered part of the BLUFF):

(1) Part or all of the feature is located in a shoreland area;

(2) The slope rises at least 25 feet above the ordinary high water level of the waterbody;

(3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30% or greater; and

(4) The slope must drain toward the waterbody.

BLUFF IMPACT ZONE. A bluff and land located within 20 feet from the top of a bluff.

BOATHOUSE. A structure designed and used solely for the storage of boats or boating equipment.

BUILDING LINE. The line measured across the width of the lot at the point where the main structure is placed in accordance with setback provisions.

COMMERCIAL. Business activity of a normal wholesale or retail nature and including travel related facilities as automobile accessory stores and gasoline filling stations, bowling alleys, cafés (including drive-in eating establishments), dairy product stores, self-service laundries, liquor stores, motels, hotels, restaurants, trailer parks and campgrounds, resorts and related recreation uses.

COMMISSIONER. The Commissioner of the Department of Natural Resources.

CONDITIONAL USE. A land use or development, as defined by ordinance, that would not be appropriate generally, but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning provisions of the code exist, the use or development conforms to the Comprehensive Land Use Plan of the city, and the use is compatible with the existing neighborhood.

DECK. A horizontal, unenclosed platform with or without attached railings, seats, trellises or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.

DUPLEX, TRIPLEX and QUAD. A dwelling structure on a single lot, having two, three and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living and sanitation facilities.

DWELLING SITE. A designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

DWELLING UNIT. Any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or time-share accommodations such as motels, hotels and resort rooms and cabins.

ENVIRONMENTAL ASSESSMENT WORK SHEET or EAW.

(1) A brief document, in work sheet format, that helps local governments and state agencies decide whether a proposed action is a major action with the potential for significant environmental effects and, in the case of a private action, whether it is of more than local significance.

(2) If the action meets these criteria, an environmental impact statement (EIS) should be prepared.

ENVIRONMENTAL IMPACT STATEMENT or EIS. An informational document which contains a thorough evaluation of the environmental effects of a proposed project. The EIS provides information for agencies and private persons which helps them not only to evaluate the impacts of proposed actions which have the potential for significant environmental effects, but to consider alternatives and to institute methods for reducing adverse environmental effects.

EXTRACTIVE USE. The use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other non-metallic minerals and peat not regulated under M.S. §§ 93.44 to 93.51, as they may be amended from time to time.

FILTERING BASIN. A wetland, low area or basin that may contain related vegetation which functions to remove sediment, organic matter and other pollutants from runoff or waste water by filtration, disposition, infiltration, absorption, adsorption, decomposition and volatilization, thereby reducing pollution and protecting the environment.

FLOODPLAIN. The areas adjoining a watercourse which have been or hereafter may be covered by the regional flood.

FLOODWAY. The channel of the watercourse and those portions of the adjoining floodplains which are reasonably required to carry and discharge the regional flood.

FOREST LAND CONVERSION. The clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

GUEST COTTAGE. A structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

HARDSHIP. The same as that term is defined in M.S. Ch. 462 (for municipalities), as it may be amended from time to time.

HEIGHT OF BUILDING. The vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.

INDUSTRIAL. Any activity engaged in the cleaning, servicing, testing, repairing, storage, processing, construction or fabrication of goods or products, including mining or stripping of soils or minerals.

INTENSIVE VEGETATION CLEARING. The complete removal of trees or shrubs in a contiguous patch, strip, row or block.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditor's plot or other accepted means and separated from other parcels or portions by the description for the purpose of sale, lease or separation.

LOT WIDTH. The shortest distance between lot lines as measured at the legal building setback line and not being less than the required lake frontage.

NON-CONFORMITY. Any legal use, structure or parcel of land already in existence, recorded or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

ORDINARY HIGH WATER LEVEL. The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ORDINARY HIGH WATER LEVEL is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ORDINARY HIGH WATER LEVEL is the operating elevation of the normal summer pool.

PLANNED UNIT DEVELOPMENT. A type of development characterized by a unified site design for a number of dwelling sites on a parcel, whether for sale, rent or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases and a mix of structure types and land uses. These DEVELOPMENTS may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises or any combination of these or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels and conversions of structures and land uses to these uses.

PUBLIC WATERS. Any waters as defined in M.S. § 105.37, subd. 14 and 15, as may be amended from time to time.

