

**City Council Meeting Agenda  
City Council Chambers  
April 1, 2019**

**City of Benson Mission Statement**

Benson is a forward looking community that values public safety,  
Quality of life and treats people with dignity and respect.

		4:45 p.m. Personnel Committee	
Page	1.	5:30 p.m. Call the Meeting to Order at the Benson City Council Chambers (Mayor)	
	2.	Pledge of Allegiance	
	3.	Approval of Agenda	
		<b>Additions?</b> <input type="checkbox"/> None <b>1.</b> _____ <b>2.</b> _____	
		Any Consent Agenda items to be moved to a regular agenda item?	
		Approval of Agenda ____ as Presented or ____ Revised	<b>Action Requested</b>
	4.	Consent Agenda:	<b>Action Requested</b>
	a.	Minutes:	
3-6		▪ 3.18.2019 City Council Meeting	
7-8		▪ 2.11.2019 EDA Meeting	
	b.	Application:	
9-10		▪ Pat Hawley – EDA Board	
11-12		▪ Dave Martin – EDA Board	
13-14		▪ Linda Hodge – EDA Board	
	c.	Donation:	
		▪ Beautify Benson – on Behalf of Marlene Skold - \$50	
	d.	Correspondence:	
15		▪ MRES Recognition of Benson Utility Reliability	
16-17		▪ RDC Open House – Regional Transportation Partnership	
	5.	Persons With Unscheduled Business to Come Before the Council	
18-59	6.	Second Reading – Benson Power Purchase Agreement	<b>Action Requested</b>
60-61	7.	MRES Customized Energy Resource Mix	Information Only
62-79	8.	MRES Member Agreement Amendments	<b>Action Requested</b>
80-81	9.	Dogs At Large Discussion	Information Only
82-88	10.	Capital Authorization Request – Mower Purchase	<b>Action Requested</b>
89-110	11.	Civic Center North End Review	Information Only
111-114	12.	Consider Approving Going out for Bids-Airport A/D Building	<b>Action Requested</b>
115-116	13.	Pay Request – Alex Air Apparatus - \$53,646.00	<b>Action Requested</b>

- |         |     |  |                         |
|---------|-----|--|-------------------------|
| 117-127 | 14. | Post Issuance Compliance Policy Update – Consider Resolution         | <b>Action Requested</b> |
|         | 15. | Set Joint City, County, Benson Hospital Meeting-4/22/19 at 5:30 p.m. | <b>Action Requested</b> |
|         | 16. | Spring Bus Tour  | Information Only        |
|         | 17. | Adjourn: Mayor   |                         |

In compliance with the American Disability Act, if you need special assistance to participate in this meeting, please contact the City Manager's office at 320-843-4775. Notification 48 hours prior to the meeting will enable the City of make reasonable arrangements to ensure accessibility to this meeting.

**DRAFT**

**MINUTES - BENSON CITY COUNCIL - REGULAR MEETING  
MARCH 18, 2019**

The meeting was called to order at 5:30 p.m. by Mayor Collins. Members present: Jack Evenson, Terri Collins, Jon Buyck. Members Absent: Mark Schreck & Lucas Olson. Also present: City Manager Rob Wolfington, Director of Finance Glen Pederson, Public Works Director Dan Gens, Assistant City Attorney Don Wilcox, Chief of Police Ian Hodge, Fire Chief Jeff Reuss, Jen & Terry Sullivan, Cory Claussen, Mike Holte and Greg Zniewski.

The Council recited the Pledge of Allegiance.

Mayor Collins asked for any changes or additions to the agenda. A pay request from Craig's Inc. was added to the agenda. It was moved by Buyck, seconded by Evenson and carried unanimously to approve the amended agenda.

It was moved by Evenson seconded by Buyck and carried unanimously to approve the following items on the Consent Agenda:

- March 4, 2019 City Council Minutes
- February 4, 2019 Planning Commission Minutes
- Gambling Permit to the Benson Golf Club May 7, 2019
- The following liquor licenses effective April 13, 2019 contingent upon receiving the necessary paperwork:

**Club On-Sale Liquor License:**

Benson VFW

**Sunday Liquor License:**

Benson VFW  
Benson Bowler  
Benson Golf Club  
Patrick's Pub & Grill  
McKinney's on Southside

**Off-Sale 3.2 Malt Beverage License:**

Holiday Stationstore, LLC

- The following General licenses effective April 1, 2019:

**Roller skating License:**

Svor's Family Roller Rink

**Garbage Collection License:**

Mattheisen Disposal

**On-Sale Liquor License:**

Benson Bowler  
Benson Golf Club  
Patrick's Pub & Grill  
Mi Mexico  
McKinney's on Southside

**Sidewalk Café Permit**

Patrick's Pub & Grill, LLC

**Sewer Tap License:**

Grossman Plumbing and Heating  
Hawley's Inc.  
Craig's Refrigeration  
Rapid Response Plumbing & Heating  
T & K Kennedy Inc.

There were no persons with unscheduled business.

Jen & Terry Sullivan from Patrick's Pub and Grill approached the City Council about Kid Day weekend, and the desire to hold a street dance on Friday, July 19<sup>th</sup>, 2019. They are also holding a bean bag tournament the following Saturday. They requested closing 13<sup>th</sup> St. S. between Kansas and Pacific

Avenues Friday and Saturday of Kid Day weekend. Per last year's agreement, it is suggested Sullivans talk to the neighboring businesses, about the times they would like to close the street and suggested they bring a certificate of liability insurance in to City Hall. After discussion, it was moved by Evenson, seconded by Buyck and carried unanimously to approve Patrick's Pub and Grill's request to close 13<sup>th</sup> St. S. between Kansas & Pacific Avenues from 6am July 19 – 8am July 20, 2019 for their street dance and bean bag tournament.

Wolfington discussed a flood tour for the Council by the Wastewater Treatment Plant and to the caul de sac at the end of Meadow Lane to discuss the topography and plans with the residents there. He asked the Council to use judgement and give direction after visiting the site. He said the wastewater treatment plant has minimal protection. He presented a grading plan. He said currently there are no flood predictions for Swift County. Wolfington said in preparation, all the storm water drains have been cleaned, an excavator is positioned at the Hwy 9 bridge ready to clear the bridge of debris and keep the water flowing, and constructing a structure at Hawleywood is being discussed. The base flood elevation is 1032'. He said the City can reasonably fight it up to 1033'. Using bagsters to build up the golf course road is doable. However constructing a permanent structure outside the City limits to the north of houses at the end of Meadow Lane and Sanford Road is not an option as Agralite Cooperative and Great River Energy Services has an easement with power lines running through this area.

The Council recessed to the bus tour at 5:32 p.m.

The Council reconvened at 6:21 p.m.

Swift County Benson Hospital Foundation requested a donation of a pool pass from the City for their annual Emerald Eve fundraising event. After discussion, it was moved by Evenson, seconded by Buyck and carried unanimously to approve donating a pool pass for the 2019 season to the Emerald Eve fundraising event.

Mayor Collins discussed her flower baskets and pots program for 2019. She said she wrote a grant for \$5,000. She ordered 17 more pots and 60 hanging baskets. She discussed several light poles have state signs on them and will not be able to hold a basket, but hoping to plant 30 pots this year. She is currently looking for volunteer groups to water the plants this summer.

The Christmas lights on the buildings were next. After further research, it will cost an additional \$6,817.50 to cover new buildings. After discussion it was moved by Evenson, seconded by Buyck and carried unanimously to approve total Christmas lighting in the amount of \$42,196.30.

Next was a request to purchase 10 new street lights. Gens stated these lights will be more cost effective as they will be LED. After discussion it was moved by Evenson, seconded by Buyck and carried unanimously to approve the purchase of 10 new street lights in the amount of \$17,428.20.

Gens presented the 2019 overhead to underground project and costs. This year the area to be buried will be the northwest part of town, from Sanford Road to 16<sup>th</sup> St. N. along Utah Avenue, then going north to Nevada Avenue. It will affect 35 homes. He went on to say this is part of the 20 year overhead to underground plan. After discussion it was moved by Evenson, seconded by Buyck and carried unanimously to approve the materials in the amount of \$107,253.00.

Assistant City Attorney Don Wilcox approached the Council to review the Xcel/Benson Power purchase agreement. The agreement is between NSP/Xcel Energy and the City of Benson to buy the land, buildings and equipment in the amount of \$1,711,000. The buildings and equipment left will be at a cost of \$611,000, and 77 acres of land is valued at \$1.1 million. Once the agreement is signed, there will be a 75 day inspection period and earnest money placed down by Brightmark Energy in the amount of \$320,000 which is non-refundable. If the project goes through there will be a \$450,000 credit against the agreement with NSP paid out by MRES. If the project does not go through, the City will be out the \$450,000. He went on to say it is possible to generate 3.5 megs of power from Brightmark Energy when it

is up and operational. He went on to say once the development agreement is done, the City will have a better idea on the sewer and water needs for Brightmark Energy's project. No action was taken.

The letter of intent with Brightmark Energy will expire this month, and they have asked to extend the letter of intent for another 90 days. Wolfington said he feels confident this deal will go through with Brightmark Energy. He said if it does not, he has had several parties interested in the land. After discussion, it was moved by Evenson, seconded by Buyck and carried unanimously to approve extending the letter of intent with Brightmark Energy for 90 days and authorize the Mayor to execute the agreement.

Wolfington called to the attention of the Council the MRES 54<sup>th</sup> Annual Meeting. He said anyone interested in attending should contact staff.

Wolfington asked for direction on how to approach a possible flood fight. Public works said they can deploy the bagster sand bags on the golf course maintenance road in about 4 hours. Custom Roto Mold has plastic flood barriers that can be placed quickly. Also keeping the railroad bridge on highway 9 clear of ice and debris is a major factor. Mayor Collins asked the three homeowners about how they see the possible flood fight. Claussen asked if it is feasible to keep the bridge clear, to which Wolfington said yes. He said BNSF Railroad likes us to keep debris from the bridge to take pressure off the railroad bridge. Claussen asked in 1997 if flood water breached the golf course maintenance road, to which Wolfington replied no. He went on to say the City will no doubt give a flood a good fight, but does not feel placing bagsters to the north would be successful as equipment will get stuck, and he went on to say he feels they would have to place the bagsters 4 high to be effective. Wolfington said maybe a levee could be reviewed. Claussen and Zniewski both agreed it would be better to manage home by home by sand bagging or placing flood structures around the house, not the entire property. After discussion Buyck offered the following resolution:

**RESOLUTION TO CONTRACT DURING SPECIAL EMERGENCY  
(RESOLUTION 2019-06)**

**WHEREAS**, with a pending threat of 2019 Spring flooding in our community, the City Council of the City of Benson has declared that a special emergency is in effect; and,

**WHEREAS**, immediate action to respond to the situation is needed in order to protect the health, safety and welfare of the community; and,

**WHEREAS**, the immediate purchase of flood fight materials and hiring of contractors capable of assisting the public works department with flood fight operations, the cleanup of debris and restoration of essential services is required in order to effectively respond to the emergency; and,

**WHEREAS**, Minnesota statutes sections 365.37 and 415.01 provide that an emergency contract is not subject to the normal purchasing and competitive bidding requirements because of the emergency.

**NOW THEREFORE IT IS HEREBY RESOLVED** that the city manager is authorized, without requirement of notice or competitive bidding, to enter into a contract with a qualified contractor of his choice for flood fight operations and to assist with cleanup of debris and restoration of essential services as needed to respond to the emergency that is in effect and to purchase such materials as may be necessary.

Councilmember Evenson seconded the foregoing resolution and the following vote was recorded: AYES: Evenson, Collins, Buyck. NAYES: None. Thereupon the Mayor declared Resolution 2019-06 duly passed and adopted.

Next was a bill for the 3 new boilers for the swimming pool. It was moved by Evenson, seconded by Buyck and carried unanimously to approve the bill for swimming pool boilers from Craig's Inc. in the amount of \$80,000.00.

It was moved by Evenson, seconded by Buyck and carried unanimously to approve bills and warrants in the amount of \$415,559.40.

There being no further business to come before the Council upon motion by Evenson, seconded by Buyck and carried unanimously to adjourn the Council meeting at 7:07 p.m.

---

Mayor

---

City Clerk

✓

## EDA Meeting February 11, 2019

**Members Present:** Jack Evenson, Sheryl Madden, Rick Horecka, Dan Enderson, Mark Schreck,  
Laura Ostlie and Rob Wolfington  
**Members Absent:** Kathy Polzin and Jeff Zosel  
**Also Present:** Brian Samuelson

Chairman Evenson called the meeting to order at 7:30 a.m.

It was moved by Schreck, seconded by Madden and carried unanimously to approve the January 14, 2019 EDA minutes.

### **Brightmark Energy Project Update**

Wolfington shared CVEC and BPP had filed a complaint with the Minnesota Public Utility Commission (MPUC) claiming their bid for the Fibrominn property was a better bid and not accepted. This was their 3<sup>rd</sup> attempt at filing. CVEC and Biopro Power wanted to share the Fibrominn site with Brightmark Energy (BME). Wolfington presented pictures of demolition of the plant to CVEC Manager Chad Friese, showing the building is an empty shell from Xcel's sale of assets. CVEC withdrew their complaint. Wolfington went on to discuss the land sale and transfer. He also discussed the utility needs. BME is deciding on their process. Once this happens, it will trigger utility changes. They may need a new well, and a 6" forced sewer main. We will need to upgrade our wastewater plant if this happens at a cost of \$3.5 million. He discussed fire service needs as well.

### **Truckers & Loggers Bill \$40 Million**

Wolfington said Senator Andrew Lang has introduced a bill for the loggers and truckers looking for compensation for their revenue lost with Fibrominn closing. This is the 3<sup>rd</sup> year he has introduced it. This bill should not impact the City of Benson's Xcel monies.

### **LIFT Program**

Samuelson discussed the LIFT program. It is a program coordinated between a school district and businesses in town. Dawn Heglund from the Upper Minnesota Valley Regional Development Commission coordinates schools and employers to show kids job opportunities in our area. Kids can take a class on welding or CNA, and the class gives the kids a chance to explore a career. Ostlie said there are 30 school districts in the state participating right now, trying to partner with local employers. Dollars for these partnerships are state dollars, and some of these classes qualify for some post-secondary credits for students. He is promoting this program for the Benson Schools students.

### **Great Plains Institute**

Wolfington discussed the lobbying effort by Great Plains Institute introducing a bill for Minnesota Biogas Credits, and he may give testimony at the legislature. These credits will help BME with their financing.

### **Biomass Conference**

Ostlie will be attending the International Biomass Conference March 18-21, 2019 in Georgia. Swift County RDA will also be attending. She said they are adding new marketing materials and all new imagery to the booth. She will be mostly representing the City of Benson at our booth.

### **Revolving Loan Fund**

Ostlie discussed the City's Revolving Loan Fund. The Small Cities Grants are run through this which works on rehabilitation and restoration in the community. She and Rob are looking at our funds and proposing maybe using some of this money to help businesses with small loans like windows, signs for example at a low interest matching loan. These loans would be only for small improvements to the outside of the building. Wolfington said Ostlie could be the point of contact in taking the loan applications. We have roughly \$100,000 to work with. The loans will need collateral and possibly be a trigger loan, with special assessment aspect to it. Terms and conditions were discussed.

### **Strategic Planning**

Wolfington shared at the Council Retreat in January, it was decided to go with the RDC and Missouri River Energy Services to conduct the strategic planning for the City. The Upper Minnesota Valley RDC has been around the area a long time with a good reputation and MRES is offering strategic planning services for free to member cities in effort to help them succeed. Strategic planning gives direction to the Comprehensive plan which is a longer planning process. Strategic planning nails down specific goals in a shorter amount of time. The City plans on holding their strategic planning April 11-13, 2019. Wolfington said there will be two EDA members invited to this event.

The loan profile was reviewed.

There being no other business, it was moved by Schreck seconded by Madden and the meeting was adjourned at 8:33 a.m.

---

Chairman

---

Secretary

**CITY OF BENSON**  
**APPLICATION FOR APPOINTMENT TO CITY BOARDS OR COMMISSIONS**

Dear Applicant:

We welcome you as an applicant for one of the City's boards or commissions. These groups play a very important role in Benson City Government. These boards and commissions serve as advisory bodies to the Benson City Council. They provide information and recommendations to the City Council so the Council can make sound decisions regarding issues and policy matters.

Please fill out the information requested below. You are encouraged to attach any additional information which you believe qualifies you for appointment to the board or commission you have selected.

.....  
**BOARD OR COMMISSION PREFERENCE:**

- |  |  |
|--|--|
| <input type="checkbox"/> Airport Advisory Commission               | <input type="checkbox"/> Housing & Redevelopment Authority |
| <input type="checkbox"/> Benson Area Tourism Board                 | <input type="checkbox"/> Library Board                     |
| <input type="checkbox"/> Cemetery Board                            | <input type="checkbox"/> Park Board                        |
| <input checked="" type="checkbox"/> Economic Development Authority | <input type="checkbox"/> Planning Commission               |
| <input type="checkbox"/> Hospital Board                            | <input type="checkbox"/> Utilities Board                   |

**RETURN APPLICATION TO:**

Office of the City Manager  
City of Benson  
1410 Kansas Avenue  
Benson, MN 56215  
Telephone: 320-843-4775  
Date Received:   /  /  

**PERSONAL INFORMATION:**

Name PAT Hawley Address 911 10<sup>th</sup> ST. 50.

Telephone: Home 843-4563 Business 843-2222 Zip 56215

How long have you been a resident of Benson? 70 years - plus

Have you served previously on any of Benson's boards or commission?  YES  NO

Have you served previously on any city board/commission in any other community? YES  NO

Are any members of your immediate family in the same household presently employed by the City of Benson or serving on any of the City's boards or commissions? YES  NO

Occupation: \_\_\_\_\_ Name of Employer: \_\_\_\_\_

I am a member of the following civic organizations: \_\_\_\_\_

Please list your special interests, education, past experiences, etc., which you feel would benefit the City of Benson by your appointment to the board/commission you have indicated a preference to above:

Former Member EDA

Do you have any additional comments?

#### DESCRIPTION OF BENSON'S BOARDS AND COMMISSIONS

**Airport Commission** - Makes recommendations to the City Council for the use, management, and operation of the airport and shall advise the Council in all matters concerning the Airport.

**Cemetery Committee** - Advises and assists the City Council and City staff in the administration, maintenance and improvement of the Benson City Cemetery.

**Housing and Redevelopment Authority** - This Authority is a public corporation empowered to undertake certain types of redevelopment projects and low rent housing assistance programs pursuant to the provisions of the M.S.A. 462.411 thru 462.711. These projects may include such activities as planning, acquisition, demolition, clearance, rehabilitation and construction for the purpose of providing decent, safe and sanitary housing for persons of low and moderate income and the improvement and restoration of stagnant, undeveloped land.

**Library Board** - Acts as an advisory body to the City Council by providing information and make recommendations to the City Council on library matters.

**Park Board** - Acts as an advisory body to the City Council by making recommendations to the Council on issues associated with City parks, playgrounds, the swimming pool, skating rinks, and other related functions.

**Planning Commission** - Acts as an advisory body to the City Council by reviewing variance requests, subdivisions, plats, zoning regulations, etc. In addition, they work on developing long-range planning goals and objectives.

**Utilities Board** - Advises and assists the City Council and Director of Public Works in the administration and improvement of public utilities.

**CITY OF BENSON  
APPLICATION FOR APPOINTMENT TO CITY BOARDS OR COMMISSIONS**

Dear Applicant:

We welcome you as an applicant for one of the City's boards or commissions. These groups play a very important role in Benson City Government. These boards and commissions serve as advisory bodies to the Benson City Council. They provide information and recommendations to the City Council so the Council can make sound decisions regarding issues and policy matters.

Please fill out the information requested below. You are encouraged to attach any additional information which you believe qualifies you for appointment to the board or commission you have selected.



**BOARD OR COMMISSION PREFERENCE:**

- |  |  |
|--|--|
| <input type="checkbox"/> Airport Advisory Commission               | <input type="checkbox"/> Housing & Redevelopment Authority |
| <input type="checkbox"/> Benson Area Tourism Board                 | <input type="checkbox"/> Library Board                     |
| <input type="checkbox"/> Cemetery Board                            | <input type="checkbox"/> Park Board                        |
| <input checked="" type="checkbox"/> Economic Development Authority | <input type="checkbox"/> Planning Commission               |
| <input type="checkbox"/> Hospital Board                            | <input type="checkbox"/> Utilities Board                   |

**RETURN APPLICATION TO:**

Office of the City Manager  
City of Benson  
1410 Kansas Avenue  
Benson, MN 56215  
Telephone: 320-843-4775  
Date Received:   /  /  

**PERSONAL INFORMATION:**

Name David Martin Address 503 MEADOW LANE

Telephone: Home 843 3918 Business 842 7261 Zip 56215

How long have you been a resident of Benson? 59 yr

Have you served previously on any of Benson's boards or commission?  YES  NO

Have you served previously on any city board/commission in any other community? YES  NO

Are any members of your immediate family in the same household presently employed by the City of Benson or serving on any of the City's boards or commissions? YES  NO

Occupation: Grocer Name of Employer: David's SuperValu

I am a member of the following civic organizations: \_\_\_\_\_  
\_\_\_\_\_

Please list your special interests, education, past experiences, etc., which you feel would benefit the City of Benson by your appointment to the board/commission you have indicated a preference to above:

Business in City Important

Do you have any additional comments?

#### DESCRIPTION OF BENSON'S BOARDS AND COMMISSIONS

**Airport Commission** - Makes recommendations to the City Council for the use, management, and operation of the airport and shall advise the Council in all matters concerning the Airport.

**Cemetery Committee** - Advises and assists the City Council and City staff in the administration, maintenance and improvement of the Benson City Cemetery.

**Housing and Redevelopment Authority** - This Authority is a public corporation empowered to undertake certain types of redevelopment projects and low rent housing assistance programs pursuant to the provisions of the M.S.A. 462.411 thru 462.711. These projects may include such activities as planning, acquisition, demolition, clearance, rehabilitation and construction for the purpose of providing decent, safe and sanitary housing for persons of low and moderate income and the improvement and restoration of stagnant, undeveloped land.

**Library Board** - Acts as an advisory body to the City Council by providing information and make recommendations to the City Council on library matters.

**Park Board** - Acts as an advisory body to the City Council by making recommendations to the Council on issues associated with City parks, playgrounds, the swimming pool, skating rinks, and other related functions.

**Planning Commission** - Acts as an advisory body to the City Council by reviewing variance requests, subdivisions, plats, zoning regulations, etc. In addition, they work on developing long-range planning goals and objectives.

**Utilities Board** - Advises and assists the City Council and Director of Public Works in the administration and improvement of public utilities.

**CITY OF BENSON**  
**APPLICATION FOR APPOINTMENT TO CITY BOARDS OR COMMISSIONS**

Dear Applicant:

We welcome you as an applicant for one of the City's boards or commissions. These groups play a very important role in Benson City Government. These boards and commissions serve as advisory bodies to the Benson City Council. They provide information and recommendations to the City Council so the Council can make sound decisions regarding issues and policy matters.

Please fill out the information requested below. You are encouraged to attach any additional information which you believe qualifies you for appointment to the board or commission you have selected.

.....  
**BOARD OR COMMISSION PREFERENCE:**

- |  |  |
|--|--|
| <input type="checkbox"/> Airport Advisory Commission               | <input type="checkbox"/> Housing & Redevelopment Authority |
| <input type="checkbox"/> Benson Area Tourism Board                 | <input type="checkbox"/> Library Board                     |
| <input type="checkbox"/> Cemetery Board                            | <input type="checkbox"/> Park Board                        |
| <input checked="" type="checkbox"/> Economic Development Authority | <input type="checkbox"/> Planning Commission               |
| <input type="checkbox"/> Hospital Board                            | <input type="checkbox"/> Utilities Board                   |

**RETURN APPLICATION TO:**

Office of the City Manager  
City of Benson  
1410 Kansas Avenue  
Benson, MN 56215  
Telephone: 320-843-4775  
Date Received:    /    /   

**PERSONAL INFORMATION:**

Name Linda Hodge Address 704 17<sup>th</sup> St. S. Benson

Telephone: Home 952-491-3427 Business 972-677-4282 Zip 56215

How long have you been a resident of Benson? 6 years

Have you served previously on any of Benson's boards or commission? YES  NO

Have you served previously on any city board/commission in any other community? YES  NO

Are any members of your immediate family in the same household presently employed by the City of Benson or serving on any of the City's boards or commissions?  YES  NO

Occupation: Customer Support Advocate Name of Employer: CSC Corp tax

I am a member of the following civic organizations: Women of Today

Please list your special interests, education, past experiences, etc., which you feel would benefit the City of Benson by your appointment to the board/commission you have indicated a preference to above:

B.S. in Finance from Minnesota State University Moorhead

Work: Past Internship - HRA Benson - 1998

West Central Inc. - Bookkeeper / Office Manager - 7 years

Schwab Food / Cargill - Senior Tax Analyst - 8-9 years

CSC CorpTax - Since 2013 - Customer Support Advocate

Do you have any additional comments? 20+ Clients, Assist with

corporate, S corp, Partnership, trust, etc. Filings + e-filing

with IRS, States, Finlen, and OECD. Assist with

Quarterly financial estimates / Provisions work papers.

Train Clients, m2 User Group, Implement Software

Core Webinars. Teach at a National Conference.

#### DESCRIPTION OF BENSON'S BOARDS AND COMMISSIONS

- Duck Unlimited  
- Archery

**Airport Commission** - Makes recommendations to the City Council for the use, management, and operation of the airport and shall advise the Council in all matters concerning the Airport.

**Cemetery Committee** - Advises and assists the City Council and City staff in the administration, maintenance and improvement of the Benson City Cemetery.

**Housing and Redevelopment Authority** - This Authority is a public corporation empowered to undertake certain types of redevelopment projects and low rent housing assistance programs pursuant to the provisions of the M.S.A. 462.411 thru 462.711. These projects may include such activities as planning, acquisition, demolition, clearance, rehabilitation and construction for the purpose of providing decent, safe and sanitary housing for persons of low and moderate income and the improvement and restoration of stagnant, undeveloped land.

**Library Board** - Acts as an advisory body to the City Council by providing information and make recommendations to the City Council on library matters.

**Park Board** - Acts as an advisory body to the City Council by making recommendations to the Council on issues associated with City parks, playgrounds, the swimming pool, skating rinks, and other related functions.

**Planning Commission** - Acts as an advisory body to the City Council by reviewing variance requests, subdivisions, plats, zoning regulations, etc. In addition, they work on developing long-range planning goals and objectives.

**Utilities Board** - Advises and assists the City Council and Director of Public Works in the administration and improvement of public utilities.

## NEWS RELEASE

FOR IMMEDIATE RELEASE

March 28, 2019

# Twelve MRES member utilities recognized for reliable electric service to their communities

SIOUX FALLS, S.D. – Twelve member utilities that are members of Missouri River Energy Services (MRES) have earned national recognition for achieving exceptional electric reliability in 2018. Certificates of Excellence in Reliability were awarded by the American Public Power Association ([www.PublicPower.org](http://www.PublicPower.org)), a trade organization that represents more than 2,000 not-for-profit, community-owned electric utilities.

The Association helps member municipal utilities track power outage and restoration data through its subscription-based eReliability Tracker service and then compares the data to national statistics tracked by the U.S. Energy Information Administration for all types of electric utilities.

The following MRES member public power utilities outperformed the electric industry national average for reliability:

Benson, Minnesota, Municipal Utilities	Melrose, Minnesota, Public Utilities
Henning, Minnesota, Power and Light	Olivia, Minnesota, Municipal Utilities
Hutchinson, Minnesota, Utilities Commission	Ortonville, Minnesota, Municipal Utilities
Jackson, Minnesota, Municipal Utilities	Sauk Centre, Minnesota, Public Utilities
Luverne, Minnesota Municipal Utilities	Watertown, South Dakota, Municipal Utilities
Marshall, Minnesota, Municipal Utilities	Willmar, Minnesota, Municipal Utilities

Electric reliability is measured using four different metrics. The 2018 results for these 12 utilities were significantly better than those of other types of utilities in the region in every category.

“This recognition demonstrates public power’s exceptional reliability,” said MRES CEO Tom Heller. “It is a testament to the hard work of line workers in each of these communities to ensure that the lights stay on for all of their customers. Reliable electric service is a top priority for MRES and every member.”

*For more information, contact Member Services and Communications Director Joni Livingston at Missouri River Energy Services, phone: 605-261-3637 or email: [joni.livingston@mrenergy.com](mailto:joni.livingston@mrenergy.com).*

**Rob Wolfington**

---

**From:** Upper Minnesota Valley Regional Development <info@umvrdc.org>  
**Sent:** Thursday, March 28, 2019 5:02 PM  
**To:** rob.wolfington@co.swift.mn.us  
**Subject:** UMRDC/MnDOT Open House

**SWIFT COUNTY SECURITY NOTICE:**

This email originated from an external sender. Use caution before clicking on any links or attachments.



Upper Minnesota Valley  
**REGIONAL  
DEVELOPMENT  
COMMISSION**

UMVRDC News & Updates



Upper Minnesota Valley  
**REGIONAL  
DEVELOPMENT  
COMMISSION**

Helping Communities Prosper

**Comments Sought on Proposed Transportation Projects in Area**

The Upper Minnesota Valley Regional Development Commission will hold an open house public meeting on Thursday, April 4, from 1-3 p.m. at the Appleton Civic Center, 323 W Schlieman Avenue, Appleton, Minnesota. Public comment is requested on the draft Area Transportation Partnership Improvement Program (ATIP) for 2020-2023 regarding projects occurring in Big Stone, Swift, Chippewa, Lac qui Parle and Yellow Medicine Counties. This meeting will include a formal presentation on transportation at 2 p.m. The public is welcome to attend or view and comment on the list of projects online by clicking [here](#).

