



City of Fergus Falls Committee of the Whole Agenda

April 12, 2023

7:00 am

City Council Chambers

A. Call to Order

B. Roll Call

C. Discussion Items

1. Creation of new Maintenance Operations Supervisor position

Mike Hartwell

Requested Action: Recommendation to the council to approve the creation of a new city employment position- Maintenance Operations Supervisor at the Community Arena

2. Amendment to City Code 90.24 (B) (3), Time of Allowed Construction Activities
Tom Rufer

Requested Action: Recommendation to the council to amend City Code 90.24 (B) (3) to allow construction activities to begin before 9 am on weekends

3. AS400 Server

Tony Neville

Requested Action: Recommendation to the council to approve the upgrade of the City's current System i Power 9 computer to a Power 10

4. National Opioid Settlement

Andrew Bremseth

Requested Action: Recommendation to the council to approve a Memorandum of Agreement between the State of Minnesota and Local Governments and authorizing participation in national opioid settlements

5. Update on 2022 Minnesota State Active Transportation Infrastructure Program –
Final Application

Brian Yavarow

6. CP No. 5960 – 2023 Street and Utility Improvement Project No. 1

Brian Yavarow

Requested Action: Recommendation to the council to accept project plans and specifications and authorize the advertising of bids

7. PI 9767, Downtown & Riverfront (DTRF) Project Phase 2, East Block Site Improvements
Brian Yavarow
Requested Action: Recommendation to the council authorizing the City Engineer and City Attorney to execute the permanent and temporary easement agreements with United States of America, acting by and through the Administrator of General Services

8. PI 6079, Sidewalk Program Final Cost Hearing
Brian Yavarow
Requested Action: Recommendation to the council to set the final cost hearing for PI 6079, the 2022 Sidewalk Program for May 15

D. Additional Agenda Items

E. Announcements

- April 13 8:00 am Council/staff retreat
- April 17 5:30 pm City Council meeting
- April 20 9:30 am Board of Equalization meeting, Government Services Center

Adjourn



Council Action Recommendation

Page 1 of 1

Meeting Date: Committee of the Whole on 4/12/2023
Council Meeting on 4/17/2023

Subject: New position: Maintenance Operations Supervisor
Community Arena

Recommendation: Full-time position

Background/Key Points:

The Community Arena will be providing year-round ice production and maintenance. To properly maintain and staff year-round ice operations, the addition of a Maintenance Operations Supervisor, is key to the success of this multi-faceted and complex operation.

This person will be responsible for: See attached job description

Budgetary Impact:

The current funding model for the Community Arena (based on the annual budget) is a 4-way cost sharing agreement involving ISD#544, Fergus Falls Hockey Association, Fergus Falls Skating Club and the City.

The budgetary impact is as follows:

2023 Budget \$436,787

2023 Proposed and adjusted budget \$550,367

The Current budget allocation is:

ISD#544	33.00%
FFHA	38.00%
FFSC	11.50%
City	17.50%

The city also intends to market and sell ice-time to other outside users, which would then help compensate for the additional costs and benefit everyone. This would include a job modification to an existing position to assume these duties.

Originating Department: Public Works/Human Resources

Respectfully Submitted: Mike Hartwell

Attachments: Written Job Description

**CITY OF FERGUS FALLS
POSITION DESCRIPTION**

POSITION TITLE: Maintenance Operations Supervisor
DEPARTMENT: Public Works
ACCOUNTABLE TO: Public Works Director

PRIMARY OBJECTIVE OF POSITION

This position performs a variety of routine to skilled work in the maintenance and custodial duties for the Fergus Falls Community Ice Arena as required to prepare facilities for scheduled programming and to provide effective maintenance of the buildings, compressors, ice systems and other mechanical equipment.

SUPERVISION RECEIVED

Works under the general supervision of the Public Works Director.

SUPERVISION EXERCISED

Will supervise arena maintenance staff, temporary, and seasonal employees or others as assigned.

ESSENTIAL FUNCTIONS AND RESPONSIBILITIES

To perform this job successfully, an employee must report to work on a timely and regular basis and be able to perform each essential function. The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be assigned.

The duties listed below are intended only as illustration of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

MAINTENANCE & EQUIPMENT OPERATIONS

- Plans and implements a comprehensive program to provide effective short- and long-term maintenance of the facility's interior and exterior, grounds, compressors, ice systems and other mechanical equipment
- Performs repair and maintenance on facility equipment, including, but not limited to: air handlers, compressors, ice resurfacing equipment and energy and filtration systems and follows preventive maintenance protocol
- Calibrates and test equipment for cooling systems and maintains related controls and instrumentation
- Operates resurfacing equipment in a safe manner, maintains ice sheets in optimum condition and keeps ice hours on schedule

- Assists in training part-time personnel in the operations of equipment
- Performs general custodial work, carpentry, painting, plumbing, etc., snow and ice removal and maintenance of facility exteriors
- Participates and assigns work tasks and provides guidance to part time staff or other work program staff to assure that all custodial duties are completed on a timely basis
- Coordinates work by outside contractors as directed
- Monitors equipment, maintains records on maintenance and repairs to facility and equipment and identifies and reports issues to Supervisor(s)
- Maintains an accurate inventory of tools, machinery, supplies, and related Community Ice Arena equipment
- Makes recommendations to management regarding maintenance and repair or replacement needs
- Assists with the preparation of facilities for scheduled programs
- Returns equipment and materials to designated storage
- Provides supervision to part-time help when Supervisor is not present or as directed
- Interacts with and assists customers, keeps abreast of Arena programs and other events being held at the Community Ice Arena
- Provides input concerning building needs and supplies for purchasing and budgeting purposes

OTHER RESPONSIBILITIES

- May serve as a member of various employee committees as assigned.
- Performs other duties and assumes additional responsibilities as directed by the Parks and Recreations Supervisor, to ensure efficient department operations.

MINIMUM QUALIFICATIONS

Education and Experience

- High School Diploma
- Valid Class "B" Driver's License preferred
- Two (2) years of experience with community center, arena or related multi-faceted facility operations and maintenance including, repair, and maintenance of HVAC equipment and refrigeration systems
- Preference of two (2) years of experience in operation of ice making machinery, skid loader, forklift, push and tractor mowers and dump assist trucks.
- Must be available to work a variety of shifts including evenings and weekends. Will transition to daytime hours during less busy season. Hours of work will depend on scheduled ice time.

Preferred Knowledge, Skills and Abilities

- Knowledge of ice arena operations
- Knowledge of and experience with the operation, repair, and maintenance of air conditioning, ventilation, heating, and ice making machinery; and of ammonia refrigeration systems

- Skilled in operating an ice resurfacing equipment and forklift
- Ability to operate light motorized maintenance equipment
- Ability to deal courteously and effectively with other employees, facility users, outside vendors, and other City departments
- Ability to perform facility maintenance without close supervision
- Ability to read and record readings on gauges on facility equipment
- Ability to keep accurate records
- Ability to organize work, set priorities, meet critical deadlines, set expectations, require accountability, work as a team or independently and ensure quality control
- Ability to understand and follow applicable OSHA standards and departmental safety practices and procedures
- Working knowledge of building and grounds maintenance work
- Experience working from blueprints, sketches, shop drawings, and electrical diagrams
- Mechanical aptitude and ability to operate power tools

SPECIAL REQUIREMENTS

- Shall be subject to pre-employment drug and alcohol testing as required by City policy.

