

## TWO HARBORS CITY COUNCIL

### AGENDA

February 27, 2023

6:00 P.M. Call to order regular meeting of the City Council of the City of Two Harbors.

Roll call:

Pledge of Allegiance:

Additions or Changes to the Agenda:

[M] Approval of the Agenda.

*Items may be added to the agenda prior to approval of the agenda. Items brought forth once the agenda has been approved shall be referred to administration and/or committee.*

[M] *Adjourning regular meeting and calling to order public hearing for the purpose of receiving public input regarding a Concept Plan for a Planned Unit Development on behalf of the property owner at XX Lighthouse Point Road (Parcel ID: 23-7600-06612) in the City of Two Harbors. The concept plan contains 26 townhome units in 13 buildings, one commercial lot with space for coffee/bar/restaurant use, along with shared gathering space for resident's and public use in the City of Two Harbors.*

#### Appearances:

#### Communications:

1. *A letter from Tami & Pete Kotila, 2047 Highway 12, expressing opposition to the proposed plan or any type of development on Lighthouse Point.*

[M] *Adjourning public hearing and reconvening regular City Council meeting.*

#### Appearances:

1. Brandon Graden, 405 Second Avenue, Re: concerns with the City.
2. Jody Zastera, 722 Laura Lane Circle, Re: interview for the Library Board.

[R] Appointing Jody Zastera as a member of the Library Board of Directors, for a term which will expire on \_\_\_\_\_.

3. Jay Cole, 716 Sixth Avenue, regarding his petition that the City purchase the abandoned John A. Johnson School.

**Administrative Reports:**

**Committee Reports:**

Public Affairs Committee.

Trees & Trails Commission.

Utilities Committee.

Personnel Committee.

Public Arts & Beautification Commission.

Other.

**[R] Approving the Consent Agenda Items:**

*Items listed on the Consent Agenda are routine in nature and typically do not require discussion. If there is an item on the consent agenda that a councilmember feels warrants discussion, it should be removed from the consent agenda and dealt with individually.*

1. Approving minutes from the January 23 and February 13, 2023 Regular City Council meetings.
2. Allowing claims against the City of Two Harbors to be paid on February 28, 2023.
3. Approving payroll for the first half of February, 2023.
4. Authorizing payment to Jim Perrault Construction in the amount of \$20,306.25 for original contract price for Community Building Window Replacement Project.
5. Accepting, with regret, a letter of resignation from John Weidner, from his position on the Library Board of Trustees and authorizing a letter of appreciation for his service.
6. Accepting, with regret, a letter of resignation from Krista Busse, from her position on the City HRA, and authorizing a letter of appreciation for her service.
7. Approving the recommendation of the Personnel Committee to increase the base rate of pay for Temporary Employees to \$15.00 and \$15.50 for those individuals hired for the Public Works Department who are over the age of 18 with a valid MN Driver's License.
8. Approving the recommendation of the Personnel Committee to authorize a hiring incentive program for temporary employees who refer new temporary employees and who meet certain requirements.

9. Approving the recommendation of the Personnel Committee to authorize internal and external postings for the position of Journey or Apprentice Lineworker.
10. Removing Michael Cavallin from the City Charter Commission due to residency requirements.

**Communications:**

1. A petition requesting that the Two Harbors City Council purchase the abandoned John A. Johnson school.
2. A letter from Paula Gaboury, Pastor and Bill Hermanson, Trustee of United Church of Two Harbors, 531 Third Avenue, expressing thanks to Paul Johnson and his crew for quick repair of their leaking water line and declaring that it was very reassuring to see that the City has such competent and capable workers.
3. A memorandum from Luke Heikkila, Water and Wastewater Treatment Plant Superintendent, providing an update on his activities regarding to the Wastewater Treatment plant.
4. A memorandum from Joe Rhein, Bolton & Menk, providing an update on tree removal and City projects.
5. A memorandum from Joe Rhein, Bolton & Menk, regarding the 2023 – 2024 Street Improvement Project and Tree Removal.

**Unfinished Business:**

Other.

**New Business:**

1. [R] Consider approving the City of Two Harbors Employment Agreement with Patricia Nordean and authorizing the Mayor and Interim City Administrator to execute the Agreement on behalf of the City.
2. [M] Closing the meeting for the purpose of discussing pending litigation strategy regarding special assessments as allowed under MN Statute Section 13D.05, Subd. 3(b).
3. [M] Reconvene Regular meeting.
4. [R] Approving the State of MN Joint Powers Agreements with the City of Two Harbors on Behalf of its City Attorney and Police Department.

Other.

**Adjourn:**

2/22/23

FEB 22 2023

FEB 22 2023

To: City Council Members  
From: Tami & Pete Kotila  
Re: Development at Lighthouse Point

We are writing this letter to give our community input regarding the development at Lighthouse Point.

We oppose this plan, or for any type development at Lighthouse Point, and ask that this small section of our community be preserved for the locals and the million (statistically) visitors that come to our area, so that we and all future generations can enjoy for years to come. So much of the shoreline is being developed and it is sad to see the pristine and aesthetic look of our shoreline disappearing. We all feel the tranquility when we step out on our shoreline, take a deep breath and feel the harmony of the lake, the shore, and the sky come together. No one will convince me that this development will not affect that for all!

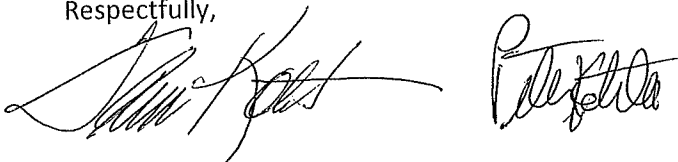
It was stated by one council member that local families will move into these townhomes and open up housing for others. That may be the case for one or two people in town, but in reality, it will have NO affect on our housing crisis. These "higher end" homes will attract only the people who can afford them from other metro locations. Please do not kid yourself that this will be an answer to our local housing problem.

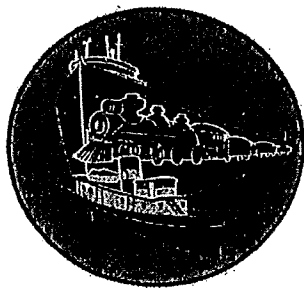
The housing crisis in our town needs to be looked at thru other avenues. Specifically, the John A. Johnson school. It is beyond my knowledge as to why this parcel has not been allowed to be developed in the past years and past property owners. I understand that the zoning is part of it, but honestly, if the council *really* wanted to help in the housing crisis, they would do whatever is needed to work with a developer to get a housing and/or apartment complex built on that location. Middle to lower incomes are what we should be shooting for, not "high end" housing. We should be attracting or encouraging our younger generation to move or stay here and bring or raise a family, to keep this town healthy with growth and job opportunities. Many of the local businesses cannot hire employees because they cannot find a place to live in town. I know of some workers in the industrial park that commute from towns as far away as Aurora and Babbitt!

Another addition to the suggested housing mentioned above, should be looking to add more senior housing. The waiting list to get into that type of housing in town is *long*. Many seniors have been forced to relocate to outside areas, such as Duluth, because senior housing is not available. If we had more housing for our seniors to move into, that alone would open up some of the housing market. Can this be part of a development plan on the J.A.J property? I think it can, IF the council would pursue talks of development with the current owners. PLEASE invest in that parcel of land (or another site if available), for the **greater good** of our residents and community. Lighthouse Point, will not do this.

Thank you for your time in reading this.

Respectfully,





City of Two Harbors  
522 1<sup>st</sup> Avenue  
Two Harbors, MN 55616

## Application to Join a City of Two Harbors Committee or Commission

Date: 16 Feb 2023

Name of Committee(s)/Commission(s) you are interested in joining:

Library Board

Full Legal Name: Jodith Ann Zastera (Jody)

Spouse's Name: \_\_\_\_\_

Address: 722 Laura Lane Circle T7+

Place of Employment: Retired

Do you reside in the 55616 zip code: Yes

Phone: 218-834-5639

Email: jodyz@frontiernet.net

How did you hear about the Committee(s)/Commission(s) you are applying to join?

Through the Director

Why would you like to join the Committee(s)/Commission(s) you are applying to join?

I volunteer at the Library 3 times / wk and so I know most of the "goings on"! ☺

I have previously served on the Two Harbors Planning Commission

Please submit completed application to Two Harbors City Hall

# TWO HARBORS CITY COUNCIL



## AGENDA ITEM SUMMARY

**AGENDA ITEM SUBJECT:** Community Center Change order

**ORIGINATING SOURCE/DEPARTMENT:** Street Dept

**FUNDING SOURCE:** CIP

**BACKGROUND:** While working on installing the windows they encountered some structural things that needed to be addressed and also ran into a couple of areas that the electrical needed to be moved and rerouted. I attached copies of the change order requests

**ESTIMATED DATE OF COMPLETION:** The job is finished

**COMMITTEE/COMMISSION RECOMMENDATION:** .

**ADMINISTRATION/STAFF RECOMMENDED COUNCIL ACTION:**

Agenda Item #

4

Meeting Date:

2/27/23

**JIM PERRAULT**  
*Construction*

ROOFING • Siding • INSULATION • CHIMNEY WORK

ADDITIONS AND REMODELING

4846 Midway Rd.  
DULUTH, MN 55811

(218) 723-8477 FAX (218) 727-3916  
MN Lic. #CR005659

349-9633

DATE

3/16/22

NUMBER

9930 M

City of Two Harbors  
Two Harbors Community Center  
417 South Ave  
Two Harbors, mn 55616


TERMS:

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

\$ \_\_\_\_\_

DATE	CHARGES AND CREDITS	BALANCE	
	BALANCE FORWARD		
	Original contract - windows	42,750	00
3/31/22	Due - half down	21,375	00
3/31/22	ROA ck# 67754	(21,375)	00
		21,375	00
	Electrical work	1425	00
	Architect	2492	50
1/31/23	Final balance due	25,292	50

Thank You

  
PAY LAST AMOUNT  
IN THIS COLUMN

# INVOICE

**Mike Stroede**  
**Jim Perrault Construction**  
**4846 Midway Road**  
**Duluth, Minnesota 55811**

**DATE:** 1/3/2023

**INVOICE NO:** 2274-1

**CONTRACT TERMS:** Hourly

**PROJECT:** 2274-Two Harbors Community Building

DESCRIPTION	HOURS/QTY	RATE	AMOUNT
PROFESSIONAL SERVICES			
Principal Architect	7.50	190.00	1,425.00
Designer	2.75	110.00	302.50
CADD Technician	9.00	85.00	765.00
		Subtotal	2,492.50

<b>INVOICE TOTAL</b>	<b>\$2,492.50</b>
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PLEASE PAY UPON RECEIPT

**SCALZO ARCHITECTS THANKS YOU FOR YOUR BUSINESS!**

Wm B. Seab.

**William B. Scalzo, CSI, CCS, AIA**  
Principal Architect

4731 Gladstone Street . Duluth, Minnesota 55804 . T: 218.722.4319 . F: 218.722.3535

# Invoice

**Closed Loop Electric LLC EA784166**

**Invoice# 12923003**

Gregory Newgren  
3029 Morris Thomas Rd  
Duluth, MN. 55811  
218-576-9493  
[gregorynewgren@gmail.com](mailto:gregorynewgren@gmail.com)

**Date** 1/29/23

**Bill to:**

Client Perrault Construction Contact Julie Gontjes  
Phone 218-355-0524 Proposal # 11923001  
Email julie@perraultconstruction.com Project Two Harbors Community Center  
Billing Address 3009 W Superior St. Duluth, MN. 55807 Project Address 417 South Ave Two Harbors MN

Description	Amount
Labor, permit and material total	\$1,425.00

**Payment due upon receipt**

**Subtotal** \_\_\_\_\_  
**Tax** \_\_\_\_\_  
**PAYMENT DUE** \$1,425.00  
**Remaining Balance** \$0.00

February 13, 2023

To: Madeline Jarvis, Library Director; Two Harbors Library Board of Trustees; Two Harbors City Council

From: John Weidner, THPL Board of Trustees member

Re: Resignation from Board of Trustees

Please accept my resignation from the THPL Board of Trustees effective February 13, 2023. Serving on the library board these last few years has been an honor and a privilege. I will continue to support the library in other ways but am no longer able to commit to regular meetings. My apologies for the short notice and thank you for allowing me to serve.

Thank you,

*John Weidner*

CA S 2/27/23

## Patty Nordean

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**From:** Krista Busse <krista.busse@gmail.com>  
**Sent:** Tuesday, February 14, 2023 3:02 PM  
**To:** Patty Nordean  
**Subject:** Re: THEDA

I will resign from HRA due to scheduling.