The ATIP lays out the four-year plan for federally-funded transportation improvements within the area. The ATIP is then sent to the MnDOT to be included within the State Transportation Improvement Program which will need to be approved for federal funding by the Federal Highway Administration.

Also available at the meeting and online is a list of 2019 construction projects for our area and a map showing construction projects proposed in other areas of Southwest and West Central Minnesota.

For more information about the meeting contact:

Chad Kingstrom, Community Development Specialist  
Upper Minnesota Valley RDC  
323 West Schlieman Ave  
Appleton, MN 56208  
320-289-1981 ext. 107  
[chad@umvrdc.org](mailto:chad@umvrdc.org)

**Stay Connected:**

(320) 289-1981  
[www.umvrdc.org](http://www.umvrdc.org)



Tour the region!



Upper Minnesota Valley Regional Development Commission  
323 W Schlieman Ave. Appleton, MN 56208

Upper Minnesota Valley Regional Development,  
323 West Schlieman Avenue, Appleton, MN 56208

[SafeUnsubscribe™ rob.wolfington@co.swift.mn.us](mailto:rob.wolfington@co.swift.mn.us)

[Forward this email](#) | [Update Profile](#) | [About our service provider](#)

Sent by [info@umvrdc.org](mailto:info@umvrdc.org) in collaboration with



Try it free today

## PURCHASE AND SALE AGREEMENT

(Benson/FibroMinn Plant Property)

**THIS PURCHASE AND SALE AGREEMENT**, by and between Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, having an address of 414 Nicollet Mall, Minneapolis, Minnesota 55401 (“Seller” or “NSP”), and the City of Benson having an address of 1410 Kansas Ave., Benson, MN 56215 (“Purchaser” or “Benson”), is made effective for all purposes as of April \_\_, 2019. Purchaser and Seller may be referred to herein individually as a “Party” or collectively as the “Parties.”

### WITNESSETH:

WHEREAS, Seller is the owner of certain real and personal property located at 900 Industry Drive, City of Benson in Swift County, State of Minnesota, as more particularly described in Exhibit A-1 and Exhibit A-2 attached hereto and incorporated herein by reference, subject to and excluding the Excluded Property (the property described in Exhibit A-1 is herein called the “Lands,” and the property described in Exhibit A-2, together with the Property Remaining Following Site Restoration, are herein collectively called the “Structures and Personal Property”); the Lands and the Structures and Personal Property are herein collectively called the “Property”); and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, the Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

1. Definitions.

a. As used herein, the following terms have the meanings set forth below:

“Agreement” shall mean this Purchase and Sale Agreement, together with all Exhibits and other attachments hereto.

“Assumed Liabilities” shall have the meaning set forth in Section 2.b.

“Backup Power Agreement” shall mean the City of Benson Agreement for Backup Station Power Service referenced in Section 1.e. of the Letter Agreement, being more particularly that certain Agreement for Backup Service dated April 12, 2004 between the City of Benson, Minnesota and Fibrominn LLC, as assigned to Benson Power LLC, and subsequently assigned to NSP, as such agreement may have been amended, including, without limitation, all obligations of NSP thereunder.

“Benson” shall have the meaning set forth in the first paragraph of this Agreement.

“Benson Confirmation Letter” shall mean that certain letter from the City of Benson to Brian Sullivan of Xcel Energy dated February 19, 2019 confirming the City of Benson’s

acknowledgement that the successful Closing of the transaction contemplated by this Agreement, in accordance with the terms contained herein, will eliminate any Claim by the City of Benson for reimbursement from NSP for stranded investment on water, wastewater and/or electric distribution assets as described in Section 1.c. of the Letter of Agreement.

“Benson Fire Hydrant” shall have the meaning set forth in Section 11.a.ii.

“Bill of Sale” shall mean the Bill of Sale substantially in the form attached hereto as Exhibit B.

“Claim Deadline Date” shall have the meaning set forth in Section 12.a.

“Claims” shall mean claims, liabilities, losses, damages, injuries, costs and expenses (including, attorneys’ fees, consultant and expert witness’ fees, and court costs and expenses, and environmental investigation, remediation, removal and restoration costs and expenses), awards or judgments, demands, compensation, suits, fines, penalties, forfeitures, administrative or other governmental orders, actions or causes of action of whatever kind or nature, whether or not specifically enumerated herein.

“Closing” or “Close” shall have the meaning set forth in Section 16.

“Closing Date” shall have the meaning set forth in Section 16.

“Closing Encumbrance” shall have the meaning set forth in Section 8.b.

“Condition Precedent” shall have the meaning set forth in Section 7.

“Cure Notice” shall have the meaning set forth in Section 8.c.

“Deed” shall mean the [Limited Warranty Deed] substantially in the form attached hereto as Exhibit C.

“Earnest Money Deposit” shall have the meaning set forth in Section 3.

“Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

“Encumbrances” means charges, liens, mortgages, security interests, pledges, easements, mortgages, deeds of trust, rights-of-way, restrictions, encroachments, licenses, leases, or any other claims and other restrictions or limitations of any kind, attached to and burdening the Lands, including, without limitation, the Indenture.

“Environmental Contamination” means the presence of Hazardous Materials at a level or concentration that requires remediation under applicable Environmental Laws.

“Environmental Laws” means all federal, state, and local laws, rules, and regulations relating to pollution or protection of the public health or the environment, including, the emission, discharge, release, manufacture, processing, distribution, use, treatment, handling, storage, disposal, or transportation of substances, materials, pollutants, contaminants, chemical, solid waste, and/or Hazardous Materials. Environmental Laws include, but are not limited to, (i) the Resource Conservation Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq.; (ii) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended 42 U.S.C. Sections 9601 et seq.; (iii) the Federal Water Pollution Control Act (“Clean Water Act”), as amended, 33 U.S.C. Sections 1251 et seq.; (iv) the Safe Drinking Water Act, as amended, 42 U.S.C. Sections 300f et seq.; (v) the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601 et seq.; (vi) the Emergency Planning and Community Right-to-Know Act of 1986, as amended; (vii) the National Environmental Policy Act, as amended, 42 U.S.C. Sections 4321 et seq.; (viii) the Occupational Safety and Health Act, as amended, 29 U.S.C. 651 et seq.; (ix) the Pollution Prevention Act of 1990, Pub. L. 101-508, November 5, 1990, as amended; (x) the Oil Pollution Act of 1990, Pub. L. 101-380, August 18, 1990, as amended; (xi) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801 et seq.; (xii) the Clean Air Act, as amended, 42 U.S.C. Sections 7601 et seq.; and (xiii) any regulations promulgated under (i) through (xii) above.

“Environmental Liabilities” shall mean any and all Claims based on, relating to, arising from or in connection with a violation or alleged violation of Environmental Laws.

“Excluded Property” shall have the meaning set forth in Section 2.

“Hazardous Materials” shall mean any substance, pollutant, contaminant, chemical, material or waste that is regulated or listed under any Environmental Law.

“Indenture” shall mean that certain that certain Trust Indenture dated February 1, 1937, from Northern States Power Company to The Bank of New York Mellon Trust Company, N.A. formerly Harris Trust and Savings Bank and BNY Midwest Trust Company, Trustee,, and the Assignment and Assumption of Trust, Supplemental Trust Indentures dated August 1, 2000 from Xcel Energy and Northern States Power Company to Harris Trust and Savings Bank, Trustee and Indentures supplemental thereto.

“Indenture Release” shall mean an instrument or other document necessary or appropriate to release the Property from the lien of the Indenture.

“Information” shall have the meaning set forth in Section 9.a.

“Inspection Period” shall have the meaning set forth in Section 6.

“Lands” shall have the meaning set forth in the first recital above.

“Letter Agreement” shall mean that certain Letter Agreement dated May 1, 2017 by and between the Seller and the Buyer in connection with Seller’s acquisition and shut down of the Benson Power Biomass Plant, which sets forth certain obligations of NSP and Benson related to the Benson Power Biomass Plant property, including the Property.

“Letter Agreement Section 1.d. Value” shall have the meaning set forth in Section 11.a.ii.

“Letter Agreement Section 1.e. Value” shall mean the mutually agreed monetized value of the obligations of NSP to Benson under Section 1.e. of the Letter Agreement (requiring NSP to honor all of its obligations under the Backup Power Agreement), which mutually agreed monetized value equals \$450,000.

“Ownership and Use” shall mean any rights, title, interests and any other rights of ownership of any kind or character, in, on, under or related to property, and any use, development, management, operations, and any other activities, or functions applied, in, on, under or related to property.

“Party” or “Parties” shall have the meaning set forth in the first paragraph of this Agreement.

“Permitted Encumbrances” means: (i) Encumbrances for taxes not yet due or which are being contested in good faith by appropriate proceedings, provided that adequate reserves, with respect to taxes which are being contested are maintained on the books of Seller in conformity with GAAP; (ii) any imperfections of title or Encumbrances that could be identified by either or both a commitment for title insurance or a survey of the Lands in question (provided that, if, pursuant to Section 8, Purchaser identifies any such imperfection of title or Encumbrance identified in this clause (ii) as a Closing Encumbrance, then such Closing Encumbrance will thereafter no longer constitute a Permitted Encumbrance for purposes of this Agreement, unless waived pursuant to Section 8.e.); and (iii) any Encumbrances to which the Lands are subject that, either individually or in the aggregate would not materially interfere with Purchaser’s ability to develop the Property as a gasification facility.

“Physical Access Information” shall have the meaning set forth in Section 9.b.

“Physical Access Liabilities” shall mean any and all Claims which Seller may incur or which may be asserted against Seller or the Property as a result of, related to, or arising in any way from or in connection with Purchaser's, or any of its Representatives', physical access to the Property pursuant to Section 10, including Claims related to personal injury (or death) and damage to the Property (including Purchaser's duty to restore the Property pursuant to Section 10) as a result of, related to, or arising in any way from or in connection with physical access to conduct inspections, tests, investigations or other due diligence related to the Property (including, without limitation, any inspections, tests, investigations or other due diligence involving invasive procedures or activities), or as a result of, related to, or arising in any way from or in connection with Purchaser's, or any of its Representatives' or employees', ingress, egress, activities or presence on the Property.

“Property” shall have the meaning set forth in the first recital above.

“Property Remaining Following Site Restoration” shall have the meaning set forth in Section 11.a.i.

“Prospective Purchaser” shall mean the prospective purchaser of the Property being acquired by Benson hereunder, pursuant to Benson’s desire and plan to develop the Property at some time following Closing. As of the Effective Date, the Prospective Purchaser is Brightmark Energy.

“Purchase Price” shall have the meaning set forth in Section 4.

“Purchaser” shall have the meaning set forth in the first paragraph of this Agreement.

“Representatives” shall have the meaning set forth in Section 9.b.

“Retained Liabilities” shall have the meaning set forth in Section 2.c.

“Seller” shall have the meaning set forth in the first paragraph of this Agreement.

“Site Restoration” shall have the meaning set forth in Section 11.a.i.

“Site Restoration Completion Date” shall have the meaning set forth in Section 11.a.i.

“Structures and Personal Property” shall have the meaning set forth in the first recital above.

“Title Company” shall mean Commercial Partners Title, LLC, having an address of 200 South Sixth Street, Suite 1300, Minneapolis, MN 55402.

b. Other Definitional Provisions.

(i.) The calculation of time within which or following which any act is to be done or step is to be taken pursuant to this Agreement excludes the date that is the reference day in calculating such period.

(ii.) As used in this Agreement, reference to dollar amounts, unless otherwise specifically indicated, means the lawful money of the United States of America.

(iii.) The terms “include,” “includes” and “including” mean including without limiting the generality of any description preceding such term, and, for purposes of this Agreement, the rule of ejusdem generis shall not be applicable to limit a general statement that follows an enumeration of specific matters, to matters similar to the matters specifically enumerated.

(iv.) All references to sections, subsections, or exhibits in this Agreement are to sections, subsections, or exhibits of or to this Agreement unless otherwise specified.

2. Purchase and Sale; Assumed Liabilities and Retained Liabilities.

a. Purchase and Sale. Upon the terms and subject to the conditions and limitations of this Agreement (including, those in Sections 12 and 13), at and as of the Closing, Seller shall sell

and deliver to Purchaser and Purchaser shall purchase and accept from Seller, all right, title and interest of Seller in, to and under the Property.

The Parties acknowledge and agree that as of the Effective Date certain structures and other property are currently located in, on or under the Lands, but to the extent such structures and other property are not Structures and Personal Property, such structures and other property are expressly excluded from the description of "Property" herein and are expressly intended by the Parties to be excluded from the purchase and sale contemplated herein (herein collectively, the "Excluded Property").

b. Assumed Liabilities. Except for Seller's indemnity obligations expressly set forth in Section 12.b.(iv) in respect of the Retained Liabilities, Purchaser shall assume, and be responsible for, (i) all Claims (other than Environmental Liabilities) based on, caused by, relating to, arising from or in connection with the Ownership and Use of the Property, including those Claims for personal injury (or death) or property damage, (ii) all Environmental Liabilities relating to, arising from or in connection with the Property (collectively, the "Assumed Liabilities"). As used in this Section 2.b., the phrase "Ownership and Use of the Property" shall mean, in respect of the Lands, the Ownership and Use of the Lands by Purchaser or by any of its successors or assigns, and in respect of the Structures and Personal Property, the Ownership and Use of the Structures and Personal Property by Purchaser, by any of its predecessors, or by any of its successors or assigns.

c. Retained Liabilities. Purchaser shall not assume, and Seller shall retain and be responsible for, subject to the limitations in Sections 12 and 13, and as otherwise set forth in this Agreement, and without affecting the "as is" and other waivers in this Agreement, (i) all Claims (other than Environmental Liabilities) based on, caused by, relating to, arising from or in connection with Ownership and Use of the Lands prior to the Closing Date, including those Claims for personal injury (or death) or property damage, and (ii) all Environmental Liabilities related to, arising from on in connection with the Lands prior to the Closing Date (collectively, the "Retained Liabilities"). As used in this Section 2.c., the phrase "Ownership and Use of the Lands" shall mean the Ownership and Use of the Lands by Seller or by any of its predecessors. Notwithstanding anything in this Section 2.c. or in Section 13 that may appear to the contrary, in respect of any particular Claim regarding an Environmental Liability retained by Seller in Section 2.c.(ii), in the event and to the extent Seller would be responsible for such Claim as an Environmental Liability under Section 2.c.(ii), but also would be relieved of responsibility for such Claim because the Property was sold "as, is, where is," Seller agrees it shall be responsible for such Claim as an Environmental Liability under 2.c.(ii).

3. Earnest Money Deposit. Concurrent with the execution hereof, Purchaser shall deliver the sum of Three Hundred Forty-Two Thousand Two Hundred and No/100ths U.S. Dollars (\$342,200.00) in the form of cash, certified funds, or wire transfer of immediately available funds to Commercial Partners Title, LLC ("Title Company"), having an address of 200 South Sixth Street, Suite 1300 Minneapolis, MN 55402, as escrow agent, for immediate deposit into an interest bearing account. The interest accrued on the deposit shall be for the benefit of the Party entitled to the deposit as provided herein. The earnest money deposit and the interest earned on the deposit are referred to herein collectively as the "Earnest Money Deposit". From and after

the end of the Inspection Period, as hereinafter defined, the Earnest Money Deposit shall become non-refundable to Purchaser and shall be considered liquidated damages to which Seller is entitled should Purchaser not thereafter close the purchase for whatever reason, other than for Purchaser's failure to close due to a default by Seller or due to a Condition Precedent not being satisfied or waived. If Closing occurs, the Earnest Money Deposit shall be applied to and credited against the Purchase Price at Closing.

Notwithstanding the foregoing, in lieu of delivering the sum set forth in the first paragraph of this Section 3 above, Purchaser may elect to use a portion of the Letter Agreement Section 1.e. Value as the "Earnest Money Deposit." In the event Purchaser makes such election, such portion of the Letter Agreement Section 1.e. Value shall be treated in the same manner as a sum deposited as an Earnest Money Deposit in the first paragraph of this Section 3 above for all purposes (including, without limitation, from and after the Inspection Period, it will, in an amount equal to Three Hundred Forty-two Thousand Two Hundred and No/100ths Dollars (\$342,200.00), become non-refundable to Purchaser and to that extent shall be considered liquidated damages to which Seller is entitled if Closing does not occur. If Closing occurs, the entire Letter Agreement Section 1.e. Value (i.e. \$450,000) will be applied to and credited against the Purchase Price, as provided in the first paragraph of this Section 3 above), except such Letter Agreement Section 1.e. Value, in whole or in part, will not be delivered to the Title Company nor will it accrue interest.

Additionally, if Closing does not occur, the portion of Letter Agreement Section 1.e. Value (\$342,200.00) shall become non-refundable as provided in this Section 3, and NSP shall pay to Benson, an amount equal to One Hundred Seven Thousand Eight Hundred and No/100ths Dollars (\$107,800.00) (being the difference between the entire Letter Agreement Section 1.e. Value (i.e. \$450,000.00) and the non-refundable portion (i.e. \$342,200.00)), within 30 days following the date that it is definitively determined that Closing will not occur. In the event Closing does not occur and upon the payment by NSP to Benson of the \$107,800.00, then such payment, together with the non-refundable portion of the Letter Agreement Section 1.e. Value, shall be deemed to be a payment by NSP to Benson in full accord and satisfaction of the obligations of Seller under Section 1.e. of the Letter Agreement (including NSP's obligations under the Backup Power Agreement), and in that event Benson hereby releases and discharges NSP from any and all Claims related to Section 1.e. of the Letter Agreement and related to the Backup Power Agreement.

If Closing occurs, then the entire Letter Agreement Section 1.e. Value (i.e. \$450,000) shall be deemed to be a payment by NSP to Benson in full accord and satisfaction of the obligations of Seller under Section 1.e. of the Letter Agreement (including NSP's obligations under the Backup Power Agreement), and in that event Benson hereby releases and discharges NSP from any and all Claims related to Section 1.e. of the Letter Agreement and related to the Backup Power Agreement.

4. Purchase Price. The purchase price for the Property, including the Earnest Money Deposit, as applied, shall be One Million Seven Hundred Eleven Thousand and No/100ths U.S. Dollars (\$1,711,000.00)("Purchase Price"), subject to closing adjustments as provided in Section 5 below. The Purchase Price is allocated \$1,110,000 for the Lands, and \$601,000 for the Structures and Personal Property. Upon application of the Earnest Money Deposit, the balance of

the Purchase Price shall be payable by Purchaser to Seller in cash, certified funds, or by wire transfer of immediately available funds at Closing.

5. Adjustments to the Purchase Price. The following adjustments to the Purchase Price shall be made at Closing:

a. Items to be Prorated. The following items shall be prorated between the Parties as of the Closing, and shall be deducted from or added to the balance of the Purchase Price due at Closing and shall be a final settlement unless otherwise agreed by the Parties in writing:

(i.) Real Property Taxes. General real property taxes for the Property for the year in which the Closing Date occurs shall be apportioned between the Parties based upon the most recent levy and assessment. For clarity, such taxes shall be prorated, notwithstanding the post-Closing obligation for Seller to pay Buyer two payments, each in an amount calculated based on certain taxes set forth in Section 11.b.i.

(ii.) Special Assessments. Seller shall pay in full all special assessments which are due and payable prior to the Closing. Any other special assessments (and/or charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to any of the Property, shall be prorated between the Parties as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date only if Seller has received written notice of any such special assessments prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto. For the sake of clarity, and notwithstanding the foregoing, "special assessments," as used in this paragraph, expressly excludes general real property taxes.

(iii.) Customary Prorations. All other items not expressly addressed in this Section 5a. that are customarily prorated in the State and County in which the Property is located, in transactions similar to the transaction contemplated by this Agreement, shall be prorated between the Parties in the customary manner.

b. Documentary and Recording Fees. Purchaser shall pay all documentary fees and recording fees required for recordation of the Deed and any other documents.

c. Title Company Fees. Seller and Purchaser shall equally divide the escrow and/or closing fee payable to Title Company at Closing.

d. Credited Amounts. In addition to the Earnest Money Deposit in accordance with Section 3, the following shall be applied to and credited against the Purchase Price at Closing: (i) the Letter Agreement Section 1.d. Value.

6. Inspection Period. For a period of seventy five (75) days following the Effective Date ("Inspection Period"), Purchaser may, at Purchaser's expense, investigate the Property and all matters Purchaser deems relevant to its Ownership and Use.

7. Structures and Personal Property Review. During the Inspection Period and in connection with Buyer's due diligence, Buyer and Seller shall inspect and document the As Is, Where Is, With All Faults condition of the material portions of the Structures and Personal Property. Buyer and Seller shall confirm by an additional inspection, to be conducted not less than twenty-one (21) days prior to the Closing Date, that none of the material portions of the Structures and Personal Property have been removed or materially damaged by Seller since the previous inspection. Seller agrees that if such second inspection reveals that Seller has removed or materially damaged any of the material portions of the Structures and Personal Property, Seller shall replace or repair those portions so removed or materially damaged prior to Closing. In lieu of any such replacement or repair, the Parties may agree to reduce the Purchase Price by an amount equal to a good faith estimate by Seller of the cost of such replacement or repair.

8. Title Review.

a. At Seller's sole cost and expense, Seller shall provide to Purchaser, within \_\_\_ days following the date the Agreement is executed, a commitment to issue title insurance insuring fee simple title to the Lands, subject to the exceptions to title noted therein. Purchaser shall be solely responsible for any endorsements to such title insurance commitment and any title premiums required to be paid to issue the title insurance reflected in such commitment. Within 20 days after Purchaser's receipt of such title commitment, Purchaser shall make any reasonable objections it may have to the contents thereof (matters reflected therein and not objected to within such period shall be deemed Permitted Encumbrances).

b. Any objections to the title commitment within the required time period that are so identified by Purchaser pursuant to Section 8.a. above shall constitute a "Closing Encumbrance" for purposes hereof. Any other Encumbrance that materially affects the Lands that is not shown in the title commitment but that is identified in writing by Purchaser to Seller prior to Closing will also be considered a Closing Encumbrance.

c. Seller may, but shall have no obligation to, cure any Closing Encumbrances. Seller shall have 30 days after receipt of notice of any Closing Encumbrances identified by Purchaser to deliver notice to Purchaser (the "Cure Notice") identifying the Closing Encumbrances, if any, Seller intends to cure, at its discretion, which such cure shall be effected at Seller's sole cost and expense prior to the Closing; provided, however, (i) Seller shall have no obligation with respect to any Closing Encumbrances not contained in the Cure Notice, and (ii) failure to cure any Closing Encumbrance not listed in the Cure Notice shall not constitute a breach of any of Seller's representations, warranties, covenants or agreements contained herein.

e. If any Closing Encumbrances are not cured prior to the Closing, Purchaser will have the option (which shall be its sole and exclusive remedy in respect of such failure to cure) to (i) terminate this Agreement or (ii) waive such objections and proceed to consummate the Closing; provided, however, if Purchaser proceeds to consummate the Closing, any Closing Encumbrances not cured shall be deemed Permitted Encumbrances for all purposes of this Agreement.

9. Review of Information and Confidentiality of Information.

a. Review of Information. Seller shall make available for review by Purchaser, during regular business hours, copies of surveys, engineering studies, feasibility studies, soil and water test results, environmental studies or reports, maps, plats, contracts, documents, agreements, permits, licenses, reports and data pertaining to or affecting the Property (collectively, the "Information") that are in the possession or reasonable control of Seller's Real Estate Services department, if any. The Information shall be made available to Purchaser on or before twenty-one (21) days after the Effective Date. In the event of termination of this Agreement for any reason after the Effective Date, Purchaser, without additional cost to Seller, shall promptly return to Seller all copies of the Information that are in the Purchaser's possession or under Purchaser's control.

Seller makes no representation or warranty relating to the accuracy of any record, document or information including, without limitation, the Information, made available to Purchaser. Statements of fact or opinion contained in any record, documents or information, including, without limitation, the Information, made available to Purchaser shall not be deemed to be a representation or warranty hereunder. The records, documents and information made available to Purchaser, including, without limitation, the Information, are being provided to Purchaser for informational purposes only and shall be read in the context that they were prepared by Seller, or Seller's consultants, for intercompany use without expectation that such Information would be disseminated to third parties in connection with a transaction. Further, it is agreed that Purchaser is responsible for its own due diligence despite receiving information and documentation relating to the Property from Seller, including, without limitation, the Information. Purchaser agrees that Purchaser may independently verify such information provided by Seller, including, without limitation, the Information, and Purchaser hereby releases and discharges Seller from any and all Claims related to Purchaser's reliance thereon.

b. Confidentiality. Purchaser shall maintain all Information, and all information and documents (including, any reports or results) generated as a result of Purchaser's physical access to conduct due diligence of the Property as provided in Section 10 below ("Physical Access Information"), as strictly confidential and will not disclose such Information or such Physical Access Information, to any third party without the express written consent of Seller, except to its lenders, attorneys and consultants but expressly excluding any Prospective Purchaser ("Representatives"), but only to the extent necessary to complete Purchaser's review of the Information and Purchaser's due diligence of the Property and perform its obligations hereunder, and subject to such third party's agreement to maintain the information as confidential. Information and Physical Access Information shall be disseminated within Purchaser's organization, and to its Representatives, on a "need to know" basis only. In the event that Purchaser does not acquire the Property for any reason, Purchaser will return or deliver to Seller all copies of any Information and Physical Access Information in its, or its Representatives', possession or within its, or its Representatives', reasonable control.

10. Physical Access to Property. During the Inspection Period and subject to the confidentiality obligation in Section 9.b. above, Purchaser and its designated employees and Representatives shall be granted access to the Property under this Agreement for the purpose of conducting any due diligence Purchaser deems necessary or prudent. Notwithstanding anything

in this Agreement to the contrary, Purchaser shall not be permitted to perform any invasive tests on the Property without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion. Such persons or firms desiring access to the Property are subject to Seller's reasonable approval prior to any entry onto the Property. Further, Purchaser shall provide Seller with written notice of its, or its designated employees' or Representatives,' intention to enter the Property at least five (5) days prior to such entry.

a. Copies of Reports and Results. Purchaser shall deliver to Seller a copy of any reports or results of any tests regarding the physical characteristics of the Property within five (5) days of receipt by Purchaser or its Representatives.

b. Responsibility for Physical Access Liabilities; Restoration of Property. Purchaser shall be liable and responsible to Seller for all Physical Access Liabilities, including Purchaser shall repair any damage done to the Property as a result of, related to, or arising in any way from or in connection with physical access to conduct inspections, tests, investigations or other due diligence related to the Property, or as a result of, related to, or arising in any way from or in connection with Purchaser's, or any of its Representatives' or employees', ingress, egress or presence on the Property. Purchaser, upon completion of its physical access to the Property, shall restore the Property to its condition as existed immediately prior to such physical access.

c. Rules and Regulations. Purchaser and its Representatives shall obey all applicable laws and ordinances and written rules and regulations of Seller made known to Purchaser prior to entry, as well as reasonable oral instructions related to safety as such are made known to Purchaser during its presence on the Property.

d. Accompaniment by Seller. At all times while on the Property, Purchaser and its Representatives shall be accompanied by Seller's designated representative, unless otherwise authorized by Seller in advance.

e. Insurance. Purchaser shall, and shall cause any of its Representatives physically accessing the Property, take out and maintain, at their own expense, at least the following insurance with not less than the following limits:

<u>Insurance</u>	<u>Amount</u>
Workers Compensation:	Statutory
Comprehensive General Liability:	\$1,000,000 per occurrence/ \$2,000,000 aggregate.
Automotive liability:	\$1,000,000 per occurrence/ \$2,000,000 aggregate.

f. Representatives and Employee Compliance. Purchaser shall be solely responsible for ensuring that all of its Representatives and employees comply with the requirements of this Agreement.

11. Pre-Closing and Post-Closing Obligations; Letter Agreement Release.

a. Pre-Closing Obligations.

i. **Site Restoration.** Pursuant to Section 1.g. of the Letter Agreement, NSP has an obligation to Benson regarding site restoration. The following shall replace and supersede Section 1.g. of the Letter Agreement in its entirety:

Prior to Closing, Seller shall perform the following, in all material respects (collectively, the "Site Restoration"):

(A) in respect of the structures and other property (other than Structures and Personal Property) located in, on or under the Lands as of the Effective Date, (i) remove all such structures and other property (other than above-ground improvements and foundations), (ii) remove all such structures and other property which are above-ground improvements to grade; and (iii) remove all such structures and other property which are foundations to a depth of four (4) feet below grade; and

(B) in respect of the Lands, remediate Environmental Contamination, if any, to the extent required by applicable Environmental Law for the Lands' use for commercial or industrial purposes, including entering into the Minnesota Pollution Control Agency's Voluntary Investigation and Cleanup Program., if appropriate. The Parties acknowledge that no evidence of Environmental Contamination was identified in the Phase I Environmental Site Assessment performed by WENCK Associates, dated June 21, 2017. Any Environmental Contamination remediated pursuant to this Section 11.a.i.(B) shall not constitute a Retained Liability pursuant to Section 2.c.

Upon completion of Seller's removal activities set forth in this Section 11.a.i. above, Seller shall provide written notice to Purchaser of the completion of such removal, which notice shall include the date when such removal was completed (the "Site Restoration Completion Date").

Purchaser acknowledges and agrees that, following the completion of the work in respect of Site Restoration, certain of the structures and other property (or portions thereof), at depths greater than the depths for which removal is required in Section 11.a.i. (A) above, may not have been removed and will remain in, on or under the Lands following Closing (the "Property Remaining Following Site Restoration"). Purchaser agrees that such Property Remaining Following Site Restoration will be conveyed to Purchaser under this Agreement, and will be deemed to be Structures and Personal Property for all purposes hereunder.