PHYSICAL DEMANDS AND WORK ENVIRONMENT

The physical demands and work environment described here are representative of those that must be met by an employee to successfully perform the essential functions of this position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to reach with hands and arms. The employee frequently is required to stand; walk; and use hands and fingers to handle, feel or operate objects, tools or controls. The employee is occasionally required to sit, climb, balance, stoop, kneel, crouch or crawl and talk or hear.

While performing the duties of this job, the employee regularly works near moving mechanical parts and in both inside and outside weather conditions. The employee frequently works in high, precarious places and is frequently exposed to wet and/or humid conditions, fumes or airborne particles and toxic or caustic chemicals. The employee is occasionally exposed to the risk of electrical shock.

The employee must frequently lift and/or move up to 50 pounds and occasionally lift up to 100 pounds. Specific vision abilities required by this job include close vision, distance vision, peripheral vision, depth perception and the ability to adjust focus. The noise level in the environment is usually quiet.

SELECTION GUIDELINES

Formal application, rating of education and experience; oral interview and reference check; job related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and the requirements of the job change.

§ 90.24 NOISE VIOLATIONS.

(A) *Prohibited noises.* The following are declared to be nuisances affecting public health, safety, peace, or welfare:

(1) Any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person, or precludes their enjoyment of property, or affects their property's value in such a manner as to be plainly audible at the boundary of the real property, building, structure, or residence from which the noise originates, or at a distance of 50 feet from the source of the noise. (this general prohibition is not limited by any specific restrictions provided in this section). "Plainly audible" is defined as sound that can be detected by a person using their unaided hearing faculties.

(2) All obnoxious noises, motor vehicle or otherwise, in violation of Minn. Rules Ch. 7030, as they may be amended from time to time, are hereby incorporated into this ordinance by reference.

(3) The use of any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.

(4) The discharging of the exhaust or permitting the discharge of the exhaust of any statutory internal combustion engine, motor boat, motor vehicle, motorcycle, all-terrain vehicle (ATV), snowmobile, or any recreational device, except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations.

(5) Any loud or excessive noise in the loading, unloading, or unpacking of any vehicle.

(6) The use or operation, or permitting the use or operation, of any radio receiving set, television set, musical instrument, music device, paging system, machine, or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby. Operation of any device referred to above between the hours of 8:00 p.m. and 8:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of violation of this section;

(7) Creating excessive noise on a street, alley, or public grounds adjacent to any school, institutions of learning, church or hospital when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents and when conspicuous signs indicate the presence of such institution.

(B) *Hourly restriction of certain operations.*

(1) *Domestic power equipment.* No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill, or other similar domestic power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.

(2) *Refuse hauling.* No person shall collect or remove garbage or refuse in any residential district, except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(3) *Construction activities.* No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(4) *Noise impact statements.* The Council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation, alteration, or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. The Council shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning changes requested.

(C) *City Services Exempt.* The City performing improvements or maintenance to any city utility, street or other city services are exempt from the provisions of § [90.24](#).
(Ord. 13, Eighth Series, effective - -2021)



Council Action Recommendation

Page 1 of 1

Meeting Date:

Subject: Computer System Upgrade

Recommendation:

Approve the upgrade of the City's current System i Power 9 computer to a Power 10.

Background/Key Points:

Quote received from Heppner Consulting is under the State of MN pre-bid contract.

Upgrade cost of \$240,259.80

The new system would include a Three (3) year warranty resulting in a savings of \$91,493 in maintenance cost.

The new system would include new high speed disk drives.

Budgetary Impact:

The upgrade cost is in the 2023 Budget.

The existing IBM Power 9 will either be sent to auction or traded in.

Originating Department: Information Systems

Respectfully Submitted: Tony Neville

Attachments:



Council Action Recommendation

Page 1 of 1

Meeting Date:

1/18/22 City Council--- **UPDATE 4/17/23 City Council**

Subject:

National Opioids Settlement- City Resolution agreeing to Memorandum of Agreement

Recommendation:

Resolution approving the Memorandum of Agreement (MOA) between the State of Minnesota and Local Governments and authorizing participation in national opioid settlements

Background/Key Points:

UPDATE 4/17/22: Round 2 of these settlements have occurred and we are being asked to sign on again for additional funds that will be sent to the State and then to the County. OTC is required to consult with cities on an annual basis regarding these funds and their use within the County. The more cities that sign on, the more monies that come to MN (and OTC). Both the League and Coalition of Greater MN Cities are encouraging our participation.

The State of MN is encouraging Counties and larger Cities to sign on to the National Opioids Settlement. The more subdivisions that sign on, the larger sum of settlement funds that come to MN to address the public health crisis related to opioids. To sign on to the settlement, the Governing Board for each County or City will need to pass a resolution agreeing to the Memorandum of Agreement (attached). It is contemplated within this agreement that cities will work with their County on how to spend the funds received to address the opioid issue. Otter Tail County has signed on. The City, at the time, will have the ability to direct our funds to the County or to work with the County to identify ways we can spend these monies within Fergus Falls.

The League of MN Cities, Coalition of MN Cities and the Attorney General's office are all providing ongoing guidance and are encouraging cities to sign on now, so we meet the deadlines associated with these actions.

Budgetary Impact:

No cost to the City... the City may receive funds as part of the settlement.

Originating Department:

Administration

Respectfully Submitted:

Andrew Bremseth, City Administrator

Attachments:

Sample Resolution

Resolution Authorizing [City Name] Staff to Execute All Necessary Documents to Ensure [City Name] Participation in the Multistate Settlements Relating to Opioid Supply Chain Participants, and in the Minnesota Opioids State-Subdivision Memorandum of Agreement.

WHEREAS, the State of Minnesota and numerous Minnesota cities and counties are engaged in nationwide civil litigation against opioid supply chain participants related to the opioid crisis; and

WHEREAS, the Minnesota Attorney General has signed on to multistate settlement agreements with several opioid supply chain participants, but those settlement agreements are still subject to sign-on by local governments and final agreement by the companies and approval by the courts; and

WHEREAS, there is a deadline of April, 18 2023, for a sufficient threshold of Minnesota cities and counties to sign on to the above-referenced multistate settlement agreements, and failure to timely sign on may diminish the amount of funds received by not only that city or county but by all Minnesota cities and counties from the settlement funds; and

WHEREAS, representatives of Minnesota's local governments, the Office of the Attorney General, and the State of Minnesota have reached agreement on the intrastate allocation of these settlement funds between the State, and the counties and cities, as well as the permissible uses of these funds, which will be memorialized in the Minnesota Opioids State-Subdivision Memorandum of Agreement, as amended (the "State-Subdivision Agreement"); and

WHEREAS, the State-Subdivision Agreement creates an opportunity for local governments and the State to work collaboratively on a unified vision to deliver a robust abatement and remediation plan to address the opioid crisis in Minnesota;

NOW, THEREFORE, BE IT RESOLVED, [CITY NAME] supports and agrees to the State-Subdivision Agreement; and

BE IT FURTHER RESOLVED, [CITY NAME] supports and opts in to all future multistate settlement agreements with opioid supply chain participants; and

BE IT FURTHER RESOLVED, [CITY NAME] authorizes city staff to execute all necessary documents to ensure [CITY NAME] participation in the multistate settlement agreements, including the Participation Agreement and accompanying Release, and in the State-Subdivision Agreement.