Krista

Sent from my iPhone

On Feb 14, 2023, at 2:59 PM, Patty Nordean <pnordean@twoharborsmn.gov> wrote:

Okay. Let me know if that is what you decide to do.  
Thank you,

## Patricia Nordean

City Clerk, Human Resources

### City of Two Harbors

522 First Avenue

Two Harbors, MN 55616

[pnordean@twoharborsmn.gov](mailto:pnordean@twoharborsmn.gov)

Ph: (218) 834-8806

Fax: (218) 834-2674

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**From:** Krista Busse <krista.busse@gmail.com>  
**Sent:** Tuesday, February 14, 2023 2:58 PM  
**To:** Patty Nordean <pnordean@twoharborsmn.gov>  
**Subject:** Re: THEDA

Thanks.

I'll do not get back to a Two Harbors until 5:30 or so. I think he mentioned that the meeting needs to be done by 6. I don't think he ever mentioned a start time...

I may have to resign from HRA. The schedule doesn't work for me as I have a full time job at Duluth Airport.

Krista

Sent from my iPhone

CIA 6 2/27/23

On Feb 14, 2023, at 2:49 PM, Patty Nordean <[pnordean@twoharborsmn.gov](mailto:pnordean@twoharborsmn.gov)> wrote:

Hi Krista:

Please be aware that tonight's meeting of THEDA has been cancelled due to the municipal election. The HRA is meeting earlier in the evening prior to the restricted timeframe, so that meeting is still on. THEDA will be rescheduled for a later date.

Thanks,

**Patricia Nordean**

City Clerk, Human Resources

**City of Two Harbors**

522 First Avenue

Two Harbors, MN 55616

[pnordean@twoharborsmn.gov](mailto:pnordean@twoharborsmn.gov)

Ph: (218) 834-8806

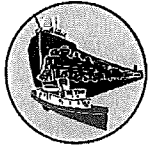
Fax: (218) 834-2674



**CITY OF TWO HARBORS  
CITY COUNCIL**

**AGENDA ITEM  
COVER SHEET**

<b>Originating Staff:</b> P Nordean	<b>Department:</b> Administration	<b>Date:</b> 02/27/2023
<b>Agenda Item Subject:</b> Approving the recommendation of the Personnel Committee to increase the base rate of pay for Temporary Employees to \$15.00 and \$15.50 for those individuals hired for the Public Works Department who are over the age of 18 with a valid MN Driver's License	<b>Fiscal Impact:</b>	
<b>BACKGROUND:</b> In the last couple of years it has been difficult to attract seasonal employees to the City. With discussion in Personnel, they have recommended increasing the wage rate from \$12.50 to \$15.00. For those individuals over the age of 18 with a valid MN Driver's License they would start at \$15.50.		
<b>COUNCIL ACTION REQUESTED:</b> Approving the recommendation of the Personnel Committee to increase the base rate of pay for Temporary Employees to \$15.00 and \$15.50 for those individuals hired for the Public Works Department who are over the age of 18 with a valid MN Driver's License		
<b>RECOMMENDATION:</b> Approving the recommendation of the Personnel Committee to increase the base rate of pay for Temporary Employees to \$15.00 and \$15.50 for those individuals hired for the Public Works Department who are over the age of 18 with a valid MN Driver's License		



**CITY OF TWO HARBORS  
CITY COUNCIL**

**AGENDA ITEM  
COVER SHEET**

<b>Originating Staff:</b> P Nordean	<b>Department:</b> Administration	<b>Date:</b> 02/27/2023
<b>Agenda Item Subject:</b> Approving the recommendation of the Personnel Committee to authorize a hiring incentive program for temporary employees who refer new temporary employees and who meet certain requirements.	<b>Fiscal Impact:</b>	
<b>BACKGROUND:</b> In the last couple of years, it has been difficult to attract seasonal employees to the city. The city would like to initiate an incentive plan for seasonal employees. A candidate can refer a friend/relative for employment and will receive \$100 after 60 days of successful employment as well as 60 days of employment of the person they referred.		
<b>COUNCIL ACTION REQUESTED:</b> Approving the recommendation of the Personnel Committee to authorize a hiring incentive program for temporary employees who refer new temporary employees and who meet certain requirements.		
<b>RECOMMENDATION:</b> Approving the recommendation of the Personnel Committee to authorize a hiring incentive program for temporary employees who refer new temporary employees and who meet certain requirements.		



**CITY OF TWO HARBORS  
CITY COUNCIL**

**AGENDA ITEM  
COVER SHEET**

<b>Originating Staff:</b> B Prince	<b>Department:</b> Electrical	<b>Date:</b> 02/27/2023
<b>Agenda Item Subject:</b> Approving the recommendation of the Personnel Committee to authorize a hiring incentive program for temporary employees who refer new temporary employees and who meet certain requirements.	<b>Fiscal Impact:</b>	
<b>BACKGROUND:</b> There is a anticipated retirement in the Electrical Department in October 2023, the Department would like to begin the process of finding a candidate to hire and train prior to the retirement.		
<b>COUNCIL ACTION REQUESTED:</b> Approve the recommendation of the Personnel committee to authorize internal and external postings for the position of Journey or Apprentice Lineworker		
<b>RECOMMENDATION:</b> A Approve the recommendation of the Personnel committee to authorize internal and external postings for the position of Journey or Apprentice Lineworker		
<b>ATTACHMENTS:</b> A		

## Patty Nordean

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**From:** Patty Nordean  
**Sent:** Wednesday, February 22, 2023 11:41 AM  
**To:** Tim Costley  
**Subject:** Charter Commission

Hi Tim:

I was informed that Mike Cavallin does not live within the City limits. I was told that he used to live in town, our records show he was read out in 5/2016. The address that we had on record for him for the Charter Commission is 2404 20<sup>th</sup> Avenue. At this point, I don't know that it matters when he moved or that he may have served while he was not a resident. Currently, the County Parcel Information System shows him as the owner of 2404 20<sup>th</sup> Avenue, Parcel ID: 25-5311-35320. This parcel is not within the City limits. I believe he will need to be removed from the Charter Commission.

### 410.05 CHARTER COMMISSION.

§

#### Subdivision 1. **Appointment.**

When the district court of the judicial district in which a city is situated, deems it for the best interest of the city so to do, the court, acting through its chief judge, may appoint a charter commission to frame and amend a charter. Upon presentation of a petition requesting such action, signed by at least ten percent of the number of voters of the city, as shown by the returns of the last regular city election, or upon resolution of the governing body of the city requesting such action, the court shall appoint a charter commission. The commission shall be composed of not less than seven nor more than 15 members, **each of whom shall be a qualified voter of the city.** The size of the commission shall be determined within the above limits by the court, except that where the commission is appointed pursuant to a petition of the voters or resolution of the governing body of the city, the size of the commission shall be as specified in such petition or resolution. Any city may by charter provision fix the size of the charter commission at a figure which shall not be less than seven nor more than 15 members, and such charter provision shall prevail over any inconsistent provisions of this subdivision. Except as otherwise provided in the charter, no person shall be disqualified from serving on a charter commission by reason of holding any other elective or appointive office other than judicial. The charter may provide that members of the governing body of the city cannot serve on the charter commission.

I will add this to our list of things for the agenda for next week.

**Patricia Nordean**

City Clerk, Human Resources

## **City of Two Harbors**

522 First Avenue

Two Harbors, MN 55616

[pnordean@twoharborsmn.gov](mailto:pnordean@twoharborsmn.gov)

Ph: (218) 834-8806

Fax: (218) 834-2674

SUBMITTED BY JAY COLE

2-22-2023 Petition for Two Harbors City Council to Purchase the Abandoned John A Johnson school

Dear Two Harbors City Council,

We, the undersigned members of the community, are writing to propose that the City of Two Harbors purchase the abandoned John A Johnson Elementary School property, which has been vacant since 2006.

We believe that the purchase of this property by the City of Two Harbors would provide a number of benefits to the community, including:

1. Revitalization of the property: The property has been vacant for over 15 years and is currently in disrepair. The City of Two Harbors could purchase the property and work to revitalize it, potentially turning it into a community center, business incubator, or other useful space.
2. Economic benefits: The purchase of the property could provide economic benefits to the community, including the creation of jobs and increased economic activity.
3. Community engagement: The purchase of the property could serve as a catalyst for community engagement and involvement in local government. This could lead to increased civic participation and a stronger sense of community in Two Harbors.

We understand that there may be concerns about the cost of purchasing and renovating the property, as well as potential liability issues. However, we believe that these concerns can be addressed through a thorough analysis of the costs and benefits of the project, as well as careful planning and risk management.

We also recognize that there may be competing priorities for the City of Two Harbors, and that the purchase of the John A Johnson Elementary School property may not be the top priority for the city at this time. However, we believe that the benefits of the project are significant and that it is worth consideration by the City Council.

We respectfully request that the City Council consider our proposal and take the necessary steps to explore the possibility of purchasing the John A Johnson Elementary School property. We would be happy to provide further information or assistance in any way that we can.

Thank you for your attention to this matter.

Sincerely,

[Your Name] JAY COLE

[Your Address] 716 6TH AVE TWO HARBORS, 55616 MN

[Your Phone Number] 218.221.2931

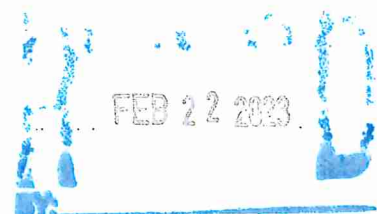
[Your Email] THANK YOU JESUS TV @ gmail.com

[Your Name]

[Your Address]

[Your Phone Number]

[Your Email]



comm #1

2/27/23



UNITED CHURCH OF TWO HARBORS



One congregation fully related to the  
United Methodist Church and the Presbyterian Church (U.S.A.)  
531 Third Avenue, Two Harbors, Minnesota 55616  
(218) 834-4257      [ucth@ucth.org](mailto:ucth@ucth.org)

February 11, 2023

We at The United Church extend a huge thank you to Paul Johnson and his crew for the quick repair of the leaking water line at the United Church, 531 3rd Avenue. Paul immediately identified the sound of the leak as it was telegraphed via the water line into the church. He worked with us to schedule the repair as soon as possible and when water began leaking into the church he moved up the repair so no damage occurred in the church. He and his crew made quick work of digging to the broken line, repairing and replacing it, and replacing the material into the hole. It is very reassuring to see that the city has such competent and capable workers keeping the city's infrastructure working. Because of their professional work we were able to continue our services this weekend. Please share our thanks with them. Keep up the good work guys.

Paula Gaboury; Pastor

Bill Hermanson; Trustee,

Comm #2

2/27/23

**Patty Nordean**

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**From:** Luke Heikkila  
**Sent:** Thursday, February 9, 2023 6:57 AM  
**To:** Miranda Pietila  
**Cc:** Patty Nordean; Joel Dhein; Randy Hedin  
**Subject:** Update

Good Morning,

Just an update for you all. I have been in DC this week with MRWA. I did thank the senators and congressmen/women for their funding for the Two Harbors wastewater treatment plant with federal dollars. This was the first time all 10 offices scheduled dates with us so it was nice to see everyone or their aides.

I will be at the plants for a full day Saturday with Randy to help fill out paperwork and continue training for the MPCA DMR's and the CDB monthly sampler report.

Al Parella with Barr engineering out of Duluth toured the plant and they will be submitting a quote for plant certification from April-November.

I know you had a full plate with the administrator interviews/weekend and prep for it, I hope it went well!

Please let me know if you need any help getting the new supt position posted or with the contract licensing.

As always if you have any questions or concerns please reach out to me. Have a great rest of your day and weekend!

Luke



Real People. Real Solutions.

4960 Miller Trunk Highway  
Suite 550  
Duluth, MN 55811

Ph: (218) 729-5939  
Bolton-Menk.com

## MEMORANDUM

Date: February 27, 2023  
To: Two Harbors City Council  
Interim City Administrator Joel Dhein  
From: City Engineer Joe Rhein  
Subject: Tree Removal  
City Projects Update

### Introduction

The Northern Long-Eared Bat (NLEB) is officially being reclassified from a threatened species to an endangered species. The new classification takes effect March 31, 2023. MnDOT provided an email to all city engineers in Minnesota on January 31<sup>st</sup> regarding this issue; included with the email was an FAQ document. Copies of both the email and FAQ are attached to this memo for reference. Question #4 on the FAQ document has been circled for emphasis.

Based on the reclassification, it is recommended all tree removal for projects be completed prior to the NLEB effective date; in other words, all tree removal be performed by March 31<sup>st</sup>. The active season for NLEB is April 1<sup>st</sup> to October 31<sup>st</sup>; therefore, if trees are not removed by March 31<sup>st</sup>, the recommendation is the trees not be removed until after October 31<sup>st</sup>.

In accordance with the recommendation, we are pursuing opportunities to remove the necessary trees for City projects by March 31<sup>st</sup>. There are three projects anticipated for construction in 2023 to which this issue will apply:

- Odegard Trail
- Municipal Liquor Store
- 2023-2024 Street Improvement Project

This memo is intended to provide an update on the approach to tree removal for each project.