Seller shall not have any obligation or responsibility to perform any Site Restoration in respect of the Structures and Personal Property.

ii. **Water Distribution and Controls.** Pursuant to Section 1.d. of the Letter Agreement, NSP has an obligation to Benson regarding water distribution and controls. The Parties have learned that the removal of the facility will not compromise the pipeline

providing water to NAF, and desire revise the obligation of NSP in connection with water use. The following shall replace and supersede Section 1.d. of the Letter Agreement in its entirety:

Benson shall install a fire hydrant, with associated piping (“Benson Fire Hydrant”) prior to Closing on Benson owned property, at a location near the Property to be determined by Benson, in its sole discretion, and NSP shall reimburse Benson for the reasonable and documented costs actually incurred by Benson for the installation of such Benson Fire Hydrant; provided however, in no event shall NSP’s obligation to reimburse Benson for the installation of such Benson Fire Hydrant ever exceed \$15,000. Following the completion of such installation, Benson shall provide NSP with the cost and reimbursement amount verification documentation. The amount of such reimbursement shall apply to and be a credit against the Purchase Price at Closing (the amount of the reimbursement is herein called the “Letter Agreement Section 1.d. Value”).

iii. **Indenture Release.** Within ten (10) days following the Site Restoration Completion Date, and so long as Seller has no reason to believe there is a possibility that the transactions contemplated herein may not Close, Seller shall make application for a release of the Property from the lien of Seller’s Indenture (“Indenture Release”). In the event the Indenture Release is not issued, for any reason, on or before Closing, Seller may, at Seller’s option, extend the Closing Date by written notice to Purchaser for up to six successive thirty (30) day periods until such Indenture Release is issued.

b. **Post-Closing Obligations.**

i. **Payments by Seller Calculated Based on Amount of Certain Property Taxes.** If Closing occurs, NSP will make two (2) annual payments to Benson within 10 days of receipt of an invoice by Benson, one payment on each of the first and second anniversaries of the Site Restoration Completion Date. Each of the two payments shall equal the amount of local county, city and school property taxes payable by Seller in respect of the Lands for the last full tax year prior to the Site Restoration Completion Date. Notwithstanding that the two payments by Seller are calculated based on the amount of certain taxes paid by Seller in respect of the Lands, Seller shall have no obligation to pay Buyer’s taxes or to pay taxes to any taxing authority related to Property, nor any other obligation related to taxes from and after the Closing Date, except as expressly set forth in Section 5.a.i. regarding the proration of general real estate taxes. Buyer shall be responsible for payment of all taxes related to the Property from and after the Closing Date.

ii. **Indemnity by Prospective Purchaser.** Purchaser shall obtain an obligation from Prospective Purchaser, satisfactory to NSP, in Purchaser’s purchase and sale agreement with Prospective Purchaser, to indemnify, defend and hold harmless NSP, its affiliates and its and their respective directors, officers, shareholders, employees, agents, representatives and assigns (as third party beneficiaries of such purchase and sale

agreement) from and against any and all Claims arising out of, related to or otherwise in respect of the Assumed Liabilities.

c. Letter Agreement Release.

If Closing occurs, then the consideration of providing covenants and agreements regarding matters covered by the Letter Agreement set forth herein, and any amounts applied to and credited against the Purchase Price related to monetized values of NSP's obligations in the Letter Agreement, shall be deemed to be a payment by NSP to Benson in full accord and satisfaction of all of the obligations of NSP under the Letter Agreement (including all of NSP's obligations under any agreements referenced in the Letter Agreement), and Benson hereby releases and discharges NSP from any and all Claims related to the Letter Agreement and related to the any such referenced agreements, including, without limitation, all Claims related to Section 1.c. of the Letter Agreement, being the Claims referenced in the Benson Confirmation Letter.

12. Survival and Indemnification.

a. Survival of Representations, Warranties, Covenants and Agreements. (i) Except as otherwise expressly set forth in Sections 12.a.(ii) and 12.a.(iii) below, none of the representations, warranties, covenants and agreements, including indemnification obligations in respect thereof, of the Parties in this Agreement shall survive the Closing.

(ii) Notwithstanding anything in Section 12.a.(i) above that may appear to the contrary, the following representations, warranties, covenants and agreements (including any releases, acknowledgements, limitations and disclaimers of representations and warranties), including indemnification obligations in respect thereof, of the Parties in this Agreement shall survive the Closing for a period beginning on the Closing Date and ending on the date that is one (1) year after the Closing Date (the ending date of such period, the "One Year Claim Deadline Date"): (A) the representations and warranties of Seller regarding Seller Authorization set forth in Section 14.a, and the indemnification obligations related to breach or inaccuracy of representations or warranties set forth in Section 12.b.(i) below in respect thereof.; and (B) the representations and warranties of Purchaser regarding Purchaser Authorization set forth in Section 15.a, and the indemnification obligations related to breach or inaccuracy of representations or warranties set forth in Section 12.c.(i) below in respect thereof.

Notwithstanding anything in Section 12.a.(i) or in the paragraph immediately above in this Section 12.a.(ii) that may appear to the contrary, the following representations, warranties, covenants and agreements (including any releases, acknowledgements, limitations and disclaimers of representations and warranties), including indemnification obligations in respect thereof, of the Parties in this Agreement shall survive the Closing for a period beginning on the Closing Date and ending on the date that is two years after the Closing Date (the ending date of such period, the "Two Year Claim Deadline Date"; the One Year Claim Deadline Date and the Two Year Claim Deadline Date are herein collectively called the "Claim Deadline Date"): (A) the covenants and agreements of Seller set forth in Section 11.b.i. regarding two post-Closing payments by Seller based on certain tax payment amounts, and the indemnification obligations

related to breach of a covenant or agreement of Purchaser set forth in Section 12.c.(ii) below in respect thereof; and (B) the covenants and agreements of Purchaser regarding confidentiality set forth in Section 9.b, and the indemnification obligations related to breach of a covenant or agreement of Purchaser set forth in Section 12.c.(ii) below in respect thereof.

In respect of the first two paragraphs of this Section 12.a.(ii), no Claim shall be made or payable in respect of any such representations, warranties, covenants or agreements, including, no Claim shall be made or payable in respect of indemnification obligations, after the applicable Claim Deadline Date, except (x) for those payable in respect of the representations, warranties, covenants and agreements, including the indemnification obligations in respect thereof, set forth in the Section 12.a.(iii) below that are to survive the Closing indefinitely, and (y) with respect to Claims made prior to such applicable Claim Deadline Date, but not then resolved (such representation, warranty, covenant or agreement surviving with respect to such Claim solely until resolution of such Claim). In respect of claims in this Section 12.a.(ii) to which an applicable Claim Deadline Date applies, if a Claim notice is given in accordance with the terms hereof prior to the applicable Claim Deadline Date, the Claim shall continue indefinitely until such Claim is finally resolved in accordance with the terms of this Agreement.

(iii) Notwithstanding anything in Sections 12.a.(i) and (ii) above that may appear to the contrary, the following representations, warranties, covenants and agreements (including any releases, acknowledgements, limitations and disclaimers of representations and warranties), including the indemnification obligations in respect thereof, of the Parties in the Agreement shall survive the Closing indefinitely: (A) the covenants and agreements in Section 3 regarding the Earnest Money Deposit and the full accord and satisfaction and the release by Benson in respect of Section 1.e. of the Letter Agreement, and the indemnification obligations related to breach of a covenant or agreement of Purchaser set forth in Section 12.c.(ii) below in respect thereof; (B) the covenants and agreements of Purchaser set forth in Section 11.b.ii. regarding obtaining an indemnity obligation from the Prospective Purchaser, and the indemnification obligations related to breach of a covenant or agreement of Purchaser set forth in Section 12.b.(ii) below in respect thereof; (C) the covenants and agreements in Section 11.c. regarding the full accord and satisfaction and the release by Benson in respect of the Letter Agreement, and the indemnification obligations related to breach of a covenant or agreement of Purchaser set forth in Section 12.c.(ii) below in respect thereof; (D) the indemnification obligations related to fraud or intentional misrepresentation set forth in Section 12.b.(iii) below; (E) the indemnification obligations related to fraud or intentional misrepresentation set forth in Section 12.c.(iii) below; (F) the covenants and agreements in Section 2.c. regarding the Retained Liabilities, and the indemnification obligations related to the Retained Liabilities set forth in Section 12.b.(iv) below; (G) the covenants and agreements in Section 2.b. regarding Assumed Liabilities, and the indemnification obligations related to the Assumed Liabilities set forth in Section 12.c.(iv) below, (H) the covenants and agreements in Section 10 regarding Physical Access Liabilities, and the indemnification obligations related to the Physical Access Liabilities set forth in Section 12.c.(v) below; (I) the representations and warranties of Purchaser regarding due diligence and independent investigation set forth in Section 15.c., and the indemnification obligations related to breach or inaccuracy of representations or warranties set forth in Section 12.c.(i) below in respect thereof; (J) the representations and warranties of Seller regarding broker and finder commissions and fees set forth in Section 18 below, and the indemnification obligations related to breach or inaccuracy of representations or warranties set forth in Section 12.b.(i) below in

respect thereof; and (K) the representations and warranties of Purchaser regarding broker and finder commissions and fees set forth in Section 18 below, and the indemnification obligations related to breach or inaccuracy of representations or warranties set forth in Section 12.c.(i) below in respect thereof.

Additionally, notwithstanding anything in this Agreement that may appear to the contrary, the covenants and agreements (including any releases, acknowledgements, limitations and disclaimers of representations and warranties), including any indemnification obligation in respect thereof, set forth in Sections 8, 9.a. and 13, including that the Property is being conveyed in its present condition (including, environmental condition) "AS IS, WHERE IS, WITH ALL FAULTS), and the representations, warranties, covenants and agreements (including any releases, acknowledgments, limitations and disclaimers of representations and warranties), including any indemnification obligations in respect thereof, set forth in this Section 12., shall survive the Closing indefinitely.

b. Seller's Obligation to Indemnify.

Subject to the terms, conditions, and limitations set forth in this Section 12, and to the extent permitted by law, Seller shall indemnify, defend and hold harmless Purchaser and its elected officials and employees (each, a "Purchaser Indemnified Person") from and against any and all Claims suffered or incurred by any Purchaser Indemnified Person arising out of, related to or otherwise in respect of:

- (i.) any breach or inaccuracy of any representation or warranty of Seller contained in this Agreement;
- (ii.) any breach of any covenant or agreement of Seller in this Agreement;
- (iii) fraud or intentional misrepresentation by Seller in connection with this Agreement; and
- (iv.) the Retained Liabilities.

c. Obligation of Purchaser to Indemnify.

To the extent permitted by law, Purchaser shall indemnify, defend and hold harmless Seller, its affiliates and its and their respective directors, officers, shareholders, employees, agents, representatives and assigns (each, a "Seller Indemnified Person") from and against any and all Claims suffered or incurred by any Seller Indemnified Person arising out of, related to or otherwise in respect of:

- (i.) any breach or inaccuracy of any representation or warranty of Purchaser contained in this Agreement;
- (ii.) any breach of any covenant or agreement of Purchaser in this Agreement;

(iii.) fraud or intentional misrepresentation by Purchaser in connection with the this Agreement;

(iv.) the Assumed Liabilities; and

(v) the Physical Access Liabilities.

d. Limitations on Indemnification Obligations.

(i.) Total Limit on Seller's Liability; Indemnity Basket. Notwithstanding anything to the contrary contained in the Agreement (and taking highest precedence in the event of one or more conflicts), the maximum aggregate liability of Seller to Purchaser (together with all Purchaser Indemnified Persons) hereunder shall be limited to \$1,110,000, being the amount of the Purchase Price allocated to the Lands. Further, notwithstanding anything to the contrary contained this Agreement, Seller shall not have any obligation to indemnify Purchaser (or if a Purchaser Indemnified Person (other than Purchaser) is making a claim for indemnity by Seller, shall not have any obligation to indemnify any such Purchaser Indemnified Person) pursuant to Section 12.b., unless and until Purchaser (or if a Purchaser Indemnified Person (other than Purchaser) is making a claim for indemnity by Seller, such Purchaser Indemnified Person) shall have incurred, on a cumulative basis, aggregate Claims in an amount exceeding One Hundred Thousand and no/100 Dollars (\$100,000.00) (the "Basket"), in which event the obligation of Seller to indemnify shall apply to all Claims incurred above the amount of the Basket.

(ii.) Limitation on Types of Damages. No Party shall be liable to the other Party for special, punitive, exemplary, incidental, consequential or other indirect damages, or lost profit or losses calculated by reference to any multiple of earnings, or earnings before interest, tax, depreciation (or any other valuation methodology), whether based on contract, tort, strict liability or otherwise for any Claim relating to this Agreement, provided, however, that if a Party is obligated to indemnify the other Party for a Claim by a third party that gives rise to such damages, then the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages.

(iii.) Seller's obligation to indemnify under Section 12.b. hereby expressly includes any other successors or assigns of Purchaser or of a Purchaser Indemnified Person.

(iv.) Notice and Participation in Claims. Upon the occurrence of any event which would give rise to a claim by Purchaser (or by a Purchaser Indemnified Person) or by Seller (or by a Seller Indemnified Person) (collectively, "Indemnified Person") for indemnification by the other Party under this Section 12 (the "Indemnifying Party"), or in the event that a Claim is begun or initiated which would give rise to a claim by an Indemnified Person for indemnification by the Indemnifying Party hereunder, then the Indemnified Person (or the relevant Party on its behalf) shall give written notice to the Indemnifying Party of such occurrence, event or Claim within twenty (20) days of the Indemnified Person receiving actual notice of such occurrence, event or Claim. The failure of the Indemnified Person to provide such timely notice shall not relieve the Indemnifying Party from any obligation of indemnification hereunder for such

occurrence, event or Claim, unless and to the extent (and only unless and to the extent) that such failure materially prejudices the Indemnifying Party's ability to defend the Claim. In the event of any such occurrence, event or Claim and the Indemnifying Party is notified thereof, then the Indemnifying Party shall have the obligation to defend such Claim, but the Indemnified Party (or a Party on its behalf) shall be entitled, at the Indemnified Party's sole cost and expense, to obtain its own counsel, and to participate with, and to the extent that it shall wish to do so, to participate in directing the defense thereof or to participate in any decision by the Indemnifying Party as to what action or actions to take related to the Claim.

(v.) No Merger. To the extent any representations, warranties, covenants and agreements (including any releases, acknowledgements, limitations and disclaimers of representations and warranties, and including indemnification obligations in respect thereof), of the Parties in this Agreement are to survive the Closing (for whatever period) as set forth in Section 12.a., the same, together with the limitations set forth in Section 12.d which survive Closing indefinitely, shall not be, nor shall be deemed to be, merged into any instrument of conveyance delivered at Closing.

(vi.) Exclusive Remedy. Seller and Purchaser acknowledge and agree that the indemnities expressly set forth in Article 12.b., subject to the survival of certain representations, warranties, covenants and agreements (including any releases, acknowledgements, limitations and disclaimers of representations and warranties, and including indemnification obligations in respect thereof) set forth in Section 12.a., and subject to the limitations set forth in this Section 12.d, shall be the sole and exclusive remedy of Purchaser (and each Purchaser Indemnified Party) against Seller for Claims incurred or suffered that arise out of, relate to or are otherwise in respect of this Agreement or the Property.

13. "As-Is" Condition of Property and Disclaimer of Warranties. The Property is sold by Seller and acquired by Purchaser in its present condition, "As-Is, Where-Is, With All Faults" with no right of set-off or reduction in the Purchase Price. THE PROPERTY IS BEING CONVEYED AND SOLD HEREUNDER WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER ORAL OR WRITTEN, MADE BY SELLER OR ANY AGENT OR REPRESENTATIVE OF SELLER RELATING TO TITLE TO THE PROPERTY, RELATING TO THE CONDITION (INCLUDING, WITHOUT LIMITATION, THE PHYSICAL, ENVIRONMENTAL OR STRUCTURAL CONDITION), QUALITY, QUANTITY OR VALUE OF ANY OF THE PROPERTY, OR RELATED TO THE EXISTENCE OR ABSENCE OF PETROLEUM, HAZARDOUS MATERIALS, POLLUTANTS OR CONTAMINANTS IN, ON, UNDER, OR AFFECTING THE PROPERTY OR RELATED TO THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY. PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATED TO WARRANTY OF INCOME POTENTIAL, DEVELOPMENT POTENTIAL, OPERATING EXPENSES, USES, HABITABILITY, TENANTABILITY, OR SUITABILITY FOR ANY PURPOSE, MERCHANTABILITY, OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES SELLER HEREBY

EXPRESSLY DISCLAIMS. PURCHASER CONFIRMS THAT IT HAS INVESTIGATED AND INSPECTED THE PROPERTY FOR ALL PURPOSES. Purchaser is relying entirely upon information and knowledge obtained from its own investigation, experience, or personal inspection of the Property, and not on any statements of Seller or any documents or other information provided or made available by Seller. Statements of fact or disclosures, if any, made by Seller in this Agreement, or in connection with this Agreement, do not constitute warranties or representations of any nature.

14. Seller's Representations and Warranties. Seller represents and warrants to Purchaser as of the Effective Date and again as of the Closing Date as follows in Sections 14.a, 14.b., 14.c and 14.d., and certifies and discloses to Purchaser as of the Closing Date in Section 14.e. below:

a. Seller Authorization. Seller is a corporation duly organized under the laws of the State of Minnesota and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. This Agreement has been duly executed and delivered by Seller and is a valid and binding obligation of Seller enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto have each been (or prior to the Closing date will be) duly authorized by all necessary corporate action on the part of Seller and that such execution, delivery and performance does and will not conflict with or result in a violation of Seller's articles of incorporation or by-laws or any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and/or any of the Property is bound or subject.

b. Creditors. Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

c. Adverse Proceedings. Except as set forth on Schedule 14.c, there is no pending, or to Seller's knowledge, threatened or contemplated, litigation, investigation, arbitration, condemnation or other proceedings of any kind affecting the Property.

d. Violation of Laws. To Seller's knowledge, there is no condition existing with respect to the Property or the operation thereof by Seller, or any part thereof, which violates any law, rule, regulation, ordinance, code, other decree or ruling of any city, county, state or federal government, agency or court. Seller has not received notice from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property, or any part thereof.

e. Statutory Representations. Except for any exceptions to the following set forth in Schedule 14.e. attached hereto, Seller makes the following certifications and disclosures: Pursuant to the Minnesota Ground Water Protection Act, Minn. Stat. Chapter

103I, Seller certifies there is a well with certificate number 812421 located on the Property. Seller certifies that it does not know of any individual sanitary treatment systems or “septic systems” on the Property. To Seller’s knowledge, methamphetamine production has not occurred at the Property. Seller discloses that any applicable airport zoning regulations affecting the Property are available for review at the Swift County Courthouse. Seller certifies that it does not know of any above ground or underground storage tanks and associated piping now located in or on the Property. Seller certifies that it does not know of any above ground or underground storage tanks and associated piping that have been located in or on the Property and have subsequently been removed or filled. All of the Seller’s certifications and disclosures in this Section 14.e. shall be subject to and automatically modified by any tests, reports, studies or other information concerning the Property previously provided to or obtained by Purchaser or which are provided to or obtained by Purchaser prior to Closing. Purchaser acknowledges that Seller’s certifications in this Section entitled “Statutory Representations” are provided only to the extent required by Minnesota law and shall be deemed limited in scope and purpose so as to provide only the certifications and disclosures as expressly required by law.

Notwithstanding the foregoing provisions of this Section 14 entitled “Seller’s Representations and Warranties”, Seller will not be deemed to be in breach of this Agreement with respect to facts or conditions which are the subject of the foregoing representations and warranties, and certifications and disclosures, which are disclosed by Seller to Purchaser or otherwise discovered by Purchaser prior to Closing. Wherever herein a representation, warranty, certification and/or disclosure is made based upon the knowledge of, or notice to, Seller, such knowledge or notice, is limited to the actual knowledge of, or notice received by Gene Tverberg, Operations Manager of Xcel Energy, without a duty to perform an investigation, provided nothing in this Agreement will be deemed to be a representation, warranty, certification or disclosure made by Gene Tverberg other than in his representative capacity, and Purchaser hereby expressly releases Gene Tverberg from any and all personal liability arising out of this Agreement or the representations, warranties, certifications and/or disclosures made herein.

15. Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller as of the Effective Date and again as of the Closing Date as follows:

a. Purchaser Authorization. Purchaser is a municipal corporation organized under the laws of Minnesota and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto. This Agreement has been duly executed and delivered by Purchaser and is a valid and binding obligation of Purchaser enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto have each been duly authorized by all necessary action on the part of Purchaser and that such execution, delivery and performance does and will not conflict with or result in a violation of Purchaser’s [charter or other governing instruments] or any judgment, order or decree of any court or arbiter to which Purchaser is a party, or any agreement to which Purchaser and/or any of the Property is bound or subject.

b. Creditors. Purchaser has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Purchaser's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

c. Due Diligence and Independent Investigation. Purchaser is knowledgeable about the purchase of lands and other property for development purposes and the usual and customary practices of entities, including government entities, engaged in such business. Purchaser has had access to the Property and sufficient opportunities to review the Information, to access the Property to investigate and inspect the Property, and to discuss any relevant information regarding the Property with Seller's appropriate employees, agents, and representatives. Purchaser has conducted its own independent investigation of the Properties and is relying, in its decision to enter into this Agreement and consummate the transactions contemplated herein, exclusively on its own independent investigation.

The foregoing representations and warranties are express representations and warranties which Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. Consummation of this Agreement by Seller with knowledge of any such breach shall not constitute a waiver or release by Seller of any claims arising out of or in connection with such breach.

16. Closing. The consummation of the purchase and sale of the Property as contemplated in this Agreement in accordance with the terms and conditions herein (the "Closing" or to "Close") shall take place on a date and time as may be mutually agreed upon by Purchaser and Seller ("Closing Date"); provided however, such Closing Date shall not be less than thirty (30) days following the Site Restoration Completion Date. The Closing shall be held at the offices of the Title Company, except that Seller and/or Purchaser may deposit with Title Company their respective closing deliveries, as described below, on or before the Closing Date with appropriate instructions for recording and disbursement consistent with this Agreement.

a. Conditions to Obligations of Seller. The obligation of Seller to Close shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions (unless waived in writing by Seller, in its absolute and sole discretion):

i. Closing Deliveries. Purchaser shall have tendered or delivered to Seller the items listed in Section 16d. hereof.

ii. Representations and Warranties of Purchaser. Each of the representations and warranties of Purchaser set forth in Section 15 shall be true and correct as of the Effective Date, and shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though newly made as of that date.

iii. Covenants of Purchaser. Purchaser shall have performed in all material respects all of its obligations under this Agreement (to the extent not already an obligation in respect of another item listed in this Section 16a.) that by the terms of such obligations are to be performed on or before the Closing Date.

iv. Indenture Release. Seller shall have obtained an Indenture Release.

v. Closing Encumbrance Resolution. All Closing Encumbrances, if any, have been cured by Seller or waived by Purchaser pursuant to Section 8.

b. Conditions to Obligations of Purchaser. The obligations of Purchaser to Close shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions (unless waived in writing by Purchaser in its absolute and sole discretion):

i. Closing Deliveries. Seller shall have delivered to Purchaser the items set forth in Section 16c. hereof.

ii. Representations and Warranties of Seller. The representations and warranties of Seller set forth in Section 14 shall be true and correct in all material respects as of the Effective Date, and shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though newly made as of that date.

iii. Covenants of Seller. Seller shall have performed in all material respects all of its obligations under this Agreement (to the extent not already an obligation in respect of another item listed in this Section 16b.) that by the terms of such obligations are to be performed on or before the Closing Date.

iv. Indenture Release. Seller shall have obtained an Indenture Release.

v. Closing Encumbrance Resolution. All Closing Encumbrances, if any, have been cured by Seller or waived by Purchaser pursuant to Section 8.

vi. Purchaser is satisfied, in Purchaser's sole discretion, that (a) Seller, pursuant to Section 10, has permitted Purchaser to conduct any invasive testing Purchaser believes is warranted to adequately investigate the Property; and (b) Purchaser's physical inspection of the Lands and review of Information in respect of the Lands, did not reveal

any Environmental Contamination, beyond the Environmental Contamination, if any, to be remediated pursuant to Section 11.a.i.(B).

vii. The inspection contemplated in Section 7 shall confirm that none of the material portions of the Structures and Personal Property have been removed or materially damaged by Seller since the previous inspection; or if any material portion of the Structures and Personal Property have been removed or materially damaged since the previous inspection, Seller has either replaced or repaired those portions prior to Closing, or the Parties have agreed to reduce the Purchase Price, in accordance with Section 7.

c. Seller's Deliveries. At or prior to the Closing, Seller shall deliver to Purchaser the following:

- i. Bill of Sale. The Bill of Sale, duly executed by Seller.
- ii. Deed. A recordable Deed, duly executed by Seller, with all appropriate notarizations.
- iii. Indenture Release. Duly executed copy of an Indenture Release.

d. Purchaser's Deliveries. At or prior to the Closing, Purchaser shall deliver to Seller the following:

- i. Purchase Price. The Purchase Price (as adjusted pursuant to Section 5) by immediately available funds via wire transfer pursuant to instructions provided by Seller prior to the Closing Date.
- ii. Bill of Sale. The Bill of Sale, duly executed by Purchaser.
- iii. Deed. A recordable Deed, duly executed by Purchaser, with all appropriate notarizations.

e. Further Instruments. Each Party shall, at Closing or from time to time prior to Closing, execute and deliver such further instruments as the other Party or the Title Company may reasonably request to effectuate the intent of this Agreement or as required by applicable law.

f. Possession. Seller shall deliver possession of the Property to Purchaser upon Closing.

17. Condemnation. In the event that any portion of the Property shall be taken in condemnation or under the right of eminent domain after the Effective Date and before the Closing Date, Purchaser may, at Purchaser's option, either (a) terminate this Agreement, in which event the Parties shall be released from all liabilities and obligations hereunder, except

those which expressly survive termination, and the Earnest Money shall be returned to Purchaser, or (b) proceed to Closing and elect to have the portion of the Property so taken removed from the transaction contemplated hereunder (and removed from the definition of Property hereunder), and to have the proceeds received from such condemnation or right of eminent domain proceeding applied against the Purchase Price.

18. Broker Commission. Each of the Parties represents to the other that such Party has neither utilized any real estate broker, agent, or salesperson in connection with the transaction contemplated hereby, nor incurred any brokerage commission or finder's fee as a result of this transaction.

19. [Reserved].

20. Assignment. This Agreement shall be binding upon, and inure to the benefits of, Seller and Purchaser and their respective permitted successors and assigns. This Agreement shall not be assignable by Purchaser, without prior written approval of Seller.

21. Confidentiality of Terms. Purchaser agrees to retain the confidentiality of the terms of this Agreement prior to Closing, and not to disclose the same to any third party other than to the extent required by applicable law, or to Representatives to the extent necessary for Purchaser to complete its investigation and/or inspection during the Inspection Period, to obtain financing to complete this transaction, or to determine the tax treatment or tax structure of the transaction contemplated by this Agreement. The provisions of this Section 21 shall survive the termination of this Agreement.

21. Notices. Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when (a) delivered personally; (b) confirmed by facsimile transmittal; (c) two business days after deposited with the United States Postal Service by certified or registered mail, return receipt requested, postage prepaid, or (d) confirmed delivered by a nationally recognized overnight delivery service, in any event, addressed to the applicable Party as follows:

If to Seller: Northern States Power Company  
d/b/a Xcel Energy  
Attention: Manager  
Siting and Land Rights 6<sup>th</sup> Floor  
414 Nicollet Mall  
Minneapolis, MN 55401

If to Purchaser: City of Benson  
Attention City Manager  
1410 Kansas Ave.,  
Benson, MN 56215

or to such other address as shall be designated by such Party in writing to the other Party.

22. Entire Agreement; Modification; Waiver. This Agreement embodies the entire agreement and understanding between Seller and Purchaser, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in writing executed by both Seller and Purchaser. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.

23. [Reserved].

24. Governing Law and Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law that would apply the law of another jurisdiction. Each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts in or for Hennepin County in the State of Minnesota (the "Minnesota Courts") in any action arising out of or relating to this Agreement or to the transactions contemplated herein, and, to the extent permitted by applicable law, hereby expressly waives any defense or objection to jurisdiction or venue based on the doctrine of *forum non conveniens*, and stipulates that the Minnesota Courts shall have *in personam* jurisdiction and venue over such Party for the purpose of litigating any dispute or controversy between the Parties arising out of or relating to this Agreement and the transactions contemplated herein.

25. Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

26. Time of the Essence. Time is of the essence under this Agreement and each and every provision hereof.

27. Construction. All of the Parties have been represented by counsel in the negotiation and preparation of this Agreement, the Deed, the Bill of Sale and all Exhibits and other documents related hereto; therefore, this Agreement, the Deed, the Bill of Sale, and each of the Exhibits and other documents related hereto shall be deemed to be drafted by each of the Parties hereto, and no rule of construction will be invoked respecting the authorship of this Agreement.

28. Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, enlarge, limit or prescribe the scope, meaning or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, and words of gender shall include any other gender.

29. Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective permitted successors and assigns of Seller and Purchaser.

30. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

31. Recording. Neither party shall record this Agreement.

32. No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person or entity other than the Parties hereto, including no rights shall be conferred to Prospective Purchaser hereunder.

33. Exhibits, Appendices and Schedules. All appendices, exhibits, and schedules hereto, or other documents expressly referenced in and incorporated into this Agreement, are hereby incorporated into this Agreement and are hereby made a part hereof as it set out in full in this Agreement.

34. Expenses. Purchaser, on the one hand, and Seller, on the other hand, shall bear all of its or their respective expenses in connection with the preparation, negotiation, execution, delivery and performance of this Agreement.