SEMI-PUBLIC USE. The use of land by a private, non-profit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

SENSITIVE RESOURCE MANAGEMENT. The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding or occurrence of flora or fauna in need of special protection.

SETBACK. The minimum horizontal distance between a structure, sewage treatment system or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line or other facility.

SEWAGE TREATMENT SYSTEM. A septic tank and soil absorption system or other individual or cluster type sewage treatment system.

SEWER SYSTEM. Pipelines or conduits, pumping stations and force main, and all other construction, devices, appliances or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

SHORE IMPACT ZONE. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 feet for agricultural land uses and 50% of the structure setback for all other land uses.

SHORELAND. Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of SHORELANDS may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner.

SIGNIFICANT HISTORIC SITE. Any archaeological site, standing structure or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of M.S. § 307.108, as it may be amended from time to time. A HISTORIC SITE meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the State Archaeologist or the Director of the state's Historical Society. All unplatted cemeteries are automatically considered to be SIGNIFICANT HISTORIC SITES.

STEEP SLOPE. Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this subchapter. Where specific information is

not available, STEEP SLOPES are lands having average slopes over 12%, as measured over horizontal distances of 50 feet or more, that are not bluffs.

STRUCTURE. Any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles and other supporting facilities.

SUBDIVISION. Land that is divided for the purpose of sale, rent or lease, including planned unit developments.

SURFACE WATER-ORIENTED COMMERCIAL USE. The use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts and restaurants with transient docking facilities are examples of the use.

TOE OF THE BLUFF. The lower point of a 50-foot segment with an average slope exceeding 18%.

TOP OF THE BLUFF. The higher point of a 50-foot segment with an average slope exceeding 18%.

VARIANCE. The same as that term is defined in § 154.002 of this chapter.

WATER-ORIENTED ACCESSORY STRUCTURE OR FACILITY. A small above ground building or other improvement, except stairways, fences, docks and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of the structures and facilities include boathouses, screen houses and fish houses.

WETLAND. A surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition) and shall be identified on the Protected Waters Inventory Maps on file in the City Engineer's office.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.067 ADMINISTRATION.

The administration of this subchapter is in accordance with the provisions of this chapter.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.068 SHORELAND CLASSIFICATION SYSTEM AND LAND USE DISTRICTS.

(A) Shoreland classification system. The public waters of the city have been classified below consistent with the criteria found in Minn. Rules part 6120.3300, and the protected waters inventory map for the county.

(B) Definition. The shoreland area for the waterbodies listed in divisions (C) and (D) below shall be as shown on the official zoning map.

(C) Lakes are classified as follows:

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A. General development (GD):

| <u>General Development Lake Name</u> | <u>DNR Public Waters I.D. #</u> |
|--------------------------------------|---------------------------------|
| <u>Lake Alice</u> | <u>#56-867</u> |
| <u>Opperman</u> | <u>#56-865</u> |
| <u>Groto</u> | <u>#56-819</u> |
| <u>Unnamed</u> | <u>#56-822</u> |
| <u>Unnamed</u> | <u>#56-828</u> |
| <u>Unnamed</u> | <u>#56-1204</u> |
| <u>Unnamed</u> | <u>#56-1203</u> |
| <u>Unnamed</u> | <u>#56-821</u> |

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B. Recreational development (RD); and

| <u>Recreational Development Lake Name</u> | <u>DNR Public Waters I.D. #</u> |
|---|---------------------------------|
| <u>Hoot Lake</u> | <u>#56-782</u> |
| <u>Pebble Lake</u> | <u>#56-829</u> |
| <u>Wright Lake</u> | <u>#56-783</u> |

c. Natural environment (NE).

