



**REGULAR CITY COUNCIL MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
AUGUST 10, 2021
7:00 PM**

INTRODUCTORY PROCEEDINGS

Call to order

Pledge of Allegiance

Open forum

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council. Individuals who wish to address the Council must have registered prior to the meeting.

Approve the Minutes of the (1) City Council Work Session of July 27, 2021; and (2) City Council Meeting of July 27, 2021.

PRESENTATIONS

1. 2021 Gene & Mary Jacobsen Citizen of the Year Presentation

AGENDA APPROVAL

2. Approval of the Agenda
3. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consider the approval of a resolution authorizing the City of Richfield to enter into a Local Road Improvement Program grant agreement with the Minnesota Department of Transportation (MnDOT Agreement No. 1047188) for \$11,690,000 to be used for construction of the 77th Street and Trunk Highway 77 Improvements Project.

Staff Report No. 118
 - B. Consider approval of a Temporary On Sale Intoxicating Liquor license for the Richfield Foundation's A Toast To Richfield event to take place on Thursday, October 7, 2021, in the atrium area of Woodlake Center, located at 6601 Lyndale Ave South.

Staff Report No. 119
 - C. Consider the approval of the Bureau of Criminal Apprehension's (BCA's) Master Joint Powers Agreement (JPA) with Richfield Department of Public Safety/Police for access to the Criminal Justice Data Communications Network (CJDN) and the Court Data Services Subscriber Amendment to CJDN

Subscriber Agreement.

Staff Report No. 120

- D. Consider a resolution of support for the expansion of the Minnesota Independence College and Community in the City of Richfield.

Staff Report No. 121

4. Consideration of items, if any, removed from Consent Calendar

CITY MANAGER'S REPORT

5. City Manager's Report

CLAIMS AND PAYROLLS

6. Claims and Payroll

COUNCIL DISCUSSION

7. Hats Off to Hometown Hits

8. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

City Council Work Session

July 27, 2021

CALL TO ORDER

The meeting was called to order by Mayor Regan Gonzalez at 5:01 p.m. in the Bartholomew Room.

Council Members Present: Maria Regan Gonzalez, Mayor; Ben Whalen; Mary Supple; Simon Trautmann; and Sean Hayford O'leary

Staff Present: Katie Rodriguez, City Manager; Chris Regis, Finance Director; Jay Henthorne, Police Chief; Jennifer Anderson, Health Administrator; Mike Petersen, Assistant Utilities Superintendent; Joe Powers, City Engineer; Neil Ruhland, Communications and Engagement Manager; Blanca Martinez Gavina, Equity Administrator; and Kelly Wynn, Administrative Assistant

Item #1	PROVIDE UPDATED KEY FINANCIAL STRATEGIES (KFS) INFORMATION; REVIEW PRELIMINARY PROPOSED 2022 BUDGET, PROPOSED 2022 CAPITAL IMPROVEMENT BUDGET (CIB) AND 2023-2026 CAPITAL IMPROVEMENT PLAN (CIP), REVIEW OF 5 YEAR STREET RECONSTRUCTION PLAN, PROPOSED UTILITY RATES, AND A REVIEW OF CITY FEES.
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Director Regis reviewed the Capital Financing Plan differences between 2021 and 2022 along with how it will affect resident tax payers.

Council Member Supple asked if the potential impacts are because property values have gone up.

Director Regis explained it is a culmination of things such as the tax levy, market values and debt levy increase. He spoke of an estimated 6.9% increase in 2023.

Council Member Supple asked if any of the government funds are included in calculations.

Director Regis explained the guidance of how to use the government funds are not quite clear so they are not included.

Council Member Whalen asked for clarification on the decrease of LGA funds.

Director Regis spoke of the limited ways to make up the lost revenues.

Council Member Whalen asked what the forecast would be to buy down debt while still maintaining reserves.

Director Regis stated it is a possibility but wouldn't recommend.

City Manager Rodriguez spoke of the impact from LGA when major TIF's roll off and staff is doing research of impacts but will not have a solid answer until 2024.

Mayor Regan Gonzalez asked if the 3% budget increase is due to operating or staff costs and if the increase is necessary.

Director Regis stated pay plans are budgeted for 3% increase in 2022 but that does not include step increases. The 2022 budget is currently projected to be a 4.4% increase based on the information each department has submitted.

Council Member Trautmann asked about cash reserves and if it would be possible to invest some money so it can gain interest to take some of the burden off the taxpayers.

City Manager Rodriguez stated concern drawing too much from reserves.

Director Regis stated the tax capacity rate will drop in TIF's roll off but it does not become revenue. An option to increase revenues would be to levy more taxes.

Council Member Supple asked if increasing tax capacity rather than relying on LGA would be a better long term solution.

City Manager Rodriguez stated it would create a more stable base as the funds from LGA are unknown.

Director Regis reviewed the timetable and key events of 2022 budget; budget update; 2022 proposed gross levy; gross tax levy history; 2022 proposed General Fund budget; General Fund revenues; General Fund expenditures by department; Capital Process; and Significant projects.

Council Member Supple asked how much the city will be responsible for when it comes to the Nicollet/Penn reconstruction project.

Engineer Powers stated they are county roads and the cost will be worked through cost share but it is unknown at this point.

City Manager Rodriguez stated revenues are down due to covid mitigations and limited services and it is uncertain when they will recover.

Council Member Trautmann asked if Penn Ave reconstruction is a goal for 2029.

Engineer Powers explained it will depend on the county when that will be completed but no date has been decided.

Assistant Superintendent Petersen reviewed the utility fund-water; water fund outlook; 2021 water rates comparison with metro cities; utility fund-wastewater; and wastewater fund outlook.

Council Member Whalen asked about the lining projects and where the city is at with replacing them.

Assistant Superintendent Petersen state the project is going as fast as the funding will allow. They are hoping to offset some maintenance costs with replacement as they will not need to clean out as often. He then continued with reviewing the 2021 wastewater rates comparison with metro cities; utility fund-stormwater; 2021 stormwater rates comparison; and street light user fees.

Engineer Powers then reviewed the 5 year street reconstruction and transportation improvements plan; 5 year plan-capital projects; funding outlook; street reconstruction bond process; 65th street reconstruction; and proposed bond resolution.

Council Member Whalen asked about the estimated for the 65th Street reconstruction project and how accurate it is due to rising construction costs.

Engineer Powers stated it is extremely difficult to determine construction costs as they are currently very volatile right now but a contingency is built into the project. He also spoke of the reconstruction of the HUB location but significant infrastructure is needed at the site.

Council Member Hayford Oleary asked if the area is all pavement then why would redevelopment worsen the area.

Engineer Powers spoke of the significant flooding that occurs and would need to be remedied with development.

Council Member Hayford Oleary then asked about local roads eventually needing replacement and how those costs are factored in.

Engineer Powers stated in about 20 years there will be a need for a massive road replacement or mill and overlay project. He spoke of budgeting to pay for those future projects with franchise funding.

Council Member Hayford Oleary referenced special assessments in the future to have precedence where residents could benefit the most. He also commented on some residents paying more than their fair share for certain projects.

Council Member Trautmann asked about the redevelopment of the HUB parking lots and additional obstacles.

Engineer Powers explained a main trunk line which is a water line with a 16 inch diameter that moves through the HUB site.

Council Member Trautmann referenced the special assessments.

Director Regis stated that street reconstruction bonds pictures everyone using the roads, so everyone should assist with payment. He explained franchise fees are controlled by the city and can assist in capturing some properties who may not be contributing with tax money.

City Manager Rodriguez pointed out the list of proposed fees for 2022 are in the packet provided.

Item #2	REVIEW AND DISCUSS INTOXICATING LIQUOR LICENSE FEES FOR 2022.
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Health Administrator Anderson reviewed intoxicating liquor fees.

Council Member Trautmann asked if loss of fees would be eligible for reimbursement from CARES or ARP funding.

City Manager Rodriguez explained the reimbursement covers loss that is entity-wide and the city is still waiting on complete guidance of how to use the funding.

Health Administrator Anderson stated over the past 19 years, fees have increase only about \$3,800.

Council Member Whalen asked about the difference between a 3.2 wine/beer and intoxicating liquor license and if it would be possible to increase the 3.2 fee.

Health Administrator Anderson stated, per state statute, a city cannot increase fees without a public hearing and fees have not been raised since 2014. She then reviewed the 2021 regional intoxicating liquor license fees.

Mayor Regan Gonzalez asked about the, roughly, \$5,000 difference Richfield displays over surrounding cities.

Chief Henthorne stated previous Council gave direction to increase fees 3% every year, regardless. He then put a moratorium in place in 2014 to not increase liquor fees.

Council Member Trautmann expressed concern for small business owners and possibility of the city losing out on new businesses due to high fees.

Council Member Hayford Oleary agreed with comments and dislikes seeing Richfield so much higher than surrounding cities.

Council Member Supple asked if the 3.2 wine/beer fee is in line with other cities.

Health Administrator Anderson stated it does align with surrounding cities.

Council Member Hayford Oleary asked if police response is higher at locations that serve intoxicating liquor.

Chief Henthorne stated most calls are to locations serving intoxicating liquor which is part of the reason for the increased fees as it helps support public safety staff.

Council Member Whalen asked if there is a possibility to raise revenues other places in order to reduce liquor fees. He would like to see options to reduce the intoxicating liquor fee without terminating staff positions.

Chief Henthorne stated staff would time to research options as some budgets are combined with multiple departments. He did explain that loss in revenues could result in lay-offs of staff members. He explained support services and public safety departments are combined and usually able to absorb underage/overage, but not always.

Council Member Supple suggested an increase to the 3.2 fee in hopes to slightly decrease the intoxicating liquor fee.

Mayor Regan Gonzalez supported the idea of reducing the intoxicating liquor fee and bring more balance to all liquor fees.

Council Member Trautmann recommended setting a goal to achieve over a number of years.

Council Member Supple wondered how much time and resources are being spent at certain establishments.

Chief Henthorne stated, right now, the city is breaking even and is not in the business of making money. He also reminded Council the Club liquor fee is set by the state and not up to the city.

Health Administrator Anderson reviewed proposed fees for 2022-2023.

Council Member Supple asked how Uber and Lyft fit into taxi fees.

Health Administrator Anderson stated they are not a part of the taxi fees and there is only one licensed taxi business within city limits.

Council Member Trautmann asked about the potential for collecting fees from Airbnb rentals.

City Manager Rodriguez did state that is being reviewed by staff.

ADJOURNMENT

The work session was adjourned by unanimous consent at 6:54 p.m.

Date Approved: August 10, 2021

Maria Regan Gonzalez
Mayor

Kelly Wynn
Administrative Assistant

Katie Rodriguez
City Manager



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Council Meeting

July 27, 2021

CALL TO ORDER

The meeting was called to order by Mayor Maria Regan Gonzalez at 7:00 p.m. in the Council Chambers.

Council Members Present: Maria Regan Gonzalez, Mayor; Mary Supple; Sean Hayford Oleary; Ben Whalen; and Simon Trautmann

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; Melissa Poehlman, Assistant Community Development Director; Jay Henthorne, Police Chief; Jennifer Anderson, Health Administrator; Blanca Martinez Gavina, Equity Administrator; and Kelly Wynn, Administrative Assistant

PLEDGE OF ALLEGIANCE

Mayor Regan Gonzalez led the Pledge of Allegiance

OPEN FORUM

Ruane Onesirosan, 2421 W 65th Street, expressed extreme concern regarding the comprehensive plan and rezoning which hurts instead of helping neighborhoods. She also asked how the city abided by the open meeting laws during the year of 2020.

APPROVAL OF MINUTES

M/Supple, S/Whalen to approve the minutes of the: (1) Joint City Council/HRA/Planning Commission Meeting of June 21, 2021; (2) Special City Council Meeting of July 6, 2021; and (3) City Council Meeting of July 13, 2021.

Motion carried 5-0.

Item #1

APPROVAL OF THE AGENDA

M/Trautmann, S/Hayford Oleary to approve the agenda

Motion carried 5-0.

Item #2	CONSENT CALENDAR
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City Manager Rodriguez presented the consent calendar.

- A. Consider a resolution to withdraw the City of Richfield from the Regional All-Hazards Incident Management Organization Joint Powers Agreement and approve the Cooperative Agreement for the Minnesota Statewide All-Hazards Incident Management Organization (IMO). Staff Report No. 112

RESOLUTION NO. 11866

**RESOLUTION WITHDRAWING FROM THE JOINT POWERS AGREEMENT
ESTABLISHING THE REGIONAL ALL-HAZARDS INCIDENT MANAGEMENT
ORGANIZATION AND APPROVING THE COOPERATIVE AGREEMENT FOR THE
MINNESOTA STATEWIDE ALL-HAZARDS INCIDENT MANAGEMENT ORGANIZATION**

- B. Consider the approval of the continuation of an agreement with the City of Bloomington for the provision of food, pools, lodging, therapeutic massage and body art establishment inspection services for the City of Richfield for 2022. Staff Report No. 113
- C. Consider the approval of engineering consultant pool agreements between the City and the selected engineering firms for routine professional engineering services for calendar years 2021 through 2025. Staff Report No. 114
- D. Consider the appointment of youth members to City advisory board/commissions. Staff Report No. 115

M/Whalen, S/Supple to approve the consent calendar

Council Member Supple stated her excitement to see youth commissioners and hopes to see more interest.

Motion carried 5-0.

Item #3	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
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None

Item #4	CONSIDER THE SECOND READING OF AN ORDINANCE REZONING NINE PROPERTIES THROUGHOUT THE CITY IN ORDER TO COMPLY WITH THE COMPREHENSIVE PLAN AND A RESOLUTION AUTHORIZING A SUMMARY PUBLICATION OF SAID ORDINANCE (STAFF REPORT NO. 116)
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Council Member Hayford Oleary presented staff report 116.

Assistant Director Poehlman added this is only for a few properties.

Council Member Hayford Oleary clarified the use and comprehensive plan match for these properties but the zoning does not. He also asked if Council is due to see more of this.

Assistant Director Poehlman stated these are the final properties for this rezoning.

M/Hayford Oleary, S/Trautmann to (1) Approve a second reading of an ordinance rezoning nine properties throughout the City in order to comply with the Comprehensive Plan; and (2) Approve a resolution authorizing summary publication of said ordinance.

RESOLUTION NO. 11867

RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE RELATING TO ZONING; AMENDING APPENDIX I TO THE RICHFIELD CITY CODE BY REZONING NINE PARCELS THROUGHOUT THE CITY IN ORDER TO CONFORM TO THE COMPREHENSIVE PLAN

Motion carried 5-0

Item #5	CONSIDER THE APPROVAL OF THE SECOND READING OF AN ORDINANCE AMENDING SECTION 1105 OF THE RICHFIELD CITY CODE RELATING TO LICENSING OF ARCADES (STAFF REPORT NO. 117)
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Council Member Trautmann read staff report 117.

Health Administrator Anderson explained this is an ordinance that has not been reviewed in several years and needed updating.

Council Member Trautmann asked why the city requires a bond to open an arcade.

Health Administrator Anderson stated an establishment of this type could have some public safety risks along with making sure they comply with city regulations.

M/Trautmann, S/Whalen to approve the second reading of an ordinance amending Section 1105 of the Richfield City code regulating arcades with amendment to include a publication summary.

RESOLUTION NO. 11868

RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE PERTAINING TO THE LICENSING OF ARCADES

Mayor Regan Gonzalez expressed her excitement to see something new coming into the community and working with business owners.

Council Member Whalen asked since it is a new kind of business for the area, staff would bring this item back if there were other concerns that were to arise.

Health Administrator Anderson confirmed.

Council Member Trautmann asked about existing establishments that may have an existing game or two, if they qualify as an arcade.

Health Administrator Anderson explained they do not fall under the arcade category but there is a small fee assessed to establishments with such items as a pool table, pinball or other coin operated games.

Motion carried 5-0

Item #6	CITY MANAGER'S REPORT
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Health Administrator Anderson provided a covid and vaccination update as the Delta variant is spreading. She encouraged residents to get vaccinated as Bloomington Public Health continues to monitor the situation.

Council Member Whalen asked if the city will reverse mask guidelines.

Health Administrator Anderson stated it is a possibility everyone may be wearing masks again but it will depend on federal guidance.

Council Member Trautmann thanked Health Administrator Anderson for her work, specifically over the last year and keeping council supplied with much needed information.

Item #7	CLAIMS AND PAYROLL
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M/Whalen, S/Trautmann that the following claims and payrolls be approved:

U.S. Bank	07/27/2021
A/P Checks 298496 - 298881	\$ 1,498,627.53
Payroll: 163586 – 163925 43404 - 43406	<u>777,425.25</u>
TOTAL	\$ 2,276,052.78

Motion carried 5-0

Item #8	HATS OFF TO HOMETOWN HITS
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Council Member Hayford Oleary expressed excitement for the upcoming Night to Unite on Tuesday, August 3 and encouraged residents to attend their own block parties.

Council Member Supple thanked block captains for their work around Night to Unite. She then thanked Joe and Bill's Lemonade stand for raising money and donating profits. She also spoke of 'Back Porch Concerts' to support the Bartholomew House renovations.

Council Member Whalen thanked everyone working behind the scenes for the 77th Underpass, Augsburg Park opening and supporting the MICC expansions.

Council Member Trautmann praised the Parks and Recreation Department for the Augsburg Park opening as well as the summer programs they are offering.

Mayor Regan Gonzalez spoke of the fundraising event put on by Crossroads Panorama taking place Saturday, August 28 at the Band shell. She then spoke of Penn Fest happening September 19 and encouraged residents to search the event and attend. She also thanked Richfield Foundation for their work and they will be putting on an event in October to benefit Richfield residents.

Council Member Whalen reminded residents of the Urban Wildland 5k and half marathon happening Friday and Saturday.

Item #9	ADJOURNMENT
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The meeting was adjourned by unanimous consent at 7:38 p.m.

Date Approved: August 10, 2021

Maria Regan Gonzalez
Mayor

Kelly Wynn
Administrative Assistant

Katie Rodriguez
City Manager

**CITY COUNCIL MEETING****8/10/2021**

REPORT PREPARED BY: Jay Henthorne, Director of Public Safety/Chief of Police

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
8/5/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW:

ITEM FOR COUNCIL CONSIDERATION:**2021 Gene & Mary Jacobsen Citizen of the Year Presentation****EXECUTIVE SUMMARY:**

The Richfield Human Rights Commission has selected a Citizen of the Year award recipient since 1971. The award is given to a family, group, organization, business or individual who lives or works in Richfield and whose actions demonstrate an awareness and commitment to the attitudes and practices that foster human understanding, tolerance and the spirit of human relations.

The Human Rights Commission has voted to present the 2021 Gene and Mary Jacobsen Outstanding Citizen award to Santos Mejia.

Santos has worked tirelessly to connect community members to crucial resources. He has lived in Seasons Park for many years and has been instrumental in building community, educating, and supporting the leadership of the residents there. He is a strong advocate for some of our most disenfranchised community members and has made concrete changes to improve the quality of people's homes at Season's Park, build civic engagement and leadership through Census and voting participation, has helped pass concrete affordable housing policy changes in Richfield that protect tenants, increase new affordable housing and preserve and improve existing affordable housing, and has even led in helping tenants get COVID related resources such as rent assistance, food, and vaccinations. In late April, Santos helped organize a successful three day COVID vaccination event that vaccinated over 340 people. He helps residence address real tangible quality of life issues in his role as a maintenance staff member.

RECOMMENDED ACTION:**BASIS OF RECOMMENDATION:****A. HISTORICAL CONTEXT**

The Richfield Human Rights Commission has selected a Citizen of the Year award recipient since 1971. The award is given to a family, group, organization, business or individual who lives or works in Richfield and whose actions demonstrate an awareness and commitment to the attitudes and practices that foster human understanding, tolerance and the spirit of human relations.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

C. CRITICAL TIMING ISSUES:

D. FINANCIAL IMPACT:

E. LEGAL CONSIDERATION:

ALTERNATIVE RECOMMENDATION(S):

PRINCIPAL PARTIES EXPECTED AT MEETING:



STAFF REPORT NO. 118
CITY COUNCIL MEETING
8/10/2021

REPORT PREPARED BY: Scott Kulzer, Administrative Aide/Analyst

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director
8/3/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/4/2021

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of a resolution authorizing the City of Richfield to enter into a Local Road Improvement Program grant agreement with the Minnesota Department of Transportation (MnDOT Agreement No. 1047188) for \$11,690,000 to be used for construction of the 77th Street and Trunk Highway 77 Improvements Project.

EXECUTIVE SUMMARY:

In 2015 the City was awarded \$10,000,000 in Local Road Improvement Program (LRIP) funds by the State Legislature to be used towards right-of-way acquisition and construction of the 77th Street and Trunk Highway 77 Improvements Project. In 2019, the City used \$4,310,000 of this sum for right-of-way acquisition which left the remaining \$5,690,000 available for future construction of the project.

In 2020, the City was awarded another \$6,000,000 in LRIP funds by the State Legislature via the 2020 bonding bill for construction of the project. Together, these two LRIP grants amount to \$11,690,000 available for construction of the project. The LRIP is administered by the Minnesota Department of Transportation (MnDOT) and requires a grant agreement as part of the process to release funds. Once the LRIP grant agreement is in place, the funds will become available to the City for designated construction purposes.

RECOMMENDED ACTION:

By Motion: Approve the resolution authorizing the City of Richfield to enter into a Local Road Improvement Program grant agreement with the Minnesota Department of Transportation (MnDOT Agreement No. 1047188) for \$11,690,000 to be used for construction of the 77th Street and Trunk Highway 77 Improvements Project.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

Consistent with City Council direction, the Capital Improvement Plan (CIP), and the City's Comprehensive Plan, staff worked for many years towards the construction of the 77th Street and Trunk Highway 77 Improvements Project. The project officially broke ground in July 2021 and staff have been ensuring the timely execution of all remaining agreements related to the project.

The 77th Street and Trunk Highway 77 Improvements Project will connect 77th Street east and west of Trunk Highway 77 via an underpass to accommodate access reconfiguration along the I-494 corridor and eliminating a gap in the minor reliever network and addressing regional traffic issues on the I-494 corridor through Richfield and Bloomington.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The LRIP grant agreement between the City and MnDOT is required to be fully executed before the City can access the funds appropriated by the State Legislature for the project.
- Minnesota Statutes, section 465.03 requires every acceptance of a grant or devise of real personal property on terms prescribed by the grantor be made by resolution by a two-thirds majority of the City Council.

C. CRITICAL TIMING ISSUES:

Timely execution of the grant agreement will ensure the funds are accessible to use for authorized expenses when they are incurred.

D. FINANCIAL IMPACT:

- There is no financial impact related to the approval of this LRIP grant agreement.
- These LRIP funds have been accounted for as a piece of the overall funding package for the project.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the grant agreement and will be available for questions.

ALTERNATIVE RECOMMENDATION(S):

None

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
▣ LRIP Grant Agreement Resolution	Resolution Letter
▣ LRIP Grant Agreement	Contract/Agreement

**RESOLUTION NO.
EXHIBIT E FOR GRANT AGREEMENT TO STATE
TRANSPORTATION FUND LOCAL ROAD IMPROVEMENT
PROGRAM GRANT TERMS AND CONDITIONS FOR
CONSTRUCTION OF THE 77TH STREET AND TRUNK
HIGHWAY 77 IMPROVEMENTS PROJECT (SP 157-594-
003; SP 157-108-035; & SP 2758-82)**

WHEREAS, the City of Richfield has applied to the Commissioner of Transportation for a grant from the Minnesota State Transportation Fund for Local Road Improvement; and

WHEREAS, the Commissioner of Transportation has given notice that funding for this project is available; and

WHEREAS, the amount of the grant has been determined to be \$11,690,000 by reason of the lowest responsible bid.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richfield, that the City of Richfield does hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52 and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota State Transportation Fund any amount appropriated for the project but not required. The Mayor and City Manager are hereby authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

Adopted by the City Council of the City of Richfield, Minnesota, this 10th day of August, 2021.

Maria Regan Gonzalez, Mayor

ATTEST:

Kari Sinning, City Clerk

LOCAL ROAD IMPROVEMENT PROGRAM (LRIP)
GRANT AGREEMENT

This Agreement between the Minnesota Department of Transportation (“MnDOT”) and the Grantee named below is made pursuant to Minnesota Statutes Section 174.52, pursuant to Minn. Laws 2015, 1st Special Session, Chapter 5- H.F. 2, and pursuant to Minn. Laws 2020, 5th Special Session, Chapter 3- H.F. 1. The provisions in that section and the Exhibits attached hereto and incorporated by reference constitute this Agreement and the persons signing below agree to fully comply with all of the requirements of this Agreement. This Agreement will be effective on the date State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2.

1. Public Entity (Grantee) name, address and contact person:

City of Richfield
6700 Portland Ave S
Richfield, MN 55423

Contact: Kristin Asher, P.E.

2. Project(s):

Name of Project & Project Number (See Exhibit C for location)	Amount of LRIP Funds	Amount of Required Matching Funds	Completion Date
77 th Street and TH 77 Improvements Project (SP# 157-594-003; 157-108-035; 2758-82)	\$11,690,000	\$10,570,863.88	December 31, 2024

3. Total Amount of LRIP Grant for all projects under this Agreement: \$ 11,690,000
4. The following Exhibits for each project are attached and incorporated by reference as part of this Agreement:

Exhibit A	Completed Sources and Uses of Funds Schedule
Exhibit B	Project Completion Schedule
Exhibit C	Bond Financed Property Certification
Exhibit D	Grant Application
Exhibit E	Grantee Resolution Approving Grant Agreement
Exhibit F	General Terms and Conditions

5. Additional requirements, if any:

6. Any modification of this Agreement must be in writing and signed by both parties.

(The remaining portion of this page was intentionally left blank.)

PUBLIC ENTITY (GRANTEE)

By: _____

Title: Mayor

Date: August 10, 2021

By: _____

Title: City Manager

Date: August 10, 2021

DEPARTMENT OF TRANSPORTATION

Approval and Certifying Encumbrance

By: _____

Title: State Aid Programs Engineer

Date: _____

Office of Financial Management, Grant Unit

By: _____

Agency Grant Supervisor

Date: _____

OFFICE OF CONTRACT MANAGEMENT

By: _____

Contract Administrator

Date: _____

EXHIBIT A

SOURCES AND USES OF FUNDS SCHEDULE

SOURCES OF FUNDS		USES OF FUNDS	
Entity Supplying Funds	Amount	Expenses	Amount
State Funds:		Items Paid for with LRIP Grant Funds:	
LRIP Grant (acct 282)	\$5,690,000.00	Roadway, curb and gutter, storm sewer	\$12,490,000.00
LRIP Grant (acct 342)	\$6,000,000.00		\$
Other:			\$
State TH Funds	\$800,000.00		\$
	\$		\$
	\$		\$
Subtotal	\$12,490,000.00	Subtotal	\$12,490,000.00
Public Entity Funds:		Items paid for with Non-LRIP Grant Funds:	
Matching Funds	\$	Roadway, curb and gutter, storm sewer	\$9,770,863.88
Federal Funds (Richfield)	\$5,099,608.54		\$
Federal Funds (MnDOT)	\$3,200,000.00		\$
DEMO Federal Funds	\$25,691.36		
Local Match	\$1,445,563.98		
Subtotal	\$9,770,863.88	Subtotal	\$9,770,863.88
TOTAL FUNDS	\$22,260,863.88	TOTAL PROJECT COSTS	\$22,260,863.88

EXHIBIT B

PROJECT COMPLETION SCHEDULE

Completion Date for this project is December 31, 2024

EXHIBIT C

BOND FINANCED PROPERTY CERTIFICATION

State of Minnesota
General Obligation Bond Financed Property

The undersigned states that it has a fee simple, leasehold and/or easement interest in the real property located in the County of Hennepin, State of Minnesota that is generally described or illustrated graphically in **Attachment 1** attached hereto and all improvements thereon (the "Restricted Property") and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- A. The Restricted Property is State bond-financed property under Minn. Stat. Sec. 16A.695, is subject to the requirements imposed by that statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget; and
- B. The Restricted Property is subject to the provisions of the Local Road Improvement Program Grant Agreement between the Minnesota Department of Transportation and the undersigned dated _____, 20____; and
- C. The Restricted Property shall continue to be deemed State bond-financed property for 37.5 years or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: _____, 20____

City of Richfield, Minnesota, a political
subdivision of the State of Minnesota

By: _____
Name: Maria Regan Gonzalez
Title: Mayor

By: _____
Name: Katie Rodriguez
Title: City Manager

Attachment 1.1 to Exhibit C

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

Project extents generally include 77th Street East between Bloomington Avenue South and Longfellow Ave and Trunk Highway 77 100 feet North of Interstate 494 to 1520 feet North of Interstate 494.

LEGEND

SHEET NO.	DESCRIPTION
(XXX)	MISCELLANEOUS REMOVAL PLAN
XX	CONSTRUCTION PLAN
(XXX)	DRAINAGE PLAN
(XXX)	EROSION CONTROL PLAN
(XXX)	TURF ESTABLISHMENT PLAN
XX	SIGNING & STRIPING PLAN

WARNING!

20" STEEL HIGH PRESSURE GAS MAIN EXISTS ON PROJECT. EXERCISE CAUTION DURING EXCAVATION ACTIVITIES. REFER TO UTILITY TABULATIONS & IN-PLACE TOPOGRAPHY AND UTILITIES PLAN SHEETS FOR MORE DETAILS.

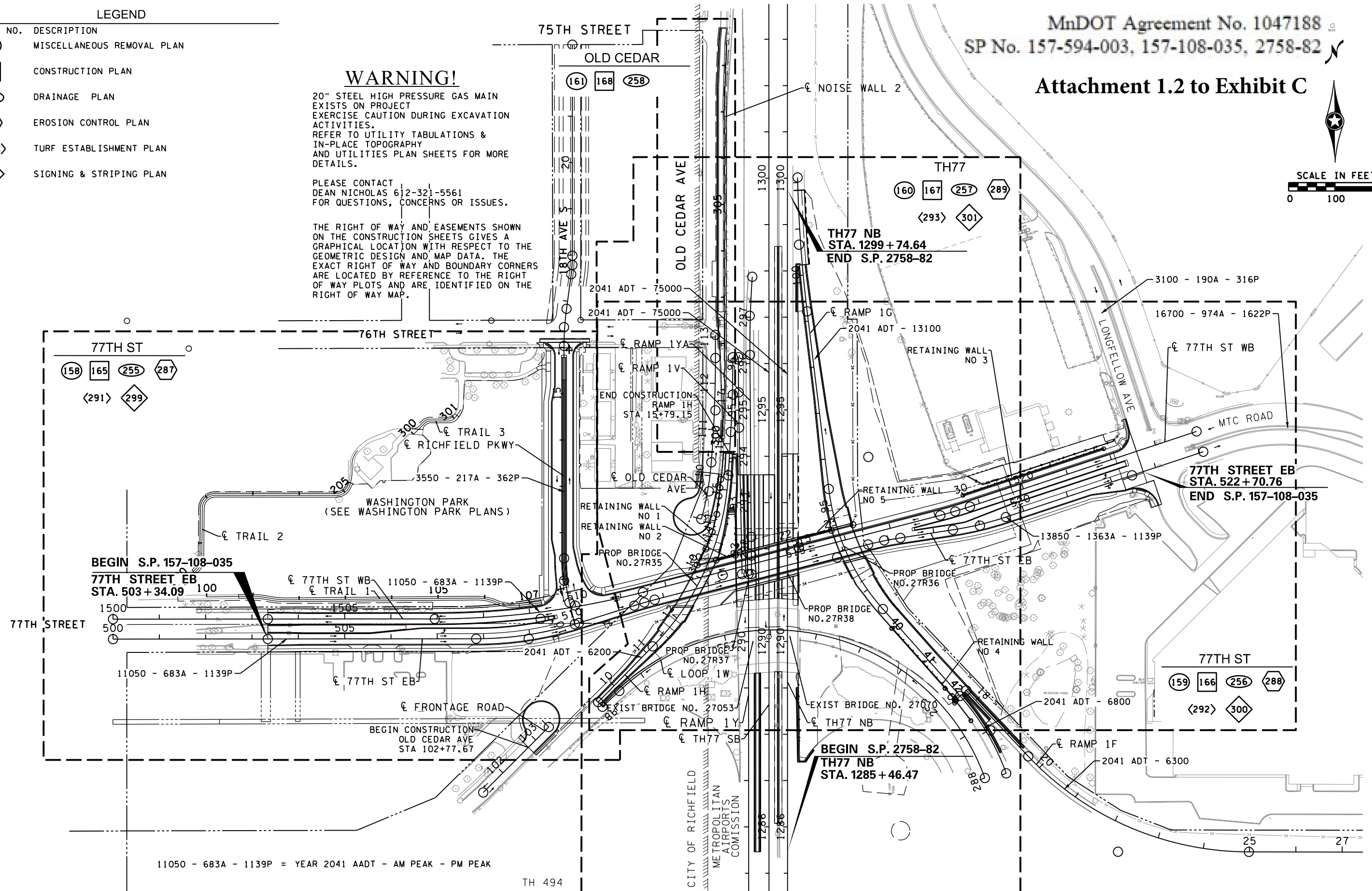
PLEASE CONTACT DEAN NICHOLAS 612-321-5561 FOR QUESTIONS, CONCERNS OR ISSUES.

THE RIGHT OF WAY AND EASEMENTS SHOWN ON THE CONSTRUCTION SHEETS GIVES A GRAPHICAL LOCATION WITH RESPECT TO THE GEOMETRIC DESIGN AND MAP DATA. THE EXACT RIGHT OF WAY AND BOUNDARY CORNERS ARE LOCATED BY REFERENCE TO THE RIGHT OF WAY PLOTS AND ARE IDENTIFIED ON THE RIGHT OF WAY MAP.

MnDOT Agreement No. 1047188
SP No. 157-594-003, 157-108-035, 2758-82

Attachment 1.2 to Exhibit C

SCALE IN FEET
0 100 200



11050 - 683A - 1139P = YEAR 2041 AADT - AM PEAK - PM PEAK

TH 494

NO.	DATE	BY	CHK	REVISIONS

Design By:	MAN-O
Plan By:	MAN-O
Checked By:	CJB
Approved By:	NEH
CERTIFIED BY:	<i>[Signature]</i> LICENSED PROFESSIONAL ENGINEER - MINNESOTA E. HENTGES, PE
DATE:	04/09/2021
LICENSE NO.	44620

wsb

Richfield

77th Street Underpass
77th Street at Trunk Highway 77
City of Richfield, Minnesota

RICHFIELD, MINNESOTA

GENERAL LAYOUT
S.P. 2758-82 (TH 77), S.P. 157-108-035

SHEET
2
OF
363
SHEETS

DATE: 4/9/2021 4:05:12 PM
PATH & FILENAME: K:\30301-420\CorPlan\30142-901.dgn

EXHIBIT D

GRANT APPLICATION

Attach the grant application for the project

A. Applicant Information

1. Name (First & Last):		2. Phone Number:	
3. E-mail:		4. Agency Type:	
5. Agency Name:			
6. Street Address:			
7. City:		8. State: MN	9. Zip Code:
10. Sponsoring County and County Engineer name (required if applicant is small city or township)			

B. Project Location

1. MnDOT District:		2. County:	
3. City:		4. Township:	
5. Name of Road:		6. Type of Road:	
7. Road Authority Type <i>(which agency owns and has jurisdiction of the road)</i> :			
8. Project Termini: From		9. To:	

C. Project Description

1. Type of Project.
2. Select the LRIP Account requested for funding.
3. Provide a summary of the proposed project and the transportation deficiencies that will be eliminated, including a description of operational and general safety benefits of the project. Projects seeking funding from the Rural Road Safety Account will need to provide a more detailed description of safety issues and benefits under Section D3.

D. LRIP Account Considerations and Eligibility

D1. Trunk Highway Corridor Account Considerations and Eligibility

1. Describe the state trunk highway project and how the local road(s) will be impacted by the trunk highway project. Funds from this account are for local road improvements impacted by trunk highway projects where local agencies have cost responsibility. It is not intended to be used for improvements or projects on the trunk highway or within the trunk highway corridor right of way that require local cost sharing per MnDOT's Cost Participation Policy.

D2. Routes of Regional Significance Account Considerations and Eligibility

1. For Routes of Regional Significance projects, which of the following criteria does your project meet (select all that apply)?

- | | |
|---|--|
| <input type="checkbox"/> Farm to Market route | <input type="checkbox"/> Part of a 10-ton route network |
| <input type="checkbox"/> Part of an economic development plan | <input type="checkbox"/> Connect to regional tourist destination |
| <input type="checkbox"/> Provides capacity or congestion relief to a parallel trunk highway system or county road | <input type="checkbox"/> Is a connection to the regional system, trunk highway, or a county road |

2. Describe the number of persons and potential multiple local agencies that will be positively impacted by the project and how they will benefit.

D2. Routes of Regional Significance Account Considerations and Eligibility

3. Describe the project contribution to the local, regional or state economy, and economic development or redevelopment efforts.

D3. Rural Road Safety Account Considerations and Eligibility (Only County State Aid Highways are eligible)

1. Is this project on a County State Aid Highway?

2. Is this project or components of this project identified in a County Road Safety Plan?

3. Identify the appropriate focus area that your project/safety strategy aligns with in the [Minnesota Strategic Highway Safety Plan](#).

D3. Rural Road Safety Account Considerations and Eligibility (Only County State Aid Highways are eligible)

4. Identify the type of crash or safety hazard this project is trying to address. Respond even if project is in a county safety plan or the Minnesota Strategic Highway Safety Plan.

5. Describe how this project improves safety, reduce traffic crashes, fatalities, injuries, and property damages. Respond even if project is in a county safety plan or the Minnesota Strategic Highway Safety Plan.

E. Project Readiness and Ability to Maintain

1. Estimated Construction Year:

2. Are there railroad impacts (RR xing or RR tracks within 600' of the project)?

3. What is the status of the engineering and design work on the project?

4. Has this project been selected for federal funding, and if so what year in the STIP?

5. Is right of way acquisition required? If so, describe the status of these efforts.

6. Describe the local agency's ability to adequately provide for the safe operation and maintenance of the facility upon completion.

F. Multimodal/Complete Streets

Identify infrastructure improvements for non-motorized and/or transit users on this project.

G. Estimated Project Cost

Source of Funding

1. LRIP Request:
2. Federal Funds:
3. State Aid Funds:
4. Local/Other Funds:
5. MnDOT Trunk Highway Funds:
6. Total Project Cost:

H. Attachments

- ☐ At least one project location map with routes and project termini labeled
- ☐ Engineer's Estimate with an itemized breakdown
- ☐ Project schedule
- ☐ Local agency resolution
- ☐ Resolution of support from sponsoring county agreeing to be sponsor and agreeing to perform sponsor tasks as identified above in section "Project Selection" (required for applications by townships and cities under 5,000 population)
- ☐ Other letters of concurrence or support

When you are ready to submit the application, save the application form with LRIP, agency and road in the name of the document; e.g. LRIP_RamseyCounty_CSAH30.pdf.

The application and attachments are due by 4:00 p.m. on **March 3, 2021**. Applications and attachments should be submitted electronically to saltirhelp.dot@state.mn.us. Please limit the file size transmitted via email to no more than 10 MB. State Aid will send a reply acknowledging receipt of the application. If you haven't received a reply from State Aid within a few days of submittal, send an email to saltirhelp.dot@state.mn.us to inquire about the status of the application.

More information is available at:

- LRIP website at: <http://www.dot.state.mn.us/stateaid/lrip.html>.
- PowerPoint on LRIP at: <http://www.dot.state.mn.us/stateaid/training/lrip.pptx>

If you have questions regarding this solicitation, contact Marc Brieese at 651-366-3802 or marc.brieese@state.mn.us.

EXHIBIT E

GRANTEE RESOLUTION APPROVING GRANT AGREEMENT

**RESOLUTION NO.
EXHIBIT E FOR GRANT AGREEMENT TO STATE
TRANSPORTATION FUND LOCAL ROAD IMPROVEMENT
PROGRAM GRANT TERMS AND CONDITIONS FOR
CONSTRUCTION OF THE 77TH STREET AND TRUNK
HIGHWAY 77 IMPROVEMENTS PROJECT (SP 157-594-
003; SP 157-108-035; & SP 2758-82)**

WHEREAS, the City of Richfield has applied to the Commissioner of Transportation for a grant from the Minnesota State Transportation Fund for Local Road Improvement; and

WHEREAS, the Commissioner of Transportation has given notice that funding for this project is available; and

WHEREAS, the amount of the grant has been determined to be \$11,690,000 by reason of the lowest responsible bid.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richfield, that the City of Richfield does hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52 and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota State Transportation Fund any amount appropriated for the project but not required. The Mayor and City Manager are hereby authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

Adopted by the City Council of the City of Richfield, Minnesota, this 10th day of August, 2021.

Maria Regan Gonzalez, Mayor

ATTEST:

Kari Sinning, City Clerk

EXHIBIT F

GENERAL TERMS AND CONDITIONS FOR LOCAL ROAD IMPROVEMENT PROGRAM (LRIP) GRANTS

Article I DEFINITIONS

Section 1.01 **Defined Terms.** The following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined) unless the context specifically indicates otherwise:

“Advance(s)” - means an advance made or to be made by MnDOT to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means the Local Road Improvement Program Grant Agreement between the Public Entity and the Minnesota Department of Transportation to which this Exhibit is attached.

“Certification” - means the certification, in the form attached as **Exhibit C**, in which the Public Entity acknowledges that its interest in the Real Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695 and is subject to certain restrictions imposed thereby.

“Code” - means the Internal Revenue Code of 1986, as amended, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner” - means the Commissioner of Minnesota Management & Budget.

“Commissioner’s Order” - means the “Fourth Order Amending Order of the Commissioner of Minnesota Management & Budget Relating to Use and Sale of State Bond Financed Property” dated July 30, 2012, as it may be amended or supplemented.

“Completion Date” - means the projected date for completion of the Project as indicated in the Agreement.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to MnDOT, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor(s) for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” - means the work to be performed under the Construction Contract Documents.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Draw Requisition” - means a draw requisition that the Public Entity, or its designee, submits to MnDOT when an Advance is requested, as referred to in Section 4.02.

“G.O. Bonds” - means the state general obligation bonds issued under the authority granted in Article XI, Sec. 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the LRIP Grant, and any bonds issued to refund or replace such bonds.

“Grant Application” - means the grant application that the Public Entity submitted to MnDOT which is attached as **Exhibit D**.

“LRIP Grant” - means a grant from MnDOT to the Public Entity under the LRIP in the amount specified in the Agreement, as such amount may be modified under the provisions hereof.

“LRIP” - means the Local Road Improvement Program pursuant to Minn. Stat. Sec. 174.52 and rules relating thereto.

“MnDOT” - means the Minnesota Department of Transportation.

“Outstanding Balance of the LRIP Grant” - means the portion of the LRIP Grant that has been disbursed to the Public Entity minus any amounts returned to the Commissioner.

“Project” - means the Project identified in the Agreement to be totally or partially funded with a LRIP grant.

“Public Entity” - means the grantee of the LRIP Grant and identified as the Public Entity in the Agreement.

“Real Property” - means the real property identified in the Agreement on which the Project is located.

Article II

GRANT

Section 2.01 **Grant of Monies.** MnDOT shall make the LRIP Grant to the Public Entity, and disburse the proceeds in accordance with the terms and conditions herein.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the LRIP Grant is being funded with the proceeds of G.O. Bonds, and as a result all of the Real Property must be owned by one or more public entities. The Public Entity represents and warrants to MnDOT that it has one or more of the following ownership interests in the Real Property: (i) fee simple ownership, (ii) an easement that is for a term that extends beyond the date that is 37.5 years from the Agreement effective date, or such shorter term as authorized by statute, and which cannot be modified or terminated early without the prior written consent of MnDOT and the Commissioner; and/or (iii) a prescriptive easement for a term that extends beyond the date that is 37.5 years from the Agreement effective date.

Section 2.03 **Use of Grant Proceeds.** The Public Entity shall use the LRIP Grant solely to reimburse itself for expenditures it has already made, or will make, to pay the costs of one of the following applicable activities: (i) preliminary, final construction and engineering and administration (ii) constructing or reconstructing city streets, county highways, or town roads with statewide or regional significance that have not been fully funded through other state, federal, or local funding sources; or (iii) capital improvement projects on county state-aid highways that are intended primarily to reduce traffic crashes, deaths, injuries, and property damage. The Public Entity shall not use the LRIP Grant for any other purpose, including but not limited to, any work to be done on a state trunk highway or within a trunk highway easement.

Section 2.04 Operation of the Real Property. The Real Property must be used by the Public Entity in conjunction with or for the operation of a county highway, county state-aid highway, town road, or city street and for other uses customarily associated therewith, such as trails and utility corridors, and for no other purposes or uses. The Public Entity shall have no intention on the effective date of the Agreement to use the Real Property as a trunk highway or any part of a trunk highway. The Public Entity must annually determine that the Real Property is being used for the purposes specified in this Section and, upon written request by either MnDOT or the Commissioner, shall supply a notarized statement to that effect.

Section 2.05 Sale or Lease of Real Property. The Public Entity shall not (i) sell or transfer any part of its ownership interest in the Real Property, or (ii) lease out or enter into any contract that would allow another entity to use or operate the Real Property without the written consent of both MnDOT and the Commissioner. The sale or transfer of any part of the Public Entity's ownership interest in the Real Property, or any lease or contract that would allow another entity to use or operate the Real Property, must comply with the requirements imposed by Minn. Stat. Sec. 16A.695 and the Commissioner's Order regarding such sale or lease.

Section 2.06 Public Entity's Representations and Warranties. The Public Entity represents and warrants to MnDOT that:

- A. It has legal authority to execute, deliver and perform the Agreement and all documents referred to therein, and it has taken all actions necessary to its execution and delivery of such documents.
- B. It has the ability and a plan to fund the operation of the Real Property for the purposes specified in Section 2.04, and will include in its annual budget all funds necessary for the operation of the Real Property for such purposes.
- C. The Agreement and all other documents referred to therein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.
- D. It will comply with all of the provisions of Minn. Stat. Sec. 16A.695, the Commissioner's Order and the LRIP. It has legal authority to use the G.O. Grant for the purpose or purposes described in this Agreement.
- E. All of the information it has submitted or will submit to MnDOT or the Commissioner relating to the LRIP Grant or the disbursement of the LRIP Grant is and will be true and correct.
- F. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into the Agreement or any document referred to herein, or to perform any of the acts required of it in such documents.
- G. Neither the execution and delivery of the Agreement or any document referred to herein nor compliance with any of the provisions or requirements of any of such documents is prevented

- by, is a breach of, or will result in a breach of, any provision of any agreement or document to which it is now a party or by which it is bound.
- H. The contemplated use of the Real Property will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.
 - I. The Project will be completed and the Real Property will be operated in full compliance with all applicable laws, rules, ordinances, and regulations of any federal, state, or local political subdivision having jurisdiction over the Project and the Real Property.
 - J. All applicable licenses, permits and bonds required for the performance and completion of the Project and for the operation of the Real Property as specified in Section 2.04 have been, or will be, obtained.
 - K. It reasonably expects to possess its ownership interest in the Real Property described in Section 2.02 for at least 37.5 years, and it does not expect to sell such ownership interest.
 - L. It does not expect to lease out or enter into any contract that would allow another entity to use or operate the Real Property.
 - M. It will supply whatever funds are needed in addition to the LRIP Grant to complete and fully pay for the Project.
 - N. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date and all such items will be situated entirely on the Real Property.
 - O. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.
 - P. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either MnDOT or the Commissioner.
 - Q. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

Section 2.07 **Event(s) of Default.** The following events shall, unless waived in writing by MnDOT and the Commissioner, constitute an Event of Default under the Agreement upon either MnDOT or the Commissioner giving the Public Entity 30 days' written notice of such event and the Public Entity's failure to cure such event during such 30-day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default; however, in no event shall the time period to cure any Event of Default exceed six (6) months unless otherwise consented to, in writing, by MnDOT and the Commissioner.

- A. If any representation, covenant, or warranty made by the Public Entity herein or in any other document furnished pursuant to the Agreement, or to induce MnDOT to disburse the LRIP

Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

- B. If the Public Entity fails to fully comply with any provision, covenant, or warranty contained herein.
- C. If the Public Entity fails to fully comply with any provision, covenant or warranty contained in Minn. Stat. Sec. 16A.695, the Commissioner's Order, or Minn. Stat. Sec. 174.52 and all rules related thereto.
- D. If the Public Entity fails to use the proceeds of the LRIP Grant for the purposes set forth in Section 2.03, the Grant Application, and in accordance with the LRIP.
- E. If the Public Entity fails to operate the Real Property for the purposes specified in Section 2.04.
- F. If the Public Entity fails to complete the Project by the Completion Date.
- G. If the Public Entity sells or transfers any portion of its ownership interest in the Real Property without first obtaining the written consent of both MnDOT and the Commissioner.
- H. If the Public Entity fails to provide any additional funds needed to fully pay for the Project.
- I. If the Public Entity fails to supply the funds needed to operate the Real Property in the manner specified in Section 2.04.

Notwithstanding the foregoing, any of the above events that cannot be cured shall, unless waived in writing by MnDOT and the Commissioner, constitute an Event of Default under the Agreement immediately upon either MnDOT or the Commissioner giving the Public Entity written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of MnDOT, MnDOT or the Commissioner may enforce any or all of the following remedies.

- A. MnDOT may refrain from disbursing the LRIP Grant; provided, however, MnDOT may make such disbursements after the occurrence of an Event of Default without waiving its rights and remedies hereunder.
- B. If the Event of Default involves a sale of the Public Entity's interest in the Real Property in violation of Minn. Stat. Sec. 16A.695 or the Commissioner's Order, the Commissioner, as a third party beneficiary of the Agreement, may require that the Public Entity pay the amounts that would have been paid if there had been compliance with such provisions. For other Events of Default, the Commissioner may require that the Outstanding Balance of the LRIP Grant be returned to it.
- C. Either MnDOT or the Commissioner, as a third party beneficiary of the Agreement, may enforce any additional remedies it may have in law or equity.

The rights and remedies specified herein are cumulative and not exclusive of any rights or remedies that MnDOT or the Commissioner would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained herein within 30 days of demand by the Commissioner, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of MnDOT and/or the Commissioner, then such amount may, unless precluded by law, be offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to MnDOT and the Commissioner, as soon as possible and in any event within seven (7) days after it has obtained knowledge of the occurrence of each Event of Default, a statement setting forth details of each Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 Effect of Event of Default. The Agreement shall survive Events of Default and remain in full force and effect, even upon full disbursement of the LRIP Grant, and shall only be terminated under the circumstances set forth in Section 2.11.

Section 2.11 Termination of Agreement and Modification of LRIP Grant.

A. If the Project is not started within five (5) years after the effective date of the Agreement or the LRIP Grant has not been disbursed within four (4) years after the date the Project was started, MnDOT's obligation to fund the LRIP Grant shall terminate. In such event, (i) if none of the LRIP Grant has been disbursed by such date, MnDOT shall have no obligation to fund the LRIP Grant and the Agreement will terminate, and (ii) if some but not all of the LRIP Grant has been disbursed by such date, MnDOT shall have no further obligation to provide any additional funding for the LRIP Grant and the Agreement shall remain in force but shall be modified to reflect the amount of the LRIP Grant that was actually disbursed and the Public Entity is still obligated to complete the Project by the Completion Date.

B. The Agreement shall terminate upon the Public Entity's sale of its interest in the Real Property and transmittal of the required portion of the proceeds of the sale to the Commissioner in compliance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order, or upon the termination of the Public Entity's ownership interest in the Real Property if such ownership interest is an easement.

Section 2.12 Excess Funds. If the full amount of the G.O. Grant and any matching funds referred to in Section 5.13 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

Article III

**COMPLIANCE WITH MINNESOTA STATUTE, SEC. 16A.695
AND THE COMMISSIONER'S ORDER**

Section 3.01 State Bond Financed Property. The Public Entity acknowledges that its interest in the Real Property is, or when acquired by it will be, "state bond financed property", as such term is used in Minn. Stat. Sec. 16A.695 and the Commissioner's Order and, therefore, the provisions contained in such statute and order apply, or will apply, to its interest in the Real Property, even if the LRIP Grant will only pay for a portion of the Project.

Section 3.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

- A. It will not use the Real Property or use or invest the LRIP Grant or any other sums treated as “bond proceeds” under Section 148 of the Code (including “investment proceeds,” “invested sinking funds” and “replacement proceeds”) in such a manner as to cause the G.O. Bonds to be classified as “arbitrage bonds” under Code Section 148.
- B. It will deposit and hold the LRIP Grant in a segregated non-interest-bearing account until such funds are used for payments for the Project.
- C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code, including Sections 103 and 148, with respect to the G.O. Bonds.
- D. It will, upon the occurrence of any act or omission by the Public Entity that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include: (i) compliance with proceedings intended to classify the G.O. Bonds as a “qualified bond” within the meaning of Code Section 141(e), or (ii) changing the nature of the use of the Real Property so that none of the net proceeds of the G.O. Bonds will be deemed to be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” within the meaning of Code Sections 141(b) and 145(a).
- E. It will not otherwise use any of the LRIP Grant or take, permit or cause to be taken, or omit to take, any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, and if it should take, permit or cause to be taken, or omit to take, as appropriate, any such action, it shall take all lawful actions necessary to correct such actions or omissions promptly upon obtaining knowledge thereof.

Section 3.03 **Changes to G.O. Compliance Legislation or the Commissioner’s Order.** If Minn. Stat. Sec. 16A.695 or the Commissioner’s Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity’s interest in the Real Property becomes exempted from Minn. Stat. Sec. 16A.695 and the Commissioner’s Order, then upon written request by the Public Entity, MnDOT shall execute an amendment to the Agreement to implement such amendment or exempt the Public Entity’s interest in the Real Property from Minn. Stat. Sec. 16A.695 and the Commissioner’s Order.

Article IV

DISBURSEMENT OF GRANT PROCEEDS

Section 4.01 **The Advances.** MnDOT agrees, on the terms and subject to the conditions set forth herein, to make Advances of the LRIP Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the LRIP Grant. If the amount of LRIP Grant that MnDOT cumulatively disburses hereunder to the Public Entity is less than the amount of the LRIP Grant delineated in Section 1.01, then MnDOT and the Public Entity shall enter into and execute whatever documents MnDOT may request in order to amend or modify this Agreement to reduce the amount of the LRIP Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, MnDOT’s obligation to make Advances shall terminate as of the dates specified in Section 2.11 even if the entire LRIP Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature delineated in

Source and Use of Funds that is attached as **Exhibit A**, (ii) accrued no earlier than the effective date of the legislation that appropriated the funds that are used to fund the LRIP Grant, or (iii) have otherwise been consented to, in writing, by the Commissioner.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 5.13. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 5.13 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1:

Cumulative Advances \leq (Program Grant) \times (percentage of matching funds, if any, required under Section 5.13 that have been disbursed)

Formula #2:

Cumulative Advances \leq (Program Grant) \times (percentage of Project completed)

Section 4.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the LRIP Grant the Public Entity shall submit to MnDOT a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and MnDOT, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to MnDOT, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by MnDOT unless the Public Entity shall advise MnDOT, in writing, of its intention to so store materials prior to their delivery and MnDOT has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to MnDOT such supporting evidence as may be requested by MnDOT to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

The final Draw Requisition shall not be submitted before completion of the Project, including any correction of material defects in workmanship or materials (other than the completion of punch list items). At the time of submission of the final Draw Requisition the Public Entity shall submit to MnDOT: (I) such supporting evidence as may be requested by MnDOT to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and that all requisite certificates and other approvals have been issued.

If on the date an Advance is desired the Public Entity has complied with all requirements of this Agreement and MnDOT approves the relevant Draw Requisition, then MnDOT shall disburse the amount of the requested Advance to the Public Entity.

Section 4.03 Additional Funds. If MnDOT shall at any time in good faith determine that the sum of the undisbursed amount of the LRIP Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be

anticipated in connection with the Project, then MnDOT may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in MnDOT's notice.

Section 4.04 **Condition Precedent to Any Advance.** The obligation of MnDOT to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

- A. MnDOT shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the amount of the LRIP Grant set forth in Section 1.01.
- B. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.
- C. No determination shall have been made by MnDOT that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 4.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to MnDOT that sufficient funds are available.
- D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.
- E. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require

Section 4.05 **Processing and Disbursement of Advances.** The Public Entity acknowledges and agrees as follows:

- A. Advances are not made prior to completion of work performed on the Project.
- B. All Advances are processed on a reimbursement basis.
- C. The Public Entity must first document expenditures to obtain an Advance.
- D. Reimbursement requests are made on a partial payment basis or when the Project is completed.
- E. All payments are made following the "Delegated Contract Process or State Aid Payment Request" as requested and approved by the appropriate district state aid engineer.

Section 4.06 **Construction Inspections.** The Public Entity shall be responsible for making its own inspections and observations regarding the completion of the Project, and shall determine to its own satisfaction that all work done or materials supplied have been properly done or supplied in accordance with all contracts that the Public Entity has entered into regarding the completion of the Project.

Article V MISCELLANEOUS

Section 5.01 **Insurance.** If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property, then the Public Entity shall have MnDOT named as an additional named insured therein.

Section 5.02 **Condemnation.** If, after the Public Entity has acquired the ownership interest set forth in Section 2.02, all or any portion of the Real Property is condemned to an extent that the Public Entity can no longer comply with Section 2.04, then the Public Entity shall, at its sole option, either: (i) use the condemnation proceeds to acquire an interest in additional real property needed for the Public Entity to continue to comply with Section 2.04 and to provide whatever additional funds that may be needed for such purposes, or (ii) submit a request to MnDOT and the Commissioner to allow it to sell the remaining portion of its interest in the Real Property. Any condemnation proceeds which are not used to acquire an interest in additional real property shall be applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order as if the Public Entity's interest in the Real Property had been sold. If the Public Entity elects to sell its interest in the portion of the Real Property that remains after the condemnation, such sale must occur within a reasonable time period after the date the condemnation occurred and the cumulative sum of the condemnation and sale proceeds applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order.

If MnDOT receives any condemnation proceeds referred to herein, MnDOT agrees to or pay over to the Public Entity all of such condemnation proceeds so that the Public Entity can comply with the requirements of this Section.

Section 5.03 **Use, Maintenance, Repair and Alterations.** The Public Entity shall not, without the written consent of MnDOT and the Commissioner, (i) permit or allow the use of any of the Real Property for any purpose other than the purposes specified in Section 2.04, (ii) substantially alter any of the Real Property except such alterations as may be required by laws, ordinances or regulations, or such other alterations as may improve the Real Property by increasing its value or which improve its ability to be used for the purposes set forth in Section 2.04, (iii) take any action which would unduly impair or depreciate the value of the Real Property, (iv) abandon the Real Property, or (v) commit or permit any act to be done in or on the Real Property in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property in accordance with this Section, MnDOT may perform whatever acts and expend whatever funds necessary to so maintain the Real Property, and the Public Entity irrevocably authorizes MnDOT to enter upon the Real Property to perform such acts as may be necessary to so maintain the Real Property. Any actions taken or funds expended by MnDOT shall be at its sole discretion, and nothing contained herein shall require MnDOT to take any action or incur any expense and MnDOT shall not be responsible, or liable to the Public Entity or any other entity, for any such acts that are performed in good faith and not in a negligent manner. Any funds expended by MnDOT pursuant to this Section shall be due and payable on demand by MnDOT and will bear interest from the date of payment by MnDOT at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per year based upon a 365-day year.

Section 5.04 **Recordkeeping and Reporting.** The Public Entity shall maintain books and records pertaining to Project costs and expenses needed to comply with the requirements contained herein, Minn. Stat. Sec. 16A.695, the Commissioner's Order, and Minn. Stat. Sec. 174.52 and all rules related thereto, and upon request shall allow MnDOT, its auditors, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract all of such items. The

Public Entity shall use generally accepted accounting principles in the maintenance of such items, and shall retain all of such books and records for a period of six years after the date that the Project is fully completed and placed into operation.

Section 5.05 **Inspections by MnDOT.** The Public Entity shall allow MnDOT to inspect the Real Property upon reasonable request by MnDOT and without interfering with the normal use of the Real Property.

Section 5.06 **Liability.** The Public Entity and MnDOT agree that each will be responsible for its own acts and the results thereof to the extent authorized by law, and neither shall be responsible for the acts of the other party and the results thereof. The liability of MnDOT and the Commissioner is governed by the provisions of Minn. Stat. Sec. 3.736. If the Public Entity is a “municipality” as that term is used in Minn. Stat. Chapter 466, then the liability of the Public Entity is governed by the provisions of Chapter 466. The Public Entity’s liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusion from coverage in any insurance policy.

Section 5.07 **Relationship of the Parties.** Nothing contained in the Agreement is to be construed as establishing a relationship of co-partners or joint venture among the Public Entity, MnDOT, or the Commissioner, nor shall the Public Entity be considered to be an agent, representative, or employee of MnDOT, the Commissioner, or the State of Minnesota in the performance of the Agreement or the Project.

No employee of the Public Entity or other person engaging in the performance of the Agreement or the Project shall be deemed have any contractual relationship with MnDOT, the Commissioner, or the State of Minnesota and shall not be considered an employee of any of those entities. Any claims that may arise on behalf of said employees or other persons out of employment or alleged employment, including claims under the Workers’ Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity or its officers, agents, contractors, or employees shall in no way be the responsibility of MnDOT, the Commissioner, or the State of Minnesota. Such employees or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from MnDOT, the Commissioner, or the State of Minnesota, including tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 5.08 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the address of the party specified below or to such different address as may in the future be specified by a party by written notice to the others:

To the Public Entity: At the address indicated on the first page of the Agreement.

To MnDOT at: Minnesota Department of Transportation
Office of State Aid
395 John Ireland Blvd., MS 500
Saint Paul, MN 55155
Attention: Marc Briesse, State Aid Programs Engineer

To the Commissioner at: Minnesota Management & Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 5.09 Assignment or Modification. Neither the Public Entity nor MnDOT may assign any of its rights or obligations under the Agreement without the prior written consent of the other party.

Section 5.10 Waiver. Neither the failure by the Public Entity, MnDOT, or the Commissioner, as a third party beneficiary of the Agreement, in one or more instances to insist upon the complete observance or performance of any provision hereof, nor the failure of the Public Entity, MnDOT, or the Commissioner to exercise any right or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such provision or the right to exercise such right or remedy thereafter. In addition, no delay by any of the Public Entity, MnDOT, or the Commissioner in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 5.11 Choice of Law and Venue. All matters relating to the validity, interpretation, performance, or enforcement of the Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions arising from any provision of the Agreement shall be initiated and venued in the State of Minnesota District Court located in St. Paul, Minnesota.

Section 5.12 Severability. If any provision of the Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 5.13 Matching Funds. Any matching funds as shown on Page 1 of the Grant Agreement that are required to be obtained and supplied by the Public Entity must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to MnDOT whatever documentation MnDOT may request to substantiate the availability and source of any matching funds.

Section 5.14 Sources and Uses of Funds. The Public Entity represents to MnDOT and the Commissioner that the Sources and Uses of Funds Schedule attached as **Exhibit A** accurately shows the total cost of the Project and all of the funds that are available for the completion of the Project. The Public Entity will supply any other information and documentation that MnDOT or the Commissioner may request to support or explain any of the information contained in the Sources and Uses of Funds Schedule. If any of the funds shown in the Sources and Uses of Funds Schedule have conditions precedent to the release of such funds, the Public Entity must provide to MnDOT a detailed description of such conditions and what is being done to satisfy such conditions.

Section 5.15 Project Completion Schedule. The Public Entity represents to MnDOT and the Commissioner that the Project Completion Schedule attached as **Exhibit B** correctly and accurately sets forth the projected schedule for the completion of the Project.

Section 5.16 Third-Party Beneficiary. The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 5.17 Public Entity Tasks. Any tasks that the Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 5.18 **Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant or the Project to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Minnesota Statutes Chapter 13, as such may subsequently be amended or replaced from time to time.

Section 5.19 **Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project and it shall fully comply with all of the provisions contained in Minnesota Statutes Chapters 363A and 181, as such may subsequently be amended or replaced from time to time.

Section 5.20 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. Secs. 176.181 subd. 2 and 176.182, as they may be amended or replaced from time to time with respect to the Project.

Section 5.21 **Antitrust Claims.** The Public Entity hereby assigns to MnDOT and the Commissioner of MMB all claims it may have for over charges as to goods or services provided with respect to the Project that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 5.22 **Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Minnesota Statutes Chapter 177, and specifically those provisions contained in Minn. Stat. §. 177.41 through 177.435 as they may be amended or replaced from time to time with respect to the Project. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project.

Section 5.23 **Entire Agreement.** The Agreement and all of the exhibits attached thereto embody the entire agreement between the Public Entity and MnDOT, and there are no other agreements, either oral or written, between the Public Entity and MnDOT on the subject matter hereof.

Section 5.24 **E-Verification.** The Public Entity agrees and acknowledges that it is aware of Minn.Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order.

Section 5.25 **Telecommunications Certification.** If federal funds are included in Exhibit A, by signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.

Section 5.26 **Title VI/Non-discrimination Assurances.** Public Entity agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. Public Entity will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. MnDOT may conduct a review of the Public Entity's compliance with this provision. The Public Entity must cooperate with MnDOT throughout the review process by supplying all requested information and

documentation to MnDOT, making Public Entity staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by MnDOT.



STAFF REPORT NO. 119
CITY COUNCIL MEETING
8/10/2021

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
8/5/2021

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW:

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of a Temporary On Sale Intoxicating Liquor license for the Richfield Foundation's A Toast To Richfield event to take place on Thursday, October 7, 2021, in the atrium area of Woodlake Center, located at 6601 Lyndale Ave South.

EXECUTIVE SUMMARY:

On July 26, 2021, the City received application materials for a Temporary On Sale Intoxicating Liquor license for the Richfield Foundation's A Toast To Richfield event to take place on Thursday, October 7, 2021. The event will take place from 6:30 p.m. to 9:00 p.m. in the atrium area of Woodlake Center, located at 6601 Lyndale Avenue South.

The request is to serve wine, craft beer and spirits. They will have approximately 21+ different wine, craft beer vendors, and spirits vendors. They will also offer appetizers, desserts, water and coffee.

All required information, documents and licensing fees have been provided. The Director of Public Safety has reviewed all required information and documents and has found no basis for denial.

The City Council has previously granted this license in conjunction with this event.

RECOMMENDED ACTION:

By motion: Approve the issuance of a Temporary On Sale Intoxicating Liquor license for Richfield Foundation's A Toast To Richfield event, to take place on Thursday, October 7, 2021, in the atrium area of Woodlake Center, located at 6601 Lyndale Avenue South.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The applicant has satisfied the following requirements for the issuance of this license:

- The required licensing fees have been received.
- Proof of liquor liability insurance has been provided showing Evanston Insurance Company affording the coverage.
- The Richfield Foundation has contacted food sanitarians from the City of Bloomington to ensure food handling practices are followed.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Richfield City Code Section 1202.05 requires all applicants to comply with all of the provisions of this code, as well as the provisions of Minnesota Statute Chapter 340A.

C. CRITICAL TIMING ISSUES:

The Richfield Foundation's A Toast To Richfield event takes place on Thursday, October 7, 2021, so approval by the City Council is needed at the regular meeting on August 10, 2021.

D. FINANCIAL IMPACT:

The required licensing fees have been received.

E. LEGAL CONSIDERATION:

There are no legal considerations.

ALTERNATIVE RECOMMENDATION(S):

The Council could deny the approval of the Temporary On Sale Intoxicating Liquor license for the Richfield Foundation. This would mean the applicant would not be able to serve alcohol at their Wine Tasting event; however, Public Safety has not found any basis for denial.

PRINCIPAL PARTIES EXPECTED AT MEETING:

A representative of the Richfield Foundation will be present.



STAFF REPORT NO. 120
CITY COUNCIL MEETING
8/10/2021

REPORT PREPARED BY: Jay Henthorne, Director of Public Safety/Chief of Police

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
8/5/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW:

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of the Bureau of Criminal Apprehension's (BCA's) Master Joint Powers Agreement (JPA) with Richfield Department of Public Safety/Police for access to the Criminal Justice Data Communications Network (CJDN) and the Court Data Services Subscriber Amendment to CJDN Subscriber Agreement.

EXECUTIVE SUMMARY:

Minnesota State Statute §299C.46 states that the Bureau of Criminal Apprehension (BCA) must provide a criminal justice data communications network to benefit criminal justice agencies in Minnesota. The agency is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in the Joint Powers Agreement.

In addition, BCA either maintains repositories of data or has access to repositories of data that benefit criminal justice agencies in performing their duties, and the agency wants to access these data in support of its criminal justice duties

RECOMMENDED ACTION:

By Motion: Approve the Bureau of Criminal Apprehension's (BCA's) Master Joint Powers Agreement with Richfield Department of Public Safety/Police for access to the Criminal Justice Data Communications Network (CJDN) and the Court Data Services Subscriber Amendment to CJDN Subscriber Agreement

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

This agreement initially went into effect 2021, and will expire on 2026.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The Department has previously been a part of a Joint Powers Agreement with the State of Minnesota, Dept. of Public Safety, Bureau of Criminal Apprehension.
- The BCA will provide Richfield Police with access to the Minnesota Criminal Justice Data Communications Network (CJDN). Access to the BCA's data is a necessary function in the daily operations of the Richfield Public Safety Department/Police Department.

C. **CRITICAL TIMING ISSUES:**

This agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.46, Subdv. 2, and expires five (5) years from the date it is effective.

D. **FINANCIAL IMPACT:**

The department agrees to pay BCA for the access to the data in the amount of \$630 quarterly or \$2,520 per year. The Richfield Department of Public Safety has funds budgeted to cover these costs.

E. **LEGAL CONSIDERATION:**

There are no legal considerations.

ALTERNATIVE RECOMMENDATION(S):

The BCA's data is a necessary part of the operations of the Richfield Department of Public Safety/Police.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter
□ Master JPA	Contract/Agreement
□ Court Amendment	Backup Material

RESOLUTION NO.

RESOLUTION AUTHORIZING APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS WITH THE CITY OF RICHFIELD ON BEHALF OF ITS CITY ATTORNEY AND POLICE DEPARTMENT

WHEREAS, the City of Richfield on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City of is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the City to pay the costs for the network connection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Richfield, Minnesota as follows:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Richfield on behalf of its Prosecuting Attorney and Police Department, are hereby approved. Copies of the two Joint Powers Agreements are attached to this Resolution and made a part of it.

2. That Chief Jay Henthorne, or his successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.

To assist the Authorized Representative with the administration of the agreement, Deb Erickson, Records Management Supervisor, or her successor, is appointed as the Authorized Representative's designee.

3. That the Attorney Martin Costello, or his successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.

4. That Maria Regan Gonzalez, the Mayor for the City of Richfield, and Kari Sinning, the City Clerk, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the City Council of the City of Richfield, Minnesota this 10th day of August, 2021.

Maria Regan Gonzalez, Mayor

ATTEST:

Kari Sinning, City Clerk



State of Minnesota Joint Powers Agreement

This Agreement is between the State of Minnesota, acting through its Department of Public Safety on behalf of the Bureau of Criminal Apprehension ("BCA"), and the City of Richfield of behalf of its Police Department ("Governmental Unit"). The BCA and the Governmental Unit may be referred to jointly as "Parties."

Recitals

Under Minn. Stat. § 471.59, the BCA and the Governmental Unit are empowered to engage in agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46, the BCA must provide a criminal justice data communications network to benefit political subdivisions as defined under Minn. Stat. § 299C.46, subd. 2 and subd. 2(a). The Governmental Unit is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this Agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized political subdivisions in performing their duties. The Governmental Unit wants to access data in support of its official duties.

The purpose of this Agreement is to create a method by which the Governmental Unit has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

Agreement

1 Term of Agreement

- 1.1 **Effective Date.** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 **Expiration Date.** This Agreement expires five years from the date it is effective.

2 Agreement Between the Parties

- 2.1 **General Access.** BCA agrees to provide Governmental Unit with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Governmental Unit is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.
- 2.2 **Methods of Access.**

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

 - A. **Direct access** occurs when individual users at the Governmental Unit use the Governmental Unit's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
 - B. **Indirect Access** occurs when individual users at the Governmental Unit go to another Governmental Unit to obtain data and information from BCA's systems and tools. This method of access generally results in the Governmental Unit with indirect access obtaining the needed data and information in a physical format like a paper report.
 - C. **Computer-to-Computer System Interface** occurs when the Governmental Unit's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Governmental Unit employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Governmental Unit will select a

method of access and can change the methodology following the process in Clause 2.10.

- 2.3 Federal Systems Access.** In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Governmental Unit with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.
- 2.4 Governmental Unit Policies.** Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Governmental Unit has created its own policies to ensure that Governmental Unit's employees and contractors comply with all applicable requirements. Governmental Unit ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.
- 2.5 Governmental Unit Resources.** To assist Governmental Unit in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://bcanextest.x.state.mn.us/launchpad/cjisdocs/docs.cgi?cmd=FS&ID=795&TYPE=DOCS>.
- 2.6 Access Granted.**
- A. Governmental Unit is granted permission to use all current and future BCA systems and tools for which Governmental Unit is eligible. Eligibility is dependent on Governmental Unit (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Governmental Unit's written request for use of a specific system or tool.
 - B. To facilitate changes in systems and tools, Governmental Unit grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Governmental Unit needs to meet its criminal justice obligations and for which Governmental Unit is eligible.
- 2.7 Future Access.** On written request from the Governmental Unit, BCA also may provide Governmental Unit with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Governmental Unit agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.
- 2.8 Limitations on Access.** BCA agrees that it will comply with applicable state and federal laws when making information accessible. Governmental Unit agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.
- 2.9 Supersedes Prior Agreements.** This Agreement supersedes any and all prior agreements between the BCA and the Governmental Unit regarding access to and use of systems and tools provided by BCA.
- 2.10 Requirement to Update Information.** The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving the Governmental Unit as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, BCA.ServiceDesk@state.mn.us.

- 2.11 Transaction Record.** The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Governmental Unit conducted a

particular transaction.

If Governmental Unit uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Governmental Unit's method of access is a computer-to-computer interface as described in Clause 2.2C, the Governmental Unit must keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If a Governmental Unit accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Governmental Unit must have a transaction record of all subsequent access to the data that are kept by the Governmental Unit. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

- 2.12 Court Information Access.** Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Governmental Unit if the Governmental Unit completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by the Governmental Unit under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Governmental Unit's access to and/or submission of the Court Records delivered through the BCA systems and tools.
- 2.13 Vendor Personnel Screening.** The BCA will conduct all vendor personnel screening on behalf of Governmental Unit as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Governmental Unit.

3 Payment

The Governmental Unit currently accesses the criminal justice data communications network described in Minn. Stat. §299C.46. The bills are sent quarterly for the amount of Six Hundred Thirty Dollars (\$630.00) or a total annual cost of Two Thousand Five Hundred Twenty Dollars (\$2,520.00).

The Governmental Unit will identify its contact person for billing purposes, and will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

4 Authorized Representatives

The BCA's Authorized Representative is the person below, or her successor:

Name: Dana Gotz, Deputy Superintendent
Address: Minnesota Department of Public Safety; Bureau of Criminal Apprehension
1430 Maryland Avenue
Saint Paul, MN 55106

Telephone: 651.793.2007
Email Address: Dana.Gotz@state.mn.us

The Governmental Unit's Authorized Representative is the person below, or his/her successor:

Name: Jay Henthorne, Chief
Address: 6700 Portland Ave S
Richfield, MN 55423
Telephone: 612.861.9828
Email Address: jhenthorne@richfieldmn.gov

5 Assignment, Amendments, Waiver, and Agreement Complete

- 5.1 Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement.
- 5.2 Amendments.** Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.
- 5.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.
- 5.4 Agreement Complete.** This Agreement contains all negotiations and agreements between the BCA and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Liability

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws, governs the Governmental Unit's liability.

7 Audits

- 7.1** Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

- 7.2** Under applicable state and federal law, the Governmental Unit's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.
- 7.3** If the Governmental Unit accesses federal databases, the Governmental Unit's records are subject to examination by the FBI and BCA; the Governmental Unit will cooperate with FBI and BCA auditors and make any requested data available for review and audit.
- 7.4** If the Governmental Unit accesses state databases, the Governmental Unit's records are subject to examination by the BCA; the Governmental Unit will cooperate with the BCA auditors and make any requested data available for review and audit.
- 7.5** To facilitate the audits required by state and federal law, Governmental Unit is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

8 Government Data Practices

- 8.1 BCA and Governmental Unit.** The Governmental Unit and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Governmental Unit or the BCA.
- 8.2 Court Records.** If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Governmental Unit comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

9 Investigation of Alleged Violations; Sanctions

For purposes of this clause, "Individual User" means an employee or contractor of Governmental Unit.

- 9.1 Investigation.** The Governmental Unit and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Governmental Unit and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Governmental Unit of the suspected violation, subject to any restrictions in applicable law. When Governmental Unit becomes aware that a violation has occurred, Governmental Unit will inform BCA subject to any restrictions in applicable law.
- 9.2 Sanctions Involving Only BCA Systems and Tools.**
The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Governmental Unit internal discipline processes, including those governed by a collective bargaining agreement.
- 9.2.1** For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Governmental Unit must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Governmental Unit must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Governmental Unit and BCA's determination controls.
- 9.2.2** If BCA determines that Governmental Unit has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Governmental Unit's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.
- 9.3 Sanctions Involving Only Court Data Services**
The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Governmental Unit. As part of the agreement between the Court and

the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Governmental Unit. The agreement further provides that only the Court has the authority to reinstate access and use.

9.3.1 Governmental Unit understands that if it has signed the Court Data Services Subscriber Amendment and if Governmental Unit's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Governmental Unit also understands that reinstatement is only at the direction of the Court.

9.3.2 Governmental Unit further agrees that if Governmental Unit believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

11.1 Termination. The BCA or the Governmental Unit may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

11.2 Termination for Insufficient Funding. Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Governmental Unit is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

12 Continuing Obligations

The following clauses survive the expiration or cancellation of this Agreement: Liability; Audits; Government Data Practices; 9. Investigation of Alleged Violations; Sanctions; and Venue.

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The Parties indicate their agreement and authority to execute this Agreement by signing below.