### Odegard Trail

Plans for the portion of trail from the underpass to 8<sup>th</sup> Street were reviewed with the Trees and Trails Commission on January 19<sup>th</sup>. Based on that plan, the necessary tree removal areas have been identified, and were reviewed with the Commission on February 16<sup>th</sup>. Sheets G2.01 and C0.01 are included with this memo to show the overall project location and the areas for tree removal.

The portion of the trail along 8<sup>th</sup> Street from 13<sup>th</sup> Avenue to 16<sup>th</sup> Avenue is being designed and planned by Lake County. Lake County is pursuing the removal of any trees necessary along that portion of the trail.

COMM #4 2/27/23

### **Municipal Liquor Store**

Preliminary layout of the proposed Municipal Liquor Store and site plan were reviewed with the City Council at their January 23<sup>rd</sup> meeting. Based on the layout options developed, the limits of necessary tree removal have been identified. Included with this memo is the concept site plan previously shared with the City Council, along with an existing conditions figure on which the areas for tree removal have been indicated. Also provided for reference is an aerial view of the parcel taken from the Lake County GIS website. (Note the aerial photo is from 2019.)

Tree removal on the site will be primarily the more sparsely vegetated central area. The more heavily wooded area along the south property line of the parcel will mostly be undisturbed by the activity; only a relatively small portion of this area is proposed to be cleared.

### **2023-2024 Street Improvement Project**

The 2023-2024 Street Improvement project is being jointly undertaken by the City of Two Harbors and Lake County, with the County as the lead agency. As a result, the approach to tree removal on the 2023-2024 Street Improvement Project is different than the Odegard Trail and Liquor Store projects. A separate memo is provided to the City Council regarding tree removal for the 2023-2024 Street Improvement Project.

### **Wetlands**

Some of the trees proposed for removal on the Liquor Store site are within delineated boundaries of wetlands. Therefore, removal of those trees is under permitting jurisdiction of Lake County Environmental Services. The wetland permit submittal for the project cannot be prepared until the final plans for the proposed project are completed, which will be after March 31<sup>st</sup>. Therefore, we are working with Lake County Environmental Services to obtain preliminary concurrence for removal of trees within the wetland boundaries.

Construction limits for the proposed Odegard Trail project do not impact any wetlands. Therefore, there are no wetland considerations necessary for tree removal on that project.

### **Quotes**

Tree removal areas for both the Odegard Trail and Liquor Store projects have been marked in the field. We have coordinated with the City Public Works Director to obtain a quote from the preferred City vendor, Bark's Tree Service, for tree removal on each of those projects. The vendor has visited and reviewed the sites, and provided written quotes on February 17<sup>th</sup>. Copies of the quotes are attached. The amount of the quotes are shown in the following table:

Tree Removal Summary of Quotes	
Item	Amount
Odegard Trail: Underpass to 8 <sup>th</sup> Street	\$ 2,800
Liquor Store Site	\$ 2,250
<b>Total Cost</b>	<b>\$ 5,050</b>

Our understanding is based on the quote amounts, this work can be authorized administratively. However, the City Council may wish to provide concurrence to accept the quotes and proceed with the work.

### **Schedule**

The vendor has indicated they could perform this work as early as February 24<sup>th</sup>. We have communicated with the vendor that work on the Liquor Store site should not be done until concurrence has been obtained from Lake County for the tree removals within the wetlands.

We will provide an update on the work schedule at the City Council meeting on February 27<sup>th</sup>.

As noted previously, all tree removal needs to be complete by March 31<sup>st</sup>. It should be noted, the work consists only of cutting/felling the trees. Removal of the material from the site, and grubbing of the stumps is not included in the quotes received. That work can be done under the main construction contract for each project, and is not subject to restrictions based on the NLEB.

### **Conclusion**

No formal action is necessary to proceed. However, if the City Council concurs with the information in this memo, an appropriate action would be to adopt a motion accepting the quotes and providing concurrence for proceeding with the work.

We will be present at the City Council meeting on February 27<sup>th</sup> to review this information. Please let us know if you have questions or need further information in advance of the meeting. I can be reached at 651-968-7384 or via e-mail at [joseph.rhein@bolton-menk.com](mailto:joseph.rhein@bolton-menk.com).

### **Attachments:**

- Quote – Odegard Trail tree removal
- Quote – Municipal Liquor Store site tree removal
- MnDOT NLEB email – Jan. 31, 2023 (1 page), with FAQ document. (3 pages)
- Odegard Trail: Sheets G2.01 and C0.01 (2pages)
- Municipal Liquor Store:
  - Concept Site Plan – January 23<sup>rd</sup> (1 page)
  - Existing Conditions Plan – Tree Removal Areas (1 page)
  - 2019 Aerial Parcel Map (1 page)

---

## Bark's Tree Service

PO Box 629  
Two Harbors, MN 55616  
(218) 349-1922

### Proposal for:

City of Two Harbors

522 1st Ave

Two Harbors, MN 55616

### Project

Walking Trail

---

### Description

Tree cutting for extension of walking trail

---

Notes:

Price is: **\$2,800.00**

---

## Bark's Tree Service

PO Box 629  
Two Harbors, MN 55616  
(218) 349-1922

### Proposal for:

City of Two Harbors  
522 1st Ave  
Two Harbors, MN 55616

### Project

Liquor Store

---

### Description

Tree cutting for Liquor Store building site

---

Notes:

Price is: **\$2,250.00**

## Joseph Rhein

---

**From:** Mn City Engineers <CEAM@LIST.MNDOT.INFO> on behalf of Gade, Dale (DOT) <0000002d51b6aba2-dmarc-request@LIST.MNDOT.INFO>  
**Sent:** Tuesday, January 31, 2023 2:20 PM  
**To:** CEAM@LIST.MNDOT.INFO  
**Subject:** Northern Long-Eared Bat  
**Attachments:** MnDOT\_NLEB\_FAQ\_Jan2023.pdf

All –

Here is the latest update on the NLEB. <https://www.fws.gov/press-release/2023-01/effective-date-reclassify-northern-long-eared-bat-endangered-extended#:~:text=The%20U.S.%20Fish%20and%20Wildlife,%2C%20to%20March%2031%2C%202023.>

TLDR Version: **The agency is extending the effective date by 60 days, from Jan. 30, 2023, to March 31, 2023.**

If you have a project this year it is encouraged to clear trees prior to that effective date. Grubbing can be done after that date as mitigation measure.

Attached updated FAQ.

TLDR – Too Long Didn't Read

Thanks,

Dale Gade, P.E.  
Project Development Engineer  
State Aid for Local Transportation  
Minnesota Department of Transportation  
651-366-3822

To unsubscribe from the CEAM list: Contact [saltirhelp.dot@state.mn.us](mailto:saltirhelp.dot@state.mn.us)

Version January 2023 (will be updated when USFWS guidance received, anticipated Feb.-March)

## Northern Long-eared Bat (NLEB) Frequently Asked Questions

**1. What action was taken and by whom?**

On November 30, 2022, the U.S. Fish and Wildlife Service (FWS) published a final rule in the federal register that reclassifies the NLEB from threatened to endangered.

**2. When does the endangered listing go into effect?**

**On January 25, 2023, USFWS provided notice that the effective date for the rule reclassifying the NLEB to endangered will be delayed until March 31, 2023.** The special "4(d) rule" that exempted many activities from the Section 9 take prohibition will be void as of this date.

**3. When is the bat's active season in Minnesota?**

Generally, the bat active season occurs April 1 to October 31, inclusive in Minnesota. Note FWS may modify these dates when it releases its updated guidance.

**4. Does the listing only impact federally funded or permitted projects?**

No, Section 9 of the federal Endangered Species Act prohibits *any person* from "taking" an endangered species of fish or wildlife. The Section 9 take prohibition applies to federal and non-federal activities, including activities on private property.

"Take" is broadly defined under the Act. To take a species is to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect. Harm includes activities that destroy or significantly modify habitat to an extent that it actually kills or injures the endangered species. Harassment includes intentional or negligent act or omission which creates the likelihood of injury by annoying it in a way that disrupts normal behavioral patterns.

**5. What are common stressors to the NLEB associated with transportation projects?**

Stressors to NLEB include direct and indirect effects to individual bats and their suitable bat habitat. Common stressors include habitat removal (e.g., tree clearing), lighting, and noise and vibrations. Bridge and culvert work may also have effects when bat use is known or assumed. Caves, mines, sinkholes, and similar rocky habitats may be used by NLEB, and impact may result in stressors to NLEB.

**6. What if my project was already reviewed for bats prior to November 30, 2022?**

If a project already received Section 7 clearance from MnDOT OES for FHWA actions, or from another federal agency, and it was determined that the project will have "**No Effect**" or the project "**May Affect, but is Not Likely to Adversely Affect**" the NLEB, those determinations

remain valid and no further action is expected. This includes projects reviewed under the 4(d) rule.

Projects reviewed under the FHWA/FTA/FRA Programmatic Biological Opinion (PBO) that received a **“May Affect, Likely to Adversely Affect”** or that were reviewed under the **4(d) rule** and received **“May Affect, Not Prohibited Incidental Take”** may need to reinstate consultation. [Details will be added once guidance is received from USFWS].

**7. What’s the best way to avoid impacts to NLEB?**

Plan to conduct tree clearing during the winter months, approximately Nov. 1 to March 31, inclusive. Bats are underground hibernating in caves and mines during this time and will not be susceptible to injury or death because of tree clearing. Also check bridge inspection reports to ensure bridges and large box culverts do not have a history of bat use ahead of projects and/or maintenance activities. Note Element #900, Condition State (CS) 4 tracks whether bats or bat signs are present. If CS4 = 1 bats or bat signs are present and additional investigation may be needed.

**8. What do I need to do differently, if anything, for projects receiving FHWA funds?**

Projects receiving FHWA funds will continue to follow existing processes. Projects must submit an Early Notification Memo or a Cultural, Noise, and Threatened and Endangered Review Request form.

Note that projects resulting in a determination of **“may affect, likely to adversely affect”** may be subject to new mitigation requirements. Mitigation may include habitat creation, habitat enhancement or restoration, and/or compensatory mitigation via a USFWS approved in-lieu fee program or conservation banking system. [Details will be added once guidance is received from FHWA/USFWS].

**9. How do I know if I need to consult with FWS for a non-federal project or maintenance activity?**

FWS will be releasing a new “Northern Long-eared Bat Rangewide Determination Key” in its [Information for Planning and Consultation](#) tool (IPaC). Once available, a project proponent may use the determination key to assist the user in evaluating the effects of their actions on northern long-eared bat. We expect the tool will be available on or before the effect date of the listing (i.e., March 31, 2023).

Note, a version of the determination key is available **in draft form**, on the “Beta” IPaC site located at: <https://ipacb.ecosphere.fws.gov/>

**10. Do the rule changes only apply to projects that are pre-environmental review or pre-letting?**

No. The rule changes apply to any activities that may “take” NLEB regardless of whether the project is starting soon or is already underway. To reduce regulatory risk, projects that have not already completed tree clearing are encouraged to complete clear trees during the bat inactive season (i.e., Nov. 1 to March 31).