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| <u>Natural Environment Lake Name</u> | <u>DNR Public Waters I.D. #</u> |
|--------------------------------------|---------------------------------|
| <u>One Mile Lake</u> | <u>#56-817</u> |
| <u>Chautauqua</u> | <u>#56-780</u> |
| <u>Unnamed</u> | <u>#56-815</u> |
| <u>Unnamed</u> | <u>#56-816</u> |
| <u>Unnamed</u> | <u>#56-826</u> |
| <u>Unnamed</u> | <u>#56-827</u> |
| <u>Unnamed</u> | <u>#56-830</u> |
| <u>Unnamed</u> | <u>#56-831</u> |
| <u>Unnamed</u> | <u>#56-832</u> |
| <u>Unnamed</u> | <u>#56-861</u> |
| <u>Unnamed</u> | <u>#56-863</u> |
| <u>Unnamed</u> | <u>#56-864</u> |
| <u>Unnamed</u> | <u>#56-866</u> |

| Natural Environment Lake Name | DNR Public Waters I.D. # |
|-------------------------------|--------------------------|
| Unnamed | #56-1188 |
| Unnamed | #56-1197 |
| Unnamed | #56-1480 |

~~(1) Natural environment lakes. One Mile Lake: protected waters inventory I.D. #56-818;~~

~~(2) Recreational development lakes.~~

~~(a) Hoot Lake: Inventory I.D. #56-782;~~

~~(b) Pebble Lake: I.D. #56-829; and~~

~~(c) Wright Lake: I.D. #56-783.~~

~~(3) General development lakes.~~

~~(a) Lake Alice: I.D. #56-867; and~~

~~(b) Opperman Lake: I.D. #56-865.~~

(D) Rivers and streams are classified as follows:-

(1) Remote rivers;

(2) Forested rivers;

(3) Transition rivers;

(4) Agricultural rivers; Pelican River, Otter Tail River (unless portion otherwise designated within this section).

(5) Urban rivers; and

(6) Tributary streams.

(E) Unclassified waters. All protected lakes, rivers and streams in the city not classified in divisions (D)(1) through (D)(4) above, shall be considered to be classified as shown on the protected waters inventory map for the county, a copy of which is hereby adopted by reference. All other protected waters in the city not so classified shall be considered to be classified as general development for lakes and tributary, for rivers and streams.

(F) Land use district descriptions. See other provisions of this chapter and official zoning map.

(G) Use and upgrading of inconsistent land use districts. See other provisions of this chapter.

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(H) Structure and on-site sewage system setbacks (in feet) from ordinary high water level. The standards in §§ 154.099, 154.100 and 154.101 of this chapter shall apply to all shorelands of all public waters within the city. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth herein, then the more restrictive standards shall apply.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.069 ZONING AND WATER SUPPLY, SANITARY PROVISIONS.

(A) Design criteria for structures.

(1) High water elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:

(a) For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;

(b) For rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with Minn. Rules parts 6120.5000 to 6120.6200 governing the management of floodplain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and

(c) Water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item, if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

(2) Water-oriented accessory structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in § 154.068(G) of this chapter if this water-oriented accessory structure complies with the following provisions.

(a) The structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. Detached decks must not exceed eight feet above grade at any point.

(b) The setback of the structure or facility from the ordinary high water level must be at least ten feet.

(c) The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions.

(d) The roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area.

(e) The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities.

(f) As an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented sporting equipment, may occupy an area up to 400 square feet; provided, the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.

(3) Stairways, lifts and landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements.

(a) Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open space recreational properties and planned unit developments.

(b) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open space recreational properties and planned unit developments.

(c) Canopies or roofs are not allowed on stairways, lifts or landings.

(d) Stairways, lifts and landing may be either constructed above the ground on posts or pilings or placed into the ground; provided, they are designed and built in a manner that ensures control of soil erosion.

(e) Stairways, lifts and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.

(f) Facilities such as ramps, lifts or mobility paths for physically-handicapped persons are also allowed for achieving access to shore areas; provided that, the dimensional and performance standards of divisions (A)(3)(a) through (A)(3)(f) above are complied in addition to the requirements of Minn. Rules Ch. 1340.

(4) Significant historic sites. No structure may be placed in a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

(5) Steep slopes.

(a) The City Engineer must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures or other improvements on steep slopes.

(b) When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

(B) Height of structures. All structures in residential districts, except churches and non-residential agricultural structures, must not exceed 30 feet in height.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.070 SHORELAND ALTERATIONS.

(A) Purpose. Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping and protect fish and wildlife habitat.

(B) Vegetation alterations.

(1) Vegetation alteration necessary for the construction of structures and sewage treatment systems are exempt from the vegetation alteration standards that follow.

(2) Removal or alteration of vegetation, except for agriculture and forest management uses as regulated in divisions (B)(6) and (B)(7) below, respectively, is allowed subject to the following standards.