Council Action Recommendation

Meeting Date:

April 12, 2023 – Committee of the Whole
April 17, 2023 – City Council

Subject:

2022 Minnesota State Active Transportation Infrastructure Program – Final Application

Recommendation:

- Informational update

Background/Key Points:

At the October 3, 2022 City Council meeting, this Council motioned authorizing staff to submit a Letter of Intent for the above referenced State program. In late October, the State responded by indicating the City’s letter of intent meets program eligibility requirements. The final application was submitted by the December 30, 2022 due date.

This past month the City was notified that our application was not selected for funding. A total of 81 applications were submitted with requests of \$29.5 million in AT infrastructure funding. Only nine (9) projects were awarded these funds. The following table summarizes the results:

2022 Active Transportation Infrastructure Solicitation, Approved Selected Projects*				
Funding Pool	Applicant	District	Grant Request	Total Project Cost
Large Cities/Major MN Cities	Saint Paul Public Works (1)	M	\$385,000	\$520,000
	City of Rochester*	6	\$250,000	\$414,500
Metro District Communities	City of Richfield (1)	M	\$235,950	\$235,950
	City of Fridley	M	\$500,000	\$881,138
Greater MN State Aid Cities	City of Willmar	8	\$500,000	\$656,394
	City of St. Cloud	3	\$500,000	\$42,000,000
Greater MN Small Cities & Townships	City of Pelican Rapids	4	\$370,900	\$19,146,503
	City of Melrose	3	\$351,725	\$428,725
	City of Plainview	6	\$383,542	\$4,949,821
Federally Recognized Tribes	No Applications Received		-	-

Budgetary Impact:

General staff time.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. – City Engineer

Attachments:

Letter - 2022 Minnesota State Active Transportation Infrastructure Program – Results

March 20, 2023

Brian Yavarow
City of Fergus Falls
112 W. Washington Avenue
Fergus Falls, MN, 56537

Re: 2022 Active Transportation (AT) Infrastructure Program Project Selection

Dear Brian Yavarow,

Thank you for your application submittal under the 2022 Active Transportation (AT) Infrastructure Program solicitation. The purpose of this letter is to inform you that your construction of concrete sidewalk, stairs, PED ramps, signs, etc. adjacent to Cleveland Elementary School and Kennedy High School project was not selected for funding for the 2022 AT Infrastructure solicitation which closed on December 30, 2022. We will keep your project application on file until the 2023 legislative session ends. If additional AT funds become available, we may be able to reconsider your application and fund additional projects. Updates and program information will be posted on the MnDOT State Aid AT Infrastructure webpage ([Infrastructure - Active Transportation Program - MnDOT \(state.mn.us\)](https://www.mn.gov/infrastructure-active-transportation-program)).

Sincerely,



Rashmi Brewer, P.E.
State Aid State Programs Engineer

copy: Nathan Gannon, District 4 State Aid Engineer



Council Action Recommendation

Meeting Date:

April 12, 2023 – Committee of the Whole
April 17, 2023 – City Council

Subject:

CP No. 5960 – 2023 Street and Utility Improvement Project No. 1

Recommendation:

- Resolution Accepting project plans and specifications
- Resolution Authorization to Advertise for Bids

Background/Key Points:

City staff has substantially completed the project plans and specifications for the above reference project. The Estimated Probable Construction Cost is \$1,750,000. The City must publicly advertise for bids pursuant to the “Competitive Bidding Requirements” monetary thresholds for a minimum 21-day publication.

Although the actual bid date is not established, the overall project delivery schedule will take into account holding the Final Assessment Hearing prior to awarding the construction services contract. Therefore, if favorable bids are received, the lowest responsible bidder’s itemized costs will be utilized to revise the final assessment roles. I will then be requesting the Council to set the final cost hearing date. Individual assessment notices along with a publication will be issued prior to the final cost hearing. A recommendation to award the construction contract will be contingent on potential objections at this final hearing.

Budgetary Impact:

Cost Breakout:

Special Assess. Bituminous St. – 5 Ton (3,832.9 LF)	= \$	323,000.00
City Share Bituminous Street – 5 Ton (571.5 LF)	=	48,000.00
City Share Bituminous Street – (Removals & Const.)	=	451,000.00
City Share – Sanitary Sewer & Services	=	631,000.00
City Share – Water Main & Services	=	692,000.00
City Share - Storm Sewer	=	<u>144,000.00</u>
Total Project Cost	=	\$2,289,000.00

Financing:

PIR 429 Bonds (Special Assessment Street - Active)	= \$ 323,000.00 (14.1%)#1
PIR 429 Bonds – City Share (Street)	= 499,000.00 (21.8%)
Sanitary Sewer Fund	= 631,000.00 (27.6%)
Water Fund	= 692,000.00 (30.2%)
Storm Water Fund	= <u>144,000.00 (6.3%)</u>
TOTAL	= \$ 2,289,000.00(100%)

Note: Some of the above items may be included in an increased PIR Bond for funding at the recommendation of the Finance Director.

#1: The percentage of the project being special assessed must be at least 20% of the PIR 429 Bond total. This project as proposed is **39.29 %** of the PIR 429 Bond total.
 $(\$323,000/\$822,000) = 39.29\%$

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. - City Engineer

Attachments:

PI 5960 – Title Sheet

CITY OF FERGUS FALLS, MINNESOTA

ENGINEERING DEPARTMENT

CONSTRUCTION PLANS FOR
SANITARY SEWER, WATER MAIN, STORM SEWER,
CURB & GUTTER BITUMINOUS

CITY PROJECT NO. 5960 STREET AND UTILITY IMP. 1

SPECIFICATIONS REFERENCE

THE 2018 EDITION OF THE MINNESOTA
DEPARTMENT OF TRANSPORTATION
"STANDARD SPECIFICATIONS FOR
CONSTRUCTION" SHALL GOVERN.

CITY ENGINEERS ASSOCIATION OF MINNESOTA (CEAM)
STANDARD SPECIFICATION 2018 EDITION, SHALL GOVERN
THE CONTRACT.