[Remainder of Page Intentionally Blank; Signature Pages to follow]

IN WITNESS WHEREOF, Seller and Purchaser have each caused this Agreement to be executed by its duly authorized representative and delivered as of the Effective Date.

**SELLER:**

**Northern States Power Company**

By: \_\_\_\_\_  
Name: Christopher B. Clark  
Title: President – NSP Minnesota  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Corporate Secretary  
Date: \_\_\_\_\_

**PURCHASER:**

**City of Benson**

By: \_\_\_\_\_  
Name: Terri Collins  
Title: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Rob Wolfington  
Title: City Manager  
Date: \_\_\_\_\_

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF THE LANDS**

South Half (S 1/2) of Lot Five (5) and all of Lot Six (6), Block One (1); Lots One (1), Two (2) and Three (3), Block Two (2); Outlots A and B, Benson Industrial Rail Second Addition to the City of Benson, Swift County, Minnesota.  
Abstract Property

CONTAINING A CALCULATED AREA OF 77 ACRES, MORE OR LESS.

**EXHIBIT A-2**

**DESCRIPTION OF THE PERSONAL AND OTHER PROPERTY  
CONSTITUTING A PORTION OF THE STRUCTURES AND PERSONAL PROPERTY**

<b>Equipment Description</b>	<b>Lot Number</b>
<b>Fuel Hall</b>	<b>601</b>
Clam Shell Bucket	169
Clam Shell Bucket	170
Clam Shell Bucket	171
Clam Shell Bucket	172
Clam Shell Bucket	173
20 Ton Crane	174
20 Ton Crane	175
20 Ton Crane	176
20 Ton Crane	177
Crane & Bucket Parts	178
Fuel Shaker Feeders	179
Fuel Shaker Feeders	180
Blower Unit	205
Blower Unit	206
Motor Control Center	203
Motor Control Center	202
Motor Control Center	201
Fuel Hall Control Cabinet	305
LP Heater	280
LP Heater	281
LP Heater	282
LP Heater	283
LP Heater	284
LP Heater	285
LP Heater	286
Hose Reel	287
Retractable Hose Reel	288
Retractable Hose Reel	289
Storage Cabinets	290
Assorted Electronics	293
Transformer	294
Uninterruptible Power Supply	295
Plant Support	296
Calorimeter	297

Oven	298
Drying Oven	299
Drying Oven	300
Cutting Mill	301
Vertical Cutter Mixer	302
Moister Analyzer	303
Computer Enclosure	304
Control Cabinets	305
Lab Cabinets	306
Assorted Room Contents	307
Barrel Dolly	308
Step Ladder	309
Spools of Wire	310
Conveyor Belt Parts	311
Hoist Brake	312

**Truck Scale**

---

Truck Scale	349
Truck Scale	350
Control Cabinet	208
Truck Wash System	207
2005 Chevy Pickup Truck	214
2008 Chevy Silverado Pickup Truck	215

**Admin Building**

---

600

**EXHIBIT B**

**FORM OF LIMITED WARRANTY DEED**

**LIMITED WARRANTY DEED**

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

Deed Tax due hereon: \$ \_\_\_\_\_

**FOR VALUABLE CONSIDERATION**, Northern States Power Company, a corporation under the laws of Minnesota, Grantor, hereby conveys and quitclaims to the City of Benson, a municipal corporation, under the laws of Minnesota, Grantee, real property in Swift County, Minnesota, described as follows:

**Legal Description:** South Half (S 1/2) of Lot Five (5) and all of Lot Six (6), Block One (1); Lots One (1), Two (2) and Three (3), Block Two (2); Outlots A and B, Benson Industrial Rail Second Addition to the City of Benson, Swift County, Minnesota.  
Abstract Property

*Check here if all or part of the described real property is Registered (Torrens)*

together with all hereditaments and appurtenances belonging thereto, subject to the following exception: the lien of that certain Trust Indenture dated February 1, 1937, from Northern States Power Company to The Bank of New York Mellon Trust Company, N.A. formerly Harris Trust and Savings Bank and BNY Midwest Trust Company, Trustee, and the Assignment and Assumption of Trust, Supplemental Trust Indentures dated August 1, 2000 from Xcel Energy and Northern States Power Company to Harris Trust and Savings Bank, Trustee, and Indentures supplemental thereto, provided however, that Northern States Power Company, a Minnesota corporation, hereby covenants to obtain and furnish to the Grantee a release of said lien within 120 days of the date hereof.

This Deed conveys after-acquired title. Grantor warrants that Grantor has not done or suffered anything to encumber the property, EXCEPT those matters set forth on Exhibit A attached hereto and made a part hereof.

---

*Check applicable box:*

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: 812421)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

**Northern States Power Company,  
a Minnesota corporation**

By \_\_\_\_\_  
Christopher B. Clark  
President, Northern States Power Company

By \_\_\_\_\_  
\_\_\_\_\_,  
Assistant Secretary,  
Northern States Power Company

STATE OF MINNESOTA        )  
  )ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by Christopher B. Clark, President and \_\_\_\_\_, Assistant Secretary of Northern States  
Power Company, a Minnesota corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary

This instrument drafted by: BES  
Northern States Power Company  
414 Nicollet Mall, 6<sup>th</sup> Floor  
Minneapolis, MN 55402  
Abstract  
200x.xxx

**MAIL REAL PROPERTY TAX STATEMENTS TO:**  
Buyer Name: City of Benson  
Address: 1410 Kansas Ave.,  
Benson, MN 56215

**Exhibit A**  
**of the Limited Warranty Deed**

**Permitted Exceptions**

- 1. The lien for Real Property taxes not yet due and payable.**
- 2. Utility and drainage easements of record.**
- 3. Building and zoning laws, ordinances and state and federal regulations.**
- 4. Restrictions relating to use or improvement of the Property.**
- 5. Reservation of any mineral rights to the State of Minnesota.**

**EXHIBIT C**  
**FORM OF BILL OF SALE**

**BILL of SALE**

Know all men by these presents, that Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, (hereinafter referred to as "Seller") in consideration of the terms and conditions stated herein and accepted by the City of Benson, a Minnesota municipal corporation (hereinafter referred to as "Buyer"), does hereby grant, bargain, sell, transfer and deliver unto the Buyer, the following described personal property and other property, namely, described as:

(Description of Property)  
Please refer to the Attached Exhibit A

The personal property and other property being granted, bargained, sold, transferred and delivered hereby is subject and pursuant to that certain Purchase and Sale Agreement between Seller and Buyer dated as of \_\_\_\_\_, 2019 (the "PSA"), and Seller makes no representation or warranty to Buyer, express or implied, in connection with the personal and other property, this Bill of Sale or the grant, bargain, sale, transfer and delivery made hereby, except as may be expressly provided for in the PSA.

In testimony whereof, Seller has caused this instrument to be executed in its name and by its proper officer this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

NORTHERN STATES POWER COMPANY

By \_\_\_\_\_  
Christopher B. Clark  
President – NSP Minnesota  
as Authorized Agent for Northern States  
Power Company, a Minnesota corporation,  
d/b/a Xcel Energy

Buyer hereby accepts the property and the terms hereof.

CITY OF BENSON

By: \_\_\_\_\_  
Terri Collins  
Mayor, City of Benson

**Exhibit A of Bill of Sale**

Equipment Description	Lot Number	Note
<b>Fuel Hall</b>	<b>601</b>	
Clam Shell Bucket	169	Clam Shell Bucket, Capacity 11.0 m3, Lifting Cap. 9900 kg, Dead Weight 7640 kg, Pump Type PV092, Control Block OF5200-15e, Year 2006, Output 33KW, Voltage 440 (Spare Bucket Setting on floor).
Clam Shell Bucket	170	Clam Shell Bucket, Capacity 11.0 m3, Lifting Cap. 9900 kg, Dead Weight 7640 kg, Pump Type PV092, Control Block OF5200-15e, Year 2006, Output 33 kW, Voltage 440 (This bucket still hooked to overhead 20 Ton Crane).
Clam Shell Bucket	171	Clam Shell Bucket, Capacity 11.0 m3, Lifting Cap. 9900 kg , Dead Weight 7640 kg, Pump Type PV092, Control Block OF5200-15e, Year.2006, Output 33 kW, Voltage 440 ( This bucket still hooked to overhead 20 Ton Crane).
Clam Shell Bucket	172	Clam Shell Bucket, Capacity 11.0 m3, Lifting Cap. 9900 Kg. , Dead Weight 7640 Kg. Pump Type PV092,Control Block OF5200-15e, yr.2006 Out put 33KW, Voltage 440 ( This bucket still Hooked to over head 20Ton Crane ).
Clam Shell Bucket	173	Clam Shell Bucket, Capacity 11.0 m3, Lifting Cap. 9900 Kg, Dead Weight 7640 kg, Pump Type PV092, Control Block OF5200-15e, Year 2006, Output 33 kW, Voltage 440 (This bucket still hooked to overhead 20 Ton Crane).
20 Ton Crane	174	20 Ton Cap. w/4.5 Ton Aux Hoist, Bridge Span Approx. 80'.
20 Ton Crane	175	20 Ton Cap. w/4.5 Ton Aux Hoist, Bridge Span Approx. 80'.
20 Ton Crane	176	20 Ton Cap. w/4.5 Ton Aux Hoist, Bridge Span Approx. 80'.
20 Ton Crane	177	20 Ton Cap. w/4.5 Ton Aux Hoist, Bridge Span Approx. 80'.
Crane & Bucket Parts	178	Bridge Crane & Clam Bucket Spare Parts.
Fuel Shaker Feeders	179	Fuel Shaker Feeders, 7.5 Motors.
Fuel Shaker Feeders	180	Fuel Shaker Feeders, 7.5 Motors.
Blower Unit	205	Part of fuel hall odor control system
Blower Unit	206	Part of fuel hall odor control system
Motor Control Center	203	Truck Wash Cutler Hammer 2100 MCC w 14 breakers, in fuel hall
Motor Control Center	202	Fuel Building Cutler Hammer 2100 MCC w 4 breakers
Motor Control Center	201	Fuel Building Cutler Hammer 2100 MCC w 35 breakers
Fuel Hall Control Cabinet	305	Fuel Hall, Fuel Handling and Crane Cabinet. Contains cabinet for fuel hall doors and macerators
LP Heater	280	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .
LP Heater	281	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .
LP Heater	282	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .
LP Heater	283	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .
LP Heater	284	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .

LP Heater	285	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .
LP Heater	286	LP Heater, 320000 BTU, 115V ( Mounted on Wall ) .
Hose Reel	287	Lot: (2) Hose Reel Hand Cranks ( Bolted To Beam ) .
Retractable Hose Reel	288	Lot: (2) Retractable Hose Reels ( Mounted on Beam ) .
Retractable Hose Reel	289	Lot: (2) Retractable Hose Reels ( Mounted on Beam ) .
Storage Cabinets	290	Lot: (2) Two Door Storage Cabinets, (1) Tennsco, (1) Lyon Cabinet .
Assorted Electronics	293	Electronics On Floor & Pallets, Consisting of PCs, Monitors, Phones, Controllers and more.
Transformer	294	Transformer, 45.0 KVA, 480, 3ph. New, never in service.
Uninterruptible Power Supply	295	Uninterruptible Power Supply, AC in 480V , AC out 208 V. Internal DC. 192V, VDC 75.5A.
Plant Support	296	(Lot) Paint Striping Machine, Floor Scraper, Barricades.
Calorimeter	297	Calorimeter, 120v. w/ Tank.
Oven	298	Bake Oven, 30-3000 C. W/ Metal Cabinet .
Drying Oven	299	Carbolite Drying Oven, 35x60x31 Outside, Inside Dimensions 26x38x24 deep.
Drying Oven	300	Carbolite Drying Oven 35x60x31 Outside, Inside Dimensions 26x38x24 deep.
Cutting Mill	301	Cutting Mill, 480V, 50Hz.
Vertical Cutter Mixer	302	Vertical Cutter Mixer.
Moister Analyzer	303	Thermo Spectra-Quad Moister Analyzer.
Computer Enclosure	304	Dust Shield PC. Enclosure.
Control Cabinets	305	Control Cabinets. Consisting of (1) Fuel Hall Control Cabinet, (1) Fuel Handling Cabinet and (1) Crane Cabinet .
Lab Cabinets	306	Lot of Lab Cabinets: ( 1 ) L Shape, 14'x5', (1) L Shape, 8'x5', (1) Straight, 10'8" ( Note: On 3rd Floor- No Elevator ) .
Assorted Room Contents	307	Lot: (2) Two Door Cabinets, Desk, File Cabinet, (4) Lab Chairs, Rubbermaid Cart, Mop Bucket ( Note: On 3rd Floor- No Elevator ) .
Barrel Dolly	308	Barrel Dolly/ Barrel Lift.
Step Ladder	309	12' Step Ladder.
Spools of Wire	310	Lot: (4) Spools of Wire, 12/4, 30 Conductor, 24AWG, Fiber Optic Cable & 1 Other.
Conveyor Belt Parts	311	Assorted Conveyor Belt Parts. To include Rollers, Belting, Used Electric Wire, Light, Wire Cable, Crane Shock Absorbers and other items included but not listed. .
Hoist Brake	312	Hoist Brake Assembly, #2003590.
<b>Truck Scale</b>		
Truck Scale	349	100000 lbs scale
Truck Scale	350	100000 lbs scale
Control Cabinet	208	Truck wash control cabinet
Truck Wash System	207	Truck Wash System

2005 Chevy Pickup Truck	214	Chevrolet K115432005 Chevy Pickup Truck VIN 2GCEK13T951313538
2008 Chevy Silverado Pickup Truck	215	Chevrolet K105432008 Chevy Silverado Pickup Truck VIN 3GCEK 13398G300929
<b>Admin Building</b>	<b>600</b>	<b>Building along with furniture and equipment</b>

---

### **SCHEDULE 14.c**

PUC Docket Number: E002/M-17-530

On January 25, 2019, Chippewa Valley Ethanol Company (CVEC) and BioPro Power (BPP) filed a Formal Complaint and Request for Contested Case proceeding in the current docket, alleging that Xcel violated the Commission's Order, as stated on page 4 of its filing.

Schedule 14.e.

Exceptions to Statutory Representations

Notwithstanding any certification or disclosure set forth in Section 14.e, the following are exceptions to such certifications and disclosures:

- 1, That certain well more particularly described in Exhibit B, Form of Limited Warranty Deed attached to the Agreement.
  
2. At the time the Property was conveyed to the Seller, there were a number of above ground storage tanks on the Lands, including, without limitation, above ground storage tanks related to the Benson Biomass Plant, some of which could remain on the Property after Closing, to the extent such above ground storage tanks are described as a part of the Structures and Personal Property being conveyed to Purchaser pursuant to the Agreement. Also, the following above ground storage tanks related to petroleum or fuel related products have been located on the Property, but have been removed or will be removed prior to Closing:
  - There are several aboveground propane tanks on the Property that are owned by the propane vendor.
  - There was a portable aboveground storage tank that contained diesel fuel for use in plant vehicles. That aboveground storage tank was sold at auction.
  - There was an above ground storage tank that stored fuel associated with the diesel-powered water fire pump. The pump was sold at auction.

## Rob Wolfington

---

**From:** Lisa Korthals <Lisa.Korthals@mrenergy.com>  
**Sent:** Friday, March 22, 2019 11:30 AM  
**To:** 'gail.brehmer@co.swift.mn.us'; Terri Collins; 'rob.wolfington@co.swift.mn.us'; Glen Pederson  
**Subject:** Benson - Your Customized Energy Resource Mix  
**Attachments:** Power Supply Resource Mix 2019 - Benson.pdf

---

**SWIFT COUNTY SECURITY NOTICE :**

**This email originated from an external sender. Use caution before clicking on any links or attachments.**

---

Hello MRES Member,

Since your utility has an allocation of hydroelectric power from Western Area Power Administration (WAPA), the percentage of power you receive from renewable resources is very high in comparison to the national average of 17 percent renewable energy (2018 average). Each year, MRES calculates how much renewable energy each MRES community receives (based on your WAPA allocation plus wind and solar energy from MRES), so you can relay this important information to your governing body and customers. Most customers who are interested in renewable energy don't realize that they are already getting a substantial amount of renewable energy from you in your current power supply mix.

New this year, MRES has included in your graph the breakdown of resources from market purchases. In the past market purchases have been listed as a separate category with no breakdown of which resources were used to generate those market purchases. The 2018 breakdown of market purchases is based on the statewide generation averages from the Mid-continent Independent System Operator (MISO) or the Southwest Power Pool (SPP). The market purchases contain a fairly substantial percentage of wind and nuclear power, so using the market purchase average increases both the renewable and carbon-free energy in your overall mix.

We have prepared a customized graph and message for you to educate customers, policymakers, and other interested groups. The attached file can be used as a bill stuffer, a direct mail piece, a handout, on social media, in your newsletter, or as a newspaper ad. It might be good timing to let your community know about the renewable energy supplied by your utility on or before Earth Day 2019, which is Monday, April 22.

Please consider letting your community know how environmentally conscious your utility is and that Caring For the Environment has always been part of your mission. If you have any questions, please feel free to contact me.

Joni

Joni Livingston  
Director of Member Services & Communications  
Missouri River Energy Services  
PO Box 88920  
Sioux Falls, SD 57109  
Phone: 800-678-4042 office

# CARING FOR THE ENVIRONMENT

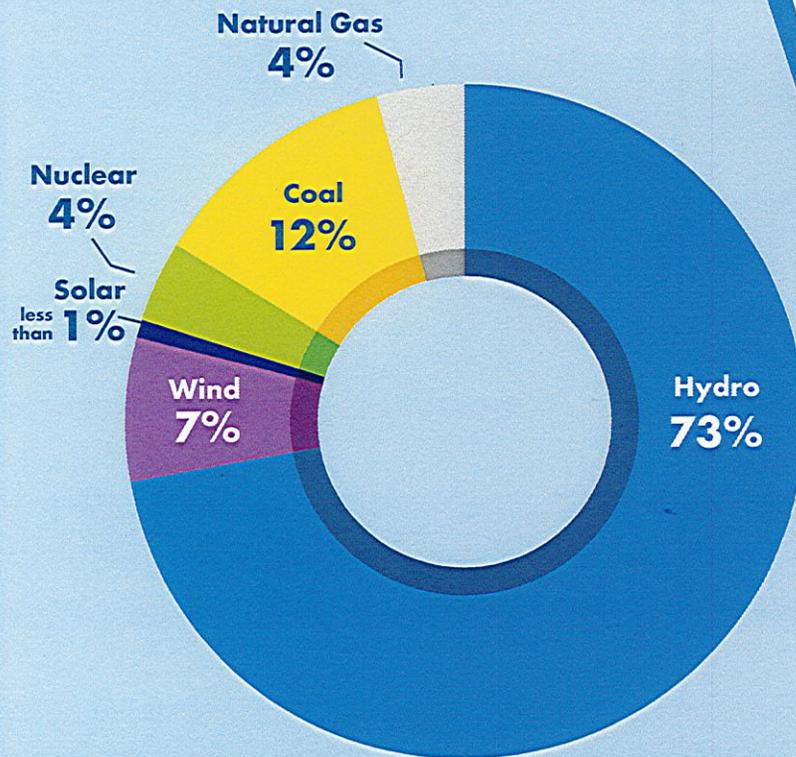
## Benson's Power Supply Mix

Our diverse mix of power supply resources results in reliable, affordable and environmentally friendly electric service for Benson's citizens and businesses.

Renewable resources continue to be added to the mix. A small solar project was added in 2016 and a new hydroelectric project is under construction.

To learn more, call us today at (320) 843-3707.

### 2018 RESOURCE MIX FOR BENSON



**80%** Benson's percentage of renewable power supply  
**84%** Benson's percentage of carbon-free power supply

**HYDROPOWER** → Our most reliable renewable resource.

**WIND POWER** → Available about 35 percent of the time.

**SOLAR POWER** → Available about 20 percent of the time.

Benson Municipal Utilities  
1410 Kansas Ave  
Benson, MN 56215



March 18, 2019

Robert Wolfington  
Benson Municipal Utilities  
City Manager  
1410 Kansas Ave  
Benson, MN 56215

Dear MRES Member Representative:

The Board of Directors of Missouri River Energy Services (“MRES”), at its March 14, 2019 meeting, unanimously voted to adopt changes to: (1) the Agreement Establishing the Missouri Basin Municipal Power Agency d/b/a Missouri River Energy Services (the “Membership Agreement”), and (2) the By-Laws of the Missouri Basin Municipal Power Agency d/b/a Missouri River Energy Services (the “By-Laws”). The changes approved by the Board on March 14 were those revisions described in the Notice of Meeting that was sent to all MRES Member Representatives prior to the March 14 meeting.

Enclosed with this letter are clean and redlined drafts of the Membership Agreement and the By-Laws. The enclosed documents reflect the changes approved by the Board. As previously noted, these changes update the documents so that their terms accurately reflect current law and practice. Each of the proposed substantive changes to the Membership Agreement and By-Laws are described below.

- Membership Agreement – Article 3(b). Article 3(b) of the Membership Agreement was revised to authorize the Board to define the specific number of Board seats to be allocated to each of MRES’s member states, subject to the requirements that each state must have one director and no state may have a majority of the directors. This revision enables MRES to maintain the current allocation of Board seats among MRES’s member states, but to also allow for this allocation to be re-evaluated in the future if and as MRES membership or other circumstances change.
- Membership Agreement – Article 4. Article 4 of the Membership Agreement identifies the powers delegated to MRES by the members. To further clarify the authority and directive of MRES to educate and advocate on issues that impact MRES and its members, this article was revised to specifically authorize MRES to educate and advocate on behalf of MRES and its members on relevant matters.

- Membership Agreement – Article 2(e); By-Laws – Article II, Section 2. The Membership Agreement and Bylaws, as previously drafted, contained conflicting terms on who may call a special meeting of the members. Each document was revised to clarify and coordinate who may call a special meeting of the members – the Chair, the Board, and the members by a petition signed by at least one-third of the members.
- By-Laws – Article II, Section 8 and Article IV, Section 6. These sections of the By-Laws, as previously drafted, authorized the Chair to close a member or Board meeting when competitively sensitive issues were discussed. Applicable law, however, allows meetings to be closed in other circumstances as well, such as to discuss litigation and personnel matters. These sections were amended to permit closing member and Board meetings when permitted by applicable law, if deemed necessary by the Chair.
- By-Laws – Article III, Section 2. Section 2 of Article III of the By-laws, as previously drafted, required election of directors by secret ballot. Historically, this practice has not been followed. Section 2 was revised to provide for election by voice vote unless there is a contested election for one or more seats, in which case a secret ballot will be used. Confusing language regarding run-off elections was also removed from this section.
- By-Laws – Article V. Article V of the By-Laws was revised to establish the Executive Committee as a permanent committee, to clarify the duration of other committees that may be established by the Board from time-to-time, and to memorialize basic procedural rules for committees.
- By-Laws – Article IX. Article IX of the By-Laws describes the process by which the Membership Agreement and By-Laws may be revised. This Article was revised to clarify the referendum process and timing for any proposed future amendments to the Membership Agreement and/or By-Laws.

This letter is being sent in accordance with Article IX of the By-Laws, which requires any amendments to the Membership Agreement or By-Laws adopted by the Board to be mailed to all MRES members. Each member then has 15 days from the date of this mailing to notify the Secretary-Treasurer of MRES if the member desires to request a referendum vote by the members on the amendments. If 20 percent or more of the members request a referendum vote in this manner, a ballot will be sent to each member and members will have 10 days to vote on the amendments. If less than 20 percent of the members request a referendum vote, the changes will become effective without any further action.

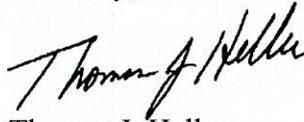
As noted above, if you agree with the amendments adopted by the Board and do not desire a referendum vote, no action by you is required. If, however, you would like the amended Membership Agreement and By-Laws to be brought to a referendum vote of the members, you

Robert Wolfington  
March 18, 2019  
Page 3

must inform us of this desire by sending an email to [secretary.treasurer@mrenergy.com](mailto:secretary.treasurer@mrenergy.com) on or before April 2, 2019. Please indicate "Amendments to Membership Agreement and By-Laws" in the "subject" line of any email requesting a member vote. We will inform you after April 2 whether a member vote will be conducted.

Please don't hesitate to contact me if you have any questions. We appreciate your continued support of MRES.

Sincerely,



Thomas J. Heller  
Chief Executive Officer

**AGREEMENT ESTABLISHING THE  
MISSOURI BASIN MUNICIPAL POWER AGENCY  
D/B/A MISSOURI RIVER ENERGY SERVICES**

This Agreement, ~~first~~ made ~~this~~the 1<sup>st</sup> day of June 1973, ~~first and thereafter~~ amended as of September 6, 1994, ~~and amended again~~ as of October 15, 1998, ~~and again~~ as of March 11, 2005, ~~and as of March 14, 2019, by and~~ among the public agencies whose names are ~~subscribed heretofore~~ set forth on the last page hereof (hereinafter referred to as the "Members"), acting pursuant to the authority conferred upon them by the Iowa Legislature in an act entitled "An Act to authorize joint exercise of governmental powers by public agencies," approved the Ordinance (hereinafter referred to as the "Authorizing Act"),

Witnesseth:

ARTICLE 1. Purposes: Missouri Basin Municipal Power Agency Created and Trade Name Adopted

The purposes of this Agreement are to enable the Members to make more efficient use of their powers as public agencies, particularly in the purchase, generation, transmission, distribution, sale and interchange of electric energy, the sale and distribution of natural gas, the provision of energy and communication services and to cooperate in other ways of mutual advantage. To effectuate these purposes, a separate entity is hereby created, to be known for official purposes as the Missouri Basin Municipal Power Agency, and authorized to do business as Missouri River Energy Services (hereinafter referred to as the "Agency").

ARTICLE 2. Membership

- (a) Public Agencies of Iowa. Any public agency of the State of Iowa (as defined in section 2 of the Authorizing Act), owning or operating facilities for the generation, transmission or distribution of electric energy and which may also distribute natural gas or provide communications services or both, may become a party to this Agreement and a Member of the Agency by executing this Agreement or a counterpart and filing the same, together with a certificate of authorization by its governing body, with the Board of Directors referred to in Article 3 (hereinafter referred to as the "Board"), upon approval of its qualifications by the Board.
- (b) Public Agencies of Other States. Any public agency of another State meeting the qualifications of the preceding paragraph, if empowered by the laws of that State, may become a party to this Agreement, and a Member of the Agency, in like manner as a public agency of the State of Iowa, upon approval of its qualifications by the Board.
- (c) Representation. The governing body of each Member shall select one person who shall represent that Member in the business of the Agency (hereinafter referred to as a "Representative"). He or she shall file with the Board a certificate or resolution of the governing body evidencing his or her appointment.

Formatted: Centered

Formatted: Page Number, Font: 9 pt

- (d) Voting. Each Member shall cast one vote. The vote of the Representative of a Member, at an annual or special meeting, shall be deemed the act of the Member, except where this ~~agreement~~Agreement specifically requires action by the governing body of a Member.
- (e) Meetings and Elections. The Members, through their Representatives designated as provided in paragraph (c) of this Article, shall meet not less frequently than once each calendar year. At the annual meeting, normally held in the spring of each year, the Members shall elect Representatives to fill the positions of the Directors whose terms have expired. The ~~Chairman~~Chair of the Board, or in his or her absence the most senior Vice-~~Chairman~~Chair, shall preside at the annual meeting of the Members, and at ~~such any~~ special meetings of the Members that may be called by the Chair, as he or she or a majority of the Board, or upon written petition of not less than one-third of the Members shall call. ~~Calls for~~Notices of the annual meeting and special meetings shall state the place and time of meeting, on not less than ten days' written notice to the Members' Representatives.

ARTICLE 3. Board of Directors

- (a) Powers. The powers of the Agency shall be exercised by a Board in which shall be vested all of the powers conferred on the Agency by this Agreement.
- (b) Composition. The Board shall consist of thirteen Directors, who shall be elected by the Members. Each state having Members in the Agency shall be represented on the Board by at least one Director. Only Representatives of Members that have executed and are taking service under a Power ~~Sales~~Sale Agreement (S-1) shall be eligible for election to the Board. As long as the Agency consists of Members from more than two states, the Board shall not consist of a majority of Directors from any one state. Subject to the requirements of this paragraph, the Board shall establish from time to time, by resolution or policy, the specific number of Directors that shall be from each state having Members in the Agency. The Directors shall serve without compensation, but their travel and incidental expenses shall be reimbursed. The term of each Director shall be three years. Members of the Board shall be elected each year to replace those Directors whose terms have expired.

At least four Members of the Board shall be elected each year, to replace those Directors whose terms have expired. The Board shall elect, annually, one of its own members, ~~Chairman~~Chair, Vice-~~Chairmen~~Chairs from each state represented in the Agency, and one Secretary Treasurer. The vice-~~chairmen~~chair positions shall be numbered (First), Second, etc.) through the number of states as are represented by the Agency. The Vice-~~Chairman~~Chair with the longest seniority on the Board shall be the First Vice-~~Chairman~~Chair and the remaining vice-~~chairmen~~chair positions shall be assigned in order of decreasing seniority.

- (c) By-Laws; Executive Committee; Management. The Board shall establish By-Laws for the conduct of the Agency's business. In such By-Laws it may create an Executive

Formatted: Centered  
Formatted: Page Number, Font: 9 pt

Committee and other committees. The By-Laws shall state the powers delegated by the Board to the officers and to the committees. The Board, through By-Laws or resolution, shall establish the office of Chief Executive Officer and such other offices as it deems necessary for the conduct of the affairs of the Agency, and shall establish the duties and compensation of such offices.

ARTICLE 4. Powers of the Missouri Basin Municipal Power Agency

(a) Delegation of Powers to Agency. The Members severally delegate to the Agency, and the Agency shall have and may exercise, the following powers, subject to the restrictions stated in paragraph (b) of this Article:

- (1) To generate, purchase, obtain by exchange, or otherwise acquire, electric power and energy and to sell, exchange, transmit and deliver such power and energy for the benefit of the Members; to establish rates and charges or other appropriate pricing mechanisms for such service; to dispose of electric power and energy which is surplus to the needs of the Members, by sale, exchange, or otherwise; to sell electric power and energy services at retail to the extent permitted by state law; to broker electric power and energy for the benefit of Members; and to provide services related to the delivery of electric power and energy to or for the benefit of individual Members.
- (2) To purchase natural gas for purposes of resale or use in electric generation, to sell and transport such natural gas, and to sell such natural gas under terms and conditions deemed appropriate for the benefit of the Members.
- (3) To act as agent for the Members or any of them in the purchase or acquisition of power and energy or natural gas for their account as principals, and delivery of the same to them, and in the disposition of power and energy surplus to their requirements, by sale or exchange, and in the disposition of natural gas through brokering.
- (4) To provide telecommunications services to or for the benefit of Members.
- (5) To borrow money; to manage or control the purchase price paid for electric power and energy consistent with the provisions of Iowa law; to make and issue bonds, notes and other evidences of indebtedness, secured or unsecured, for moneys borrowed or in payment for property acquired or for any of the other objects or purposes of the Agency; to secure the payment of such bonds, notes, or other evidences of indebtedness by mortgages, or deed or deeds of trust upon, or by the pledge of or other lien upon, any or all of the property, revenues, rights, privileges, or permits of the Agency, wheresoever situated, acquired, or to be acquired; and to pay all such indebtedness in the manner stated in the instruments evidencing the debt.

Formatted: Centered

Formatted: Page Number, Font: 9 pt

- (6) To construct, purchase, lease as lessee, and in any other manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage any real and personal property, or any interest therein, as may be necessary, convenient, or appropriate to accomplish its purposes.
- (7) To provide electric distribution service at retail to the extent consistent with applicable law.
- (8) To have and to exercise the power of eminent domain to acquire private property for its own use.

~~(9) To educate and advocate on behalf of the Agency and Members on matters related to the purposes and activities of the Agency, consistent with applicable law.~~

~~(10) To make all contracts, and take all other actions, necessary, convenient, or appropriate to accomplish any and all of the foregoing purposes.~~

(b) Restrictions on Powers. The Agency shall be subject to the following restrictions:

- (1) The Agency shall engage only in activities that are essentially public in character.
- (2) The Agency shall not be operated for profit (except to the extent of retiring indebtedness).
- (3) The Agency's income shall not inure to any private person or corporation.
- (4) Only political subdivisions of a State shall have any beneficial interest in the Agency or its property, and if the Agency incurs indebtedness to acquire property, full legal title to the property of the Agency with respect to which the indebtedness is incurred shall vest in political subdivisions which are Members of the Agency upon retirement of such indebtedness.
- (5) If the Agency shall be dissolved, all assets of the Agency shall be distributed to political subdivisions that are Members of the Agency, subject to Articles 5(e) and 6(b) below.
- (6) No Member of the Agency shall be individually liable upon any indebtedness incurred by the Agency, nor liable for the indebtedness of any other Member, nor liable for any amount for any purpose in excess of the assessments made against that Member determined as provided in Article 5.

#### ARTICLE 5. Financing

(a) Not-For-Profit Basis. The Agency shall operate on a not-for-profit basis, and shall be financed as provided in this Article.

Formatted: Centered

Formatted: Page Number, Font: 9 pt

- (b) Operating Budget. The Board shall establish an annual operating budget on a fiscal year basis that includes all estimated expenses, exclusive of principal and interest payments on bonded debt, and all estimated sources of revenue. The Board shall establish assessments against the Members, in a form to be established by the Board, to collect such amounts as will, in the aggregate, be not less than the budgeted expenditures for the fiscal year, plus adequate provisions for contingencies and reserves, after taking into account anticipated net revenue to the Agency from the disposition of electric power and energy, natural gas, telecommunications and other services. The assessments shall be paid at such times as the By-Laws may provide.
- (c) Restriction on Incurring Indebtedness. The Board shall not obligate the Agency for the payment of any indebtedness in excess of that budgeted for repayment out of current revenues within one calendar year after it is incurred, unless the Board shall first submit to the Members, at an annual or specially called meeting thereof, a proposal to incur such indebtedness, and unless the same shall be approved by a majority of the Representatives of Members present.
- (d) Separate Budget for Debt Service. The Board shall establish a separate budget for the payment of interest and principal of all debt in excess of that permitted by paragraph (b) of this Article. It shall establish such rates and charges for electric power and energy, natural gas, telecommunications or other services, establish such separate bank or other accounts, and make such transfers of funds into those special accounts, and make such disbursements out of such special accounts, as may be required in the indenture or other instrument evidencing the debt.
- (e) Asset Pools. All assets of the Agency, whether ownership interests in tangible or intangible property, contract rights for services or other assets, shall be considered to be held for the benefit of all Members unless the asset was procured for the benefit of and with the funds of a defined subgroup of less than all Members. In the latter situation, such assets will be considered to be segregated into a separate "Asset Pool" which is to be supported by, and, if appropriate, ultimately distributed to, the defined subgroup of Members for whose benefit the asset was procured or maintained.

ARTICLE 6. Effective Date; Duration; Termination; Withdrawal

- (a) Effective Date. This ~~agreement~~Agreement shall become effective when nine Members have executed it pursuant to authorization by their respective governing bodies, and it shall remain in effect until terminated in the manner provided in paragraph (b) of this Article.
- (b) Termination. This ~~agreement~~Agreement may be terminated by vote of a majority of the Members, voting at a regular meeting or a meeting specifically for that purpose, but not until after all debts of the Agency have been paid. Thereafter, the Board shall liquidate the business of the Agency as expeditiously as possible and distribute the net proceeds from the disposition of all assets not identified as part of an Asset Pool to all Members in

Formatted: Centered

Formatted: Page Number, Font: 9 pt

the ratio of their individual dues payments made during the term of their membership to the total dues collected from all Members as of the date of termination. The net proceeds from the liquidation of assets in Asset Pools shall be distributed only to the Members that had participated in the program giving rise to the appropriate Asset Pool. Net proceeds related to each pool would be distributed to participating Members in the ratio that the total payments made by each of them for that pool bears to the sum of the total payments made by all of them for that pool.

- (c) Withdrawal. Any Member may withdraw from this ~~agreement~~Agreement upon giving one year's written notice to the Board, evidenced by resolution of its governing body, and payment of all amounts in arrears in its assessments; Provided, that if the Agency, prior to giving of such written notice, shall have incurred other indebtedness in conformity with Article 5(c) which matures after the effective date of the notice of withdrawal, the withdrawal shall not become effective until such indebtedness shall have been paid by the Agency, or, in the alternative until the withdrawing Member shall have paid to the Agency its pro rata portion thereof. The withdrawal of a Member will not affect the requirement that it pay all outstanding obligations to the Agency. The withdrawing Member retains no equity rights in the Agency or distributive rights to any of its tangible or intangible assets.

[Signature Page Follows]

Formatted: Centered

Formatted: Page Number, Font: 9 pt

IN WITNESS WHEREOF, the parties hereto have caused this ~~agreement~~Agreement to be executed as of \_\_\_\_\_.  
(month, day and year)

**MISSOURI BASIN MUNICIPAL POWER AGENCY  
d/b/a MISSOURI RIVER ENERGY SERVICES**

By \_\_\_\_\_  
**Chairman**Chair of Missouri River Energy Services

[SEAL]

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer of Missouri River Energy Services

\_\_\_\_\_ **MUNICIPAL UTILITIES**

By \_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

[SEAL]

ATTEST:

\_\_\_\_\_  
Secretary

Formatted: Centered

Formatted: Page Number, Font: 9 pt

In witness whereof, the following Members have executed this Agreement on the dates severally appearing below:

Member	Date Executed
Kimballton, Iowa	Nov. 1, 1965
Sanborn, Iowa	Nov. 9, 1965
Denison, Iowa	Nov. 12, 1965
Orange City, Iowa	Nov. 18, 1965
Hawarden, Iowa	Dec. 6, 1965
Manilla, Iowa	Dec. 10, 1965
Shelby, Iowa	Dec. 10, 1965
Pringhar, Iowa	Dec. 16, 1965
Sioux Center, Iowa	Dec. 16, 1965
Woodbine, Iowa	Dec. 17, 1965
Rock Rapids, Iowa	Dec. 21, 1965
Hartley, Iowa	Jan. 3, 1966
Paullina, Iowa	Jan. 10, 1966
Remsen, Iowa	Jan. 11, 1966
Lake Park, Iowa	Mar. 4, 1966
Lakefield, Minnesota	Sep. 14, 1966
Jackson, Minnesota	Dec. 22, 1966
Alexandria, Minnesota	Jul. 26, 1968
Elbow Lake, Minnesota	Jul. 30, 1968
Benson, Minnesota	Aug. 20, 1968
Alton, Iowa	Oct. 14, 1968
Detroit Lakes, Minnesota	Jan. 2, 1969
Lake Park, Minnesota	Mar. 10, 1969
Henning, Minnesota	Apr. 1, 1969
Ortonville, Minnesota	Jan. 14, 1970
Madison, Minnesota	Feb. 7, 1972
Luverne, Minnesota	Oct. 10, 1972
Westbrook, Minnesota	Nov. 7, 1972
Barnesville, Minnesota	Jan. 8, 1973
Wadena, Minnesota	Jan. 10, 1973

Member	Date Executed
Saint James, Minnesota	Jan. 16, 1974
Moorhead, Minnesota	Apr. 2, 1974
Worthington, Minnesota	Apr. 9, 1974
Big Stone City, South Dakota	Jul. 1, 1974
Watertown, South Dakota	Jul. 8, 1974
Winner, South Dakota	Jul. 15, 1974
Brookings, South Dakota	Jul. 18, 1974
Faith, South Dakota	Jul. 29, 1974
Adrian, Minnesota	Aug. 6, 1974
Flandreau, South Dakota	Aug. 6, 1974
Burke, South Dakota	Aug. 16, 1974
Vermillion, South Dakota	Oct. 7, 1974
Beresford, South Dakota	Oct. 16, 1974
Pierre, South Dakota	Jan. 2, 1975
Fort Pierre, South Dakota	Aug. 4, 1975
Hillsboro, North Dakota	Aug. 22, 1979
Lakota, North Dakota	Sep. 4, 1979
Northwood, North Dakota	Oct. 1, 1979
Cavalier, North Dakota	Oct. 15, 1979
Valley City, North Dakota	Oct. 31, 1979
Sauk Centre, Minnesota	Jun. 14, 1982
Staples, Minnesota	Sep. 8, 1982
Breckenridge, Minnesota	Jan. 13, 1987
Pickstown, South Dakota	Aug. 15, 1989
Riverdale, North Dakota	Jan. 1, 1993
Atlantic, Iowa	Feb. 17, 2003
Marshall, Minnesota	May 13, 2004
Melrose, Minnesota	Apr. 1, 2005
Hutchinson, Minnesota	Apr. 1, 2006
Pella, Iowa	June 9, 2011
Willmar, Minnesota	April 23, 2018

Last revision: ~~April 23, 2018~~ March 14, 2019.

Formatted: Centered

Formatted: Page Number, Font: 9 pt

**BY-LAWS OF THE  
MISSOURI BASIN MUNICIPAL POWER AGENCY  
D/B/A MISSOURI RIVER ENERGY SERVICES**

ARTICLE I - Membership

Members. The Members of the Missouri Basin Municipal Power Agency authorized to do business as Missouri River Energy Services (hereinafter "Agency"), and the limitations, conditions, restrictions, rights, privileges, duties and obligations pertaining to membership are set forth in the ~~agreement of~~Agreement Establishing the Missouri Basin Municipal Power Agency d/b/a Missouri River Energy Services dated June 1, 1973 and as thereafter amended from time to time as provided herein (hereinafter "Agency Agreement"), ~~as amended as of October 15, 1998, on file with the Iowa Secretary of State.~~ All definitions in the Agency Agreement shall apply herein as if fully stated.

ARTICLE II - Meetings of Members

Section 1. Annual Meeting. There shall be an annual meeting of the Members, at such place as shall be designated by the Board of Directors (hereinafter "Board") in the notice of meeting.

Section 2. Special Meetings. Special meetings may be called at the discretion of the Board, ~~or upon a written request signed by two (2) directors,~~ or by the ~~Chairman~~Chair, or upon the written petition of not less than one-third of the membership.

Section 3. Notice of Meetings. Notices of any annual or special meetings shall be ~~mailed~~transmitted to the Representatives of the Members not less than ten days before the meeting by first class mail, email or a comparable or superior means of delivery.

Section 4. Waiver of Notice. Any Member may waive, by writing, any notice of a meeting required to be given by these By-laws. The attendance at a meeting shall constitute a waiver of notice of such meeting by such Member, except where such attendance shall be for the express purpose of objecting that any such meeting has been lawfully called and convened.

Section 5. Quorum. Representatives of a majority of the Members present in person shall constitute a quorum.

Section 6. Voting. Each Representative of a Member shall cast one vote. All questions shall be decided by a majority vote except where specifically provided otherwise below.

Section 7. Alternate Representatives. A Member may appoint an alternate Representative to act on its behalf in the absence of its Representative at a meeting of Members by informing the Agency of the name of the alternate Representative in writing at or prior to any such meeting.

Section 8. Attendance at Meetings. All meetings of the Members shall be open to the public except in circumstances when competitively sensitive issues are the subjects of discussion or

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

Formatted: Centered

when otherwise deemed necessary by the Chair, as permitted by applicable law, at which time the ChairmanChair may close the meeting.

### ARTICLE III - Directors

Section 1. General Powers. The powers of the Agency shall be exercised by a boardBoard of thirteen directors. The Board shall have power to adopt rules and regulations, not inconsistent with the Agency Agreement as amended, these By-laws, or the laws of Iowa, for the management, administration and regulation of the business affairs of the MembersAgency.

Section 2. Election and Tenure. The term of office of a director shall be three years. Members of the Board shall be elected each year, to replace those whose terms have expired. Directors shall be elected by a majority vote of the Members at the annual meeting. Voting shall be by voice vote, except in the event there is a contested election for one or more seats in which case the vote Voting shall be by secret ballot. If no candidate receives more than 50 percent of the vote, a run-off election shall be held among the top three candidates.

Section 3. Removal of Directors. Directors may be removed from office for cause by at least a two-thirds vote of the Board, or by a majority vote at any special meeting of the Members called for that purpose.

Section 4. Vacancies. Any vacancies in the Board shall be filled by election by the Board of a Member Representative for the unexpired portion of a term.

Section 5. Compensation. No director shall be compensated for his or her services, but he or she may be reimbursed necessary expenditures incurred on behalf of the Agency.

Section 6. Accounting and Audits. The Board shall cause to be established and maintained an appropriate accounting system. A complete audit shall be made of the Agency's accounts, books, and financial conditions after the close of each fiscal year, and a report thereon shall be submitted to the Members at the next annual meeting.

Section 7. Funds and Securities. The Board shall have charge of and be responsible for all funds and securities of the Agency. The Board shall also be responsible for the receipt of and the issuance of receipts for all monies due and payable to the Agency and for the deposit of all such monies in the name of the Agency in such bank or banks as shall be selected in accordance with the provisions of these By-laws.

Section 8. Alternate Directors. The ChairmanChair may appoint an alternate director to act on behalf of an elected director in the event of the director's absence, when the elected director is the only Representative from a state in which the Agency has Members. The alternate director shall be a Member Representative from the same state and his or her term shall run concurrently with that of the elected director. The alternate director may attend all meetings of the Board but may only vote if the director for which he or she is an alternate is absent. The alternate director shall be reimbursed for expenses in accordance with Section 5 above.

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

Formatted: Centered

Section 9. Indemnification. Each director and officer of the Agency shall be indemnified by the Agency against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as such director or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such director or officer; and the ~~corporation~~Agency shall reimburse each such person for all legal expenses reasonably incurred by him or her in connection with any such claim or liability, provided, however that no such person shall be indemnified against, or be reimbursed for, any expense incurred in connection with any claim or liability arising out of his or her own willful misconduct or gross negligence.

The amount paid to any officer or director by way of indemnification shall not exceed his or her actual, reasonable, and necessary expenses incurred in connection with the matter involved.

#### ARTICLE IV - Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the Board shall be held in conjunction with the annual meeting of the Members, and otherwise shall be held at times designated by the Board. Notices shall be in accordance with Article II, Section 3 of these By-laws.

Section 2. Special Meetings. Special meetings of the Board may be called by the ~~Chairman~~Chair or by any three directors, pursuant to which the Secretary-Treasurer shall give written notice of the time, place, and purpose of such meeting to each director not less than five days prior thereto.

Section 3. Waiver of Notice. Any director may waive, by writing, any notice of a meeting required to be given by these By-laws. The attendance at a meeting, or participation in a meeting held by concurrent communication as specified in Section 4, shall constitute a waiver of notice of such meeting by such director, except where such attendance or participation shall be for the express purpose of objecting that any such meeting has not been lawfully called and convened.

Section 4. Venue of Meetings. Regular or special meetings of the Board called by appropriate notice may be held through any means of concurrent communication, including face-to-face meetings, telephone conference calls or other medium that enable all persons participating in the meeting to hear each other. Actions taken during meetings held in a form other than face-to-face shall be confirmed either (a) by confirmation of the minutes and actions of the ~~special~~meeting at the next ~~regular scheduled face-to-face~~meeting of the Board or (b) by confirmation of the action through the execution by a majority of the directors of the Board present at the meeting of a resolution circulated in counterpart after the meeting by mail, email or a comparable or superior means of delivery~~facsimile machine or otherwise~~.

Section 5. Quorum. A majority of the Board shall constitute a quorum.

Section 6. Confidentiality. The ~~Chairman~~Chair may close a meeting when competitively sensitive issues are discussed or when otherwise deemed necessary by the Chair, as permitted by applicable law.

#### ARTICLE V - Committees

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

Formatted: Centered

Section 1. Executive Committee. ~~The Board~~There shall ~~have the power, by resolution, to appoint~~be an Executive Committee ~~consisting which consists~~ of the ~~Director~~director officers of the Agency, including the ChairmanChair, the Vice-ChairmenChairs and the Secretary-Treasurer. The Executive Committee shall ~~hold office at the pleasure of the Board and shall~~ exercise such powers of the Board as the Board may ~~by resolution~~ delegate to it; and it may be given responsibility for the general direction of the Agency when the Board is not in session. At no time shall the members of the Executive Committee constitute a majority of the Board.

Section 2. Other Committees. The Board may, by motion and in its discretion, create and authorize the establishment of other committees in addition to the Executive Committee as necessary to assist in the supervision and control of the Agency's affairs. Such committees may include, but need not be limited to, a finance committee, personnel committee, nominating committee and such other committees as the Board may deem appropriate. Each committee so constituted shall serve at the pleasure of the Board. All Members of each committee shall be appointed by the ~~ChairmanChair~~ of the Board -with the concurrence of the Board. ~~Each committee shall exist for the period specified by the Board and such period may be indefinite.~~ The ChairmanChair shall designate the chairperson ~~and Members~~ of each committee ~~on an annual basis.~~ Each committee shall exist until dissolved by the Board. At no time shall the members of any committee constitute a majority of the Board.

Section 3. Committee Rules. ~~Each~~Notices of committee ~~meetings shall make rules for~~be ~~transmitted to committee members not less than ten days before the calling of its meetings and the conduct~~meeting by first class mail, email or a comparable or superior means of its ~~business~~delivery. A majority of the ~~Members~~members of the ~~Executive Committee~~a committee shall constitute a quorum for the transaction of its business. Record of all business transacted at the meetings of ~~the Executive Committee~~committees shall be kept ~~by the Secretary-Treasurer~~ and preserved ~~with the minutes of the meetings of the Board and the Members~~by the Agency. Each committee shall present a report to the Board when requested. Unless the Board indicates otherwise, notice shall be provided to the Board of all committee meetings and such meetings shall be open to attendance by any director.

#### ARTICLE VI - Officers

Section 1. Number. The officers of the Agency shall be a ChairmanChair, one Vice-ChairmanChair from a Member in each state in which the Agency has Members, a Secretary-Treasurer, the Chief Executive Officer, who shall not be a director; and such other officers as the Board may deem appropriate from time to time. The Vice-ChairmanChair shall be designated when elected as first Vice-ChairmanChair, second Vice-ChairmanChair and so forth and shall perform the duties of the office of the Vice-ChairmanChair in the foregoing order of seniority in addition to such other duties as may be provided for.

Section 2. Election and Tenure of Director Officers. At the first meeting of the Board it shall elect the officers of the Agency, other than Chief Executive Officer, who shall serve until their successors are elected at that next annual meeting. Director ~~Officers~~officers shall thereafter be

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

Formatted: Centered

elected annually for one-year terms. A vacancy in any office shall be filled by the Board for the unexpired portion of the term.

Section 3. Removal of Director Officers. Director ~~Officers~~officers may be removed by at least a two-thirds vote of the Board for cause or whenever in the Board's judgment the best interest of the Agency will be served thereby.

Section 4. Powers and Duties of the ChairmanChair. The ~~Chairman~~Chair:

- (a) shall be the principal policy officer of the Agency and, unless otherwise determined by the Board, shall preside at all meetings of the Members and the Board;
- (b) may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these By-laws to some other officer of the Agency, or shall be required by law to be otherwise signed or executed; and
- (c) shall in general perform all duties incident to the office of the ~~Chairman~~Chair and such other duties as may be prescribed by the Board from time to time.

Section 5. Powers and Duties of the Vice-ChairmenChairs. In the absence of the ~~Chairman~~Chair, or in the event of his or her inability or refusal to act, the Vice-~~Chairman~~Chair with the greatest seniority shall perform the duties of the ~~Chairman~~Chair, and when so acting shall have all the powers of and be subject to all the restrictions upon the ~~Chairman~~Chair. Each Vice-~~Chairman~~Chair shall also perform such other duties as from time to time may be assigned to him or her by the Board.

Section 6. Powers and Duties of the Secretary-Treasurer. The Secretary-Treasurer shall perform or delegate performance of the following:

- (a) keep the minutes of the meetings of the Members and of the Board in one or more books provided for that purpose;
- (b) see that all notices are duly given in accordance with these By-laws or as required by law;
- (c) be custodian of the Agency records and of the seal of the Agency and affix the seal of the Agency to documents, the execution of which on behalf of the Agency under its seal is duly authorized in accordance with the provisions of these By-laws;
- (d) have general charge of the books of the Agency;
- (e) keep on file at all times a complete copy of the Agency Agreement and By-laws of the Agency containing all amendments thereto (which copy shall always be open to the inspection of any Member) and, at the expense of the Agency, forward a copy of the By-laws and of all documents thereto ~~each to a Member;~~ upon the request of a Member; and

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

Formatted: Centered

- (f) in general perform all duties incident to the office of Secretary-Treasurer and such other duties as from time to time may be assigned to him or her by the Board.

Section 7. Powers and Duties of the Chief Executive Officer. The Board shall appoint a Chief Executive Officer ("CEO"). The CEO shall, in general, supervise and control all of the business and affairs of the Agency. The CEO shall have the authority to sign, on behalf of the Agency, all agreements and other documents that are either expressly approved by the Board or are of such nature as to fall within the ordinary management of the Agency and which are not expressly required by law to be executed by another officer of the Agency. The CEO shall have authority to designate an officer or employee of the Agency to exercise his or her supervisory, control or signatory functions as described above. The CEO shall also perform such duties as the Board may require of him or her and shall have such authority as the Board may vest in him or her.

Section 8. Custody of Funds and Fidelity Bond Requirements. The Board may require the Secretary-Treasurer and any other officer or employee of the Agency charged with responsibility for the custody of any of its funds or property to give fidelity or surety bonds for the faithful discharge of their duties, in such form and containing such terms and conditions and with such surety or sureties as the Board shall determine. The Agency shall pay for the bond required of any of its officers or employees.

Section 9. Compensation. The duties, terms of employment, and compensation of all officers and employees of the Agency shall be maintained in accordance with a policy established by the Board.

#### ARTICLE VII - Not-for-Profit Operation

Not-for-Profit Operation. The Agency shall operate on a not-for-profit basis, and shall be financed as provided in the Agency Agreement.

#### ARTICLE VIII - Contracts and Financial Transactions

Section 1. Contracts. Subject to the Agency Agreement and these By-laws, the Board may authorize any one or more of its officers or employees to enter into any contract or execute and deliver any instrument in the name and on behalf of the Agency.

Section 2. Commercial Instruments. All checks, drafts or other orders for payment of money, including payment by electronic transfer of funds, notes, bonds or other evidence of indebtedness shall be signed or authorized by any one or more officers, or employees, and in such manner, as the Board may authorize by resolution.

Section 3. Bank Deposits. All funds of the Agency shall be deposited to the credit of the Agency in such bank or banks as the Board may select. "Deposit" includes funds credited pursuant to electronic transfer.

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

Formatted: Centered

Section 4. Fiscal Year. The fiscal year of the Agency shall begin on the first day of January each year and shall end on December thirty-first of that same year.

ARTICLE IX - Amendments

Section 1. Amendments. The Agency Agreement and these By-laws may be altered, amended, or repealed by the affirmative vote of two-thirds of the votes cast at any regular or special meeting of the Board, provided that the notice of such meeting shall fully describe the proposed change.

Section 2. Referendum. Any amendment described in Section 1 shall be mailed or emailed to all Members within ten days after its adoption. Any Member wishing to have the amendment put to referendum shall so notify the Secretary-Treasurer within fifteen days after such mailing or emailing, and he or she shall at once so notify all Members. If one-fifth of the Members signify within such fifteen day period their desire to have an amendment put to referendum, the Secretary-Treasurer shall so notify the Board, which shall thereupon prepare a referendum pamphlet containing a statement explaining the proposed amendment, and a ballot. The referendum pamphlet and ballot shall be transmitted to each Member, and shall direct the Member to register its vote in writing and to return the ballot within ten days of its receipt. No vote shall be valid unless the ballot is mailed or emailed within that period, and the referendum shall be null and void unless 35 percent of the eligible votes are returned. The proposed amendment shall be approved or rejected by a majority of the votes cast.

~~Adopted—~~

Amended – ~~October 15, 1998~~ March 14, 2019

Formatted: Tab stops: 2.6", Left

Formatted: Centered, Indent: Left: -3.25", Right: -2.94", Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin

Formatted: Font: +Body (Times New Roman), 9 pt, Italic

Formatted: Right

03/01/19

Benson City Council

I am writing your office today to stress to you, the Benson City Council, along with the Benson Police Department, how important it is that our animal ordinances are enforced in the city of Benson.

I am enclosing some pictures of me following a dog attack that occurred in Benson in October of 2016. I suffered puncture wounds in both of my legs and one arm; and although the bites have healed, I will never be able to "get over" this, emotionally speaking.

Needless to say, this dog attack was life changing for me. This particular dog was returned to the breeder, rather than destroyed. Could this happen to someone else? Are there other dogs in Benson that are capable of doing this to a passer-by? It is really not possible for a person to even go for a walk in Benson in the summer time and not encounter at least one dog that is "loose." I know so many other people that have been bitten by loose dogs in Benson, and even more that have been chased/threatened while on a walk. Anyone should be able to walk down any street in Benson and not have to worry about a dog leaving someone's yard to come after you. Unfortunately, there are some irresponsible pet owners that do not see the gravity in what could possibly happen when their dog is loose or unattended. Many say, "MY dog would never do that." How sure can they be?

Before this, I had been a dog lover all my life- my family still is- and the dog that did this was well cared for and from a "good" home. I believe the dog had even been to obedience training. Animals are unpredictable- that is a fact, not an opinion. I hope that these pictures serve as a reminder that ANY dog can act unexpectedly out of feelings of protectiveness, being startled, etc. It is a difficult balance for me, being afraid of dogs because of what happened to me, yet as an example- encouraging my daughter to work towards her goal to be involved with the Humane Society.

One thing that is very hard for me is seeing dogs in our city parks & golf course that I know to be aggressive when at their home. It is great that we have a dog park-- what an asset it is, for residents to have a place to be able to exercise their pet where they are safe and do not need to worry about them being a safety liability! On the other hand- as an example- with all the kids and chaos of **Kid Day**- is it a good idea to continue to allow people to bring their dogs to Roosevelt park? This is an especially high-risk scenario because of the loud, busy atmosphere. Dog bites are a very big financial liability. It is also unfair to the dogs themselves, to be put in these situations where something could easily go wrong. What if a child is bit? Discovery Kids is often at Roosevelt park as well- what would the repercussions be if a child in a school-sponsored daycare is bit by a dog in a city park? It is for the protection of both the spectators, and the dogs, that I feel dogs should not be allowed at our city parks. Should dogs continue to

be allowed to be exercised on the golf course, where their urine and feces could be damaging to the grass and greens? I feel it would be best if we reserved these places for our enjoyment and referred people to the dog park instead. Again, for both the safety of the community AND the safety of the dogs.

What I ask of the City Council and the Police Department, is that we as a community require responsible pet ownership, by enforcing our leash laws, fines, etc and carefully reconsider where and when people are allowed to bring their pets. The cost of "Dog Free Area" signs would be minimal - and so many "what if"s that could be spared, would be so worthwhile. If one dog bite is spared, it would be well worth it for both the pet owner and the victim. I do not want to see anyone else have to deal with the emotional or physical issues that I have had to deal with because of a dog attack.

Thank you for your consideration.



Desiree Beyer

**CITY OF BENSON  
CAPITAL AUTHORIZATION REQUEST**

1 Fund: Capital Department: Parks  
 Prepared by: Dan Goad Date: 3/25/19  
 Describe Proposed Capital Expenditure: Replace old John Deere  
 mower with new Kubota  
 Does Proposed Expenditure Replace Existing Equipment?  If Yes, Describe Use of Replaced Equipment: JD mower trade in

2 If Included in Capital Improvements Program:  
 What Year: 2019  
 What Heading: CIP Parks  
 Budgeted Amount: \$ 30,000.00

3 Total Cost: \$34,397.04 + Fees  
 -Trade-in (if applicable): \$4,300.00  
 +<sup>source well</sup> Net Book Value (depreciated value): +\$7,567.30  
 =Net Capitalized Cost: =\$23,906.73

4 Justification of the Expenditure: (Main Objectives and Assumptions)

*The parks dept. routinely replaces used mowers with new equipment. They researched Kubota with dealers and other communities. This mower presents the best price and includes a much needed bagger.*

5 Approval Section:  
 Action taken: \_\_\_\_\_

	Signature	Date
Department Supervisor	_____	_____
Division Director	_____	_____
City Manager	_____	_____

City Council Approval (If Applicable) \_\_\_\_\_ Council Meeting \_\_\_\_\_

— Standard Features —

— Custom Options —



**Kubota**

F Series F3990

\*\*\* EQUIPMENT IN STANDARD MACHINE \*\*\*

**DIESEL ENGINE**

Model #V1505T-IDI+DPF  
 4 Cyl., 1498 cu. cm.  
 +36.9 Gross Eng. HP  
 @3000 Eng. RPM

CARB Certified

Alternator -- 40 Amps

Hand Throttle

Dual Element Air Cleaner

**OPERATING FEATURES**

Tilt Steering Wheel

Power Steering

Deluxe Suspension Seat

w/ 4 Adj. Controls

**HYDRAULICS**

Open Center -- Gear Type

2 Point Hitch Lift

Cap at Lift Point -- 573 lbs

8.6 GPM Hyd. Pump Cap.

6 GPM Remote Outlet

**HYD. INDEPENDENT**

PTO

Hyd. Multi-Disc PTO

Single Speed PTO

2583 rpm @ 2500 Eng. rpm

+ Manufacturer Estimate

**TRANSMISSION**

Hydrostatic Drive (F2/R2)

Forward Speed -- 0 - 12.5 mph

Reverse Speed -- 0 - 6.8 mph

Front Differential Lock

**FLUID CAPACITY**

Fuel Tank 16.1 gal

Cooling System 3.9 qts

Engine Oil 5 qts

Transmission and Hydraulics 14.8 qts

**SAFETY EQUIPMENT**

2 Post Foldable ROPS w/

Retractable Sear Belt

ROPS meet ISO and OSHA

Safety Start Switch

Operator Presence Control

Parking Brake

Overheat Alarm Buzzer

**INSTRUMENTS**

Liquid Chrystal Display (LCD) Panel

Hour Meter

Electric Fuel Gauge

Temperature Gauge

Easy Checker <sup>TM</sup>

Oil Light

Charge Light

Glow Plug Light

**SELECTED TIRES**

AR8641 & AF9398A TURF TIRES

FRONT - 24x12.00-12 R3 Maxxis Pro Tech

REAR - 18x9.50-8 R3 Kenda Super Turf K500

F3990 Base Price: \$24,604.00

(1) SUSPENSION SEAT inc.

F8280-SUSPENSION SEAT

(1) 72" MOWER DECK FOR F SERIES TRACTOR \$4,517.00

RCK72P-F39-72" MOWER DECK FOR F SERIES TRACTOR

(1) HYDRAULIC VALVE FOR IMPLEMENTS \$459.00

WITHOUT CATCHER

F8283-HYDRAULIC VALVE FOR IMPLEMENTS WITHOUT

CATCHER

(1) GRASS CATCHER FOR F2690E & F3990 \$4,139.00

GCK72-F39-GRASS CATCHER FOR F2690E & F3990

(1) BOOT KIT FOR RCK72P-F39 \$279.00

F8289-BOOT KIT FOR RCK72P-F39

(1) GRASS CATCHER MOUNT KIT FOR F3990 \$399.00

F5339-GRASS CATCHER MOUNT KIT FOR F3990

Configured Price: \$34,397.00

Sourcewell Discount: (\$7,567.34)

SUBTOTAL: \$26,829.66

Dealer Assembly: \$488.75

Freight Cost: \$540.00

PDI: \$250.00

John Deere 1445-72 (\$4,300.00)

Market Fee \$98.32

Total Unit Price: \$23,906.73

Quantity Ordered: 1

Final Sales Price: \$23,906.73

**Purchase Order Must Reflect  
the Final Sales Price**

**To order, place your Purchase Order directly with the quoting  
dealer**

\*All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price. All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.

Quote Id: 19000660

---

Prepared For:  
**City Of Benson**

Prepared By: **Steve Shea**

Midwest Machinery Co.  
380 Atlantic Avenue  
Benson, MN 56215

Tel: 320-843-2610  
Mobile Phone: 320-760-2777  
Fax: 320-843-2604  
Email: [sshea@mmcj.com](mailto:sshea@mmcj.com)

Date: 19 February 2019

Offer Expires: 28 February 2019

---

*Confidential*



**Quote Summary**

**Prepared For:**  
City Of Benson  
1410 Kansas Ave  
Benson, MN 56215  
Business: 320-843-4775

**Prepared By:**  
Steve Shea  
Midwest Machinery Co.  
380 Atlantic Avenue  
Benson, MN 56215  
Phone: 320-843-2610  
Mobile: 320-760-2777  
sshea@mmcjd.com

**Quote Id:** 19000660  
**Created On:** 19 February 2019  
**Last Modified On:** 20 February 2019  
**Expiration Date:** 28 February 2019

<b>Equipment Summary</b>	<b>Selling Price</b>	<b>Qty</b>	<b>Extended</b>
JOHN DEERE 72 In. 7-Iron PRO Commercial Side Discharge Mower Deck	\$ 4,205.65 X	1 =	\$ 4,205.65
JOHN DEERE 1580 TerrainCut Commercial Front Mower (Less Mower Deck)	\$ 26,676.51 X	1 =	\$ 26,676.51

**Equipment Total** **\$ 30,882.16**

<b>Trade In Summary</b>	<b>Qty</b>	<b>Each</b>	<b>Extended</b>
2010 JOHN DEERE 1445 - TC1445D100209 PayOff	1	\$ 5,000.00	\$ 5,000.00 \$ 0.00
Total Trade Allowance			\$ 5,000.00

**Trade In Total** **\$ 5,000.00**

<b>Quote Summary</b>	
Equipment Total	\$ 30,882.16
Trade In	\$( 5,000.00)
SubTotal	\$ 25,882.16
Est. Service Agreement Tax	\$ 0.00
<b>Total</b>	<b>\$ 25,882.16</b>
Down Payment	(0.00)
Rental Applied	(0.00)
<b>Balance Due</b>	<b>\$ 25,882.16</b>

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_



JOHN DEERE

# Selling Equipment



Quote Id: 19000660

Customer: CITY OF BENSON

## JOHN DEERE 72 In. 7-Iron PRO Commercial Side Discharge Mower Deck

Hours:

Stock Number:

				Selling Price
				\$ 4,205.65
Code	Description	Qty	Unit	Extended
0347TC	72 In. 7-Iron PRO Commercial Side Discharge Mower Deck	1	\$ 4,979.00	\$ 4,979.00
<b>Standard Options - Per Unit</b>				
001A	United States and Canada	1	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>				<b>\$ 0.00</b>
<b>Other Charges</b>				
	Freight	1	\$ 162.73	\$ 162.73
	EnviroCrate	1	\$ 40.00	\$ 40.00
	Setup	1	\$ 250.00	\$ 250.00
<b>Other Charges Total</b>				<b>\$ 452.73</b>
<b>Suggested Price</b>				<b>\$ 5,431.73</b>
<b>Customer Discounts</b>				
<b>Customer Discounts Total</b>			<b>\$ -1,226.08</b>	<b>\$ -1,226.08</b>
<b>Total Selling Price</b>				<b>\$ 4,205.65</b>

## JOHN DEERE 1580 TerrainCut Commercial Front Mower (Less Mower Deck)

Hours:

Stock Number:

				Selling Price
				\$ 26,676.51
Code	Description	Qty	Unit	Extended
2451TC	1580 TerrainCut Commercial Front Mower (Less Mower Deck)	1	\$ 32,549.00	\$ 32,549.00
<b>Standard Options - Per Unit</b>				
001A	United States and Canada	1	\$ 0.00	\$ 0.00
2011	Comfort Adjust Suspension Seat with Armrests	1	\$ 390.00	\$ 390.00
<b>Standard Options Total</b>				<b>\$ 390.00</b>
<b>Value Added Services Total</b>				<b>\$ 0.00</b>
<b>Other Charges</b>				
	Freight	1	\$ 224.91	\$ 224.91
	EnviroCrate	1	\$ 40.00	\$ 40.00



JOHN DEERE



# Selling Equipment

Quote Id: 19000660

Customer: CITY OF BENSON

Setup	1	\$ 250.00	\$ 250.00
<b>Other Charges Total</b>			<b>\$ 514.91</b>
<b>Suggested Price</b>			<b>\$ 33,453.91</b>
<b>Customer Discounts</b>			
<b>Customer Discounts Total</b>		<b>\$ -6,777.40</b>	<b>\$ -6,777.40</b>
<b>Total Selling Price</b>			<b>\$ 26,676.51</b>



JOHN DEERE



# Trade In

Quote Id: 19000660

Customer: CITY OF BENSON

<b>2010 JOHN DEERE 1445</b>	
<b>SN# TC1445D100209</b>	
<b>Machine Details</b>	
<b>Description</b>	<b>Net Trade Value</b>
2010 JOHN DEERE 1445	\$ 5,000.00
SN# TC1445D100209	
Your Trade In Description	
<b>Additional Options</b>	
Hour Meter Reading	1704
<b>Total</b>	<b>\$ 5,000.00</b>

To: Benson City Council  
From: Benson Civic Center Board  
Re: Civic Center Study  
Date: March 28, 2019

The Benson Civic Center Board has concluded a review of the north end of the building and is pleased to submit this report.

A structural review was performed by the City's' engineering firm Stantec. Their report is included. It doesn't appear they found anything that would suggest that the building is not suitable for the purpose of providing indoor recreation to the area. A former tenant disconnected braces from the wall which may need to be reinstalled.

The city contracted with Engan & Associates to do a code review. Attached are their two signed schedules. I broke down the code review portion into a separate pdf to make it easier to read. Their work along with Building Inspector Mike Jacobson has determined a use of A-4 for the ice arena and A-3 for the north end. An A use is for assembly areas. The 4 designates an ice arena while the 3 is for community or exhibition halls.

The code review used the floorplan that the school had developed. We may not be using that exact layout so don't be too concerned with those specific details.

The code review also determined that:

- The north end must be sprinkled. We propose to sprinkle that area along with the upper and lower heated viewing areas, existing locker rooms and concession area.
- The ice arena is not required to be sprinkled as long as it remains only as an ice rink.
- There is a shortage of restrooms. They recommended two unisex restrooms be constructed inside the north end.

Finally attached for your review is a budget and improvement plan using the same contractors that were awarded the bid from the school. The budget covers the entire building. The Benson Hockey Assn essentially covers all of the expenses for the ice arena. Their contribution has been increase by \$10,000 in this budget as they had previously committed to help with the sprinkler system expense. A transfer from the City has been included which has not been discussed or approved.

Whether or not the school is willing to rent the North end is the key to this plan. If they are not able or willing to commit to using the space for their programs for an extended period at a funding level close to what is in the budget then it probably is not feasible to go forward. We haven't been given the impression that the City is willing to proceed on its own.

In absence of financial commitments from the school and city the Hockey Association and Civic Center Board will discuss options to do specific improvements and return to renting the space in order to pay for those and future improvements.



Stantec Consulting Services Inc.  
733 Marquette Avenue Suite 1000, Minneapolis MN 55402-2309

March 28, 2019

**Attention: Glen Pederson, Director of Finance**

City of Benson  
1410 Kansas Avenue  
Benson, MN 56215

**Reference: Civic Center Condition Assessment  
Project No. 193804697**

Dear Mr. Pederson,

At the City's request, on March 7, 2019, Stantec performed a visual condition assessment of the City's Civic Center, located at 2298 Tatges Avenue, Benson, MN 56215. The Civic Center is divided into two main areas. The southern two-thirds of the building houses the indoor hockey arena, while the northern one-third is unoccupied. This assessment focused on the unoccupied space at the north end.

**Purpose and Scope of Assessment**

The City would like to utilize the unoccupied space in the northern portion of the building. Stantec was requested to visually examine the building space and make note of signs of distress, functional issues, and general observations of conditions that may affect how the space may be used. No specific use for the space has been discussed, and this assessment was not intended to be exhaustive. No verification or documentation of as-built field conditions, material testing, or other invasive or detailed examination was performed. Design and construction documents for the building and subsequent modifications were reviewed during a desktop assessment.

**Building Description**

The Civic Center building is a 1-story, "pre-engineered" steel rigid frame building, designed and fabricated by Chief Industries and erected by Gopher State Contractors. Overall building dimensions are 340 feet long, by 120 feet wide, with a 16-foot eave height. Originally constructed to store grain, the building design includes reinforced sidewalls, with closely-spaced wall girts and intermediate "soldier columns" spaced between the rigid frames to support the wall girts containing the grain.

See Photo Nos. 1, 4 and 5, in Appendix A, attached, for overall views of the building.

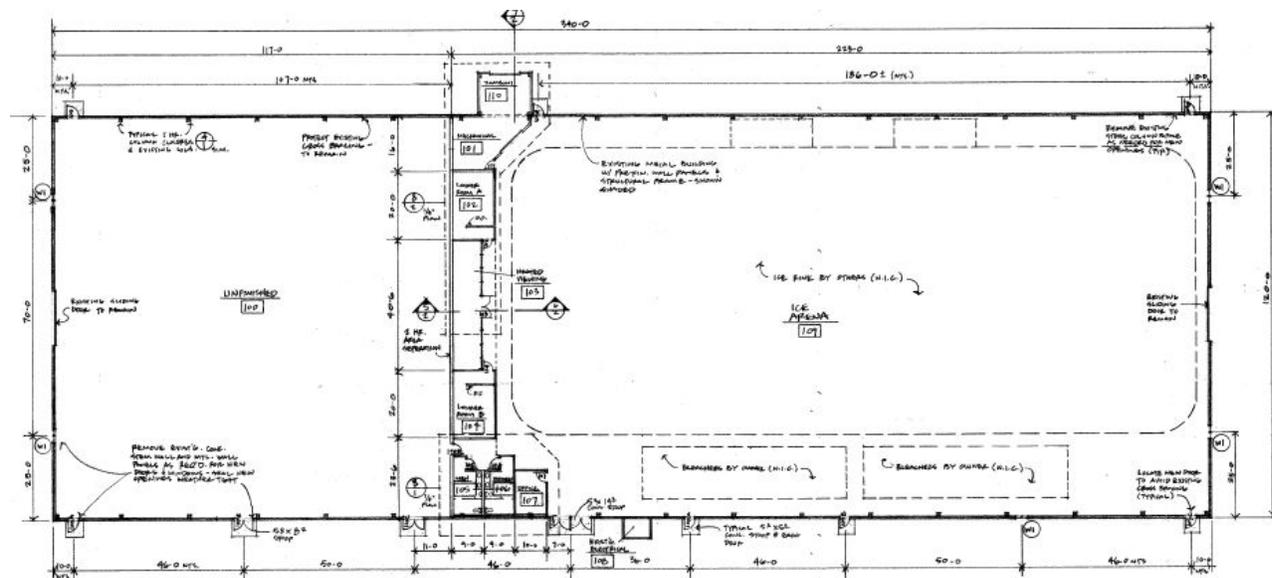
Features of the original building design include steel rigid frames spaced at 20'-0" on center, with multiple steel reinforcing bars ("rebar") tension ties running under the floor at each frame line, to counter the frame thrust foundation forces. Selected bays have diagonal steel rod "X"-bracing in the "minor" direction of the walls, continuing across the roof and opposite side wall, to the foundation walls. See Photo Nos. 5 thru 10.

**Reference: Civic Center Condition Assessment**

Pre-engineered metal buildings (PMBs) are designed and fabricated by a single company and, as such, are proprietary. They are optimally designed for efficiency (and cost effectiveness) with proprietary computer programs to be a building system, so that each component is essential in making the whole system work. There is little or no redundancy, so any missing or damaged piece reduces the overall building strength. Also, the buildings are, by nature, flexible and move laterally ("drift") more than most other building types. This fact makes no difference for most uses (e.g. grain storage), but can be an issue if brittle finishes (e.g. drywall-finished interior walls, masonry veneers) are attached without careful accommodation for movement.

Overhead doors are installed on the north and west walls, with a dock leveler at the west door. See Photo Nos. 11 and 12.

The floor is a 6 inch thick, mesh-reinforced concrete slab on grade. The frame line tension ties are not integral with the floor slab, embedded in a concrete trench just below. The building floor plan is shown below.



**Benson Civic Center Floor Plan**

The original building was constructed in 1986, but then had multiple changes made to it within the first 10 years. From a review of the available documentation, a brief history of the building is summarized below:

1986 – Original Construction

The 120' x 340' building was designed and constructed for United Farmers Elevator, for storing grain. The interior was open and unobstructed, but soon was divided, and the south portion remodeled to create an ice arena. The north portion has remained unfinished.

**Reference: Civic Center Condition Assessment**

1989

A letter, from a Chief Industries Customer Service Manager to Gopher State Contracting, indicates that the flange braces and "bulkhead framing" were not installed correctly, so Chief Industries was not going to warranty the building. It is unknown whether the necessary corrections were made.

1993

The building was divided into two spaces by a permanent, insulated, full-height wall, separating the ice arena in the southern two-thirds from the vacant north portion.

1995 – West Entry

The current 1-story concrete block entry/restroom addition was constructed on the west side, providing covered access to both portions of the main building.

**Methods of Assessment**

For the level of detail necessary, the scope of the assessment was limited to visual observations by experienced staff and review of relevant documents. Construction and erection drawings were available from the original building construction, as well as for the subsequent remodeling work. These documents were reviewed to establish the history of the construction and the basis for the design. This review was followed up with a site visit by a licensed structural engineer and architect to tour the building and observe the current conditions.

Observations were focused on identifying conditions that involved either building performance-related issues (e.g. stuck doors, water intrusion) or structural deficiencies (e.g. cracks, corrosion) that may reduce the building strength from its original design and construction.

Detailed measurements, material sampling and testing, calculations, etc. were not within the scope of this assessment.

**Assessment Findings**

Generally, the building is in good condition. However, during our document review and building walk-through, several items were noted. Some are more substantive than others, but it's important that the City, as owner, is aware of them when considering potential reuse options. In no particular order, these items include:

1. Flange braces for several of the columns and wall girts were detached and no longer functioning as intended. These braces are essential for achieving the design strength of the columns in some loading conditions. See Photo Nos. 13 and 14.
2. Anchor bolts and nuts were showing signs of corrosion.

**Reference: Civic Center Condition Assessment**

3. Cementitious fire protection coating was damaged and/or missing in several locations on the structural steel. See Photo Nos. 13 and 14.
4. The concrete floor slab was sawcut and removed in an area approximately 20' x 50'. The removal did not, however, expose the frame column tension ties. See Photo No. 10.
5. The Structural Notes for the West Entry indicate the design was based upon a 30 psf snow loading. The code has since increased the minimum snow loading to 35 psf, plus unbalanced snow accumulation and/or drifted snow. The framing installed may, in fact, accommodate this higher minimum load, but it must be verified by further investigation and calculation, which is beyond the scope of this assessment.
6. The Structural Notes for the West Entry also indicate the design was based upon a basic wind speed of 80 mph. The code has since increased the minimum design wind speed to 90 mph (or equivalent). The entry may, in fact, accommodate this higher wind speed, but it must be verified by further investigation and calculation, which is beyond the scope of this assessment.
7. As mentioned previously, (4) rebar tie rods run the width of the building at each frame line, just below the floor slab, to resist the frame thrust forces. Future renovations must be careful to avoid damaging these rods.
8. Exterior metal wall panels at the north and east walls have numerous holes of varying sizes. See Photo Nos. 6, 10 and 11.

**Recommendations**

From the assessment, no immediate safety concerns were noted. However, the disconnected and missing flange braces reduce the building's ability to withstand a low-probability, high wind event. If the building will be renovated soon (1-3 years), this work can wait. If no work is envisioned for the foreseeable future, these braces should be re-attached or replaced on at least a temporary basis.

The metal wall panels with holes should either be replaced or covered from the inside to weather-proof the exterior building envelope.

It should also be noted that, if the building remains unheated, the snow on the roof does not melt as readily and can increase above the design level snow loading. The metal roofing is slippery, so snow accumulating above approximately 24" depth is unlikely, but it should be monitored and removed if observed to be building up.

No other actions are necessary at this time, other than to be aware of the Findings described, if/when the City moves forward with reuse plans for the building.

If you have questions or comments, or would like to discuss any of the information presented in more detail, please contact me at (612) 712-2029 or at [phil.caswell@stantec.com](mailto:phil.caswell@stantec.com).

**Reference: Civic Center Condition Assessment**

**Limitations**

*The opinions stated in this report are based upon limited visual observations and desktop document review only, applicable at the time the services were performed, limited to the locations described in the scope of services. No material testing nor destructive investigation was performed. No warranty is made, expressed or implied, that deficiencies that may affect life safety, outside the scope of this report, may not exist or develop in the future.*

Regards,

**Stantec Consulting Services Inc.**



**Philip J. Caswell, PE**

Senior Associate  
Phone: 612 712 2029  
Phil.Caswell@stantec.com

Attachments: Appendix A – Selected Photos

<p><u>Professional Engineer</u> I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am duly Licensed Professional Engineer under the laws of the state of Minnesota.</p> <p> Signature: _____</p> <p>Date: <u>3/26/19</u>                      License Number: 19204</p>
--



Photo No. 1 – View of West Side Covered Loading Dock



Photo No. 2 – Lower West Entry Roof Adjacent to Large Main Roof



Photo No. 3 – West Entry, Looking East. Building Dividing Line is Visible.



Photo No. 4 – Hockey Rink Portion of Building, Looking South



Photo No. 5 – Interior Panoramic View



Photo No. 6 – Interior View, Looking Northwest



Photo No. 7 – Steel Rod “X”-bracing in Roof Plane



Photo No. 8 – Steel Frame Rafters with Flange Braces



Photo No. 9 – Divider Wall Between Hockey Rink (South) and Vacant Space (North)



Photo No. 10 – Portion of Concrete Floor Slab Removed



Photo No. 11 – Snow Intrusion at Overhead Door in North Wall

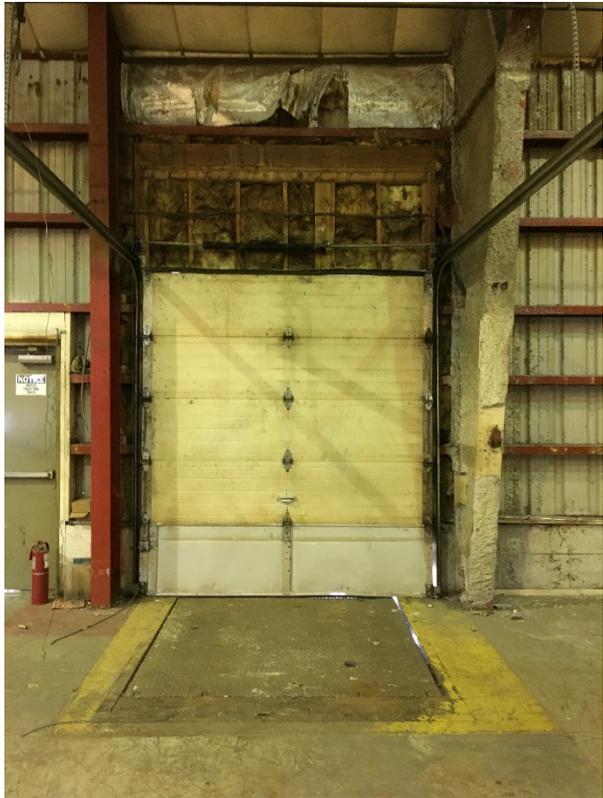


Photo No. 12 – Overhead Door and Dock Leveler at West Wall



Photo No. 13 – Detached Flange Braces on End Wall Columns



Photo No. 14 – Detached Flange Braces and Missing Fire-proofing Coating on Column

# 2015 MINNESOTA BUILDING CODE REVIEW (IBC)

THE FOLLOWING ARE SOME BUILDING CODE REQUIREMENTS

## CHAPTER 3 USE AND OCCUPANCY CLASSIFICATION

303.4	GYMNASIUM	A-3
303.5	ARENA	A-4

## CHAPTER 5 GENERAL BUILDING HEIGHTS AND AREAS

### 503 GENERAL BUILDING HEIGHT AND AREA LIMITATIONS

GROUP	STORIES	HEIGHT	BASIC ALLOWABLE	TOTAL ALLOWABLE	ACTUAL AREA	%
A-3 IN II-B	2	55	9,500		19,765	
A-4 IN II-B	2	55	9,500		17,145	
TOTAL	2	55	9,500		46,582	

### 506.2 AREA INCREASE DUE TO FRONTAGE

$$I_f = [F/P - 0.25] W/30 \quad F=1,023 \text{ FT} \quad P=1,023 \text{ FT} \quad W=30 \text{ FT}$$

$$I_f = 1/1 - 0.25$$

$$I_f = 75\%$$

### 506.3 AUTOMATIC SPRINKLER SYSTEM INCREASE

200% FOR BUILDINGS WITH MORE THAN ONE STORY  
 300% FOR BUILDINGS WITH ONE STORY

### TOTAL ALLOWABLE BUILDING AREA OF THIS BUILDING

BASIC ALLOWABLE AREA	9,500
FRONTAGE INCREASE	7,125
SPRINKLER INCREASE	28,500
TOTAL AREA	45,125

ACTUAL AREA	$9,500 + [9,500(3)] + [9,500(75)] = 45,125 \text{ SF ALLOWABLE}$
EXISTING	46,582
ADDITION	0
TOTAL	46,582

### 507 UNLIMITED AREA BUILDINGS

507.3 A-4 BUILDINGS MAY HAVE UNLIMITED AREA IF AUTOMATIC SPRINKLING SYSTEM & EXIT DOORS DOORS DIRECTLY TO THE OUTSIDE. 60'-0" OF OPEN SPACE.

507.6 A-3 BUILDING MAY HAVE UNLIMITED AREA IF TYPE II CONSTRUCTION, AUTOMATIC SPRINKLING SYSTEMS SURROUNDED BY 60'-0" OF OPEN SPACE.

508.4 REQUIRED SEPARATION OF OCCUPANCIES  
 A-3 & A-4 NO SEPARATION REQUIRED

### 509 INCIDENTAL USE AREAS

FURNACE ROOM WITH EQUIPMENT OVER 400,000 BTU PER HOUR	IHR OR SPRINKLED
BOILERS OVER 15 PSI AND 10 HP	IHR OR SPRINKLED
REFRIGERANT MACHINERY ROOMS	IHR OR SPRINKLED
STORAGE ROOMS OVER 100SQ FEET	IHR OR SPRINKLED

**CHAPTER 6 TYPE OF CONSTRUCTION**

TABLE 601 FIRE RATING REQ II-D

STRUCTURAL FRAME	- 0 HR
BEARING WALLS	- 0 HR
NON BEARING WALLS	- 0 HR
FLOOR CONSTRUCTION	- 0 HR
ROOF CONSTRUCTION	- 0 HR

TABLE 602 DISTANCE TO EXTERIOR WALLS  
1HR IF LESS THAN 10 FEET TO A PROPERTY LINE

**CHAPTER 7 FIRE AND SMOKE PROTECTION FEATURES**

705.8 EXTERIOR OPENINGS  
UNLIMITED IF GREATER THAN 30 FEET OF SEPARATION.

716 OPENING PROTECTIVES

**CHAPTER 8 INTERIOR FINISHES**

8.3.1.1 CLASS A: FLAME SPREAD INDEX 0-25, SMOKEDEVELOPED INDEX 0-450  
CLASS B: FLAME SPREAD INDEX 26-75, SMOKEDEVELOPED INDEX 0-450  
CLASS C: FLAME SPREAD INDEX 75-200, SMOKEDEVELOPED INDEX 0-450

803.9 INTERIOR WALL AND CEILING FINISH SPRINKLED BUILDING

VERTICAL EXITS AND EXIT PASSAGEWAYS	B
CORRIDOR	B
ROOMS	C
FLOORS	

**CHAPTER 9 FIRE PROTECTION SYSTEMS**

903 AUTOMATIC SPRINKLING SYSTEMS  
AN AUTOMATIC SPRINKLING SYSTEM IS REQUIRED IN BUILDING MORE THAN 12,000 SQ. FT. OR MORE THAN 300 OCCUPANTS.

906.3.1 MAX TRAVEL DISTANCE TO PORTABLE FIRE EXTINGUISHER  
75 FEET

907 FIRE ALARM SYSTEM  
IS REQUIRED AUTOMATIC FIRE SPRINKLING SYSTEM.

CHAPTER 10 MEANS OF EGRESS

1004.1.2 &  
TABLE 1015.01

OCCUPANT LOAD

OCCUPANCY LOAD TABLE				
MAIN FLOOR	AREA	RATING	OCCUPANCY	EXITS
ARENA RINK & LOCKERS	20888		326	3
BLEACHER SEATING	1248	18 INCH	261	2
GYMNASIUM	13765	15	917	3
MECHANICAL	706	300	2	1
STORAGE	630	300	2	1
HEATED VIEWING	370	18 INCH	40	1
*BALANCE	8975			
TOTAL	46582		1548	11
UPPER FLOOR				
ASSEMBLY TABLE/CHAIRS	720	15	48	1
*BALANCE	171			
TOTAL	891		48	1
TOTAL	47473		1596	12
*BALANCE IS BUILDING CORRIDORS, WALLS, STAIRS, AND RESTROOMS				

1005 EGRESS WIDTH

1006 MEANS OF EGRESS ILLUMINATION  
MINIMUM OF ONE FOOTCANDLE AT FLOOR, POWERED BY EMERGENCY POWER.

1011 EXIT SIGNS  
ARE REQUIRED

1013 GUARDS

1014 EXIT ACCESS

1016 TRAVEL DISTANCE TO EXIT  
250-0' MAX TRAVEL DISTANCE TO EXIT. ACTUAL TRAVEL DISTANCE 150-0'

# CITY OF BENSON, MN



**ENGAN ASSOCIATES**  
ARCHITECTS | INTERIOR DESIGNERS  
shared vision. innovative design.

311 4th Street SW, P.O. Box 856, Williston, MN 55850  
320-235-0860 FAX: 320-235-0861 | www.engan.com

PLUMBING FIXTURE COUNT FOR HOCKEY ARENA - A-4

AVERAGE CALCULATION USED TO DETERMINE FIXTURE COUNT AS FOLLOWS:

OCCUPANT LOAD WILL BE DETERMINED DURING A HOCKEY GAME WITH BLEACHERS AND VIEWING AREA FULL. PLAYERS, COACHES, REFS WILL USE LOCKER ROOM FIXTURES.

MAXIMUM ROOM OCCUPANT LOADS DURING WEEKNIGHTS/WEEKENDS FOR GAME EVENTS - TOTAL EQUALS 396 OCCUPANTS

FIXTURE COUNT BASED ON

TOTAL OCCUPANT LOADS DURING A HOCKEY GAME = 396 OCCUPANTS IN A-4 CLASSIFICATION

MALE AND FEMALE OCCUPANT LOADS =  $396/2 = 198$  EACH

A-4 OCCUPANCY

FEMALE FIXTURES REQUIRED  $198/65 = 3$  WATER CLOSET FIXTURES  
 $198/200 = 1$  LAVATORIES

REQUIRED  
5 WATER CLOSETS  
2 LAVATORIES

PROVIDED  
7 WATER CLOSETS  
4 LAVATORIES

MALE FIXTURES REQUIRED  $198/125 = 1$  WATER CLOSET FIXTURES  
 $198/200 = 1$  LAVATORIES

REQUIRED  
3 WATER CLOSETS  
1 LAVATORIES

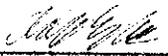
PROVIDED  
3 WATER CLOSETS AND 3 URINALS  
4 LAVATORIES

DRINKING FOUNTAINS

TOTAL OCCUPANTS =  $396/1000 = 2$  REQUIRED  
PER STATE AMENDMENT 2902.1 FOOTNOTE 1, CAN SUBSTITUTE UP TO 50% FOR ANY OF THE FOLLOWING: (KITCHEN LINE, VENDINGS, STUDENT STORE, CONCESSION STAND AND AL-A-CART.)

2 DRINKING FOUNTAINS REQUIRED - PROVIDED 2 DRINKING FOUNTAINS

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly licensed architect under the laws of the state of Minnesota. Date: \_\_\_\_\_ LIC. NO. 051238

  
Andrew M. Engan  
Copyright © 2019 All rights reserved  
Engan Associates, P.A.

PROJECT # 520.08

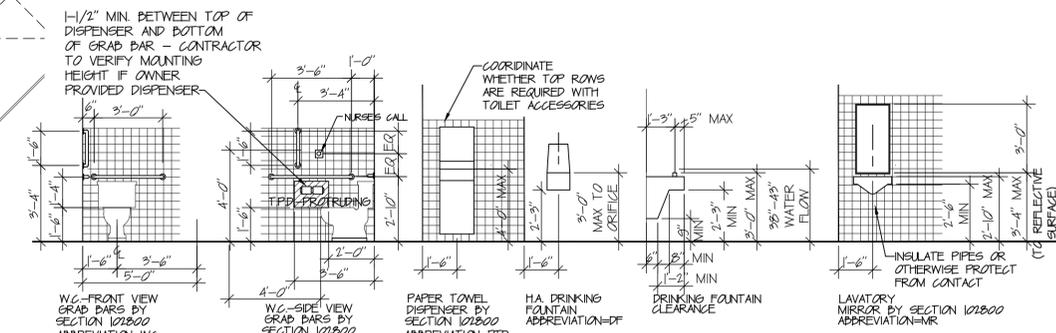
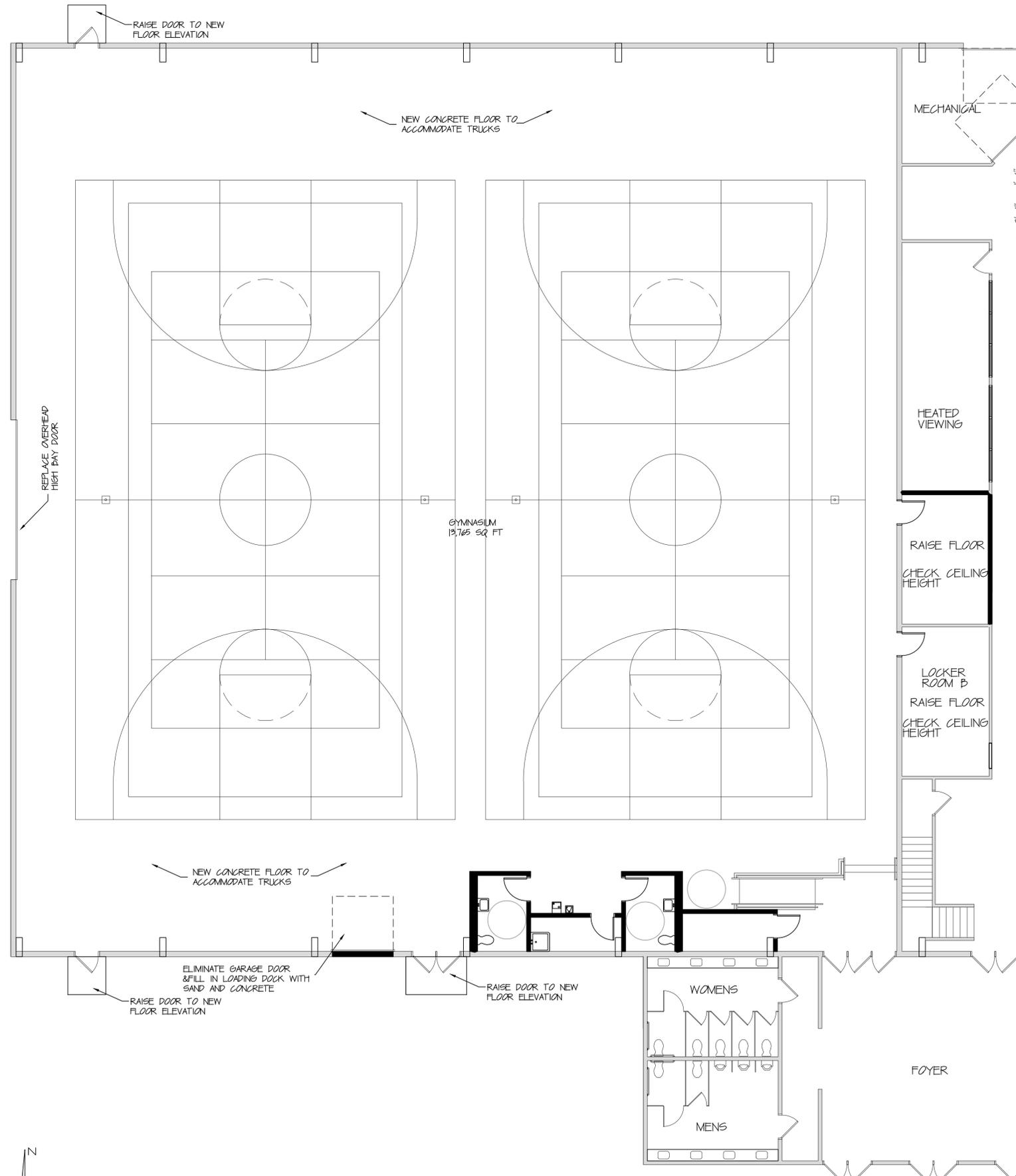
DATE: 3/12/2019

DRAWN BY:

CHECKED BY:

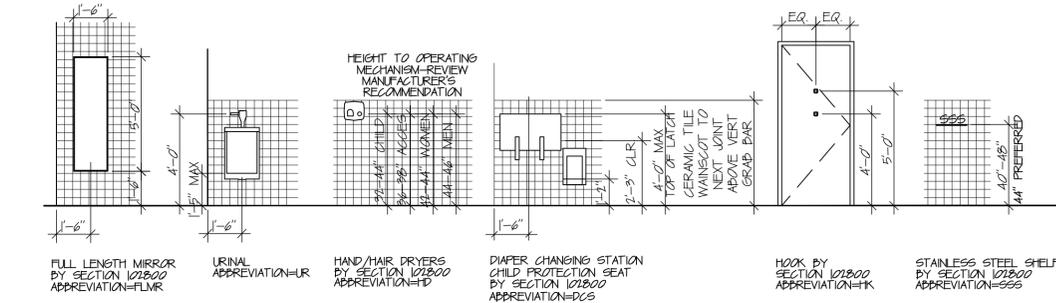
OWNER:





**2 H.A. PLUMBING FIXTURES AND ACCESSORIES STANDARDS**

ENGAN ASSOCIATES STANDARDS ARE PAGED UPON MN STATE BUILDING CODE SECTION 1341



**3 H.A. PLUMBING FIXTURES AND ACCESSORIES STANDARDS**

ENGAN ASSOCIATES STANDARDS ARE PAGED UPON MN STATE BUILDING CODE SECTION 1341

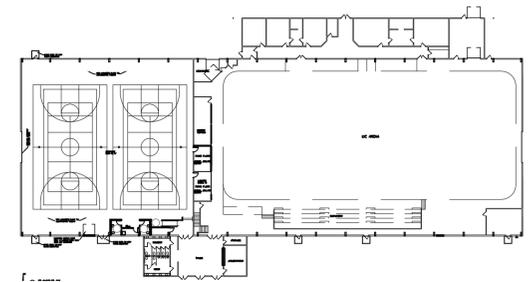
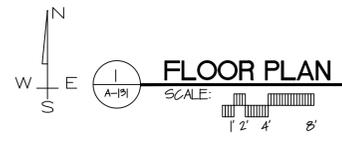
PRELIMINARY  
PROGRESS PRINT  
FOR INFO ONLY  
NOT FOR CONST.

PROJECT # 520.08	DATE: 3/12/2019
DRAWN BY:	CHECKED BY:
OWNER:	

CITY OF BENSON  
CIVIC CENTER

BENSON,  
WILLMAR

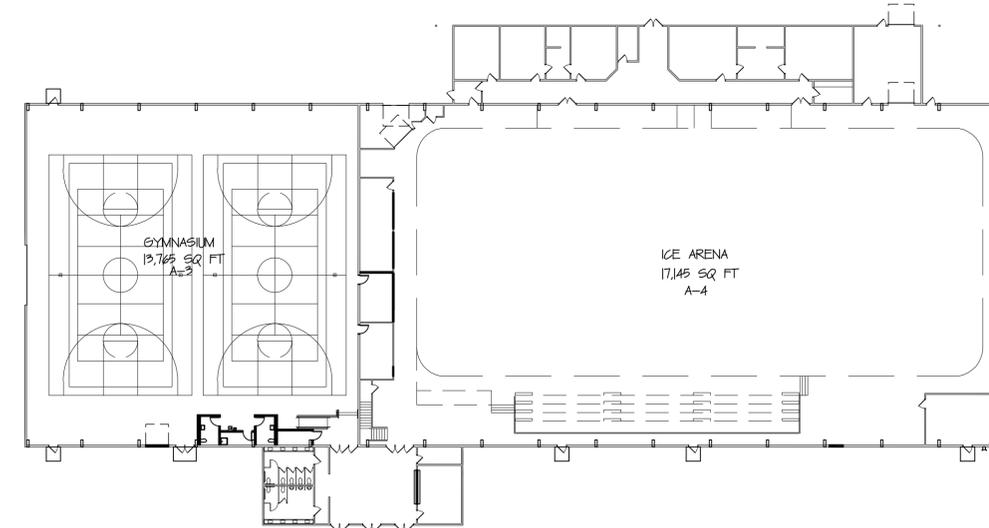
FLOOR PLAN



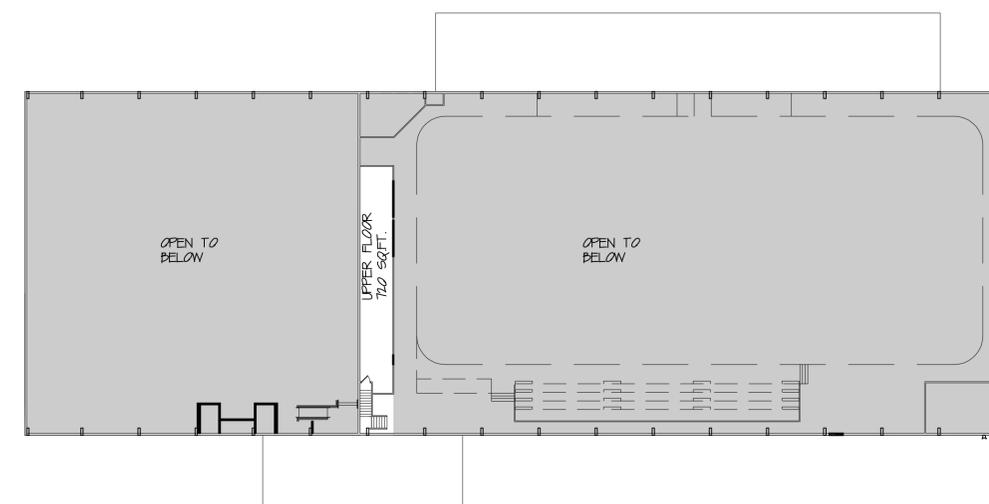
2015 MINNESOTA BUILDING CODE REVIEW (IBC)

THE FOLLOWING ARE SOME BUILDING CODE REQUIREMENTS

<b>CHAPTER 3 USE AND OCCUPANCY CLASSIFICATION</b>	
303.4	GYMNASIUM A-3
303.5	ARENA A-4
<b>CHAPTER 5 GENERAL BUILDING HEIGHTS AND AREAS</b>	
503 GENERAL BUILDING HEIGHT AND AREA LIMITATIONS	
GROUP	STORIES HEIGHT BASIC ALLOWABLE TOTAL ALLOWABLE ACTUAL AREA %
A-3 IN II-B	2 55 9,500 19,765
A-4 IN II-B	2 55 9,500 17,145
TOTAL	2 55 9,500 46,582
506.2 AREA INCREASE DUE TO FRONTAGE	
$I_f = [F/P - 0.15] W/30$ $F=1018$ FT $P=1018$ FT $W=90$ FT $I_f = 1/1 - 0.15$ $I_f = 75\%$	
506.3 AUTOMATIC SPRINKLER SYSTEM INCREASE	
100% FOR BUILDINGS WITH MORE THAN ONE STORY 90% FOR BUILDINGS WITH ONE STORY TOTAL ALLOWABLE BUILDING AREA OF THIS BUILDING	
BASIC ALLOWABLE AREA 9,500 FRONTAGE INCREASE 7,125 SPRINKLER INCREASE 28,500 TOTAL AREA 45,125	
ACTUAL AREA 9,500 + [9,500(9)] + [9,500(75)] = 45,125 SF ALLOWABLE EXISTING 46,582 ADDITION 0 TOTAL 46,582	
507 UNLIMITED AREA BUILDINGS	
507.3 A-4 BUILDINGS MAY HAVE UNLIMITED AREA IF AUTOMATIC SPRINKLING SYSTEM & EXIT DOORS DOORS DIRECTLY TO THE OUTSIDE 60'-0" OF OPEN SPACE	
507.6 A-3 BUILDING MAY HAVE UNLIMITED AREA IF TYPE II CONSTRUCTION, AUTOMATIC SPRINKLING SYSTEMS SURROUNDED BY 60'-0" OF OPEN SPACE	
508.4 REQUIRED SEPARATION OF OCCUPANCIES A-3 & A-4 NO SEPARATION REQUIRED	
509 INCIDENTAL USE AREAS	
FURNACE ROOM WITH EQUIPMENT OVER 400,000 BTU PER HOUR IHR OR SPRINKLED BOILERS OVER 15 PSI AND 10 HP IHR OR SPRINKLED REFRIGERANT MACHINERY ROOMS IHR OR SPRINKLED STORAGE ROOMS OVER 100SQ FEET IHR OR SPRINKLED	
<b>CHAPTER 6 TYPE OF CONSTRUCTION</b>	
TABLE 601	FIRE RATING REQD II-B STRUCTURAL FRAME - 0 HR BEARING WALLS - 0 HR NON-BEARING WALLS - 0 HR FLOOR CONSTRUCTION - 0 HR ROOF CONSTRUCTION - 0 HR
TABLE 602	DISTANCE TO EXTERIOR WALLS 1HR IF LESS THAN 10 FEET TO A PROPERTY LINE
<b>CHAPTER 7 FIRE AND SMOKE PROTECTION FEATURES</b>	
705.8 EXTERIOR OPENINGS UNLIMITED IF GREATER THAN 30 FEET OF SEPARATION	
716 OPENING PROTECTIVES	
<b>CHAPTER 8 INTERIOR FINISHES</b>	
8.3.1	CLASS A: FLAME SPREAD INDEX 0-25, SMOKEDEVELOPED INDEX 0-450 CLASS B: FLAME SPREAD INDEX 26-75, SMOKEDEVELOPED INDEX 0-450 CLASS C: FLAME SPREAD INDEX 76-200, SMOKEDEVELOPED INDEX 0-450
8.03.9	INTERIOR WALL AND CEILING FINISH SPRINKLED BUILDING VERTICAL EXITS AND EXIT PASSAGEWAYS D CORRIDOR D ROOMS C FLOORS C
<b>CHAPTER 9 FIRE PROTECTION SYSTEMS</b>	
903 AUTOMATIC SPRINKLING SYSTEMS AN AUTOMATIC SPRINKLING SYSTEM IS REQUIRED IN BUILDING MORE THAN 12,000 SQ. FT. OR MORE THAN 300 OCCUPANTS	
906.3.1 MAX TRAVEL DISTANCE TO PORTABLE FIRE EXTINGUISHER 75 FEET	
907 FIRE ALARM SYSTEM IS REQUIRED AUTOMATIC FIRE SPRINKLING SYSTEM	



1 CODE PLAN- MAIN FLOOR  
SCALE: 1/8" = 1'-0"



2 CODE PLAN- UPPER FLOOR  
SCALE: 1/8" = 1'-0"

CHAPTER 10 MEANS OF EGRESS

1004.1.2 & TABLE 1015.01 OCCUPANT LOAD

OCCUPANCY LOAD TABLE				
MAIN FLOOR	AREA	RATING	OCCUPANCY	EXITS
ARENA RINK & LOCKERS	20888		926	3
BLEACHER SEATING	1248	1B INCH	261	2
GYMNASIUM	19765	1B	917	3
MECHANICAL	706	300	2	1
STORAGE	630	300	2	1
HEATED VIEWING	970	1B INCH	40	1
*BALANCE	8975			
TOTAL	46582		1548	11
UPPER FLOOR				
ASSEMBLY TABLE/CHAIRS	720	1B	48	1
*BALANCE	171			
TOTAL	891		48	1
TOTAL	47473		1596	12

\*BALANCE IS BUILDING CORRIDORS, WALLS, STAIRS, AND RESTROOMS

1005 EGRESS WIDTH

1006 MEANS OF EGRESS ILLUMINATION  
MINIMUM OF ONE FOOTCANDLE AT FLOOR, POWERED BY EMERGENCY POWER

1011 EXIT SIGNS  
ARE REQUIRED

1013 GUARDS

1014 EXIT ACCESS

1016 TRAVEL DISTANCE TO EXIT  
250'-0" MAX TRAVEL DISTANCE TO EXIT. ACTUAL TRAVEL DISTANCE 150'-0"

PLUMBING FIXTURE COUNT FOR HOCKEY ARENA - A-4

AVERAGE CALCULATION USED TO DETERMINE FIXTURE COUNT AS FOLLOWS:  
OCCUPANT LOAD WILL BE DETERMINED DURING A HOCKEY GAME WITH BLEACHERS AND VIEWING AREA FULL PLAYERS, COACHES, REFS WILL USE LOCKER ROOM FIXTURES.

MAXIMUM ROOM OCCUPANT LOADS DURING WEEKNIGHTS/WEEKENDS FOR GAME EVENTS - TOTAL EQUALS 996 OCCUPANTS

FIXTURE COUNT BASED ON  
TOTAL OCCUPANT LOADS DURING A HOCKEY GAME = 996 OCCUPANTS IN A-4 CLASSIFICATION

MALE AND FEMALE OCCUPANT LOADS = 996/2 = 198 EACH

A-4 OCCUPANCY

FEMALE FIXTURES REQUIRED 198/65 = 3 WATER CLOSET FIXTURES  
198/200 = 1 LAVATORIES

REQUIRED	PROVIDED
5 WATER CLOSETS	7 WATER CLOSETS
2 LAVATORIES	4 LAVATORIES

MALE FIXTURES REQUIRED 198/125 = 1 WATER CLOSET FIXTURES  
198/200 = 1 LAVATORIES

REQUIRED	PROVIDED
3 WATER CLOSETS	3 WATER CLOSETS AND 3 URINALS
1 LAVATORIES	4 LAVATORIES

DRINKING FOUNTAINS  
TOTAL OCCUPANTS = 996/1000 = 2 REQUIRED  
PER STATE AMENDMENT 2302.1 FOOTNOTE 1, CAN SUBSTITUTE UP TO 50% FOR ANY OF THE FOLLOWING: (KITCHEN LINE, VENDINGS, STUDENT STORE, CONCESSION STAND AND AL-A-CART.)

2 DRINKING FOUNTAINS REQUIRED - PROVIDED 2 DRINKING FOUNTAINS

PLUMBING FIXTURE COUNT FOR COMMUNITY GYM - A-3

AVERAGE CALCULATION USED TO DETERMINE FIXTURE COUNT AS FOLLOWS:  
OCCUPANT LOAD WILL BE DETERMINED BY 2 BASKETBALL COURTS WITH PLAYERS, COACHES, REFEREES, AND SPECTATORS.

A) MAXIMUM OCCUPANT LOAD = 260 OCCUPANTS  
B) OCCUPANT LOADS FOR ICE RINK DURING DAY TIME = 225 OCCUPANTS

FIXTURE COUNT BASED ON  
OCCUPANT LOAD DURING GYM USE = 485 OCCUPANTS

485 OCCUPANT LOAD WILL BE USED TO DETERMINE FIXTURE COUNTS

MALE AND FEMALE FIXTURES = 485/2 = 243 EACH

A-3 OCCUPANCY

FEMALE FIXTURES REQUIRED 243/65 = 4 FIXTURES  
243/200 = 2 LAVATORIES

REQUIRED	PROVIDED
4 WATER CLOSETS	7 WATER CLOSETS
2 LAVATORIES	6 LAVATORIES

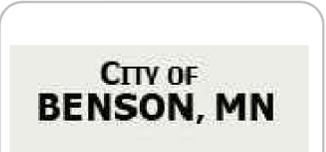
PLUS (1) WC AND (2) LAVS IN THE WOMEN'S LOCKER ROOM

MALE FIXTURES REQUIRED 243/125 = 2 FIXTURES  
243/200 = 2 LAVATORIES

REQUIRED	PROVIDED
2 WATER CLOSETS	3 WATER CLOSETS AND 3 URINALS
2 LAVATORIES	5 LAVATORIES

PLUS (1) WC AND (2) LAVS IN THE MEN'S LOCKER ROOM

PLUS (1) UNISEX TOILET WITH (WC AND LAV)



311 4th Street SW, P.O. Box 956, Willmar, MN 56201  
320-235-0860 FAX: 320-235-0861 | www.engan.com

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly licensed architect under the laws of the state of Minnesota. Date: LIC. NO. 051238

Andrew M. Engan  
Copyright © 2019 All rights reserved  
Engan Associates, P.A.

PROJECT # 520.08 DATE: 3/12/2019  
DRAWN BY: CHECKED BY:  
OWNER:

CITY OF BENSON CIVIC CENTER

BENSON, WILLMAR

CODE REVIEW

G-011

# Benson Civic Center Board 2020 Budget

	<b>Proposed 2020 Budget</b>
<b>Revenues</b>	
Transfer from the City	15,000
Sign Rental	6,000
Transfer from Hockey Assn	70,000
North End Rent	<u>40,000</u>
Total Revenues	131,000
 <b>Expenditures</b>	
<b>Common Areas</b>	
Repairs & Maintenance	3,000
Operating Supplies	2,000
Insurance	3,000
Sprinkler System	1,500
Utilities	3,500
Garbage Pickup	1,500
Small Tools & Equipment	<u>2,000</u>
Total Common Areas	16,500
 <b>North End (Warm)</b>	
Repairs & Maintenance	3,000
Operating Supplies	
Debt Service Payment (20 years)	36,500
Utilities	8,000
Heat	5,000
Small Tools & Equipment	<u>0</u>
Total North	52,500
 <b>South End (Cold)</b>	
Repairs & Maintenance	2,500
Operating Supplies	
Utilities	52,000
Heat	<u>4,500</u>
Total South	59,000
Total Expenditures	128,000
 Net Income	 3,000

## Proposed North End Improvements

Lighting and electrical, Insulation	290,900
Level floor, new sheet steel	
Doors and exit upgrades	
Open 2nd level viewing area	15,000
Sprinkler System	57,486
Craigs Heating	20,000
New restrooms	15,000
Painting and striping Floor	14,000
Tennis Posts & Net installed	4,000
Contingencies	30,000
 Total	 446,386

**DOCUMENT 00 11 11**  
**NOTICE OF CALL FOR BIDS**

Project Location: Benson Municipal Airport  
Project Name: Arrival/Departure Building  
FAA AIP No. 3-27-0011-11-2019  
SP No. A7601-36  
TKDA Project No. 16604  
Bids Close At: 11:00AM on Tuesday, May 7, 2019

**NOTICE TO CONTRACTORS**

Sealed bid proposals for the project listed above will be received by the City of Benson at the office of the City Administrator, Benson City Hall, 1410 Kansas Avenue, Benson, Minnesota 56215, until the date and hour indicated. The bids will be publicly opened and read aloud immediately thereafter in the City Council Chambers. The work, in accordance with drawings and specifications prepared by TKDA, 444 Cedar Street, St. Paul, Minnesota 55101.

This project provides for:

1. General Construction of a one thousand (1,000) square foot arrival and departure building consisting of a public waiting area, public access corridor and vestibule, two (2) ADA compliant restrooms, and utility room. Structural systems including structural steel, glue laminated timber, cast-in-place concrete foundation, and structural insulated panels. Architectural systems including exterior fiber cement panel system, exterior wood siding, exterior stone base, aluminum framed entrances and storefront, hollow metal doors, flush wood doors, aluminum windows, rough carpentry and interior finish carpentry, ceramic tiling, acoustic ceiling panels, gypsum board, wood veneer faced architectural cabinets and associated millwork, fiberglass sandwich panel assemblies, standing seam metal roof, furniture, fixtures, and equipment, paint and finishes, and low maintenance landscaping.
2. Electrical Construction: Power distribution system including switchgear, switchboards, panel boards, and associated equipment. Lighting system(s) including luminaires, lamps, mounting hardware, poles, bases, and lighting controls. Installation as required of Phone/Data and Audio/Visual wiring.
3. Mechanical Construction: Plumbing and HVAC systems including domestic water piping and pumps, sanitary waste and vent piping, fuel fired domestic water heater, plumbing fixtures for 2 ADA compliant restrooms, kitchenette, and finned-tube radiation heaters, refrigerant piping, furnace, electric duct heaters, condenser unit, air to air energy recovery equipment, direct gas-fired heating and ventilating units, metal ducts, centrifugal HVAC fans, associated insulation accessories.
4. Civil Site Construction work for the Arrival/Departure Building project, as shown or specified including the following major work items: concrete curbing and sidewalks, chain link fencing, manual slide gate and turf establishment.

Bids shall be submitted on Document 00 41 11 - Bid Form. No other Bid Form is acceptable.

Consistent with Minnesota Statute, Section 473.144, City of Benson may not accept a bid or proposal for a contract or execute a contract in excess of \$100,000 with any business unless said business is in compliance with certain requirements concerning affirmative action plans. Evidence of compliance must be submitted within two (2) City business day following opening of bids. Bids will be considered non-responsive if the compliance requirements are not met. Compliance requirements are outlined in the project specification.

**NONDISCRIMINATION IN EMPLOYMENT**

Refer to Contract and Labor Provisions in the specifications for requirements.

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The goal of the City of Benson for the utilization of Disadvantaged Business Enterprises (DBE) on this project is 1.4%.

Within (2) two City business day following the opening of the bids, all bidders who wish to remain in competition for the contract will be required to submit the following information as referenced in the Information For Bidders.

Bidders will be prohibited from entering into agreements with a DBE in which the DBE promises not to provide subcontracting quotations to other bidders.

A bidder's failure to show a good faith effort to achieve the specified contract goal for the participation of DBEs in the completion of this project will be grounds for finding the bid non-responsive.

**NOTICE OF REQUIREMENTS FOR  
AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

<u>GOALS FOR MINORITY PARTICIPATION IN EACH TRADE</u>		<u>GOALS FOR FEMALE PARTICIPATION IN EACH TRADE</u>	
Federal Requirements:	2.2%	Federal Requirements:	6.9%
State Requirements:	15.0%	State Requirements:	9.0%

These goals are applicable to all contractors' construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-federally involved construction.