**11. What about non-federal projects and activities?**

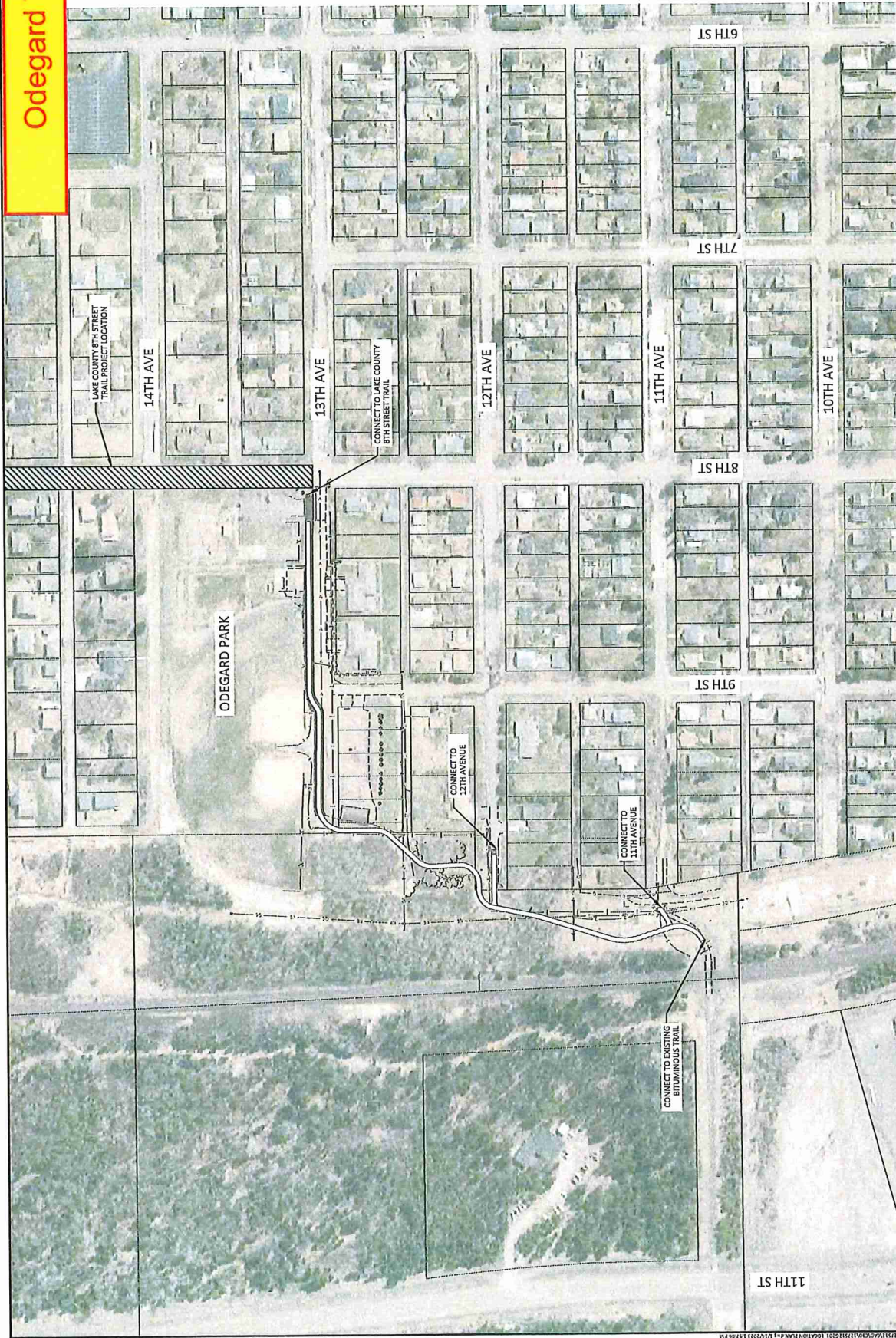
Non-federal projects and activities that cannot avoid impacts to NLEB should contact the [USFWS Minnesota-Wisconsin Ecological Services Field Office](#) to discuss compliance options. Projects with FHWA or MnDOT funding may contact the MnDOT Protected Species Program Coordinator: [Christopher.E.Smith@state.mn.us](mailto:Christopher.E.Smith@state.mn.us) or 612-741-7678.

**12. Isn't white-nose syndrome (WNS) the main threat to bats? Why regulate transportation agencies for something they have no control over?**

It's true, WNS is the primary threat to Minnesota's bats. However, because populations of the bat are depressed by this disease, human activities that were not significant before may be so now. Transportation agencies conduct activities, such as tree clearing and bridge/culvert work, that could kill or injure bats when done during the time of year when bats are present.

For additional NLEB information, please visit: <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>

# Odegard Trail



**90% PLAN SET**  
JOSEPH R. RYAN  
2/13/2023

1"=100'

0 100 200  
FEET

0 100 200  
SCALES

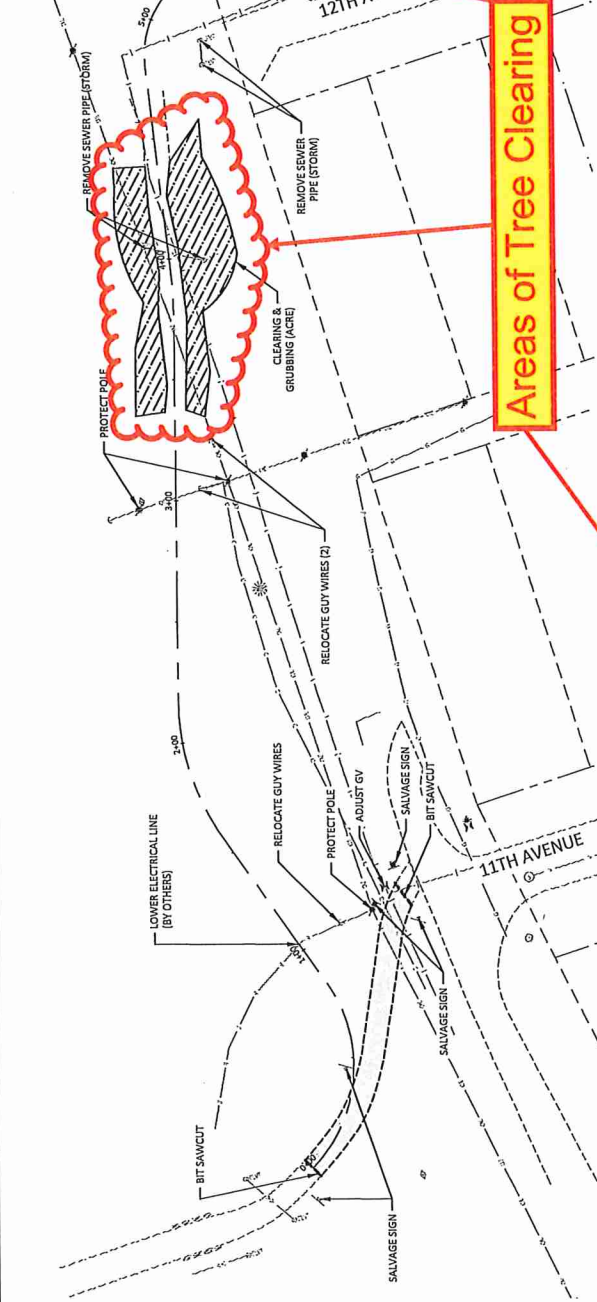
**BOLTON & MENK**

4950 MILLER TRUNK HIGHWAY, SUITE 350  
DULUTH, MINNESOTA 55811  
Email: B&M@bolton-menk.com  
www.bolton-menk.com

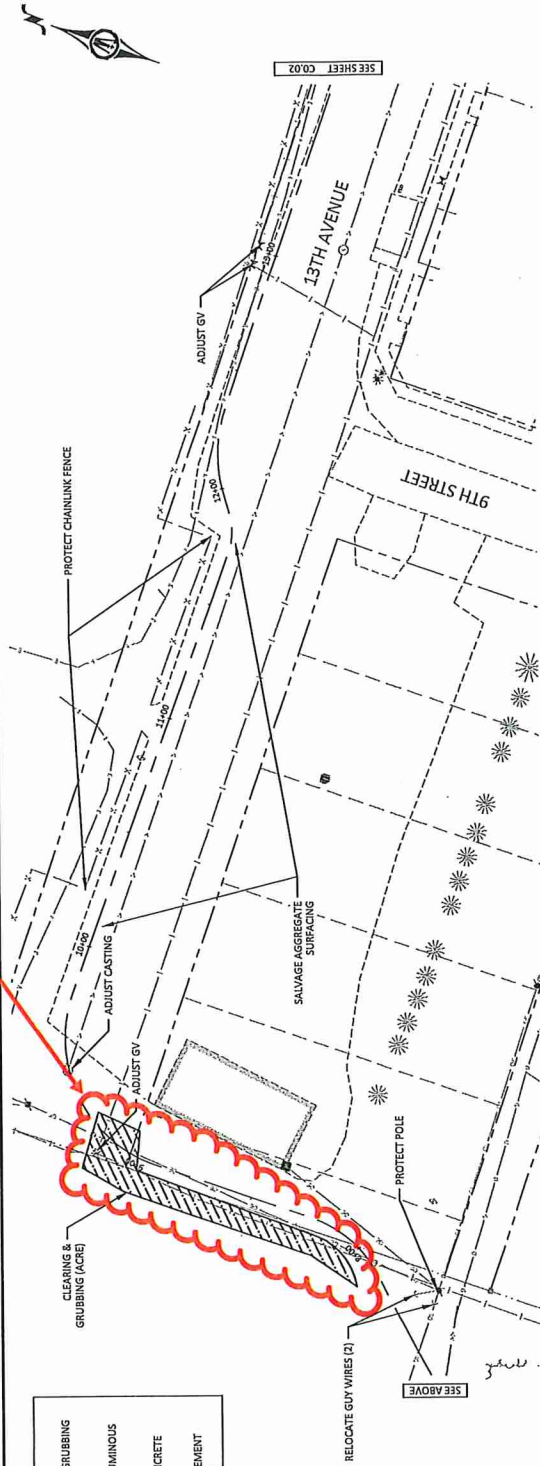
CITY OF TWO HARBORS, MINNESOTA  
ODEGARD TRAIL  
LOCATION PLAN

SHEET  
G2.01

# Odegard Trail



## Areas of Tree Clearing



REMOVALS LEGEND:	
CLEARING & GRUBBING (ACRE)	
REMOVE BITUMINOUS PAVEMENT	
REMOVE CONCRETE WALK	
SAVING PAVEMENT (FULL DEPTH)	

**BOLTON & MENK**

4800 MILLER TRUNK HIGHWAY, SUITE 330  
DULUTH, MINNESOTA 55811  
Email: B&M@bolton-menk.com  
www.bolton-menk.com

**90% PLAN SET**

JOSEPH R. RHEIN

DATE: 2/12/2022

CITY OF TWO HARBORS, MINNESOTA

ODEGARD TRAIL

EXISTING CONDITIONS & REMOVALS PLAN

SHEET

C0.01

0 25 50 FEET

SCALE

DATE: 2/12/2022

BY: JRR

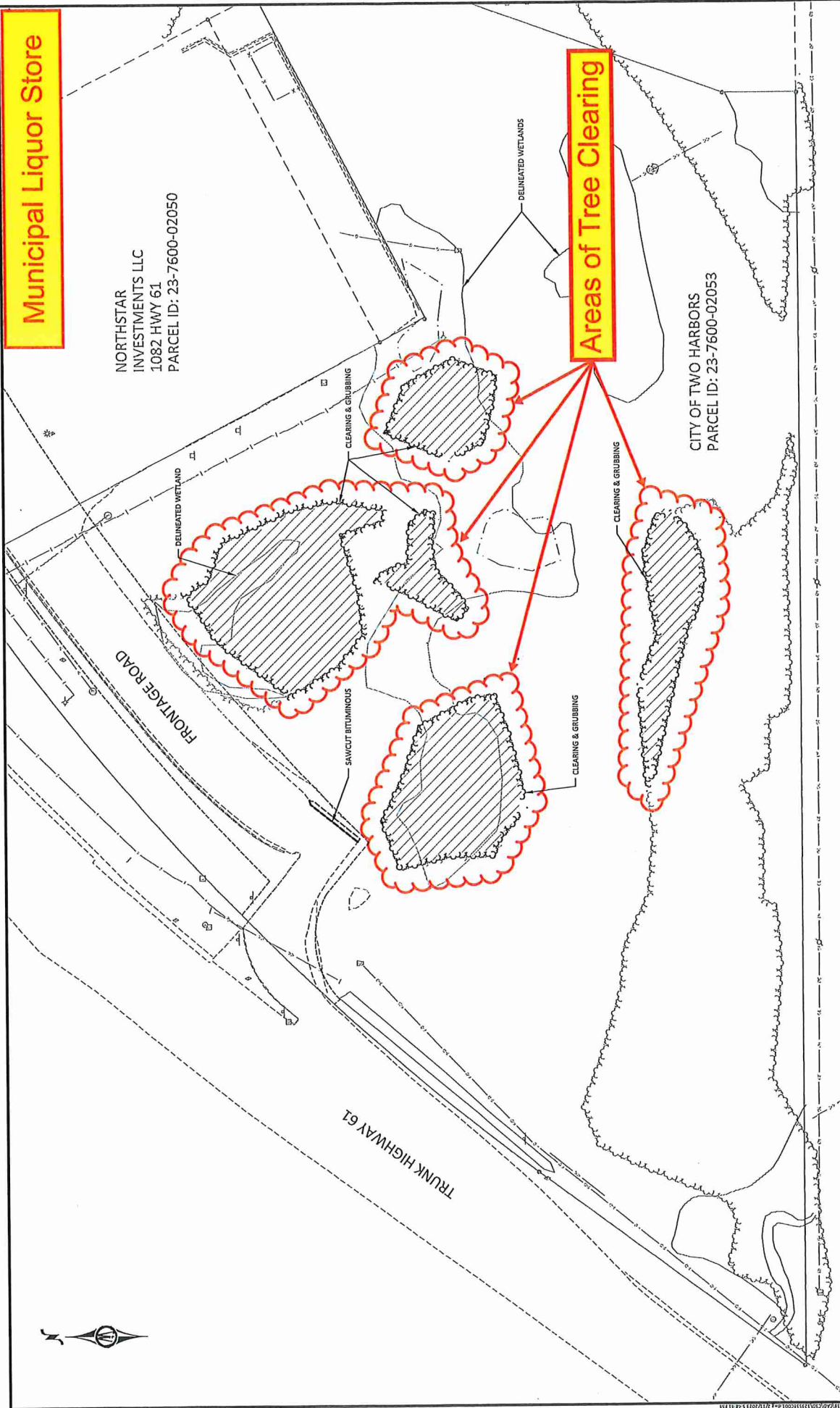


# Municipal Liquor Store

NORTHSTAR  
INVESTMENTS LLC  
1082 HWY 61  
PARCEL ID: 23-7600-02050

# Areas of Tree Clearing

CITY OF TWO HARBORS  
PARCEL ID: 23-7600-02053



**BOLTON & MENK**

4960 MILLER TRUNK HIGHWAY, SUITE 130  
DULUTH, MINNESOTA 55811  
Email: [BM@bolton-menk.com](mailto:BM@bolton-menk.com)  
[www.bolton-menk.com](http://www.bolton-menk.com)