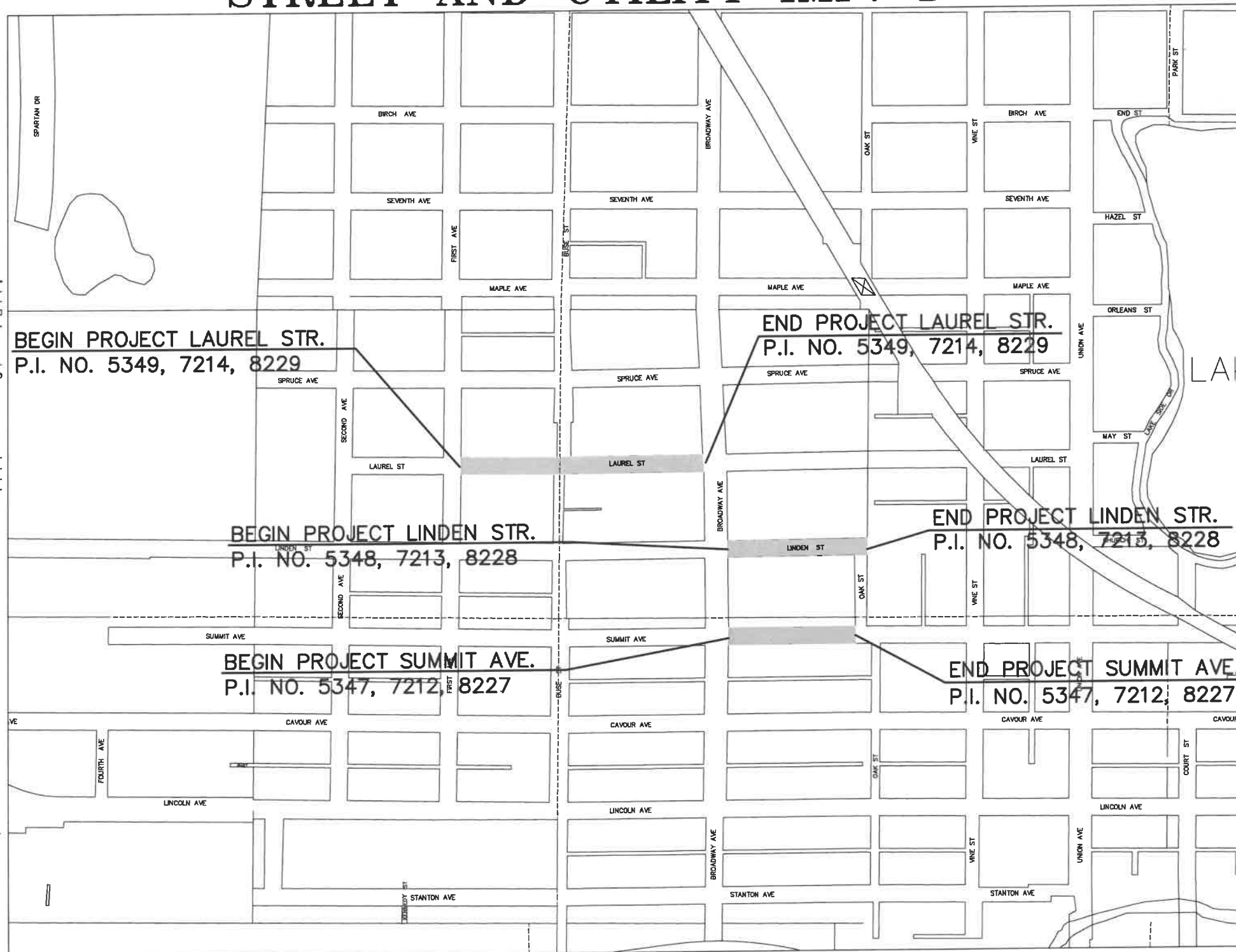


SCALES
(UNLESS OTHERWISE NOTED)



CONVENTIONAL SYMBOLS

- RIGHT OF WAY LINE
- PROPERTY LINE
- VACATED PROPERTY
- RAILROAD
- R.R. RIGHT OF WAY
- POWER POLE
- TELEPHONE POLE
- WATER VALVE BOX
- WIRE FENCE
- HEDGE
- WATER MAIN
- SANITARY SEWER IN PLACE
- STORM SEWER IN PLACE
- TREES
- MANHOLE
- FIRE HYDRANT
- STREET LIGHT
- GAS MAIN
- UNDERGROUND TELEPHONE
- UNDERGROUND POWER
- UNDERGROUND TELEVISION



INDEX OF SHEETS

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PROJECT LOCATION
COUNTY OTTERTAIL
DISTRICT 4 DETROIT LAKES



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE _____ 20____ REG. NO. 48363

COVER SHEET of 53 Sheets



Council Action Recommendation

Page 1 of 2

Meeting Date:

April 12, 2023 – Committee of the Whole
April 17, 2023 – City Council

Subject:

PI No. 9767 - Downtown & Riverfront (DTRF) Project Phase 2 – East Block Site
Improvements

Recommendation:

- Authorize the City Engineer and City Attorney to execute the permanent and temporary easement agreements with United States of America, acting by and through the Administrator of General Services.

Background/Key Points:

During the final design phase for the Downtown & Riverfront (DTRF) Phase 2 project, it was determined that a temporary and permanent easement was need from the adjacent Federal Court house building located east of the project.

In general, the permanent easement is needed to construct a storm sewer pipe discharge. The temporary easement is needed to occupy and facilitate this construction. Please refer to the attached exhibit for additional information.

The attached easements agreements were prepared and sent to the U.S. Administrator of General Services representatives for review. Upon their review, they responded with the redlined versions before you, for consideration. Both the City Attorney and myself have reviewed these documents and noted minor exceptions to these redlined versions however, in acceptable terms for the City Council to accept and authorize staff to execute.

Budgetary Impact:

General staff time and recording fees that will be charged to the project budget.

Originating Department:

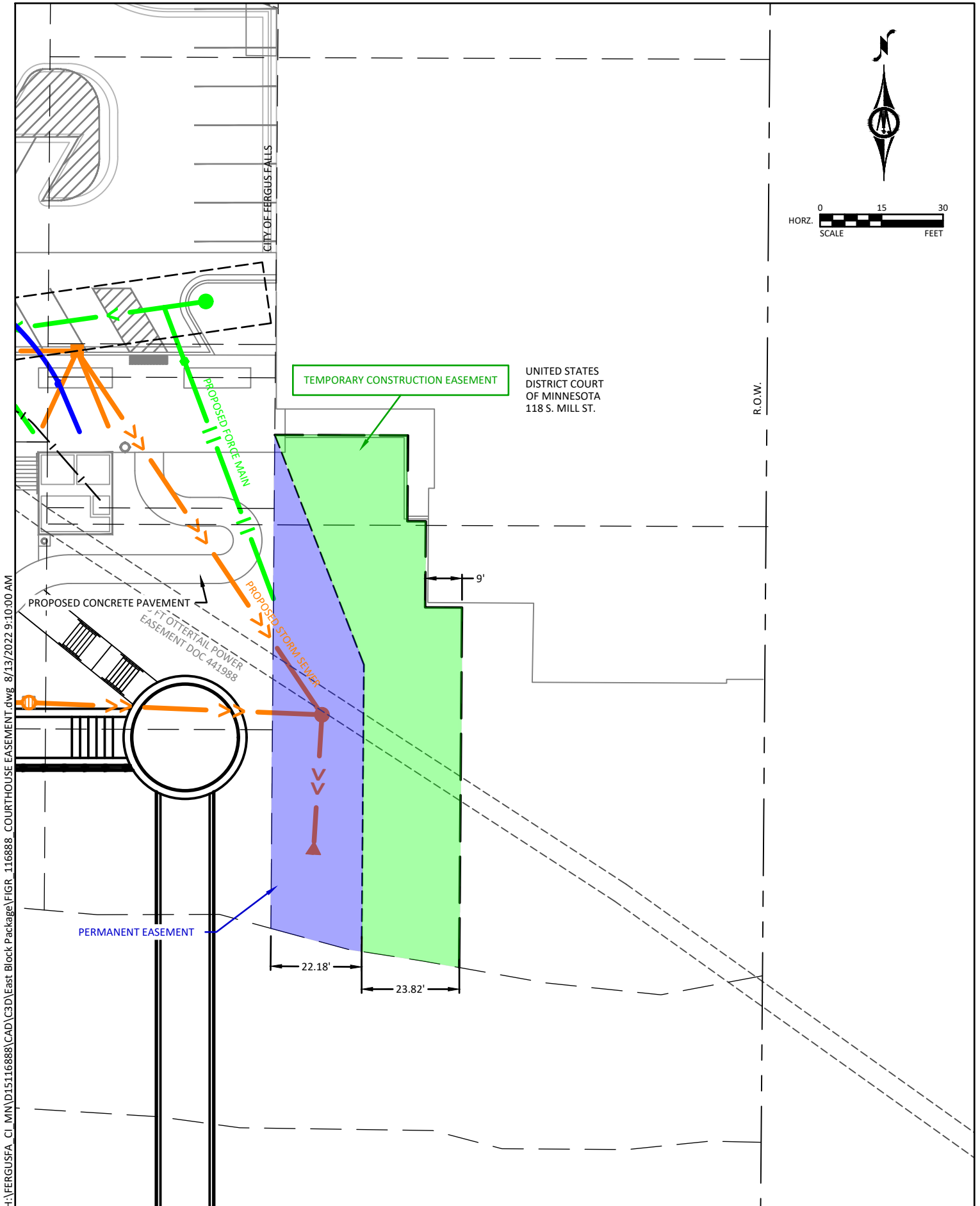
Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. – City Engineer