1. GOVERNMENTAL UNIT

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated to the Office of State Procurement

By: _____

Date: _____

COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the City of Richfield on behalf of its Police Department (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 192173, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

b. **“Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is www.courts.state.mn.us) or other location designated by the Court, as the same may be amended from time to time by the Court.

c. **“Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

d. **“DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

e. **“Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. **“Rules of Public Access”** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records* or *Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is www.courts.state.mn.us.

g. **“Court”** shall mean the State of Minnesota, State Court Administrator's Office.

h. **“Subscriber”** shall mean the Agency.

i. **“Subscriber Records”** means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. REQUESTS FOR AUTHORIZED COURT DATA SERVICES. Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. **Activation.** Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. **Rejection.** Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. **Requests for Termination of One or More Authorized Court Data Services.** The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber's access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber's duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS. Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS. During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. Court Data Services Programs. Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

b. Court Data Services Databases. Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

c. Marks. Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks "MNCIS" and "Odyssey."

d. Restrictions on Duplication, Disclosure, and Use. Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

e. Proprietary Notices. Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. Title; Return. The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. INJUNCTIVE RELIEF. Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

9. LIABILITY. Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

10. AVAILABILITY. Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

11. [reserved]

12. ADDITIONAL USER OBLIGATIONS. The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

a. Judicial Policy Statement. Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

b. Access and Use; Log. Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

c. Personnel. Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

d. Minnesota Data Practices Act Applicability. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

14. MODIFICATION OF FEES. Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

15. WARRANTY DISCLAIMERS.

a. WARRANTY EXCLUSIONS. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

b. ACCURACY AND COMPLETENESS OF INFORMATION. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

16. RELATIONSHIP OF THE PARTIES. Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

18. NON-WAIVER. The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. FORCE MAJEURE. Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

20. SEVERABILITY. Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

21. ASSIGNMENT AND BINDING EFFECT. Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

22. GOVERNING LAW. This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

23. VENUE AND JURISDICTION. Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

24. INTEGRATION. This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

1. SUBSCRIBER (AGENCY)

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION delegated to Materials Management Division

By: _____

Date: _____

4. COURTS

Authority granted to Bureau of Criminal Apprehension

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with authorized authority)

Date: _____



STAFF REPORT NO. 121
CITY COUNCIL MEETING
8/10/2021

REPORT PREPARED BY: Melissa Poehlman, Asst. Community Development Director

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
8/3/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/4/2021

ITEM FOR COUNCIL CONSIDERATION:

Consider a resolution of support for the expansion of the Minnesota Independence College and Community in the City of Richfield.

EXECUTIVE SUMMARY:

Minnesota Independence College and Community (MICC) has been operating within the Colony Apartments complex (7501 Logan Avenue) since the program first began in 1996. Over the past 25 years, MICC has grown into a nationally recognized model for serving individuals on the autism spectrum and with learning differences. The City of Richfield has proved integral to this success, through its policies related to redevelopment and its multi-modal transportation initiatives. MICC participants come from across Minnesota and the country to live, work, volunteer, and thrive in Richfield, not just for their time enrolled in MICC, but for the long term.

As MICC works to respond to a demand for wrap-around services for graduates, they have purchased 1.2 acres of land along 76th Street between Newton and Morgan Avenues. This land is guided for Medium-Density Residential housing in the City's 2040 Comprehensive Plan.

On Monday, June 21, at a joint work session of the City Council, Housing & Redevelopment Authority, and Planning Commission, MICC and partners from Bumpy Lane, LLC presented conceptual plans for the development of a mixed use building including services and affordable/accessible apartments. MICC and Bumpy Lane are now requesting a resolution from the City, confirming their support for the concept of affordable/accessible housing at this location. This letter of support does not guarantee or obligate the approval of any specific land use requests, but rather will indicate that the City is supportive of the conceptual development of the land in this manner. This resolution will aid MICC and partners in securing project financing and support at other levels of government.

The City of Richfield has a long history of partnering with organizations that best serve its residents, including MICC. Supporting sustainable independence for all Richfield residents is a way to further the community's commitment to equitable opportunities for all.

RECOMMENDED ACTION:

By motion: Approve the attached resolution supporting the development of affordable, accessible multi-family housing by the Minnesota Independence College and Community in the area of 2000, 2006,

and 2018 76th Street West.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Minnesota Independence College and Community is a 501 (c)3 nonprofit vocational and life skills training program for young adults with learning differences and autism spectrum disorder. Since its founding in 1996, MICC has remained dedicated to helping participants make successful transitions towards independent living and financial self-sufficiency.
- MICC has operated from the Colony Apartments in Richfield since its inception in 1996.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The 2040 Comprehensive Plan calls for a full range of housing choices that meet residents' needs at every stage of their lives, and ensure a healthy balance of housing types that meet the needs of a diverse population with diverse needs.
- The neighborhood immediately north of the Best Buy Corporate Campus has been guided for increased density since the adoption of the 2030 Comprehensive Plan in 2008.

C. CRITICAL TIMING ISSUES:

None

D. FINANCIAL IMPACT:

None

E. LEGAL CONSIDERATION:

The attached resolution of support indicates that the Council is supportive of an affordable, accessible housing development in the area of 2000, 2006, and 2018 76th Street West. It does not obligate the City to approve any specific development proposal.

ALTERNATIVE RECOMMENDATION(S):

Do not approve a resolution of support.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Representative(s) of MICC and/or Bumpy Lane, LLC

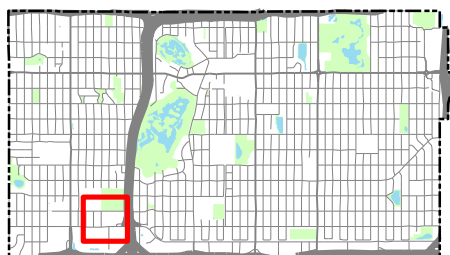
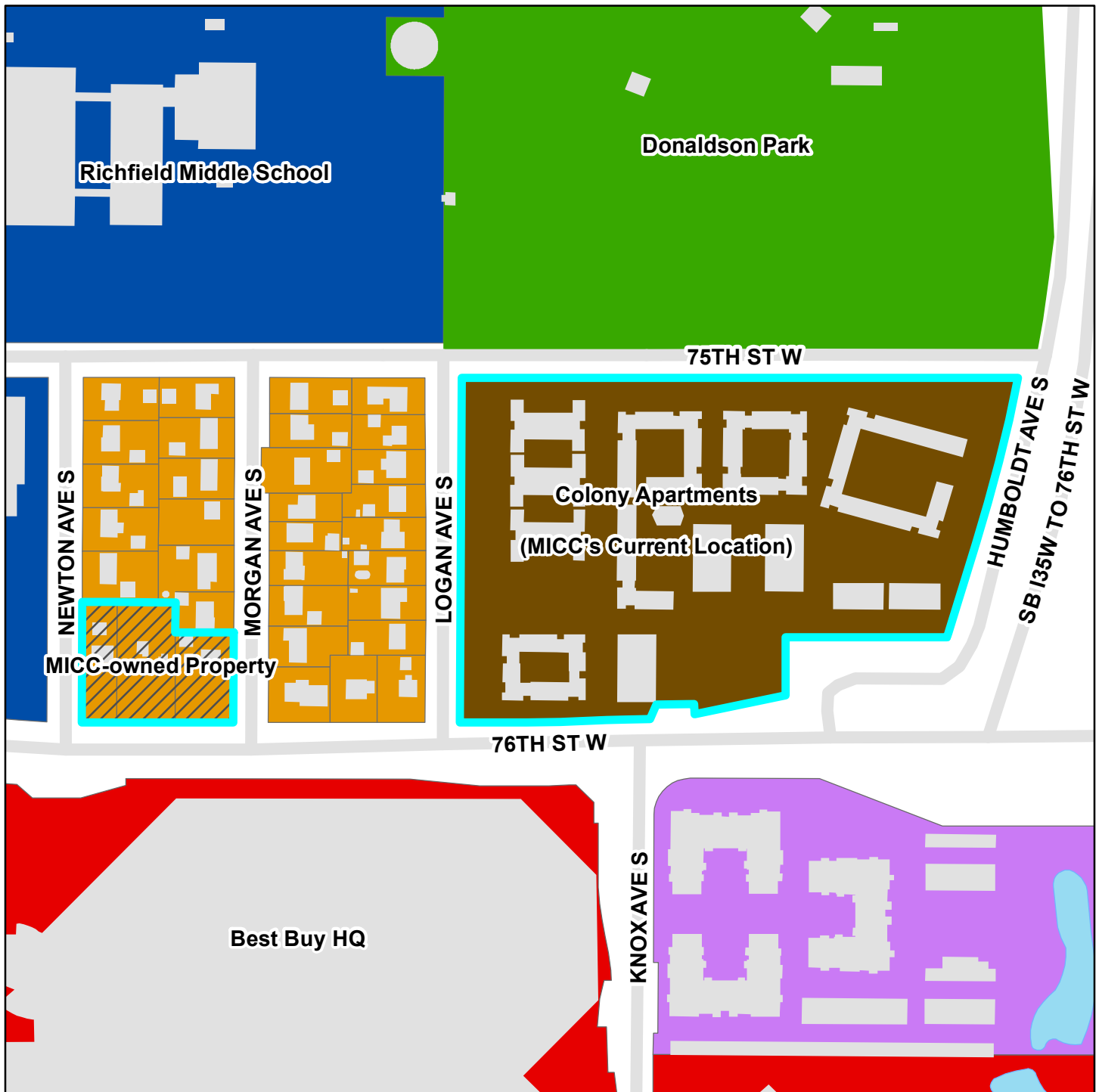
ATTACHMENTS:

Description	Type
▣ Map	Backup Material
▣ Resolution	Resolution Letter



Minnesota Independence College and Community

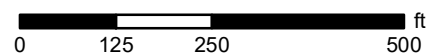
2040 Comprehensive Plan Designations



- MICC Current Location
- MICC Owned Properties

2040 Comprehensive Plan Designations

- | | |
|--|--|
| Mixed Use | Medium Density Residential |
| Regional Commercial | Low Density Residential |
| Community Commercial | Park |
| Neighborhood Commercial | Quasi-Public |
| High Density Residential | Right-of-Way (ROW) |



RESOLUTION NO. _____

**RESOLUTION SUPPORTING THE DEVELOPMENT OF AFFORDABLE, ACCESSIBLE
MULTIFAMILY HOUSING IN THE VICINITY OF
2000, 2006, AND 2018 - 76TH STREET WEST**

WHEREAS, the City of Richfield is committed to providing a full range of housing choices that meet residents' needs at every stage of their lives, and ensuring a healthy balance of housing types that meets the needs of a diverse population with diverse needs; and

WHEREAS, the City of Richfield is committed to partnering with organizations that best serve its residents; and

WHEREAS, Minnesota Independence College and Community (MICC) is a 501 (c)3 nonprofit vocational and life skills training program for young adults with learning differences and autism spectrum disorder that, since its founding in 1996, has operated from the Colony Apartments in the City of Richfield; and

WHEREAS, the City of Richfield is supportive of the continued success and growth of the MICC program in the City of Richfield and wishes to support their efforts to provide sustainable independence for their graduates; and

WHEREAS, the City of Richfield has designated land in the vicinity of 2000, 2006, and 2018 – 76th Street West for future multifamily housing development; and

WHEREAS, MICC and partner Bumpy Lane LLC, a Minnesota limited liability company, or any of its affiliates (collectively, the “Redeveloper”), has proposed to construct an affordable, accessible multifamily project to be located at or about 2000, 2006, and 2018 – 76th Street West, Richfield, Minnesota (the “Redevelopment”); and

WHEREAS, the Redeveloper has presented a conceptual Redevelopment to the City Council and has received support of the Council to move forward in the exploration of a specific Redevelopment plan and application; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council supports the development of affordable, accessible multifamily housing by the Redeveloper in the vicinity of 2000, 2006, and 2018 – 76th Street West.

Adopted by the City Council of the City of Richfield, Minnesota this 10th day of August, 2021.

Maria Regan Gonzalez, Mayor

ATTEST:

Kari Sinnig, City Clerk