The contractor's compliance with the executive order and the regulations in 41 CFR Part 60-4 and Minnesota Statutes Section 473.144 and Minnesota Rules, Part 5000.3520 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and Minnesota Rules, Part 5000.3540, and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the executive order, the regulations in 41 CFR Part 60-4, Minnesota Statutes Section 473.144 and Minnesota Rules, Part 5000.3520. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director, OFCCP, and the Compliance Division of the Minnesota Department of Human Rights, within ten (10) working days of award of any construction subcontract (in excess of \$10,000 for OFCCP reporting) at any tier for construction work under the contract resulting from the solicitation. The notification must list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract, and the geographical area in which the contract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is Swift County.

#### **BID SECURITY**

Each bid shall be accompanied by a "Bid-Security" in the form of a certified check made payable to the City of Benson in the amount of not less than five percent (5%) of the total bid, or a surety bond in the same amount, payable to the City of Benson, with the surety company thereon duly authorized to do business in the State of Minnesota. Such Bid Security to be a guarantee that the bidder will not, without the consent of the City of Benson, withdraw its bid for a period of (90) days after the opening of bids, and, if awarded the Contract, will enter into a contract with the City of Benson, and in connection therewith, give Payment and Performance Bonds as required by law and on forms furnished to the Contractor by the City of Benson. In the event the Bidder fails to enter into a Contract, the amount of the certified check will be retained or the bond enforced by the City of Benson.

The Bid Security of the three (3) lowest bidders will be retained until the contract is executed, but in no event longer than (90) days, provided that the Bid Security of the lowest responsible bidder shall be retained in any event until the contract is executed and Payment and Performance Bonds furnished as herein provided.

The bid of the lowest responsible bidder, provided said low bidder has made a good faith effort to meet the DBE contract goal, will be accepted on or before the expiration of (90) days after the date of the opening of bids. The City of Benson, however, reserves the right to reject any or all bids and to waive any minor irregularities, informalities or discrepancies.

#### **AVAILABILITY OF CONSTRUCTION DOCUMENTS**

Plans and specifications are on file for inspection at the office of the City of Benson, City Clerk, 1410 Kansas Avenue, Benson, Minnesota 56215, and at the office of TKDA, 444 Cedar Street, Suite 1500, St. Paul, Minnesota 55101.

Digital copies of the drawings and specifications will be available at [www.questcdn.com](http://www.questcdn.com). Documents may be downloaded for a non-refundable fee of \$25.00 by entering Quest Project No. ##### on the Project Search page. Please contact QuestCDN at (952) 233-1632 or [info@questcdn.com](mailto:info@questcdn.com) for assistance and free membership registration.

Hard copy drawings and specifications will not be made available to Bidders.

Dated at Benson, Minnesota, the 1st day of April. By: Rob Wolfington, City Administrator

#### Publication:

Swift County Monitor, April 10 and April 17, 2019

Quest CDN: April 5, 2019

**END OF DOCUMENT**

**PROJECT SCHEDULE**

**ARRIVAL/DEPARTURE BUILDING CONSTRUCTION  
BENSON MUNICIPAL AIRPORT  
FAA AIP No. 3-27-0011-011-2019  
State Project No. A7601-36  
TKDA Project No. 16604**

Blue Text Represents Fixed Deadline Dates

Red Text Represents Date Completed

Dates Are Subject to Change Upon Request of Sponsor, Agencies, or to Match Specific Meeting Dates

No.	ITEM	FAA (Due)	Sponsor (Sent or Will Send)	Comments
1	Selection of Sponsor's Engineer (City)		5/1/2018	
2	DBE 3-Year Goal Accepted (TKDA/City)		1/18/2017	
3	Submission of Environmental Documentation (TKDA)	10/1/2018	2/6/2018	CATEX Approved 2/7/2018
4	Provide Airspace (For new structures only) (TKDA)	12/15/2018	3/26/2019	
5	Provide Pre-Application Package to ADO (TKDA)	12/15/2018	12/15/2018	
6	Provide Final Notice of Intent to Use Funds (TKDA/City)		1/15/2019	
7	Submit Professional Services Agreement - Construction (TKDA)	1/15/2019	5/10/2019	
8	Submit Project Safety Phasing Plan (TKDA)	2/15/2019	3/26/2019	
9	90% Complete Plans and Specifications for Review (TKDA)		3/15/2019	
10	Advertisement for Bids to City for Approval (TKDA)		3/27/2019	
11	Obtain Wage Rates (TKDA)		3/29/2019	
12	Approve Advertisement for Bids (City Council Action)		4/1/2019	
13	Complete Plans and Specs (TKDA)		4/5/2019	
14	Submit Engineer's Design Report to ADO (TKDA)		4/5/2019	
15	Advertise for Bid (TKDA/City)		4/5/2019	
16	Receive Bids (City)		5/7/2019	
17	Submit Bid Tab to FAA (TKDA)		5/10/2019	
18	Conditionally Accepts Bid (City Council Action)	7/10/2019	5/20/2019	
18	Award Engineering PSA (City Council Action)	7/10/2019	5/20/2019	
19	Submit Grant Application to MnDOT / FAA (TKDA)	7/10/2019	5/22/2019	
20	Submit Transfer Agreements to ADO	5/15/2019	N/A	
21	Acceptance of Grant Offer (City Council Action)	9/1/2019	7/1/2019	
22	Award of Contract (City Council Action)		7/1/2019	
23	Preconstruction Conference / Issue Notice to Proceed (TKDA/City)		7/8/2019	
24	Construction Start		7/15/2019	
25	Construction Completion		11/30/2019	
26	Exhibit A Revised		NA	
27	5010 Updated		NA	
28	ALP Revised / Construction As-Built (TKDA)		12/31/2019	
29	AGIS Updated (TKDA)		12/31/2019	
30	Project Closeout (TKDA/City)		1/15/2020	



Alex Air Apparatus, Inc  
 11897 Co Rd 87 SE  
 Alexandria, MN 56308

# INVOICE

<b>Date</b>	<b>Invoice #</b>
2/26/2019	INV-38979

<b>Bill To</b>
Benson Fire Department 1410 Kansas Ave Benson, MN 56212

<b>Ship To</b>
Benson Fire Department 1410 Kansas Ave Benson, MN 56212

<b>S.O. No.</b>	<b>CUSTOMER PO</b>	<b>TERMS</b>	<b>DUE DATE</b>	<b>REP</b>
		Net 30	3/28/2019	822

Quantity	Item Code	Description	Price Each	Amount
1	LEGACY-13-E1	Bauer Vertecon 6,000 psi Compressor. 4 Stage, Automatic Drain System, P2 SECURUS, Interstage Pressure Gauges, 10hp, Single Phase, 240V Motor, 13cfm	18,361.00	18,361.00
1	CFS5.5-2S-H	Two Position Fill Station, High Pressure Fill	7,715.00	7,715.00
1	DF TM/CSCD	Dual function, Top Mount, Four Bank Cascade Panel Remote Fill Hose Connection (Including Bulkhead Fitting, Adjustable Regulator for 6,000 psi Service, Gauge, Isolation Valve and Quick Connect/Disconnect)	2,670.00	2,670.00
1	RF/REG	Single Position Fill Station, High Pressure Fill	1,240.00	1,240.00
1	CFS5.5-1S-H	Dual function, Side Mount, Four Bank Cascade Panel	6,280.00	6,280.00
1	DF TM/CSCD	Dual-Fill Quick Connect Fill System (High/Low), 1 Position	3,165.00	3,165.00
1	DUALFILL-1 PO...	Refill Port w/ Quick Connect / Disconnect and Valve for up to 6000 psig Service	500.00	500.00
1	RFP/6K	Custom Hose, Breathing Air	615.00	615.00
1	Custom Hose, Air	Length: 50' Ends: JIC4-F	500.00	500.00
1	CSCD-6-5	Cascade System, 6000 psi, 5 Cylinder	7,550.00	7,550.00
1	CSCD-6-3	Cascade System, 6000 psi, 3 Cylinder	4,650.00	4,650.00
1	Installation	Installation	3,000.00	3,000.00

INVOICES NOT PAID WITHIN 30 DAYS ARE SUBJECT TO A 1.5% FINANCE CHARGE	<b>Subtotal</b>
F.O.B. Shipping Point, Freight Prepaid and Added	<b>Sales Tax (6.875%)</b>
<b>Please Pay From This Invoice, A Statement Will Not Be Sent</b>	<b>Total</b>
	<b>Payments/Credits</b>
	<b>BALANCE DUE</b>

<b>Phone #</b>	<b>Fax #</b>	<b>E-Mail</b>	<b>Web Site</b>
(800) 264-2320	(320) 763-9077	orders@alexairapparatus.com	www.alexairapparatus.com



Alex Air Apparatus, Inc  
 11897 Co Rd 87 SE  
 Alexandria, MN 56308

# INVOICE

<b>Date</b>	<b>Invoice #</b>
2/26/2019	INV-38979

<b>Bill To</b>
Benson Fire Department 1410 Kansas Ave Benson, MN 56212

<b>Ship To</b>
Benson Fire Department 1410 Kansas Ave Benson, MN 56212

<b>S.O. No.</b>	<b>CUSTOMER PO</b>	<b>TERMS</b>	<b>DUE DATE</b>	<b>REP</b>
		Net 30	3/28/2019	822

Quantity	Item Code	Description	Price Each	Amount
1	Trade In 1 Ship	Trade-In Value of Bauer Mariner Compressor, Two Position Fill Station & (8) 4500psi Cylinders Shipping & Handling	-4,400.00 1,800.00	-4,400.00 1,800.00

INVOICES NOT PAID WITHIN 30 DAYS ARE SUBJECT TO A 1.5% FINANCE CHARGE	<b>Subtotal</b>	\$53,646.00
F.O.B. Shipping Point, Freight Prepaid and Added	<b>Sales Tax (6.875%)</b>	\$0.00
<b>Please Pay From This Invoice, A Statement Will Not Be Sent</b>	<b>Total</b>	\$53,646.00
	<b>Payments/Credits</b>	\$0.00
	<b>BALANCE DUE</b>	\$53,646.00

<b>Phone #</b>	<b>Fax #</b>	<b>E-Mail</b>	<b>Web Site</b>
(800) 264-2320	(320) 763-9077	orders@alexairapparatus.com	www.alexairapparatus.com

## **City of Benson, Minnesota Post-Issuance Debt Compliance Policy**

The City Council (the "Council") of the City of Benson, Minnesota (the "City") has chosen, by policy, to take steps to help ensure that all obligations will be in compliance with all applicable federal regulations. This policy may be amended, as necessary, in the future.

### **IRS Background**

The Internal Revenue Service (IRS) is responsible for enforcing compliance with the Internal Revenue Code (the "Code") and regulations promulgated thereunder ("Treasury Regulations") governing certain obligations (for example: tax-exempt obligations, Build America Bonds, Recovery Zone Development Bonds and various "Tax Credit" Bonds). The IRS encourages issuers and beneficiaries of these obligations to adopt and implement a post-issuance debt compliance policy and procedures to safeguard against post-issuance violations.

### **SEC Background**

The Securities and Exchange Commission (SEC) is responsible for enforcing compliance with the SEC Rule 15c2-12 (the "Rule"). Governments or governmental entities issuing obligations generally have a requirement to meet specific continuing disclosure standards set forth in continuing disclosure agreements ("CDA"). Unless the issuer, obligated person, or a specific obligation is exempt from compliance with CDAs, these agreements are entered into at the time of obligation issuance to enable underwriter(s) to comply with the Rule. The Rule sets forth certain obligations of (i) underwriters to receive, review and disseminate official statements prepared by issuers of most primary offerings of municipal securities, (ii) underwriters to obtain CDAs from issuers and other obligated persons to provide material event disclosure and annual financial information on a continuing basis, and (iii) broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities transactions in the secondary market. The SEC encourages issuers and beneficiaries adopt and implement a post-issuance debt compliance policy and procedures to safeguard against Rule violations.

When obligations are issued, the CDA commits the issuer or obligated person to provide certain annual financial information and material event notices to the public. Issuers and other obligated persons may also choose to provide periodic, voluntary financial information and filings to investors in addition to fulfilling the specific responsibilities delineated in their CDA. It is important to note that issuers and other obligated persons should not give any one investor certain information that is not readily available to all market participants by disseminating information to the marketplace, at large. Issuers and other obligated persons should be aware that any disclosure activities determined to be "communicating to the market" can be subject to regulatory scrutiny.

### **Post-Issuance Debt Compliance Policy Objective**

The City desires to monitor these obligations to ensure compliance with the IRS Code, Treasury Regulations and the SEC Rule. To help ensure compliance, the City has developed the following policy (the "Post-Issuance Debt Compliance Policy"). The Post-

Issuance Debt Compliance Policy shall apply to the obligations mentioned above, including bonds, notes, loans, lease purchase contracts, lines of credit, commercial paper or any other form of debt that is subject to compliance.

### **Post-Issuance Debt Compliance Policy**

The Finance Director of the City is designated as the City's agent who is responsible for post-issuance compliance of these obligations.

The Finance Director shall assemble all relevant documentation, records and activities required to ensure post-issuance debt compliance as further detailed in corresponding procedures (the "Post-Issuance Debt Compliance Procedures"). At a minimum, the Post-Issuance Debt Compliance Procedures for each qualifying obligation will address the following:

1. General Post-Issuance Compliance
2. General Recordkeeping
3. Arbitrage Yield Restriction and Rebate Recordkeeping
4. Expenditure and Asset Documentation to be Assembled and Retained
5. Miscellaneous Documentation to be Assembled and Retained
6. Additional Undertakings and Activities that Support Sections 1 through 5 above
7. Continuing Disclosure Obligations
8. Compliance with Future Requirements

The Finance Director shall apply the Post-Issuance Debt Compliance Procedures to each qualifying obligation and maintain a record of the results. Further, the Finance Director will ensure that the Post-Issuance Debt Compliance Policy and Procedures are updated on a regular and as needed basis.

The Finance Director or any other individuals responsible for assisting the Finance Director in maintaining records needed to ensure post-issuance debt compliance, are authorized to expend funds as needed to attend training or secure use of other educational resources for ensuring compliance such as consulting, publications, and compliance assistance.

Most of the provisions of this Post-Issuance Debt Compliance Policy are not applicable to taxable governmental obligations unless there is a reasonable possibility that the City may refund their taxable governmental obligation, in whole or in part, with the proceeds of a tax-exempt governmental obligation. If this refunding possibility exists, then the Finance Director shall treat the taxable governmental obligation as if such issue were an issue of tax-exempt governmental obligations and comply with the requirements of this Post-Issuance Debt Compliance Policy.

### **Private Activity Bonds**

The City may issue tax-exempt obligations that are "private activity" bonds because either (1) the bonds finance a facility that is owned by the City but used by one or more qualified 501(c)(3) organizations, or (2) the bonds are so-called "conduit bonds", where the proceeds are loaned to a qualified 501(c)(3) organization or another private entity that finances activities eligible for tax-exempt financing under federal law (such as certain manufacturing projects and certain affordable housing projects). Prior to the issuance of



**City of Benson, Minnesota**  
**Post-Issuance Debt Compliance Procedures**

The City Council (the "Council") of the City of Benson, Minnesota (the "City") has adopted the attached Post-Issuance Debt Compliance Policy dated [REDACTED]. The Post-Issuance Debt Compliance Policy applies to qualifying debt obligations issued by the City. As directed by the adoption of the Post-Issuance Debt Compliance Policy, the Finance Director of the City will perform the following Post-Issuance Debt Compliance Procedures for all of the City's outstanding debt.

1) General Post-Issuance Compliance

- a) Ensure written procedures and/or guidelines have been put in place for individuals to follow when more than one person is responsible for ensuring compliance with Post-Issuance Debt Compliance Procedures.
- b) Ensure training and/or educational resources for post-issuance compliance have been approved and obtained.
- c) The Finance Director understands that there are options for voluntarily correcting failures to comply with post-issuance compliance requirements (e.g. as remedial actions under Section 1.141-12 of the Treasury Regulations and the ability to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31 (the "VCAP Program")).

2) General Recordkeeping

- a) Retain records and documents for the obligation and all obligations issued to refund the obligation for a period of at least seven years following the final payment of the obligation. If an obligation is refunded, then the final payment of the refunding obligation becomes the beginning of the period unless otherwise directed by the City's bond counsel.
- b) Retain electronic (preferred) and/or paper versions of records and documents for the obligation.
- c) General records and documentation to be assembled and retained:
  - i) Description of the purpose of the obligation (i.e. the project or projects) and the state statute authorizing the project.
  - ii) Record of tax-exempt status or revocation of tax-exempt status, if applicable.
  - iii) Any correspondence between the City and the IRS.
  - iv) Audited financial statements.
  - v) All accounting audits of property financed by the obligation.
  - vi) Obligation transcripts, official statements, and other offering documents of the obligation.
  - vii) Minutes and resolutions authorizing the issuance of the obligation.
  - viii) Certifications of the issue price of the obligation.

- ix) Any formal elections for the obligation (i.e. an election to employ an accounting methodology other than the specific tracing method).
- x) Appraisals, demand surveys, or feasibility studies for property financed by the obligation.
- xi) All information reports filed for the obligations.
- xii) All management contracts and other service agreements, research contracts, and naming rights contracts.
- xiii) Documents related to governmental grants associated with construction, renovation or purchase of property financed by the obligation.
- xiv) Reports of any prior IRS examinations of the City or the City's obligation.
- xv) All correspondence related to the above (faxes, emails, or letters).

### 3) Arbitrage Yield Restriction and Rebate Recordkeeping

- a) Investment and arbitrage documentation to be assembled and retained:
  - i) An accounting of all deposits, expenditures, interest income and asset balances associated with each fund established in connection with the obligation. This includes an accounting of all monies deposited to the debt service fund to make debt service payments on the obligation, regardless of the source derived. Accounting for expenditures and assets is described in further detail in Section 4.
  - ii) Statements prepared by Trustee and/or Investment Provider.
  - iii) Documentation of at least quarterly allocations of investments and investment earnings to each obligation.
  - iv) Documentation for investments made with obligation proceeds such as:
    - (1) investment contracts (i.e. guaranteed investment contracts),
    - (2) credit enhancement transactions (i.e. obligation insurance contracts),
    - (3) financial derivatives (e.g. swaps, caps, and collars), and
    - (4) bidding of financial products:
      - (a) Investments acquired with obligation proceeds are purchased at fair market value (e.g. three bid safe harbor rule for open market securities needed in advance refunding escrows).
- b) Computations of the arbitrage yield.
- c) Computations of yield restriction and rebate amounts including but not limited to:
  - i) Compliance in meeting the "Temporary Period from Yield Restriction Exception" and limiting the investment of funds after the temporary period expires.
  - ii) Compliance in meeting the "Rebate Exception."
    - (1) qualifying for the "Small Issuer Exception,"
    - (2) qualifying for a "Spending Exception,"
      - (a) 6-Month Spending Exception
      - (b) 18-Month Spending Exception
      - (c) 24-Month Spending Exception
    - (3) qualifying for the "Bona Fide Debt Service Fund Exception," and

- (4) quantifying arbitrage on all funds established in connection with the obligation in lieu of satisfying arbitrage exceptions including reserve funds and debt service funds.
  - d) Computations of yield restriction and rebate payments.
  - e) Timely Tax Form 8038-T filing, if applicable.
    - i) Remit any arbitrage liability associated with the obligation to the IRS at each five-year anniversary date of the obligation, and the date in which the obligation is no longer outstanding (redemption or maturity date), whichever comes sooner, within 60 days of said date.
  - f) Timely Tax Form 8038-R filing, if applicable.
    - i) Remit the form after the date in which the obligation is no longer outstanding (redemption or maturity date), whichever comes sooner, within 2 years of said date.
  - g) Procedures or guidelines for monitoring instances where compliance with applicable yield restriction requirements depends on subsequent reinvestment of obligation proceeds in lower yielding investments (e.g. reinvestment in zero coupon SLGS).
- 4) Expenditure and Asset Documentation to be Assembled and Retained
- a) Documentation of allocations of obligation proceeds to expenditures (e.g. allocation of proceeds to expenditures for the construction, renovation or purchase of facilities owned and used in the performance of exempt purposes).
    - i) Such allocation will be done not later than the earlier of:
      - (1) eighteen (18) months after the later of the date the expenditure is paid, or the date the project, if any, that is financed by the obligation is placed in service; or
      - (2) the date sixty (60) days after the earlier of the fifth anniversary of the issue date of the obligation, or the date sixty (60) days after the retirement of the obligation.
  - b) Documentation of allocations of obligation proceeds to issuance costs.
  - c) Copies of requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to obligation proceed expenditures during the construction period.
  - d) Copies of all contracts entered into for the construction, renovation or purchase of facilities financed with obligation proceeds.
  - e) Records of expenditure reimbursements incurred prior to issuing obligations for projects financed with obligation proceeds (declaration of official intent/reimbursement resolutions including all modifications).
  - f) List of all facilities and equipment financed with obligation proceeds.
  - g) Depreciation schedules for depreciable property financed with obligation proceeds.

- h) Documentation that tracks the purchase and sale of assets financed with obligation proceeds.
  - i) Documentation of timely payment of principal and interest payments on the obligation.
  - j) Tracking of all issue proceeds and the transfer of proceeds into the debt service fund as appropriate.
  - k) Documentation that excess earnings from a Reserve Fund are transferred to the Debt Service Fund on an annual basis. Excess earnings are balances in a Reserve Fund that exceed the Reserve Fund requirement.
- 5) Miscellaneous Documentation to be Assembled and Retained
- a) Ensure that the project, while the obligation is outstanding, will avoid IRS private activity concerns.
  - b) The Finance Director shall monitor the use of all obligation-financed facilities in order to:
    - i) Determine whether private business uses of obligation-financed facilities have exceeded the *de minimus* limits set forth in Section 141(b) of the Code as a result of:
      - (1) sale of the facilities;
      - (2) sale of City capacity rights;
      - (3) leases and subleases of facilities including easements or use arrangements for areas outside the four walls (e.g. hosting of cell phone towers);
      - (4) leasehold improvement contracts, licenses, management contracts in which the City authorizes a third party to operate a facility (e.g. cafeteria);
      - (5) research contracts;
      - (6) preference arrangements in which the City permits a third-party preference (e.g. parking in a public parking lot, joint ventures, limited liability companies or partnership arrangements);
      - (7) output contracts or other contracts for use of utility facilities including contracts with large utility users;
      - (8) development agreements which provide for guaranteed payments or property values from a developer;
      - (9) grants or loans made to private entities including special assessment agreements;
      - (10) naming rights agreements; and
      - (11) any other arrangements that provide special legal entitlements to nongovernmental persons.
    - ii) Determine whether private security or payments that exceed the *de minimus* limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such obligation-financed facilities.

- c) The Finance Director shall provide training and educational resources to any City staff that have the primary responsibility for the operation, maintenance, or inspection of obligation-financed facilities with regard to the limitations on the private business use of obligation-financed facilities and as to the limitations on the private security or payments with respect to obligation-financed facilities.
  - d) The City shall undertake the following with respect to the obligations:
    - i) An annual review of the books and records maintained by the City with respect to such obligations.
    - ii) An annual physical inspection of the facilities financed with the proceeds of such obligations, conducted by the Finance Director with the assistance of any City staff who have the primary responsibility for the operation, maintenance, or inspection of such obligation-financed facilities.
  - e) Changes in the project that impact the terms or commitments of the obligation are properly documented and necessary certificates or opinions are on file.
- 6) Additional Undertakings and Activities that Support Sections 1 through 5 above:
- a) The Finance Director will notify the City's bond counsel, financial advisor and arbitrage provider of any survey or inquiry by the IRS immediately upon receipt. Usually responses to IRS inquiries are due within 21 days of receipt. Such IRS responses require the review of the above-mentioned data and must be in writing. As much time as possible is helpful in preparing the response.
  - b) The Finance Director will consult with the City's bond counsel, financial advisor and arbitrage provider before engaging in post-issuance credit enhancement transactions (e.g. obligation insurance, letter of credit, or hedging transaction).
  - c) The Finance Director will monitor all "qualified tax-exempt debt obligations" (often referred to as "bank qualified" obligations) within the first calendar year to determine if the limit is exceeded, and if exceeded, will address accordingly. For obligations issued during years 2009 and 2010 the limit was \$30,000,000. During this period, the limit also applied to pooled financings of the governing body and provides a separate \$30,000,000 for each 501 (c)(3) conduit borrower. In 2011 and thereafter it is \$10,000,000 unless changed by Congress.
  - d) Identify any post-issuance change to terms of obligations which could be treated as a current refunding of "old" obligations by "new" obligations, often referred to as a "reissuance."
  - e) The Finance Director will consult with the City's bond counsel prior to any sale, transfer, change in use or change in users of obligation-financed property which may require "remedial action" under applicable Treasury Regulations or resolution pursuant to the VCAP Program.

- i) A remedial action has the effect of curing a deliberate action taken by the City which results in satisfaction of the private business test or private loan test. Remedial actions under Section 1.141-12(d)(e) and (f) include the redemption of non-qualified obligations and/or the alternative uses of proceeds or the facility (i.e. to be used for another qualified purpose).
- f) The Finance Director will ensure that the appropriate tax form for federal subsidy payments is prepared and filed in a timely fashion for applicable obligations (e.g. Build America Bonds).

## 7) Continuing Disclosure Obligations

- a) Identify a position at the City to be responsible for compliance with continuing disclosure obligations as defined by the Rule and any policies of the City.
- b) The position responsible for compliance may have the ability to assign responsibilities, delegate where appropriate or engage a dissemination agent or third-party service providers to perform all or some of the duties described in this section. The City cannot delegate its compliance responsibilities.
- c) The City should specify how providers or delegated authorities will be monitored and supervised.
- d) The City should identify the documents that set forth the respective requirements being monitored at the time of closing for each obligation.
- e) The City should catalog all outstanding Continuing Disclosure Agreements and establish consolidated filing requirements based on the outstanding CDAs.
- f) The City should identify the frequency of the actions to be undertaken to ensure compliance, establish a system or filing alerts or reminders to administer the filing requirements.
- g) The Finance Director for compliance must be made aware of any new outstanding debt, changes to obligation or loan covenants, events of acceleration or default that would materially affect investors.
- h) The City should review a compliance checklist to verify compliance with CDA requirements, at least annually, although it may be advisable to provide more frequent reviews in connection to specific material events.
- i) The City should monitor mandatory material events specifically identified in accordance with the Rule and file required notices within 10 days of occurrence.
  - i) Principal and interest payment delinquencies.
  - ii) Non-payment related defaults, if material.
  - iii) Unscheduled draws on debt service reserves reflecting financial difficulties.
  - iv) Unscheduled draws on credit enhancements reflecting financial difficulties.
  - v) Substitution of credit or liquidity providers or their failure to perform.

- vi) Adverse tax opinion, IRS notices or material events affecting the tax status of the obligation.
  - vii) Modifications to rights of security holders, if material.
  - viii) Obligation calls, if material.
  - ix) Defeasances.
  - x) Release, substitution or sale of property securing repayment of the obligations, if material.
  - xi) Rating Changes.
  - xii) Bankruptcy, insolvency, receivership, or similar event of the obligated person(s).
  - xiii) Merger, consolidation, or acquisition of the obligated person, if material.
  - xiv) Appointment of a successor or additional trustee, or change of name of a trustee, if material.
  - xv) Incurrence of financial obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material.
  - xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the City, any of which reflect financial difficulties.
- j) In addition to the mandatory material events, the City should review and file any additional or voluntary event notices.
  - k) The City should maintain a catalog of all outstanding obligations whether publicly offered or privately placed, and the terms and conditions that govern default or acceleration provisions.
  - l) Any missed filing requirement should be remedied with a failure to file notice as soon as possible once the late filing is identified and the required information is available to file.
  - m) Sensitive information such as bank accounts and wire information should be redacted from documents prior to posting on EMMA.
  - n) The City needs to monitor for changes in law and regulations that effect continuing disclosure obligations and review disclosure policies and procedures periodically to ensure compliance and consistency with regulation and market expectations.
- 8) Compliance with Future Requirements
- a) Take measures to comply with any future requirements issued beyond the date of these Post-Issuance Debt Compliance Procedures which are essential to ensuring compliance with the applicable state and federal regulations.

**City of Benson, Minnesota**

**Resolution**

**Adopting Post-Issuance Debt Compliance Policy for Tax-exempt and Tax-advantaged Governmental Bonds**

**WHEREAS**, the City of Benson, Minnesota (the "City") from time to time will issue tax-exempt and tax-advantaged governmental bonds; and

**WHEREAS**, under the Internal Revenue Code of 1986, as amended and related regulations (the "Code"), and Securities and Exchange Commission (the "SEC") the City is required to take certain actions after bond issuance to ensure that interest on those bonds remains in compliance with the Code and SEC; and

**WHEREAS**, the City has determined to adopt a policy regarding how the City will carry out its compliance responsibilities via written procedures, and to that end, has caused to be prepared documents titled Post-Issuance Debt Compliance Policy and Post-Issuance Debt Compliance Procedures; and

**WHEREAS**, The City Council (the "Council") of the City has reviewed the Post-Issuance Debt Compliance Policy in connection with the Post-Issuance Debt Compliance Procedures and has determined that it is in the best interest of the City to adopt the Policy.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BENSON, MINNESOTA;** the Council approves the Policy as shown in the form attached; and

**BE IT FURTHER RESOLVED;** the City staff is authorized to take all actions necessary to carry out the Post-Issuance Debt Compliance Policy and Post-Issuance Debt Compliance Procedures.

**Adopted by the City of Benson, Minnesota this** \_\_\_\_ **day of** \_\_\_\_.

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_