Attachments:

Easement Exhibit
Temporary Easement
Grant of Easement (Permanent)



TEMPORARY ~~CONSTRUCTION~~ EASEMENT

FOR ~~AND INVALUATION~~ CONSIDERATION of a sum of One Dollar (\$1.00), receipt of which is hereby acknowledged, the United States of America, acting by and through the Administrator of General Services Administration (GSA), having a business address at Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222 (the "Grantor"), under and pursuant to the powers and authority contained in 40 USC §1314(b), and the regulations and orders promulgated thereunder, hereby grants and conveys to the **CITY OF FERGUS FALLS**, a municipal corporation organized under the laws of the State of Minnesota, having a business address at ADDRESS (the "Grantee"), its successors and assigns, a non-exclusive temporary easement and right-of-way ~~for to aid the Grantee in completing the associated underground utility installation work, which includes~~ storm sewer, sanitary sewer, watermain and utility ~~purposes~~, including, without limitation, the construction, maintenance, repair and replacement thereof, and uses incident thereto, in, over, under, across and upon the real property in Otter Tail County, Minnesota, (the "Property") described as follows:

Formatted: Highlight

A temporary easement, over, under and across Reserve 67, THE REDRAFT OF THE ORIGINAL PLAT OF FERGUS FALLS, according to the plat thereof on file and of record in the Office of the County Recorder, Otter Tail County, Minnesota, described as follows:

Commencing at the northeast corner of Lot 18, Block 20, ORIGINAL PLAT OF FERGUS FALLS, according to the plat thereof on file and of record in the Office of the County Recorder, Otter Tail County, Minnesota; thence North 89 degrees 47 minutes 11 seconds West (Minnesota County Coordinate System, Otter Tail County, 2011 adjustment), along the north line of said Lot 18, a distance of 120.00 feet; thence South 00 degrees 27 minutes 14 seconds West, a distance of 142.06 feet; thence South 21 degrees 11 minutes 41 seconds East, a distance of 60.13 feet to the point of beginning; thence North 21 degrees 11 minutes 41 seconds West, a distance of 60.13 feet; thence South 89 degrees 47 minutes 11 seconds East, a distance of 32.50 feet; thence South 00 degrees 27 minutes 14 seconds West, a distance of 20.94 feet; thence South 89 degrees 47 minutes 11 seconds East, a distance of 4.50 feet; thence South 00 degrees 27 minutes 14 seconds West, a distance of 21.00 feet; thence South 89 degrees 47 minutes 11 seconds East, a distance of 9.00 feet; thence South 00 degrees 27 minutes 14 seconds West, a distance of 88 feet, more or less to the north shoreline of the Otter Tail River; thence northwesterly along said shoreline to a point of intersection with a line bearing South 00 degrees 27 minutes 14 seconds West from the point of beginning; thence North 00 degrees 27 minutes 14 seconds East, a distance of 70 feet, more or less, to the point of beginning.

Contains 3,193 square feet of land, more or less.

In addition, Grantor grants unto Grantee the right to remove or otherwise dispose of all earth or other material excavated from said easement and right-of-way ~~as the Grantee may deem fit~~, and to remove trees, brush, undergrowth and other obstructions interfering with the location, construction and maintenance of the storm sewer and other utility, as may be reasonable and necessary.

Grantor further grants to Grantee the right to enter upon said easement property for purposes of maintenance,

replacement, reconstruction or relocation of said storm sewer, sanitary sewer, watermain and other utility. Grantor grants to Grantee, its contractors, agents and servants the right to enter upon said easement property at all reasonable times for the purposes of excavation, construction, grading, sloping and restoration purposes, and all such purposes ancillary thereto, together with the right of said Grantee, its contractors, agents and servants to deposit earthen materials upon the easement area. ~~The Grantee shall restore the surface area and seed the easement area for vegetation purposes.~~

Term. Grantee shall provide Grantor with no less than thirty (30) days' prior written notice of the date on which Grantee intends to commence use of the Temporary Easement for the purposes described herein (the "Commencement Date") (currently anticipated to be ~~XXX~~ 2023). The Temporary Easement shall commence on the Commencement Date and expire on the date which is six (6) months following the Commencement Date. Upon the expiration of the term of the Temporary Easement, all the rights and benefits of Grantee in, to and under this agreement with respect to the Temporary Easement shall automatically terminate and be of no further force and effect.

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Costs Borne by Grantee. All costs incurred by Grantee or its contractors relating to the exercise of the Temporary Easement granted herein shall be borne by Grantee.

Restoration. Upon expiration of the Temporary Easement, the Grantee, at its sole cost and expense, shall restore the Temporary Easement area to substantially the same condition it was in prior to Grantee's use. Grantee shall not leave any rubbish or debris on or about the Temporary Easement area. Grantee shall make reasonable efforts to minimize interference with Grantor's use of the Property during the Grantee's use of the Temporary Easement area, consistent with the nature of the easement rights granted herein. In the event that the Grantor is required to take actions to complete the restoration of the Temporary Easement area, the Grantee shall reimburse the Grantor for the reasonable costs of such actions.

Release of Liability and Indemnification.

a. Grantee, on behalf of itself and its successors and permitted assigns, by acceptance of this grant of Temporary Easement, assumes all risk of loss or damage, from whatever cause, to the Temporary Easement area, and hereby releases Grantor from any and all liability for such loss or damage, except to the extent due to the willful misconduct or negligence of Grantor.

b. Grantee, on behalf of itself and its successors and permitted assigns, by acceptance of this Grant of Temporary Easement, (i) agrees to hold harmless Grantor, its successors and assigns, and indemnify Grantor, its successors and assigns, for and against any loss, cost, or damage arising out of or caused by the construction and installation of the sewer and other utility and/or with any other activities in, on, over, or under the Temporary Easement area by Grantee associated with the work described herein, except to the extent due to the willful misconduct or negligence of Grantor, and (ii) agrees to fix, repair, replace, or otherwise make Grantor whole for any damage to the Temporary Easement area arising out of or associated with the construction and installation of the sewer and other utility, and with any other activities in, on, over, or under the Temporary Easement area associated with the sewer and other utility work except to the extent due to the willful misconduct or negligence of Grantor.

Defaults and Remedies. If at any time, Grantee fails to perform or observe any term, covenant or condition contained in this Grant of Temporary Easement, and such failure continues for a

period of thirty (30) days after the Grantor gives written notice to Grantee specifying the nature of the default claimed (unless such default shall be of such nature that it cannot be completely cured within such thirty (30) day period and Grantee commences to cure such default during such thirty (30) day period and thereafter continues curing the same with reasonable diligence); then, in any such instance, the Grantor may terminate this Temporary Easement by written notice to Grantee, such termination to be effective on the date specified in such notice.