**PRELIMINARY**

JOSEPH R. RYAN  
2/21/23

**CITY OF TWO HARBORS, MINNESOTA**

LIQUOR STORE SITE IMPROVEMENTS

**REMOVALS PLAN**

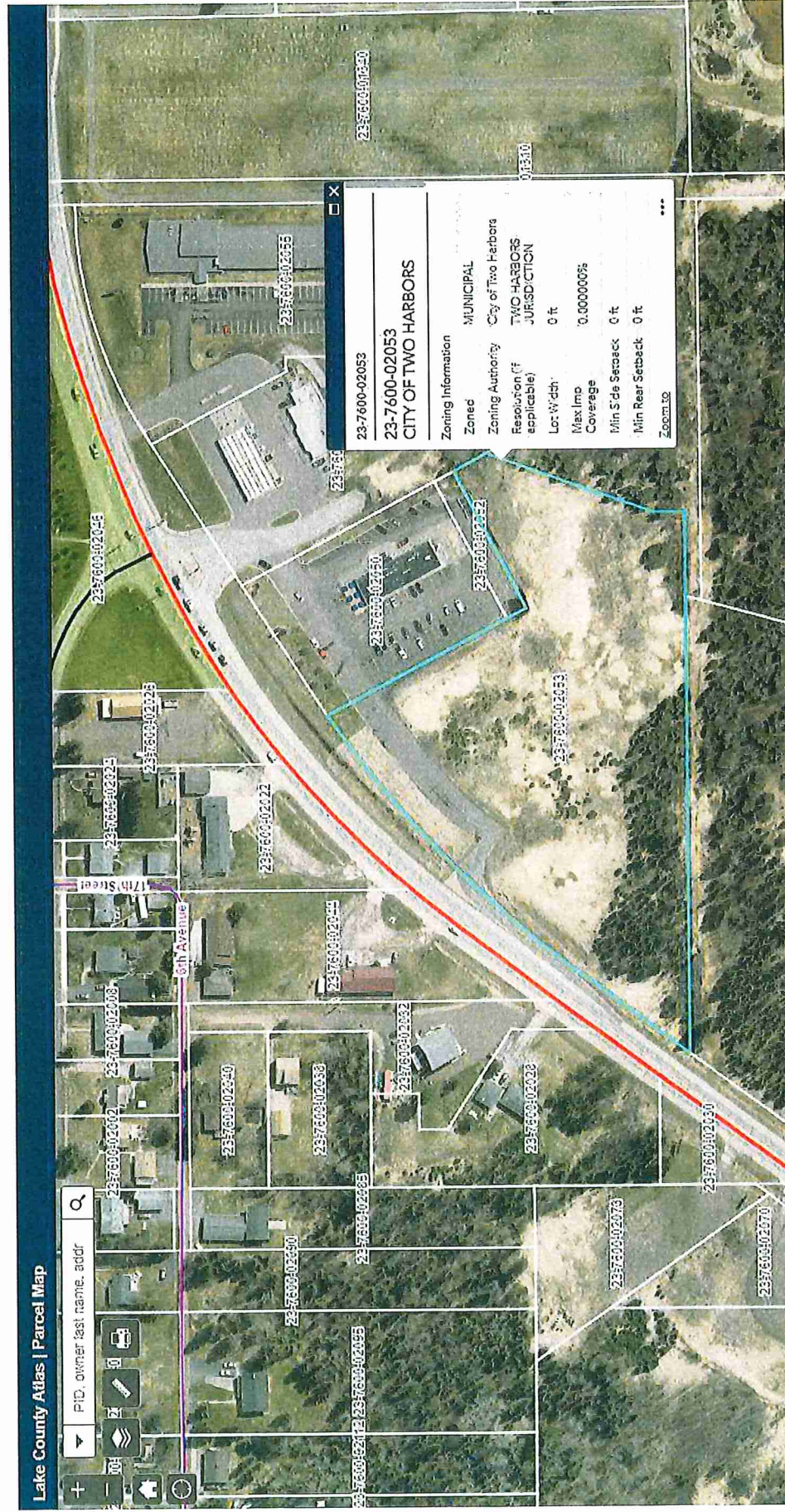
DATE: 02/21/23

BY: JRR

SCALE: 1"=50'

SHEET C0.01

# Liquor Store Parcel - Existing Conditions (2019)



Lake County will solicit quotes for the work; they will be provided for consideration by the City Council on February 27<sup>th</sup> and County Board on February 28<sup>th</sup>. Assuming authorization is given, the work would be completed in March. A copy of the quote documents is provided for reference.

### **Notification**

It is recommended a notice be mailed to all properties within the project area notifying them of the tree removals. This mailing could be done on March 1<sup>st</sup>, assuming authorization for the work is given by both the City and County. The notice would be a one-page overview with basic information on the project and proposed tree removals, and a project location map. It would also provide a link to the City website where the detailed figures showing the trees for removal would be posted. A draft of the proposed notice is provided with this memo.

It should be noted, not all tree removal for the project will be performed in March. Trees along the south side of 6<sup>th</sup> Avenue from 4<sup>th</sup> Street to 6<sup>th</sup> Street are not proposed to be removed at that time. This is due to easements needed to perform work in some areas, as well as to the sensitive nature of Skunk Creek. Those tree removals along 6<sup>th</sup> Avenue are intended to be part of the main construction contract, and would be performed between November 1, 2023 and March 31, 2024. It is intended a notice would be sent to the project area prior to removal of those trees along 6<sup>th</sup> Avenue.

Provided with this memo are figures indicating the trees to be removed in March 2023, and those areas where tree removals will be done between November 2023 and March 2024. These figures are what would be posted on the City website.

### **Action**

If the City of Two Harbors concurs with the information in this memo and wishes to proceed with tree removals for the 2023-2024 Street Improvement Project, appropriate action would be:

- Adopt a resolution accepting the quotes received and recommending award of a contract by Lake County for the work.
  - Estimated total cost to the City would be 30 times the unit price per tree provided in the low quote. This amount will be provided at the Council meeting.

We will be present at the City Council meeting on February 27<sup>th</sup> to review this information. Please let us know if you have questions or need further information in advance of the meeting. I can be reached at 651-968-7384 or via e-mail at [joseph.rhein@bolton-menk.com](mailto:joseph.rhein@bolton-menk.com).

### **Attachments:**

- Tree Removal Quote Document. (3 pages)
- Notice to Project Area (1 page)
- Project Location Map (1 page)
- Tree Removal Figures – February 2023 (7 pages)



Real People. Real Solutions.

4960 Miller Trunk Highway  
Suite 550  
Duluth, MN 55811

Ph: (218) 729-5939  
Bolton-Menk.com

## MEMORANDUM

Date: February 27, 2023  
To: Two Harbors City Council  
Interim City Administrator Joel Dhein  
From: City Engineer Joe Rhein  
Subject: 2023-2024 Street Improvement Project  
Tree Removal

---

### Introduction

The Northern Long-Eared Bat (NLEB) is officially being reclassified from a threatened species to an endangered species. The new classification takes effect March 31<sup>st</sup>. Based on the reclassification, it is recommended all tree removal for projects be completed prior to the NLEB effective date; in other words, all tree removal be performed by March 31<sup>st</sup>. The active season for NLEB is April 1<sup>st</sup> to October 31<sup>st</sup>; therefore, if trees are not removed by March 31<sup>st</sup>, the recommendation is the trees not be removed until after October 31<sup>st</sup>.

In accordance with the recommendation, we are pursuing removal of the necessary trees for the 2023-2024 Street Improvement Project by March 31<sup>st</sup>. This memo is intended to provide an update on the approach to tree removal.

### Project Background

The 2023-2024 Street Improvement project is being jointly undertaken by the City of Two Harbors and Lake County, with the County as the lead agency. The project consists of 10 blocks, including portions of 4<sup>th</sup> Avenue, 5<sup>th</sup> Avenue, 6<sup>th</sup> Avenue, and 5<sup>th</sup> Street. A project location map is provided with this memo for reference. Anticipated tree removal based on preliminary design was reviewed with the Trees and Trails Commission in October 2022, and field walk was performed October 24<sup>th</sup>.

The construction contract for the 2023-2024 Street Improvement Project will not be in place by March 31<sup>st</sup>. Therefore, it is proposed to perform the tree removal as a separate activity in advance of the main construction contract. As with the main construction contract, Lake County will be the lead agency for the tree removals.

### Quote Process

Updated figures for proposed tree removal to be done in March based on the current design have been prepared and provided to Lake County. A total of 61 trees are indicated for removal; 31 are located along the County project segments, and 30 along City segments. Cost of the work will be based on each tree removed.

comm #5 2/27/23



## 2023 TREE CLEARING

### Proposal For Tree Clearing

#### LAKE COUNTY, MN

The County of Lake (COUNTY), in partnership with the City of Two Harbors (CITY), proposes a project to clear trees in conflict with planned street and utility improvement project work within CITY limits and scheduled for 2023 (2023 Tree Clearing or PROJECT). The PROJECT is located on the following streets in Two Harbors; a project location map is attached. A detailed tree removal plan is also attached.

- 5<sup>th</sup> Street (CSAH 36)
- 4<sup>th</sup> Avenue (CSAH 35 / CR 105)
- 5<sup>th</sup> Avenue
- 6<sup>th</sup> Avenue
- 8<sup>th</sup> Street (CR 105)

The PROJECT includes but is not limited to providing all labor, materials, tools, equipment, and all else required to clear and dispose of trees along city streets. Additional project requirements and specifications are included in the PROJECT **General Requirements** attached to this proposal.

The undersigned, having become familiar with local conditions and other factors affecting the cost of the work, hereby proposes to perform the necessary work required to complete the PROJECT. Compensation for the work will be based on the quoted unit prices for completed work, not to exceed the cost total included on the bid form on the following page. The unit costs quoted on the bid form should include all associated costs to remove trees, including, but not limited to, Traffic Control and Mobilization, as indicated in the **General Requirements** and the attached tree removal plan. It is the bidder's responsibility to visit the site and determine the full extent of equipment, labor, and materials needed to complete the work.

All tree clearing work shall be completed prior to April 1, 2023.

The COUNTY reserves the right to reject any or all quotes and this quote may not be withdrawn for a period of thirty (30) days after the due date.

Please address quotes to:

Lake County Highway Department  
ATTN: County Highway Engineer  
1513 Highway 2  
Two harbors, MN 55616

Please return quotes via email to Jason DiPiazza at [Jason.dipiazza@co.lake.mn.us](mailto:Jason.dipiazza@co.lake.mn.us) by:  
**3:00 PM, February 24, 2023.**

Please contact Jason DiPiazza (218) 834-8380 with any questions.

## QUOTE FORM

Clearing and removal of all trees as shown in attached documents:

Item	Unit	Quantity	Unit Price	Total Price
Clearing	Each	61	\$	\$

Total Cost \$ \_\_\_\_\_

( \_\_\_\_\_ DOLLARS)

### Contractor/Bidder:

Contractor proposed completion date: \_\_\_\_\_

Company Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Address: \_\_\_\_\_ Name: \_\_\_\_\_

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

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

### County Acceptance:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Attached:     General Requirements  
                 Tree Removal Plan

## **GENERAL REQUIREMENTS**

All materials and work incorporated into the project shall meet the general requirements of the 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" (MnDOT SPEC) including applicable supplemental specifications.

### **Tree Clearing**

Tree clearing operations shall be in accordance with MnDOT SPEC 2101 and the following

1. Unit price for tree clearing by EACH shall apply to all trees removed regardless of diameter, height, or type.
2. Trees identified for removal shall be removed to a remaining stump height of 12 inches or less.
3. All timber, branches, brush, wood chips or other byproducts resulting from clearing operations shall be the property of the contractor and disposed of off the right of way in accordance with MnDOT SPEC 2101.

### **Miscellaneous Site Work & Coordination**

1. Provide vehicular and pedestrian traffic control and advanced warning signs for clearing operations in conformance with the Minnesota Temporary Traffic Control Field Manual. Streets may be closed to through traffic, but local traffic shall be allowed access to homes and businesses.
2. Mobilization and traffic control required shall be considered incidental to clearing operations and no separate payment shall be made.
3. Remove wood chips and other tree debris from sidewalk and street pavement at the end of each working day.
4. Prior to the start of work, the Contractor shall coordinate with the COUNTY and CITY for an on-site walk through of the project area.