(a) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.

(b) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas and permitted water-oriented accessory structures or facilities; provided that:

1. The screening of structures, vehicles or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;
2. Along rivers, existing shading of water surfaces is preserved; and
3. The above provisions are not applicable to the removal of trees, limbs or branches that are dead, diseased or pose safety hazards.

(C) Topographic alterations/grading and filling.

(1) Grading and filling and excavations necessary for the construction of structures, sewage treatment systems and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems and driveways.

(2) Notwithstanding division (C)(1) above, a grading and filling permit will be required for:

(a) The movement of more than ten cubic yards of material on steep slopes or within shore or bluff impact zones; and

(b) The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.

(3) The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals.

(a) Grading or filling in any Type 2, 3, 4, 5, 6, 7 or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland:

1. Sediment and pollutant trapping and retention;
2. Storage of surface runoff to prevent or reduce flood damage;
3. Fish and wildlife habitat;
4. Recreational use;
5. Shoreline or bank stabilization; and
6. Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals or others.

(b) This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews or approvals by other local, state or federal agencies such as a watershed district, the state's Department of Natural Resources or the United States Army Corps of Engineers. The applicant will be so advised.

(c) Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible.

(d) Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible.

(e) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.

(f) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.

(g) Fill or excavated material must not be placed in a manner that creates an unstable slope.

(h) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30% or greater.

(i) Fill or excavated material must not be placed in bluff impact zones.

(j) Any alterations below the ordinary high water level must first be authorized by the Commissioner under M.S. § 105.42, as it may be amended from time to time.

(k) Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.

(l) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet, unless approved by the City Engineer.

(4) Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the Commissioner has approved the proposed connection to public waters.

(5) Fill below OHW and construction of channels must be in accordance with M.S. § 103G.245, as it may be amended from time to time.

(D) Storm water management. The following general and specific standards shall apply.

(1) When possible, existing natural drainage ways, wetlands and vegetated soil surfaces must be used to convey, store, filter and retain stormwater runoff before discharge to public waters.

(2) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

(3) When development density, topographic features and solid and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins,

skimming devices, waterways and ponds may be used. Consideration should be given to designs using surface drainage, vegetation and infiltration rather than buried pipes and human-made materials and facilities.

(E) Specific standards.

(1) When constructed facilities are used for storm water management, documentation must be provided by a qualified individual that they are designed and installed consistent with acceptable engineering practices.

(2) New constructed stormwater outfalls to public waters should provide for filtering or settling of suspended solids and skimming of surface debris before discharge whenever possible.

(F) Agriculture use standards.

(1) General cultivation, farming, grazing, nurseries, horticulture, truck farming, sod farming and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (resource management systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service.

(2) Application of fertilizer, herbicides, pesticides, animal wastes or other chemicals within shorelands must be done in a way as to minimize impact on the shore impact zone or public water by proper application or use of earth or vegetation.

(3) Animal feedlots shall not be permitted in the shoreland of public waters.

(G) Forest management standards. The harvesting of timber and associated reforestation or conversion of forested use to a non-forested use must be conducted consistent with the following standards.

(1) Timber harvesting and associated reforestation must be conducted consistent with the provisions of the state's Non-Point Source Pollution Assessment Forestry and the provisions of Water Quality in Forest Management, Best Management Practices in Minnesota.

(2) If allowed by local governments, forest land conversion to another use requires issuance of a conditional use permit and adherence to the following standards.

(a) Shore and bluff impact zones must not be intensively cleared of vegetation.

(b) An erosion and sediment control plan is developed and approved by the local soil and water conservation district before issuance of a conditional use permit for the conversion.

(3) Use of fertilizer, pesticides or animal wastes within shorelands must be done in a way as to minimize impact on the shore impact zone or public water by proper application or use of earth or vegetation.

(H) Extractive use standards.

(1) Site development and restoration plan. An extractive use site development and restoration plan must be developed, approved and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion and must clearly explain how the site will be rehabilitated after extractive activities end.

(2) Setbacks for processing machinery. Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.

(3) Placement and design of roads, driveways and parking areas.

(a) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

(b) Roads, driveways and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.

(c) Public and private watercraft access ramps, approach roads and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this division (H) are met. For private facilities, the grading and filling provisions of this division (H) must be met.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.071 CONDITIONAL USES.