Compliance with Laws. Grantee shall, at its sole cost and expense:

(i) obtain and maintain as necessary all permits, licenses and approvals required by any governmental authority with jurisdiction thereof for the use by Grantee, its employees, agents, invitees or Grantees of the easement for the purpose stated herein; and

(ii) comply with all applicable laws, rules regulations and by-laws of governmental authorities, and with the terms and conditions of all permits, licenses and approvals issued to Grantee in connection with the use by Grantee and its employees, contractors of the easement for the purpose stated herein.

Assignment. The benefits and burdens of the Temporary Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However, Grantee shall not assign any rights granted hereunder without the prior written consent of Grantor, which prior written consent Grantor shall not be obligated to give.

Non-Exclusive. The rights and easements granted herein are non-exclusive and shall be exercisable in common with others entitled thereto from time to time, provided that such use shall not materially impair the exercise by the benefited party of the rights and easements herein granted.

Governing Law. The construction and effect of the terms of this Temporary Easement shall be determined in accordance with federal law and in the absence of applicable federal law, the law of the State of Minnesota.

Notice. All notices and other communication which is required or permitted by this Temporary Easement shall be in writing and delivered by personal service, sent by registered or certified first class US mail, postage prepaid, properly addressed, return receipt requested, or by overnight receipt delivery service such as Federal Express, at the addresses first set forth above.

Entire Agreement. This Temporary Easement and the attachments hereto, each of which is hereby incorporated herein, set forth all of the agreements, promises, covenants conditions and undertakings between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written.

Sovereign Rights. Nothing contained in the Grant of Temporary Easement shall be deemed to be a waiver or modification of any of the rights of Grantor as sovereign.

Grantor covenants that Grantor is the owner of the premises and has the right, title and capacity to grant the easement and right-of-way granted hereby.

~~To have and to hold said permanent easement, together with all the hereditaments and~~

appurtenances thereto unto said Grantee, its successors and assigns until public construction is completed, for said purposes.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands this _____ day of _____, 20____.

General Services Administration (GSA)-
Authorized GSA Representative

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services has caused these presents to be duly executed for and in its name and behalf by John Kelly, Director of Property Utilization and Disposal, Public Buildings Service, New England Region, General Services Administration, who has this _____ day of _____, 2023, hereunto set his hand and seal.

UNITED STATES OF AMERICA
Acting by and through the
Administrator of General Services

JOHN E. KELLY, Director
Property Utilization and Disposal
Public Buildings Service
New England Region, Boston, MA

ACKNOWLEDGEMENT

Commonwealth of Massachusetts _____)
County of Suffolk _____) ss.

In Boston, in said County and State, on this _____ day of _____, 2023, before me personally appeared John Kelly, Director of Property Utilization and Disposal, Public Buildings Service, General Services Administration, Boston, Massachusetts, proved to me through satisfactory evidence of identification, which was a U.S. General Services Administration ID card, to be the person whose name is signed on the preceding instrument and by him duly executed, to be his free act and deed in his capacity as Director of Property Utilization and Disposal, Public Buildings Service, General Services Administration, Boston, Massachusetts.

Carol H. Chirico, Notary Public
My commission expires
November 2, 2023

STATE OF MINNESOTA _____)
_____) ss.

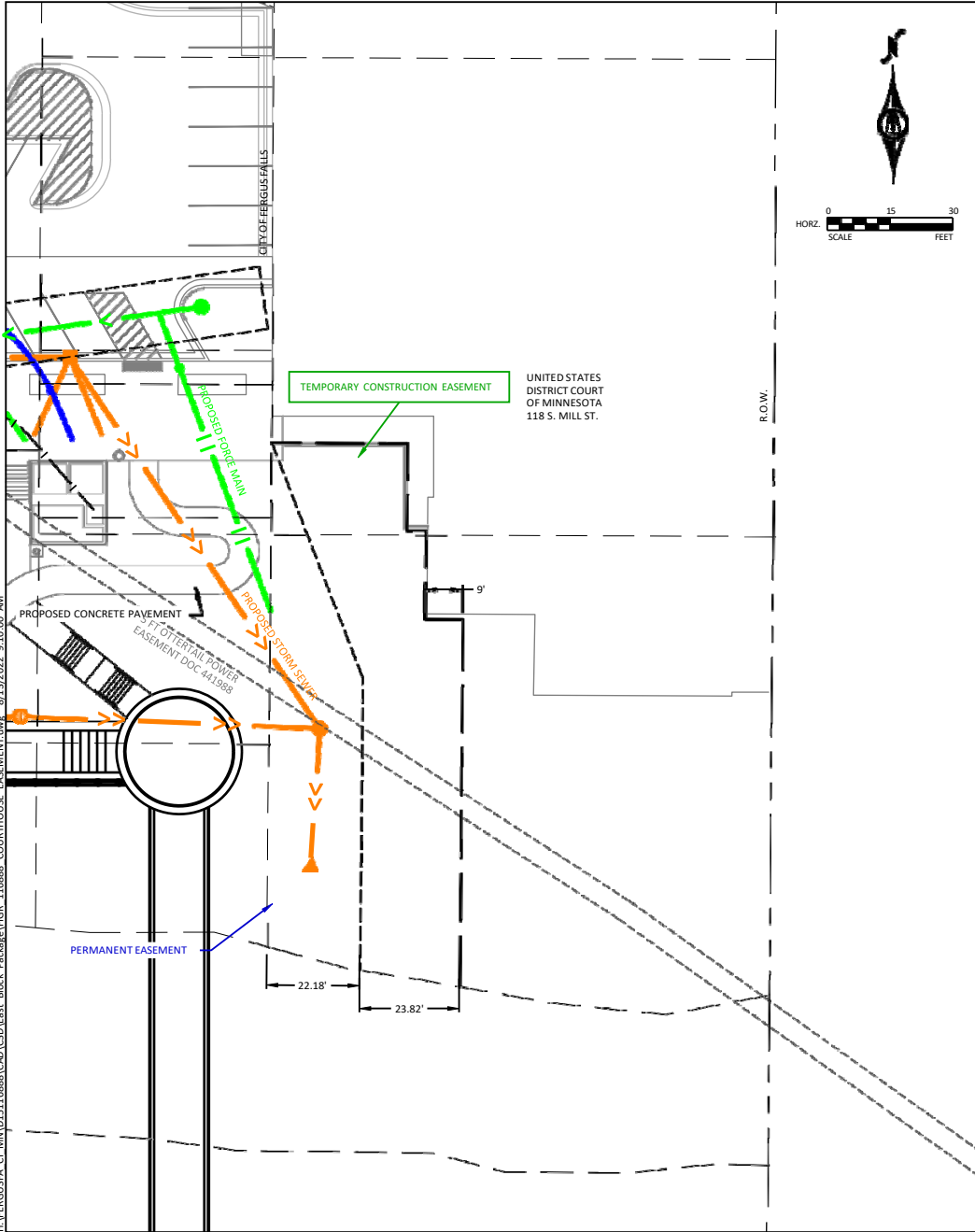
COUNTY OF OTTER TAIL)

The foregoing easement was acknowledged before me this _____ day of _____, 20____, by _____,

Notary Public

Drafted by: Brian Yavarow, P.E.
Fergus Falls City Engineer
112 West Washington Avenue
Fergus Falls, MN 56537
218.332.5413