Construction is anticipated to begin in late May or June. This notice is regarding trees that need to be removed in advance of construction.

## 2023-2024 Street Project

- Lake County segments:
  - 5<sup>th</sup> Street (CSAH 36) 4<sup>th</sup> Avenue to 7<sup>th</sup> Avenue
  - 4<sup>th</sup> Avenue (CSAH 35/CR105) 3<sup>rd</sup> Street to 6<sup>th</sup> Street
- City segments:
  - 5<sup>th</sup> Avenue 5<sup>th</sup> Street to 6<sup>th</sup> Street
  - 6<sup>th</sup> Avenue 4<sup>th</sup> Street to 7<sup>th</sup> Street

## Tree Removals

The Northern Long-Eared Bat has officially been designated an endangered species. Bat roosting season is from April 1<sup>st</sup> to October 31<sup>st</sup>, during which restrictions are placed on tree removal. To avoid potential impacts to the endangered species, yet still allow construction to be done in 2023, trees need to be removed by March 31<sup>st</sup>.

A contractor will be on-site during March cutting and removing trees. Stumps will be left in place, and will be removed with the main construction. Detailed maps showing the trees to be removed can be found on the project page at the City's website: [https://www.twoharborsmn.gov/2023-2024\\_street\\_project/index.php](https://www.twoharborsmn.gov/2023-2024_street_project/index.php)

Not all trees for the project will be removed in March. Trees along the south side of 6<sup>th</sup> Avenue from 4<sup>th</sup> Street to 6<sup>th</sup> Street will be left in place, to avoid disturbance of Skunk Creek. The contractor for the street project will remove trees in those areas sometime between November 1, 2023 and March 31, 2024. A separate notice will be provided prior to removal of those trees.

### Neighborhood Meeting

A Neighborhood Meeting will be held prior to the start of project construction, to cover practical issues such as access during construction, mail and trash service, utility interruptions, etc. That meeting is anticipated for May; a separate notice will be sent once the time and date for the Neighborhood Meeting has been scheduled.

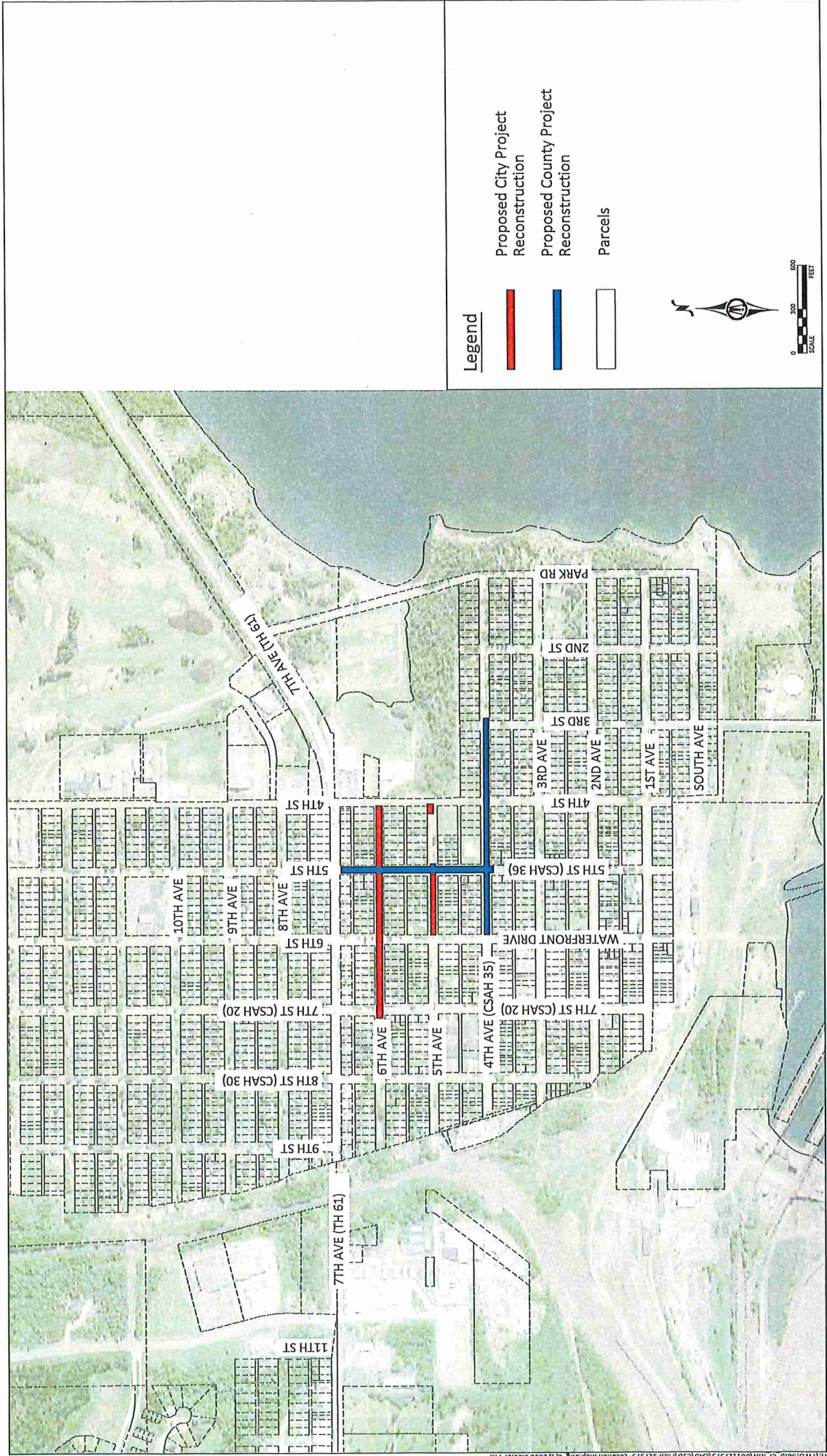
## Questions

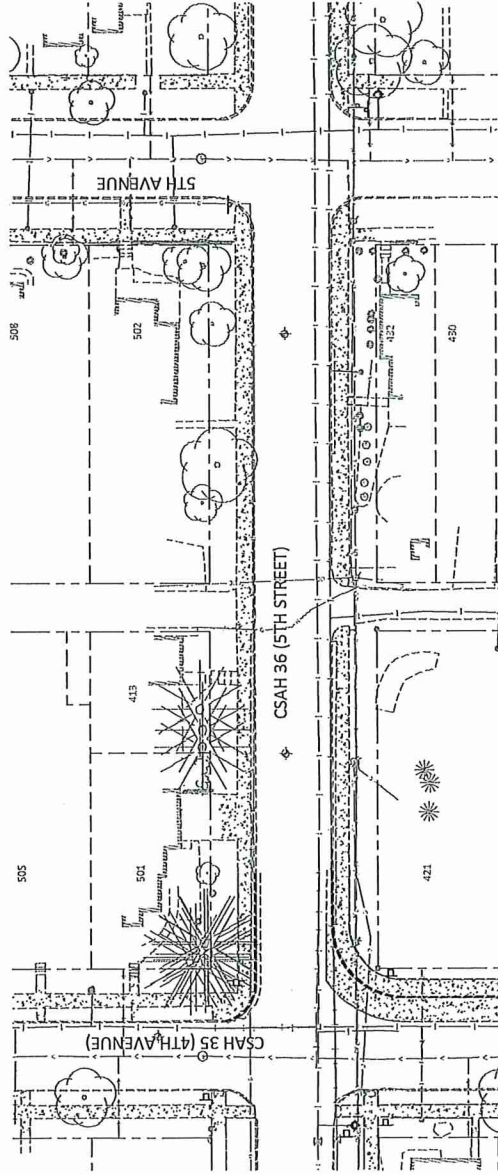
If you have questions regarding this notice or the project in general, please contact Two Harbors City Hall at 218-834-5631 or Lake County Highway Department at 218-834-8380.



2023-2024 Street Improvements

Location Map





5TH STREET (4TH AVENUE - 5TH AVENUE) (COUNTY PROJECT)		
	0	
	0	
TOTAL =	0	

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		
STREET	EACH	
4TH AVE	20	
5TH AVE	14	
6TH AVE	16	
5TH STREET	8	
TOTAL	67	

PROJECT TOTALS

COUNTY PROJECT: CITY PROJECT:

31	30
6	0
0	0.37 ACRES

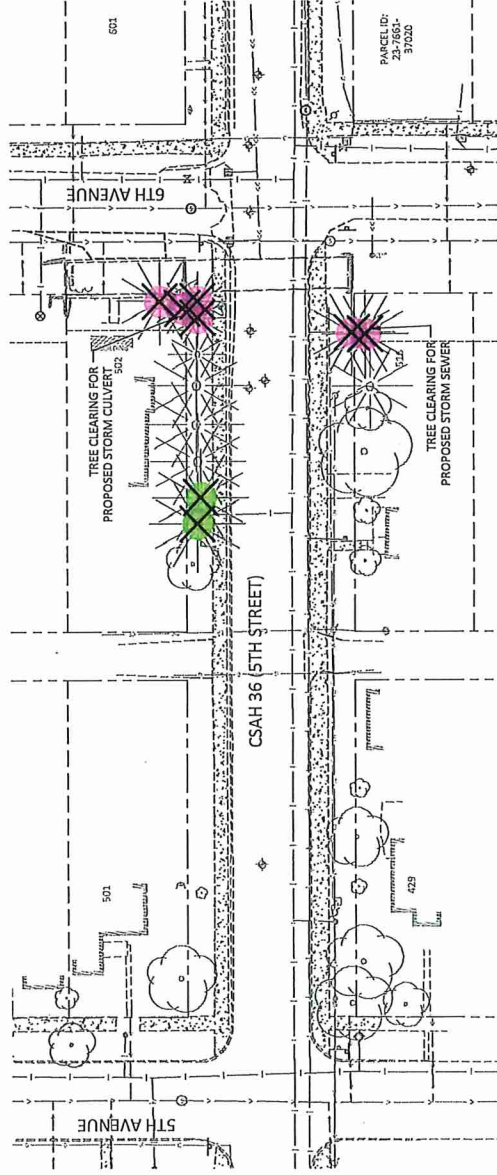


COUNTY TOTAL  
37 TREES  
0.37 ACRES

CITY TOTAL  
30 TREES  
0.37 ACRES

PROJECT TOTALS  
67 TREES  
0.37 ACRES

- NOTES:
- ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER.
  - PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  - TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.



5TH STREET (5TH AVENUE - 6TH AVENUE) (COUNTY PROJECT)		
	2	
	6	
TOTAL =	8	

31	30
6	0
0	0.37 ACRES



COUNTY TOTAL  
37 TREES  
0.37 ACRES

CITY TOTAL  
30 TREES  
0.37 ACRES

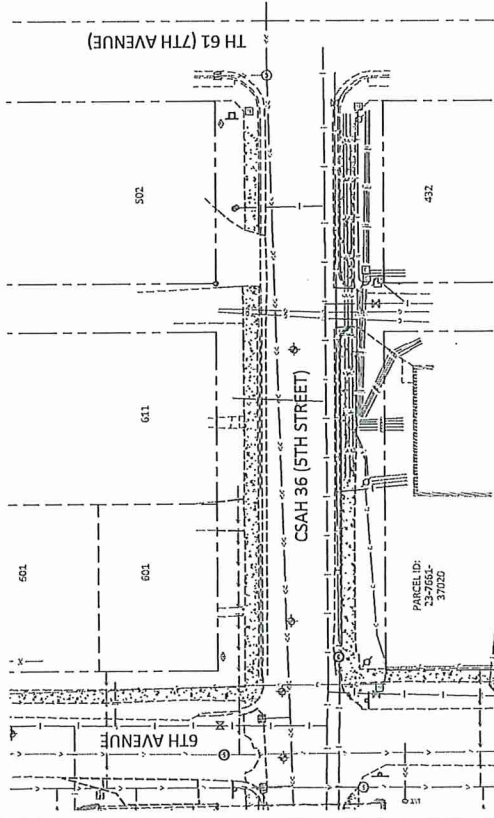
PROJECT TOTALS  
67 TREES  
0.37 ACRES

- NOTES:
- ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER.
  - PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  - TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.



2023-2024 Street Improvements  
LAKE COUNTY, MN

Tree Removals: 5th Street  
FEBRUARY 2023



CSAH 36 (6TH AVENUE - 7TH AVENUE)

5TH STREET (6TH AVENUE - 7TH AVENUE) (COUNTY PROJECT)		
	0	
	0	
TOTAL =	0	

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		EACH
STREET		
4TH AVE		29
5TH AVE		14
6TH AVE		16
5TH STREET		8
TOTAL		67

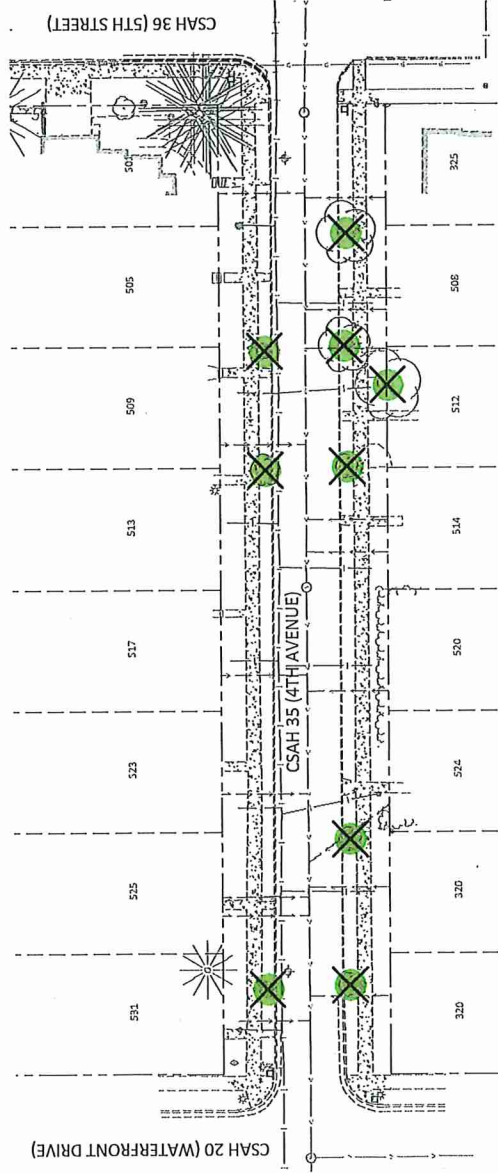
PROJECT TOTALS

COUNTY PROJECT:	CITY PROJECT:
31	30
6	0
0	0.37 ACRES



COUNTY TOTAL	CITY TOTAL
37 TREES	30 TREES
	0.37 ACRES
PROJECT TOTALS	
67 TREES	
0.37 ACRES	

- NOTES:
- ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER.
  - PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  - TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.



4TH AVENUE (5TH STREET - 5TH STREET) (COUNTY PROJECT)		
	9	
	0	
TOTAL =	9	

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		
STREET	EACH	
4TH AVE	29	
5TH AVE	14	
6TH AVE	16	
5TH STREET	8	
TOTAL	67	

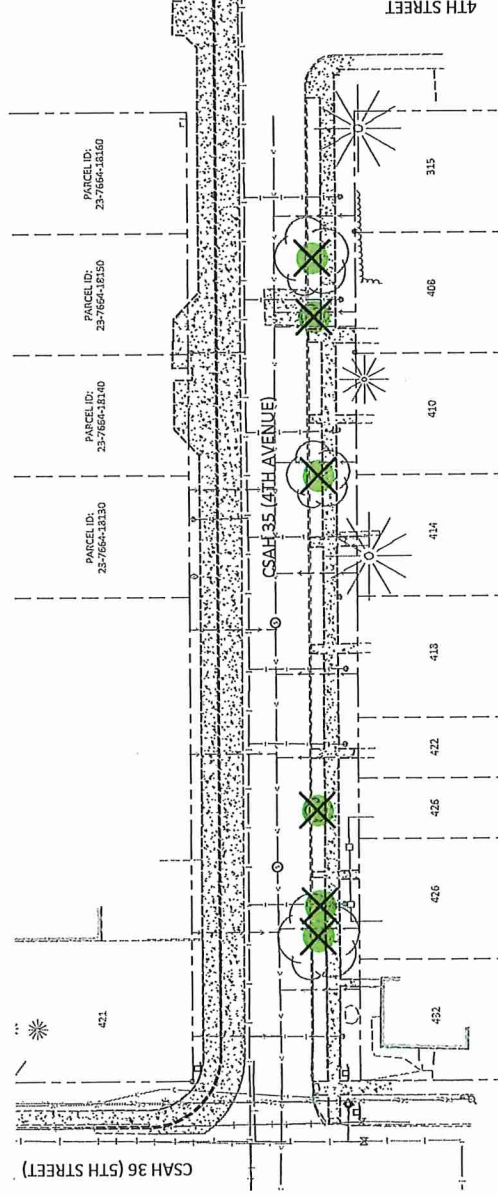
#### PROJECT TOTALS

COUNTY PROJECT: CITY PROJECT:

31	30	MARCH 2023 TREE REMOVAL
6	0	NOVEMBER 2023 - MARCH 2024 TREE REMOVAL
0	0.37 ACRES	NOVEMBER 2023 - MARCH 2024 TREE REMOVAL

COUNTY TOTAL	CITY TOTAL
37 TREES	30 TREES
0.37 ACRES	0.37 ACRES
PROJECT TOTALS	
67 TREES	
0.37 ACRES	

- NOTES:
- ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER.
  - PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  - TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.

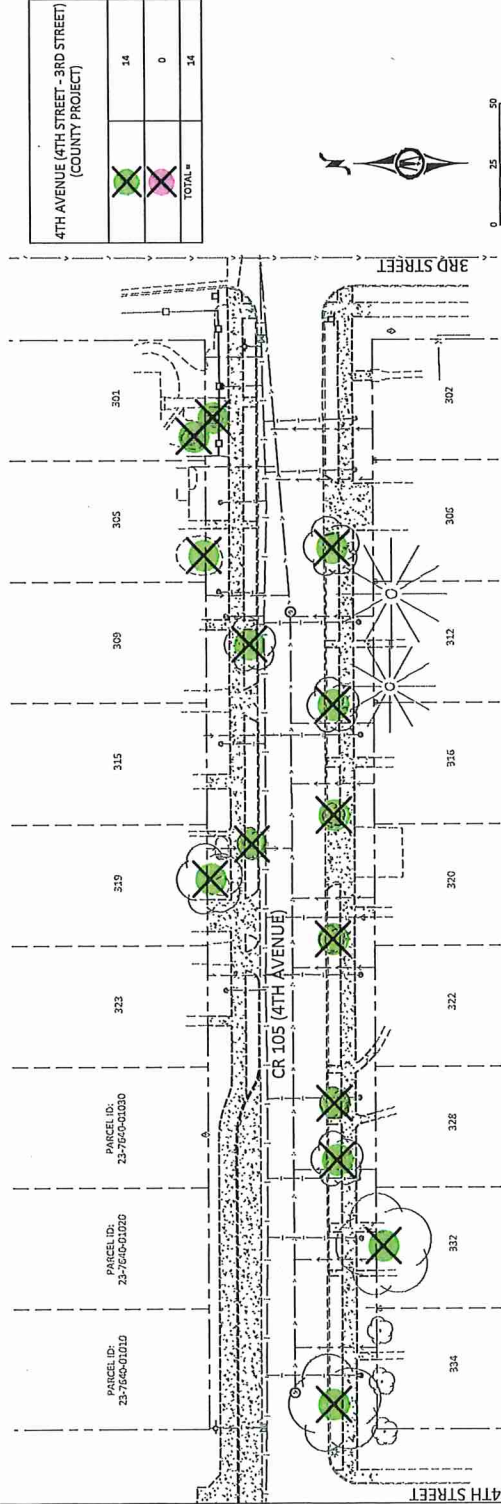


4TH AVENUE (5TH STREET - 4TH STREET) (COUNTY PROJECT)		
	6	
	0	
TOTAL =	6	



2023-2024 Street Improvements  
LAKE COUNTY, MN

Tree Removals: 4th Avenue  
FEBRUARY 2023



4TH AVENUE (4TH STREET - 3RD STREET) (COUNTY PROJECT)		
	14	
	0	
TOTAL *	14	

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		
STREET		EACH
4TH AVE		29
5TH AVE		14
6TH AVE		16
5TH STREET		8
TOTAL		67

PROJECT TOTALS

COUNTY PROJECT: CITY PROJECT:

31	30	MARCH 2023 TREE REMOVAL
6	0	NOVEMBER 2023 - MARCH 2024 TREE REMOVAL
0	0.37 ACRES	NOVEMBER 2023 - MARCH 2024 TREE REMOVAL

COUNTY TOTAL CITY TOTAL  
37 TREES 30 TREES  
0.37 ACRES 0.37 ACRES

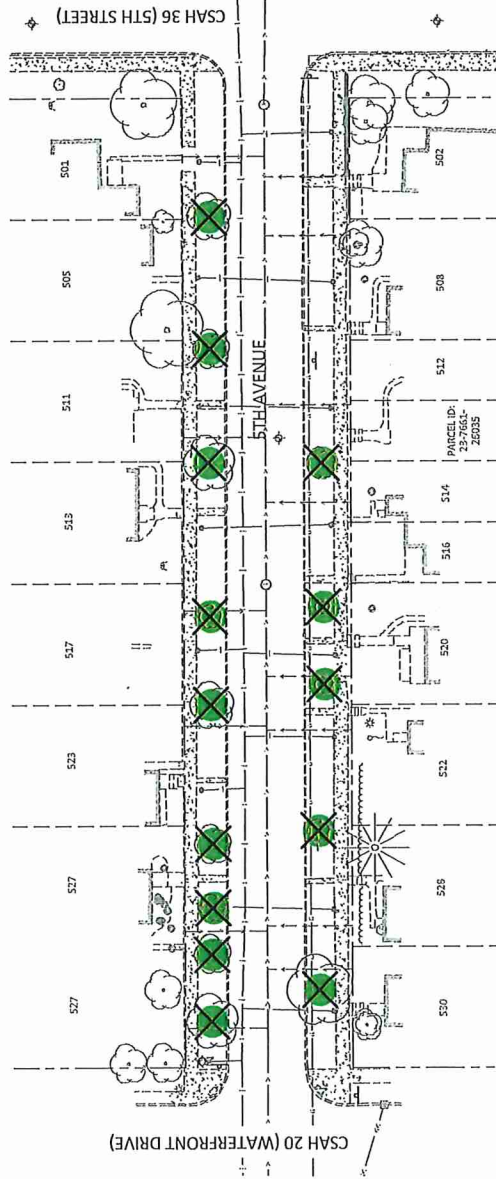
PROJECT TOTALS  
67 TREES  
0.37 ACRES

- NOTES:
1. ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER, MOVED TO THE SIDE OF THE ROAD OR TO THE TOP OF SNOW COVER.
  2. PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  3. TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.

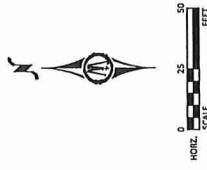


2023-2024 Street Improvements  
LAKE COUNTY, MN

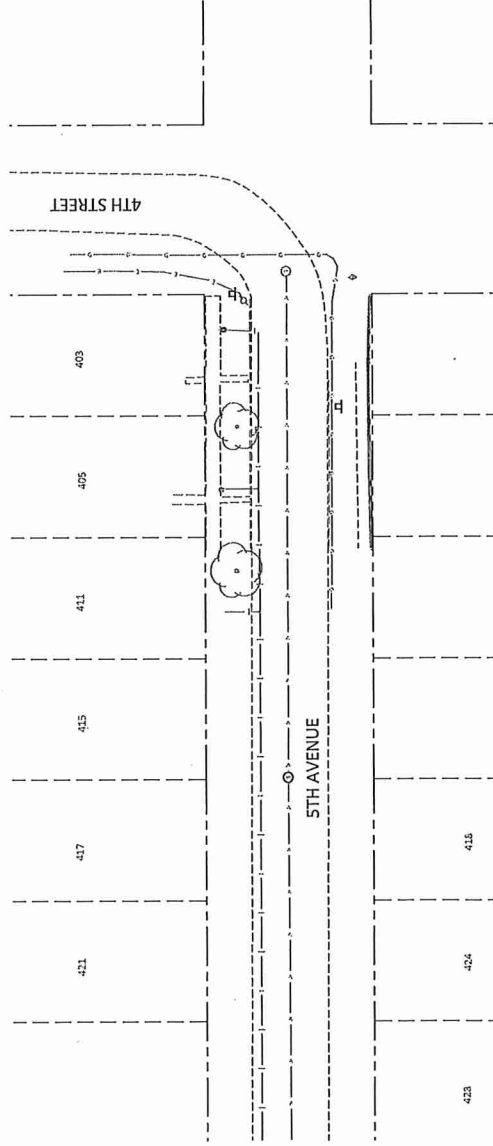
Tree Removals: 5th Avenue  
FEBRUARY 2023



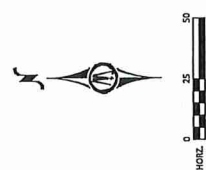
5TH AVENUE (6TH STREET - 5TH STREET) (CITY PROJECT)		
	14	
	0	
TOTAL =	14	



5TH AVENUE (6TH STREET - 5TH STREET)



5TH AVENUE (5TH STREET - 4TH STREET) (CITY PROJECT)		
	0	
	0	
TOTAL =	0	



5TH AVENUE (5TH STREET - 4TH STREET)

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		
STREET	BACH	
4TH AVE	29	
5TH AVE	14	
6TH AVE	16	
5TH STREET	8	
TOTAL	67	

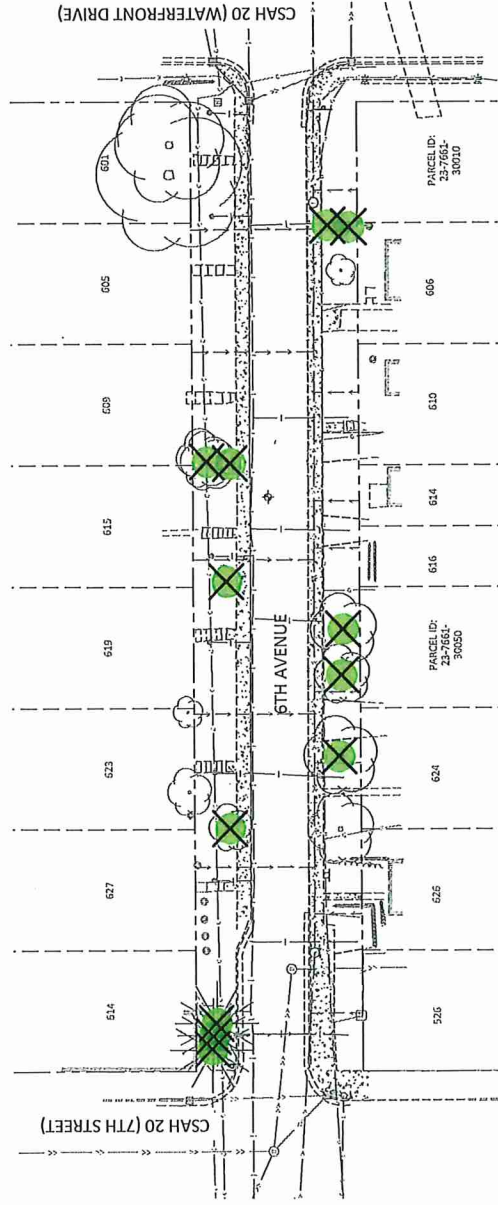
PROJECT TOTALS



COUNTY PROJECT	CITY PROJECT
31	30
6	0
0	0.37 ACRES



COUNTY TOTAL	CITY TOTAL
37 TREES	30 TREES
	0.37 ACRES
PROJECT TOTALS	
67 TREES	
0.37 ACRES	

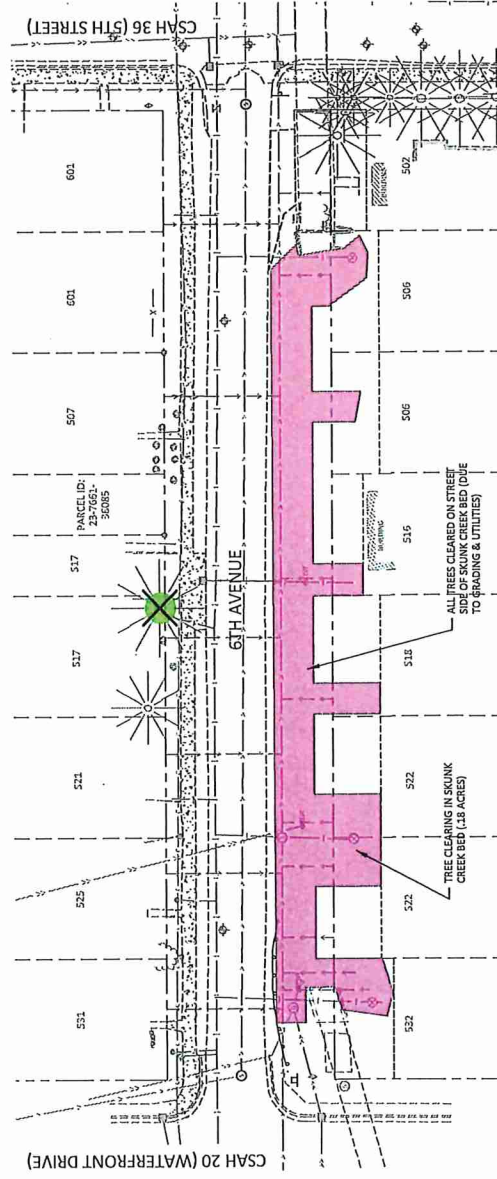
- NOTES:
- ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24' OR TOP OF SNOW COVER.
  - PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  - TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.





6TH AVENUE (7TH STREET - 6TH STREET) (CITY PROJECT)		12
		0
	TOTAL =	12



6TH AVENUE (7TH STREET - 6TH STREET)



6TH AVENUE (6TH STREET - 5TH STREET) (CITY PROJECT)	
	1
	0
TOTAL #	1



6TH AVENUE (6TH STREET - 5TH STREET)

• TREE CLEARING IN SKUNK CREEK BED (.18 ACRES)

ALL TREES CLEARED ON STREET  
SIDE OF SKUNK CREEK BED (DUE  
TO GRADING & UTILITIES)

NOTES:

1. ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER, WHICHEVER IS LESS
2. PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
3. TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		
STREET	EACH	
4TH AVE	29	
5TH AVE	14	
6TH AVE	16	
5TH STREET	8	
TOTAL	67	

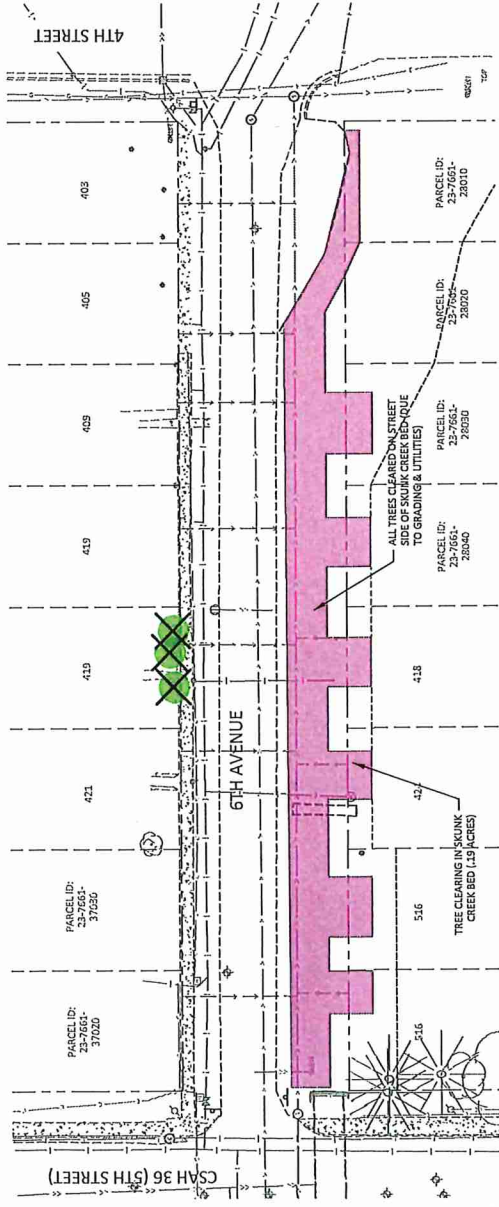
## PROJECT TOTALS

**COUNTY PROJECT:**

	MARCH 2023 TREE REMOVAL	NOVEMBER 2023 - MARCH 2024 TREE REMOVAL	NOVEMBER 2023 - MARCH 2024 TREE REMOVAL
31			
30			
6			
0			
			0.37 ACRES

<u>COUNTY TOTAL</u>	37 TREES
<u>CITY TOTAL</u>	30 TREES 0.37 ACRES

**PROJECT TOTALS**  
67 TREES  
0.37 ACRES



6TH AVENUE (5TH STREET - 4TH STREET) (CITY PROJECT)		
	3	
	0	
TOTAL =	3	



6TH AVENUE (5TH STREET - 4TH STREET)

2023 - 2024 STREET IMPROVEMENT PROJECT		
TREE CLEARING		
STREET	EACH	
4TH AVE		29
5TH AVE		14
6TH AVE		16
5TH STREET		8
TOTAL		67

PROJECT TOTALS

COUNTY PROJECT	CITY PROJECT
31	30
6	0
0	0.37 ACRES

COUNTY TOTAL	CITY TOTAL
37 TREES	30 TREES
	0.37 ACRES

PROJECT TOTALS
67 TREES
0.37 ACRES

- NOTES:
- ALL TREES TO BE TAKEN AT A MAX HEIGHT OF 24" OR TOP OF SNOW COVER.
  - PROTECT EXISTING SIGNS AND STRUCTURES DURING CLEARING OPERATIONS.
  - TREE CLEARING TO INCLUDE HAUL AND DISPOSAL OF ALL TIMBER.



**CITY OF TWO HARBORS  
CITY COUNCIL**

**AGENDA ITEM  
COVER SHEET**

<b>Originating Staff:</b> Joel Dhein, Interim City Administrator	<b>Department:</b>  Administration	<b>Date:</b>  02/27/2023
<b>Agenda Item Subject:</b> Consider approving the City of Two Harbors Employment Agreement with Patricia Nordean and authorizing the Mayor and Interim City Administrator to execute the Agreement on behalf of the city.	<b>Fiscal Impact:</b>	
<b>BACKGROUND:</b> See attached employment agreement		
<b>COUNCIL ACTION REQUESTED:</b> Approve City of Two Harbors Employment Agreement with Patricia Nordean and authorizing the Mayor and Interim City Administrator to execute the Agreement on behalf of the city.		
<b>RECOMMENDATION:</b> City of Two Harbors Employment Agreement with Patricia Nordean and authorizing the Mayor and Interim City Administrator to execute the Agreement on behalf of the city.		



**CITY OF TWO HARBORS  
CITY COUNCIL**

**AGENDA ITEM  
COVER SHEET**

Originating Staff: <b>P. Nordean</b>	Department: <b>Administration</b>	Date: <b>2/17/23</b>
Agenda Item Subject: <b>Litigation Strategy</b>	Fiscal Impact:	
<b>BACKGROUND:</b> The City Attorney would like to discuss with the Council, pending litigation regarding special assessments, for the purpose of discussing litigation strategy. This would be done in closed session.		
<b>COUNCIL ACTION REQUESTED:</b> Close the meeting for the purpose of discussing litigation strategy.		
<b>RECOMMENDATION:</b> Close the meeting for the purpose of discussing litigation strategy.		
<b>ATTACHMENTS:</b>		

Agenda Item # NB 2

Meeting Date 2/27/23



**CITY OF TWO HARBORS  
CITY COUNCIL**

**AGENDA ITEM  
COVER SHEET**

<b>Originating Staff:</b> P Nordean	<b>Department:</b> Administration	<b>Date:</b> 02/13/2023
<b>Agenda Item Subject:</b> Joint Powers Agreement	<b>Fiscal Impact:</b>	
<b>BACKGROUND:</b> Agreement allows THPD to utilize systems and tools available over the State's criminal justice data communications network for which the City is eligible.		
<b>COUNCIL ACTION REQUESTED:</b> Approve a JP Agreement with the State of MN on behalf of the City's Prosecuting Attorney		
<b>RECOMMENDATION:</b> Approve a JP Agreement with the State of MN on behalf of the City's Prosecuting Attorney		
<b>ATTACHMENTS:</b> Agreement		

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS WITH THE CITY OF TWO HARBORS ON BEHALF OF ITS CITY ATTORNEY AND POLICE DEPARTMENT**

WHEREAS, the City of Two Harbors 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 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 Two Harbors, 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 Two Harbors on behalf of its Prosecuting Attorney and Police Department, are hereby approved.
2. That the Chief of Police, Richard Hogenson, or his or her 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.
3. That the Russ Conrow, Lake County Attorney, or his or her 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 Benjamin Redden, the Acting Mayor and Council President for the City of Two Harbors, and Patricia D. Nordean, the City Clerk, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the Council on this 27th day of February, 2023.

CITY OF TWO HARBORS

\_\_\_\_\_  
By: Benjamin Redden  
Its Acting Mayor and Council President

ATTEST: \_\_\_\_\_  
By: Patricia D. Nordean  
Its 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 Two Harbors on behalf of its Prosecuting Attorney ("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/cjisdcs/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](mailto: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. No charges will be assessed to the agency as a condition of this agreement.

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:	651.793.1007
Email Address:	<a href="mailto:Dana.Gotz@state.mn.us">Dana.Gotz@state.mn.us</a>

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

Name: Russ Conrow, County Attorney  
Address: 601 3<sup>rd</sup> Ave  
Two Harbors, MN 55616  
Telephone: 218.834.8350  
Email Address: [russ.conrow@co.lake.mn.us](mailto:russ.conrow@co.lake.mn.us)

**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: \_\_\_\_\_

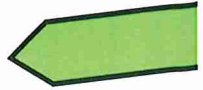
Title: \_\_\_\_\_  
(with delegated authority)

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 Two Harbors on behalf of its Prosecuting Attorney ("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 207186, 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](http://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](http://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: \_\_\_\_\_