(A) Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures and criteria and conditions for review of conditional uses established community-wide.

(B) The following additional evaluation criteria and conditions apply within shoreland areas.

(1) Evaluation criteria. A thorough evaluation of the waterbody and the topographic, vegetation and soils conditions on the site must be made to ensure:

(a) The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

(b) The visibility of structures and other facilities as viewed from public waters is limited;

(c) The site is adequate for water supply and on-site sewage treatment; and

(d) The types, uses and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

(2) Conditions attached to conditional use permits. The Council, upon consideration of the criteria listed above the purposes of this subchapter, shall attach the conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this subchapter. The conditions may include, but are not limited to, the following:

(a) Increased setbacks from the ordinary high water level;

(b) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

(c) Special provisions for the location, design and use of structures, sewage treatment systems, watercraft launching and docking areas and vehicle parking areas.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.072 WATER SUPPLY AND SEWAGE TREATMENT.

(A) Water supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the state's Department of Health and the state's Pollution Control Agency.

(B) Sewage treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows.

(1) Publicly-owned sewer systems must be used, where available.

(2) All private sewage treatment systems must meet or exceed the State Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, Individual Sewage Treatment Systems Standards, Minn. Rules Ch. 7080, a copy of which is hereby adopted by reference and declared to be a part of this subchapter.

(3) On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in § 154.068(G) of this chapter.

(4) All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in divisions (B)(5)(a) through (B)(5)(d) below. If the

determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

(5) Evaluation criteria:

- (a) Depth to the highest known or calculated ground water, table or bedrock;
- (b) Soil conditions, properties and permeability;
- (c) Slope; and
- (d) The existence of lowlands, local surface depressions and rock outcrops.

(6) Non-conforming sewage treatment systems shall be regulated and upgraded in accordance with § 154.073 of this chapter.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.073 NON-CONFORMITIES.

All legally established non-conformities as of the effective date of this subchapter may continue, but they will be managed according to applicable state statutes and other regulations of this chapter for the subject of alterations and additions, repair after damage, discontinuance of use and intensification of use; except that, the following standards will also apply in shoreland areas.

(A) Construction on non-conforming lots of record.

(1) Lots of record in the office of the County Recorder on the date of enactment of local shoreland controls that do not meet the requirements of § 154.068(G) of this chapter may be allowed as buildings sites without variances from lot size requirements; provided, the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time and sewage treatment and setback requirements of this subchapter are met.

(2) A variance from setback requirements must be obtained before any use, sewage treatment system or building permit is issued for a lot. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

(3) If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of § 154.068(G) of this chapter, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of § 154.068(G) of this chapter as much as possible.

(B) Additions/expansions to non-conforming structures.

(1) All additions or expansions to the outside dimensions of an existing non-conforming structure must meet the setback, height and other requirements of § 154.068(G) of this chapter. Any deviation from these requirements must be authorized by a variance pursuant to § 154.067 of this chapter.

(2) Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:

(a) The structure existed on the date the structure setbacks were established;

(b) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;

(c) The deck encroachment toward the ordinary high water level does not exceed 10% of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and

(d) The deck is constructed primarily of wood and is not roofed or screened.

(2002 Code, § 7.35) (Ord. 42, Fourth Series, effective 5-31-1992; Ord. 7, Seventh Series, passed 6-14-2014)

§ 154.074 PLANNED UNIT DEVELOPMENTS (PUDS).

(A) Purpose. The purpose of the "PUD" Planned Unit Development District is to permit flexibility in the use and design of structures and land in situation where modification of specific provisions of this Ordinance would not be contrary to its intent and purpose or significantly be inconsistent with the planning on which it is based, and will not be harmful to the neighborhood in which the district occurs. The PUD process may allow:

A. Variety: Within a comprehensive site design concept a mixture of land uses, housing types, and densities.

B. Sensitivity: By departing from the strict application of required performance standards associated with traditional zoning, planned unit development can maximize the development potential of land while remaining sensitive to its unique and valuable natural and scenic characteristics.

C. Efficiency: The consolidation of areas for recreation and reductions in street lengths and other utility related expenses.

D. District Integration: The combination of uses which are allowed in separate zoning districts such as:

1. Mixed residential allows both densities and unit types to be varied within the PUD.

2. Mixed commercial, residential, or institutional land use with the integration of compatible land uses within the PUD.

(B) Types of PUDs permissible. Planned unit developments (PUDs) are allowed for new projects on undeveloped land, redevelopment of previously built sites or conversions of existing buildings and land in land use districts classified as R-4, Multiple-Residence, only.

(C) Processing of PUDs. Planned unit developments must be processed as a conditional use **and comply with the provisions of this section in addition to those standards outlined elsewhere in the zoning and subdivision regulations. When there is a conflict in requirements, the more stringent of the requirements shall be applied.** An expansion to an existing commercial PUD involving 6 or less new dwelling units or sites since the date this ordinance was adopted is permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Section 10.5. Approval cannot occur until all applicable environmental reviews are complete.

(C) Application for a PUD. The applicant for a PUD must submit the following documents

(C) Application for a PUD. The applicant for a PUD must submit the following documents

(1) A site plan and/or plat for the project showing locations of property boundaries, surface water features, existing and proposed structures and other facilities, land alterations, sewage treatment and water supply systems (where public systems will not be provided) and topographic contours at ten-foot intervals or less. When a PUD is a combined commercial and residential development, the site plan and/or plat must indicate and distinguish which buildings and portions of the project are residential, commercial or a combination of the two;

(2) A property owner's association agreement (for residential PUDs) with mandatory membership, and all in accordance with the requirements of this section;

(3) Deed restrictions, covenants, permanent easements or other instruments that:

(a) Properly address future vegetative and topographic alterations, construction of additional buildings, beaching of watercraft and construction of commercial buildings in residential PUDs; and

(b) Ensure the long-term preservation and maintenance of open space in accordance with the criteria and analysis specified in this section.

(4) When necessary, a master plan/drawing describing the project and the floor plan for all commercial structures to be occupied; and

(5) Those additional documents as requested by the city that are necessary to explain how the PUD will be designed and will function.

(D) Maintenance and design criteria.

(2) Deed restrictions, covenants, permanent easements, public dedication and acceptance or other equally effective and permanent means must be provided to ensure long-term preservation and maintenance of open space. The instruments must include all of the following protections:

- (a) Vegetation and topographic alterations other than routine maintenance prohibited;
- (b) Construction of additional buildings or storage of vehicles and other materials prohibited; and
- (c) Uncontrolled beaching of watercraft prohibited.

(E) Open space requirements. Planned unit developments outside the shoreland management area must contain open space meeting all the following criteria:

(1) At least 40% of the total project area must be preserved as open space.

Commented [KB1]: 40% is a match to what Alexandria has in their PUD ordinance. Going for less restrictive rather than more.

(3) Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries;

(4) Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites and by the general public;

(5) Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;

(6) Open space must not include commercial facilities or uses, but may contain water-oriented accessory structures or facilities;

(7) The appearance of open space areas, including topography, vegetation and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance or other effective and permanent means; and

D. Density Determination for PUDs within the shoreland management area.

Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures.

Step 1. Identify Density Analysis Tiers. Divide the project parcel into tiers by drawing one or more lines parallel to the ordinary high water level at the following intervals, proceeding landward:

| <u>Waterbody Classification</u> | <u>No Sewer (ft)</u> | <u>Sewer (ft)</u> |
|--|----------------------|-------------------|
| <u>General Development Lakes – 1st tier</u> | <u>200</u> | <u>200</u> |
| <u>General Development Lakes – all other tiers</u> | <u>267</u> | <u>200</u> |
| <u>Recreational Development Lakes</u> | <u>267</u> | <u>267</u> |
| <u>Natural Environment Lakes</u> | <u>400</u> | <u>320</u> |
| <u>All Rivers</u> | <u>300</u> | <u>300</u> |

Step 2. Calculate Suitable Area for Development. Calculate the suitable area within each tier by excluding all **road rights-of way or easements**, wetlands, bluffs, or land below the ordinary high water level of public waters.

Step 3. Determine Base Density:

A. For residential PUDs, divide the suitable area within each tier by the minimum single residential lot area for lakes to determine the allowable number of dwelling units, or base density, for each tier. For rivers, if a minimum lot area is not specified, divide the tier width or river frontage by the minimum single residential lot width.

B. For commercial PUDs:

(1) Determine the average area for each dwelling unit or dwelling site within each tier. Include both existing and proposed dwelling units and sites in the calculation.

(a) For dwelling units, determine the average inside living floor area of dwelling units in each tier. Do not include decks, patios, garages, or porches and basements, unless they are habitable space.

(b) For dwelling sites (campgrounds), determine the area of each dwelling site as follows:

For manufactured homes, use the area of the manufactured home, if known, otherwise use 1,000 sf.

For recreational vehicles, campers or tents, use 400 sf.

(2) Select the appropriate floor area/dwelling site area ratio from the following table for the floor area or dwelling site area determined in Section 10.53 B. 1.

| <u>Inside Living Floor Area or Dwelling Site Area (sf)</u> | <u>General Development Lakes w/Sewer – all tiers</u> | <u>General Development Lakes w/no sewer – all other tiers</u> | <u>Natural Environment Lakes Remote Rivers</u> |
|--|---|---|--|
| | <u>General Development Lakes w/no sewer – 1st tier</u> | <u>Recreational Development Lakes</u> | |
| | <u>Agricultural, Urban and Tributary Rivers</u> | <u>Forested and Transition Rivers</u> | |
| <u>< 200</u> | <u>.040</u> | <u>.020</u> | <u>.010</u> |
| <u>300</u> | <u>.048</u> | <u>.024</u> | <u>.012</u> |
| <u>400</u> | <u>.056</u> | <u>.028</u> | <u>.014</u> |
| <u>500</u> | <u>.065</u> | <u>.032</u> | <u>.016</u> |
| <u>600</u> | <u>.072</u> | <u>.038</u> | <u>.019</u> |
| <u>700</u> | <u>.082</u> | <u>.042</u> | <u>.021</u> |
| <u>800</u> | <u>.091</u> | <u>.046</u> | <u>.023</u> |
| <u>900</u> | <u>.099</u> | <u>.050</u> | <u>.025</u> |
| <u>1,000</u> | <u>.108</u> | <u>.054</u> | <u>.027</u> |
| <u>1,100</u> | <u>.116</u> | <u>.058</u> | <u>.029</u> |
| <u>1,200</u> | <u>.125</u> | <u>.064</u> | <u>.032</u> |
| <u>1,300</u> | <u>.133</u> | <u>.068</u> | <u>.034</u> |
| <u>1,400</u> | <u>.142</u> | <u>.072</u> | <u>.036</u> |

| <u>Inside Living Floor Area or Dwelling Site Area (sf)</u> | <u>General Development Lakes w/Sewer – all tiers</u> <u>General Development Lakes w/no sewer – 1st tier</u> <u>Agricultural, Urban and Tributary Rivers</u> | <u>General Development Lakes w/no sewer – all other tiers</u> <u>Recreational Development Lakes</u> <u>Forested and Transition Rivers</u> | <u>Natural Environment Lakes</u> <u>Remote Rivers</u> |
|--|--|---|--|
| <u>≥ 1,500</u> | <u>.150</u> | <u>.075</u> | <u>.038</u> |

(3) Multiply the suitable area within each tier determined in Section 10.52 by the floor area or dwelling site area ratio to yield the total floor area or dwelling site area for each tier to be used for dwelling units or dwelling sites.

(4) Divide the total floor area or dwelling site area for each tier calculated in Section 10.53 B. 3 by the average inside living floor area for dwelling units or dwelling site area determined in 10.53 B 1. This yields the allowable number of dwelling units or dwelling sites, or base density, for each tier.

C. Allowable densities may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any tier closer to the waterbody.

D. All PUDs with densities at or below the base density must meet the design standards in Section 10.6

Step 4. Determine if the Site can Accommodate Increased Density:

A. The following increases to the dwelling unit or dwelling site base densities determined in Section 10.53 are allowed if the design criteria in Section 10.6 of this ordinance are satisfied as well as the standards in Section 10.54, item B:

| <u>Shoreland Tier</u> | <u>Maximum density increase within each tier (percent)</u> |
|-----------------------|--|
| <u>1st</u> | <u>50</u> |
| <u>2nd</u> | <u>100</u> |
| <u>3rd</u> | <u>200</u> |
| <u>4th</u> | <u>200</u> |
| <u>5th</u> | <u>200</u> |

B. Structure setbacks from the ordinary high water level:

(1) Are increased to at least 50 percent greater than the minimum setback; or

(2) The impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional acceptable means and the setback is at least 25 percent greater than the minimum setback.

~~(8) The shore impact area, based on normal structure setbacks, must be included as open space. For residential PUDs, at least 50% of the shore impact zone area of existing developments or at least 70% of the shore impact zone of new developments must be preserved in its natural or existing state. For commercial PUDs, at least 50% of the shore impact zone must be preserved in its natural state.~~



Council Action Recommendation

Meeting Date:

November 30, 2022 – Committee of the Whole
December 5, 2022 – City Council

Subject:

PI No. 9348 – Airport Fuel System Replacement (100LL)

Recommendation:

- Resolution accepting the Mn State Grant Agreement No. A5601-55 for PI 9348

Background/Key Points:

In September, this Council accepted bids for the 2022 Fuel System Replacement project. MN Petroleum Services, Inc. was awarded the construction contract contingent on the City receiving the final State Agreement. The final State Agreement is enclosed for reference. If acceptable, materials could be procured during this winter and construction could begin in spring, 2023.

Budgetary Impact:

The following total project cost breakdown table includes estimated construction costs, SEH design and construction administration, and City staff time. There is no Federal funding assistance for this type of project; only State Funding at 70-percent.

| | Total Cost | State Share 70% | Local Share 30% |
|--|--------------|--------------------|--------------------|
| Construction Contract - MN Petroleum | \$687,450.00 | \$481,215.00 | \$206,235.00 |
| Engineering - Design | \$47,100.00 | \$32,970.00 | \$14,130.00 |
| Engineering - Design Amendment | \$18,200.00 | \$12,740.00 | \$5,460.00 |
| Engineering - Construction Observation | \$54,300.00 | \$38,010.00 | \$16,290.00 |
| City Administration | \$1,000.00 | \$700.00 | \$300.00 |
| Total Estimated Cost | \$808,050.00 | \$565,635.00 | \$242,415.00 |

The City’s Equipment Internal Service Fund is the proposed 30-percent local funding source. Sufficient local funds are available to proceed with this project.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. - City Engineer

Attachments:

State Grant Agreement No. A5601-55 w/Resolution

**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

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

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 A5601-55), 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> |
|-------------------------|----------------------|--------------------|----------------------|
| Replace Fuel System | 0% | 70% | 30% |

| | | |
|--------------------|----|-------------------|
| Federal Committed: | \$ | <u>0.00</u> |
| Federal Multiyear: | \$ | <u>0.00</u> |
| State: | \$ | <u>565,635.00</u> |
| Grantee: | \$ | <u>242,415.00</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 \$ 565,635.00.

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.

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 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. 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.

20 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: _____

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. 1050830,
"Grant Agreement for Airport Improvement Excluding Land Acquisition," for
State Project No. A5601-55 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

Page 1 of 2

Meeting Date:

November 30, 2022 – Committee of the Whole

December 5, 2022 – City Council

Subject:

PI 9502 –Old Wastewater Treatment Plant Demolition Project

Recommendation:

- Accept McCoy Environmental's professional services proposal for ESA Phase 1 services in the amount of \$1,875.00

Background/Key Points:

Pursuant to Otter Tail Power (OTP) Company's Letter of Intent, recently accepted by this Council, the City is to provide to OTP a Phase I Environmental site assessment and a Phase II site assessment, if deemed necessary, by OTP. I solicited the professional services of McCoy Environmental for this Phase 1 work. McCoy's fee is \$1,875.00 and it is anticipated to take 3-4 weeks to complete. I recommend accepting this proposal.

OTP has requested a tract of land for the purpose of installing a permanent electrical substation facility for OTP's new Express Feeder Project. The subject land is located within the abandoned Wastewater Treatment Plant that is City owned. OTP is requesting approximately 0.03 acres with a permanent ingress/egress easement to construct new facilities prior to decommissioning existing facilities such as the operating substation located adjacent to the Former Dairy site, near Buse Street.

Budgetary Impact:

The project costs are proposed to be funded thru the Sanitary Sewer Enterprise Fund.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. – City Engineer

Attachments:



0.50 MGD Old Waste Water Treatment Plant, Aerial Dated: Oct. 2009