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**PERMANENT CONSTRUCTION GRANT OF
EASEMENT**

FOR ~~AND INVALUATION~~ CONSIDERATION of the sum of One Dollar (\$1.00), receipt of which is hereby acknowledged, the United States of America, acting by and through the Administrator of General Services, having a business address at Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222-Administration (GSA), (the "Grantor"); under and pursuant to the powers and authority contained in 40 USC §1314(b), and the regulations and orders promulgated thereunder, hereby give, grant, bargain, and conveys to the CITY OF FERGUS FALLS, a municipal corporation organized under the laws of the State of Minnesota, having a business address at ADDRESS, (the "Grantee"), its successors and assigns, a permanent easement and right-of-way for storm sewer, sanitary sewer, watermain and utility purposes, including, without limitation, the construction, maintenance, repair and replacement thereof, and uses incident thereto, in, over, under, across and upon the real property in Otter Tail County, Minnesota, (the "Property"), described as follows:

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A perpetual easement, over, under and across Reserve 67, THE REDRAFT OF THE ORIGINAL PLAT OF FERGUS FALLS, according to the plat thereof on file and of record in the Office of the County Recorder, Otter Tail County, Minnesota, described as follows:

Commencing at the northeast corner of Lot 18, Block 20, ORIGINAL PLAT OF FERGUS FALLS, according to the plat thereof on file and of record in the Office of the County Recorder, Otter Tail County, Minnesota; thence North 89 degrees 47 minutes 11 seconds West (Minnesota County Coordinate System, Otter Tail County, 2011 adjustment), along the north line of said Lot 18, a distance of 120.00 feet; thence South 00 degrees 27 minutes 14 seconds West, a distance of 142.06 feet to the point of beginning; thence South 21 degrees 11 minutes 41 seconds East, a distance of 60.13 feet; thence South 00 degrees 27 minutes 14 seconds West, a distance of 70 feet, more or less to the north shoreline of the Otter Tail River; thence northwesterly along said shoreline to a point of intersection with a line bearing South 00 degrees 27 minutes 14 seconds West from the point of beginning; thence North 00 degrees 27 minutes 14 seconds East, a distance of 120 feet, more or less, to the point of beginning.

Contains 2,115 square feet of land, more or less.

In addition, Grantor grants unto Grantee the right to remove or otherwise dispose of all earth or other material excavated from said easement and right-of-way ~~as the Grantee may deem fit~~, and to remove trees, brush, undergrowth and other obstructions interfering with the location, construction and maintenance of the storm sewer, sanitary sewer, watermain and other utility. as may be reasonable and necessary.

Grantor further grants to Grantee the right to enter upon said easement property for purposes of maintenance, replacement, reconstruction or relocation of said storm sewer and other utility. Grantor grants to Grantee, its contractors, agents and servants the right to enter upon said easement property at all reasonable times for the purposes of excavation, construction, grading,

sloping and restoration purposes, and all such purposes ancillary thereto, together with the right of said Grantee, its contractors, agents and servants to deposit earthen materials upon the easement area. The Grantee shall ~~restore the surface area and seed the easement area for vegetation purposes.~~ properly backfill any excavation and restore the surface of the Property to as good condition and repair as before the excavation was made to the reasonable satisfaction of the Grantor.

Costs Borne by Grantee. All costs incurred by Grantee or its contractors relating to the exercise of the easement granted herein shall be borne by Grantee.

Relocation: If the future use or development of the Property shall require the relocation of the said sewer and other utility, or any part or parts thereof, then, the Grantee, at the written request of the Grantor, will make such relocation to an alternate location mutually satisfactory to Grantor and Grantee, and the Grantee will not require the Grantor to pay to the Grantee the cost of such relocation.

Limitations and Restrictions: Grantee recognizes and acknowledges that the rights granted by this easement are granted subject to the following limitations and restrictions:

- a. any lines, pipes, equipment and appurtenances comprising or being a part of the sewer and/or other utility, shall be located wholly under the Property, or shall be flush with the surface of Property;
 - b. any clearing of the Property pursuant to the need to repair or replace the sewer line or other utility may be done only after notifying the Grantor in writing of the need to enter upon Property to perform such clearing and the issuance by Grantor of authorization to proceed;
 - c. except in the case of emergencies, any entry upon the Property shall only occur after notifying the Grantor in writing of the need to enter upon Property and the issuance by Grantor of authorization to so proceed;
 - d. Grantee acknowledges that the enjoyment and/or exercise of any of the rights specified in this instrument are subject to the Grantee using best efforts to minimize the interference with or interruption of such use and access; and
- ~~a-c.~~ it is expressly stated herein that there shall be no taking or reduction in area of the Property, and that the Grantee's use and access shall be strictly limited to the easement.

Indemnification: The Grantee, hereby agrees to assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to its entry (and that of its employees, agents, contractors, invitees and/or the general public) upon the Property, and does hereby forever waive, release, relinquish, remise and discharge the Grantor, its agents, employees, successors and assigns from any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the easement, or any part thereof, arising out of the use by the Grantee or its employees, agents, or contractors.

Defaults and Remedies. If at any time, Grantee fails to perform or observe any term, covenant or condition contained in this Grant of Easement, and such failure continues for a period of thirty (30) days after the Grantor gives written notice to Grantee specifying the nature of the

default claimed (unless such default shall be of such nature that it cannot be completely cured within such thirty (30) day period and Grantee commences to cure such default during such thirty (30) day period and thereafter continues curing the same with reasonable diligence); then, in any such instance, the Grantor may terminate this easement by written notice to Grantee, such termination to be effective on the date specified in such notice.

Compliance with Laws. Grantee shall, at its sole cost and expense:

(i) obtain and maintain as necessary all permits, licenses and approvals required by any governmental authority with jurisdiction thereof for the use by Grantee, its employees, agents, invitees or Grantees of the easement for the purpose stated herein; and

(ii) comply with all applicable laws, rules regulations and by-laws of governmental authorities, and with the terms and conditions of all permits, licenses and approvals issued to Grantee in connection with the use by Grantee and its employees, contractors of the easement for the purpose stated herein.

Successors and Assigns: The rights and obligations contained herein are binding upon the successors and assigns of the parties hereto. However, the rights of the Grantee contained herein may not be assigned without the prior written consent of the Grantor unless such assignment is to a successor public utility company. Grantee shall provide Grantor with notice of any successor or assignee assuming the rights and obligations pursuant to this grant of easement.

Non-Exclusive. The rights and easements granted herein are non-exclusive and shall be exercisable in common with others entitled thereto from time to time, provided that such use shall not materially impair the exercise by the benefited party of the rights and easements herein granted.

Governing Law. The construction and effect of the terms of this Grant of Easement shall be determined in accordance with federal law and in the absence of applicable federal law, the law of the State of Minnesota.

Notice. All notices and other communication which is required or permitted by this Grant shall be in writing and delivered by personal service, sent by registered or certified first class US mail, postage prepaid, properly addressed, return receipt requested, or by overnight receipt delivery service such as Federal Express, at the addresses first set forth above.

Entire Agreement. This Grant of Easement and the attachments hereto, each of which is hereby incorporated herein, set forth all of the agreements, promises, covenants conditions and undertakings between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written.

Partial Invalidity. In the event any one or more of the provisions contained in this Grant of Easement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remainder of this Grant of Easement shall not be affected hereby, and each covenant and provision of this Grant of Easement shall be valid and enforceable to the fullest extent permitted by law.

Amendment. No waiver or modification of any of the terms of this Grant of Easement shall be valid unless in writing and signed by each of the parties hereto. Failure by any party to enforce any rights under this Grant of Easement shall not be construed as a waiver of such rights, and a waiver by any party of a default hereunder in one or more instances shall not be construed as constituting a continuing waiver or as a waiver of other instances of default.

Sovereign Rights: Nothing contained in the grant of easement shall be deemed to be a waiver or modification of any of the rights of Grantor as sovereign.

Grantor covenants that Grantor is the owner of the premises and has the right, title and capacity to grant the easement and right-of-way granted hereby.

~~To have and to hold said permanent easement, together with all the hereditaments and appurtenances thereto unto said Grantee, its successors and assigns forever, for said purposes.~~

~~IN WITNESS WHEREOF, the Grantors have hereunto set their hands this _____ day of _____, 20____.~~

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services has caused these presents to be duly executed for and in its name and behalf by John Kelly, Director of Property Utilization and Disposal, Public Buildings Service, New England Region, General Services Administration, who has this _____ day of _____, 2023, hereunto set his hand and seal.

UNITED STATES OF AMERICA
Acting by and through the
Administrator of General Services

JOHN KELLY, Director
Property Utilization and Disposal
Public Buildings Service
General Services Administration
New England Region, Boston, MA

General Services Administration (GSA) Authorized GSA Representative

STATE OF MINNESOTA →
) SS COUNTY OF OTTER TAIL)

The foregoing easement was acknowledged before me this _____ day of _____, 20____, by _____.

ACKNOWLEDGEMENT

Commonwealth of Massachusetts)

County of Suffolk) ss.

In Boston, in said County and State, on this _____ day of _____, 2023, before me personally appeared John Kelly, Director of Property Utilization and Disposal, Public Buildings Service, General Services Administration, Boston, Massachusetts, proved to me through satisfactory evidence of identification, which was a U.S. General Services Administration ID card, to be the person whose name is signed on the preceding instrument and by him duly executed, to be his free act and deed in his capacity as Director of Property Utilization and Disposal, Public Buildings Service, General Services Administration, Boston, Massachusetts.

Carol H. Chirico, Notary Public
My commission expires
November 2, 2023

Notary Public

Drafted by: Brian Yavarow, P.E.
Fergus Falls City Engineer
112 West Washington Avenue
Fergus Falls, MN 56537
218.332.5413

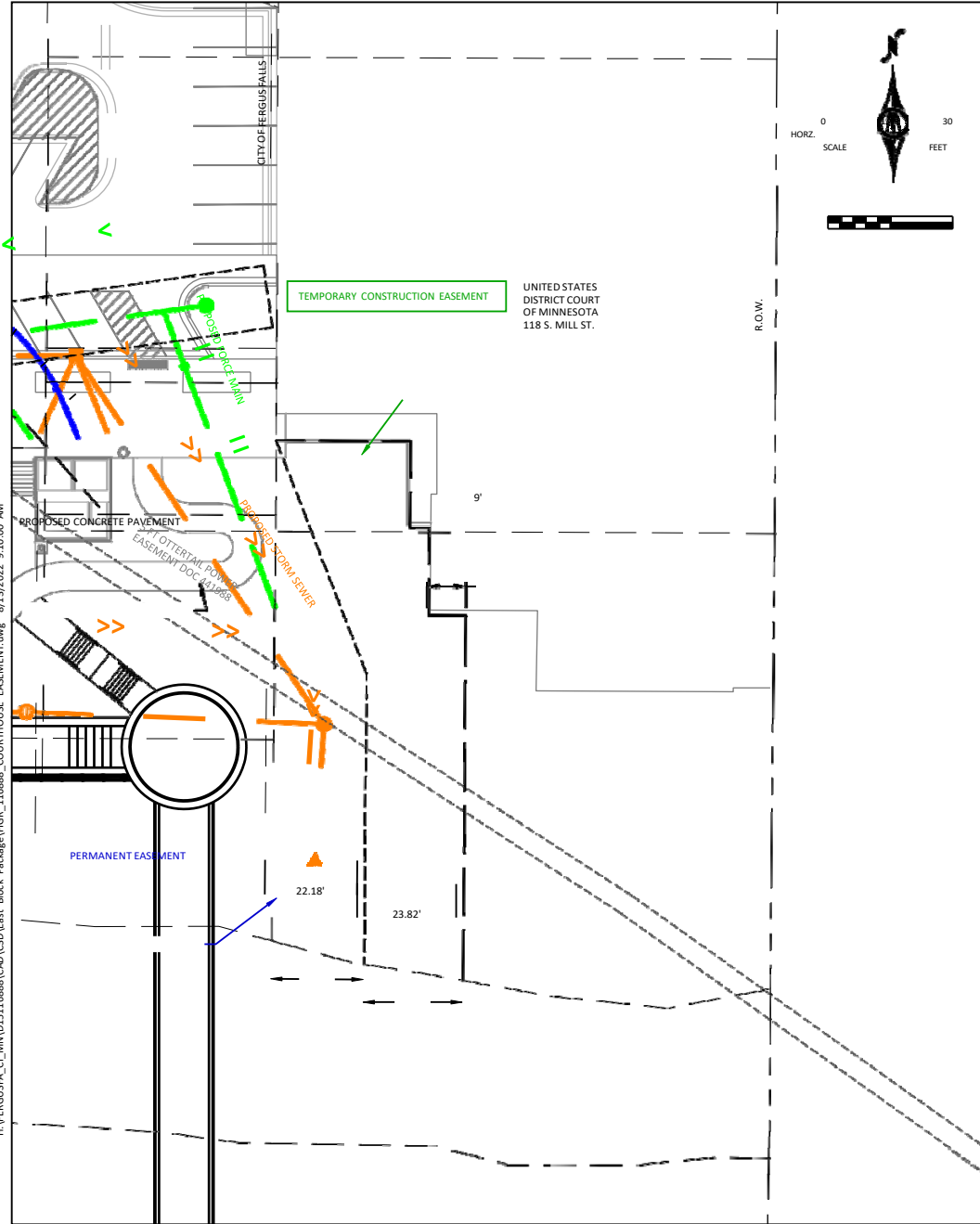
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Council Action Recommendation

Page 1 of 1

Meeting Date:

April 12, 2023 – Committee of the Whole
April 17, 2023 – City Council

Subject:

PI 6079 – 2022 Sidewalk Program Final Cost Hearing

Recommendation:

- Set the final cost hearing date for May 15, 2023 at 5:30 P.M.

Background/Key Points:

Public sidewalk construction and/or repairs are assessed at a rate determined annually by the City Council. The Fergus Falls Sidewalk Program is a 100-percent petitioned program utilized by property owners at various locations throughout the City. The assessed sidewalk rate associated with the requested final cost hearing is approximately 50% of the actual cost of construction (removal & installation) plus engineering costs required for a 5' wide by 4" thick concrete sidewalk. The City requires a 6" thick sidewalk section across driveway approaches which is assessed at 100% of cost. Engineering staff member Troy Hauge manages this program for the City. Homeowners interested in this program can contact him at City Hall for more information.

Prior to the requested final cost hearing, individual mailed notices with the proposed final individual assessment rate(s) with payment terms will be mailed along with a publication notice in the Daily Journal prior to this final cost hearing pursuant to City Policy and MN Statue Chapter 429 requirements.

The City Council will then consider, and possibly adopt, the final assessments at the conclusion of this hearing.

Budgetary Impact:

The City budgets approximately \$30,000/year to cover its share of these sidewalk projects.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow - City Engineer

Attachments: