

**THIEF RIVER FALLS CITY COUNCIL  
AGENDA  
TUESDAY – JULY 17, 2018**

**COUNCIL CHAMBERS  
CITY HALL – 405 3<sup>RD</sup> STREET EAST  
5:30 PM**

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. PUBLIC FORUM** – *Individuals may address the City Council about any item not included on the regular agenda. A maximum of 5 minutes is allotted for the public forum. Speakers are requested to come to the microphone, state their name and address for the record, and limit their remarks to five minutes. The City Council will not take official action on items discussed at this time, with the exception of referral to staff or a committee, board or commission for a future report.*
- 5. PRESENTATIONS/PROCLAMATIONS/PUBLIC INFORMATION ANNOUNCEMENTS**
- 6. APPROVE AGENDA** – *Council members may add items to the agenda for discussion purposes or staff direction. The Council will not normally take official action on items added to the agenda.*
- 7. CONSENT AGENDA** – *These items are considered routine in nature and are approved with one motion without discussion/debate. The Mayor will ask if any Council member wishes to remove an item and place it on the regular agenda for discussion and consideration. If no items are to be removed, the Mayor will then ask for a motion to approve the Consent Agenda.*
  - 7.01 Approval of July 3, 2018 Council Proceedings (page 3-9)
  - 7.02 City of Thief River Falls Bills and Disbursements
  - 7.03 Approval of Chamber of Commerce temporary on-sale liquor license for Riverfest (page 10-12)
  - 7.04 Approval of change order no. 1 and 2 with Winkelman Building Company LLC for the Electric Department Facility (page 13-17)
  - 7.05 Approval of change order no. 1 and final payment with Schmitz Builders Inc. for the Public Works Department Maintenance Facility (page 18-25)
  - 7.06 Approval of supporting action to extend the current HRA Levy Legislation (page 26-28)

**8. NEW BUSINESS**

- 8.01 Approval of Red River Corridor Grant Application (page 29-30)
- 8.02 First reading of Ordinance amendment – Solar Energy Systems (page 31)
- 8.03 Approval to call for hearing to consider an extension to MIF Grant Agreement with Arctic Cat (page 32-34)
- 8.04 Approval of TRF Investments (Barnick Property) Variance request (page 35-43)
- 8.05 Approval of Verizon Wireless Conditional Use Permit (page 44-51)
- 8.06 Approval of John Kertz property Conditional Use Permit (page 52-59)
- 8.07 Approval of REA Natural Gas Supply Agreement (page 60-73)

**9. COUNCIL BOARDS AND COMMISSIONS REPORTS** – *Not all boards or commissions will have met prior to the Council meeting. These reports are intended to keep the other council members informed of actions or proposed actions taken by these boards and commissions. Only those with something to report would be on the agenda.*

**10. UPCOMING MEETINGS**

- 10.01 City Council Meeting – August 7<sup>th</sup> at 4:30 p.m. at Pioneer Village
- 10.02 Utilities Committee Meeting – August 13<sup>th</sup> at 7:00 a.m.
- 10.03 Public Safety/Liquor Committee Meeting – August 13<sup>th</sup> at 4:30 p.m.
- 10.04 Administrative Services Committee Meeting – August 14<sup>th</sup> at 4:30 p.m.
- 10.05 Public Works Committee Meeting – August 15<sup>th</sup> at 4:30 p.m.
- 10.06 City Council Meeting – August 21<sup>st</sup> at 5:30 p.m.

**11. ADJOURNMENT**

## COUNCIL PROCEEDINGS

#7.01

JULY 3, 2018

The City Council of Thief River Falls, Minnesota, met in regular session at 5:30 p.m. on July 3, 2018 in the Council Chambers of City Hall. The following Councilmembers were present: Holmer, Howe, Prudhomme, Aarestad and Brown. Councilmembers Hagen, Sollom and Narverud were absent. Mayor Holmer chaired the meeting.

### **PRESENTATIONS/PROCLAMATIONS/PUBLIC INFORMATION ANNOUNCEMENTS**

- Zehlians Art/Wine Walk – July 26<sup>th</sup> – Natasha Reiersen & Jodi Beeson
- Advance Thief River – Michelle Landsverk & Rick Trontvet

### **APPROVAL OF AGENDA**

Councilmember Howe motioned, being seconded by Councilmember Brown, to approve the agenda with the addition of two items. On vote being taken, the motion was unanimously approved.

### **RESOLUTION NO. 7-148-18: APPROVAL OF COUNCIL PROCEEDINGS**

Presented as part of the Consent Agenda, Councilmember Aarestad introduced Resolution No. 7-148-18, being seconded by Councilmember Brown, that:

RESOLVED, by the City Council, to approve June 19, 2018 Council Proceedings.

On vote being taken, the resolution was unanimously passed.

### **RESOLUTION NO. 7-149-18: APPROVAL OF PAYMENT OF BILLS**

Presented as part of the Consent Agenda, Councilmember Aarestad introduced Resolution No. 7-149-18, being seconded by Councilmember Brown, that:

RESOLVED, by the City Council, to authorize payment of bills and disbursements in the total amount of \$2,151,889.48. A printout of the approved payments and disbursements is attached hereto and made a part hereof.

On vote being taken, the resolution was unanimously passed.

### **RESOLUTION NO. 7-150-18: APPROVAL OF PENNINGTON COUNTY EASEMENT – ELECTRIC DEPARTMENT FACILITY**

Presented as part of the Consent Agenda, Councilmember Aarestad introduced Resolution No. 7-150-18, being seconded by Councilmember Brown, that:

WHEREAS, Digi-Key Electronics has purchased the former Electric Department facility and has constructed a new parking lot to support their existing business and current expansion. The Electric Department is currently functioning out of several locations on a temporary basis until a new facility can be completed. The city awarded the construction

contract for this facility to Winkelman Building Company and the project is currently under construction; and

WHEREAS, the primary access for the facility is from First Street West. There is a secondary access across the Pennington County Joint Use Facility property. Verbal Authorization was granted to cross their property as the construction plans were being developed. A formal easement agreement is now ready for execution.

THEREFORE, BE IT RESOLVED, by the City Council, to approve an easement agreement with Pennington County for ingress and egress across the Pennington County Joint Use Facility property as a secondary access to the new Electric Department Facility and authorize the Mayor to execute the agreement.

On vote being taken, the resolution was unanimously passed.

**RESOLUTION NO. 7-151-18: APPROVAL OF VFW POST 2793 LIQUOR LICENSE ADDENDUM**

Presented as part of the Consent Agenda, Councilmember Aarestad introduced Resolution No. 7-151-18, being seconded by Councilmember Brown, that:

RESOLVED, by the City Council, to approve temporary extension of the VFW Post 2793 On-Sale Intoxicating Liquor License to an outside fenced off designated area effective July 20, 2018 from 8:00 p.m. – midnight.

On vote being taken, the resolution was unanimously passed.

**2017 AUDIT – HOFFMAN, PHILIPP & KNUTSON**

Hoffman, Philipp & Knutson along with Finance Director Philipp presented the 2017 Audit.

**RESOLUTION NO. 7-152-18: APPROVAL OF ORDINANCE NO. 111, 3<sup>RD</sup> SERIES, REGULATING NONESSENTIAL WATER USAGE UPON CRITICAL WATER DEFICIENCY AS AUTHORIZED BY MINN. STAT. § 103G.291, SUBD. 1 AND 2**

Councilmember Prudhomme motioned, being seconded by Councilmember Brown, to call for the second reading of an ordinance amending water usage in a critical water deficiency. The motion was unanimously carried. City Attorney Sparby read the proposed ordinance.

Councilmember Howe introduced Resolution No. 7-152-18, being seconded by Councilmember Aarestad, that:

**THE CITY COUNCIL OF THIEF RIVER FALLS ORDAINS:**

**SECTION 1. PURPOSE.**

This ordinance establishes water conservation restrictions; and the plan will be in effect at any time the governor declares by executive order a critical water deficiency, pursuant to Minnesota Statutes section 103G.291.

## SECTION 2. DEFINITIONS.

2.1 Clerk in statutory cities means the person assigned duties pursuant to Minn. Stat. § 412.151; or the city manager pursuant to Minn. Stat. § 412.601 – 412.751 or in charter cities as determined by city charter.

2.2 Department means the city water department.

2.3 Emergency means the declaration of a critical water deficiency by the governor.

2.4 Irrigation means the watering of shrubs, trees, sod, seeded areas, gardens, lawns, or any other outdoor vegetation, except outdoor vegetation utilized for agricultural purposes.

2.5 Notification to public means notification through local media, including interviews and issuance of news releases.

2.6 Public water supplier means the city or other entity that owns, manages, or operates a public water supply, as defined in Minn. Stat. § 144.382, subdivision 4.

2.7 Reclaimed water means water collected from rooftops, paved surfaces, or other collection devices and all water utilized more than once before re-entering the natural water cycle.

2.8 Water recirculation system means any system which enables a user to reuse water at least once prior to returning the water to the natural water cycle.

## SECTION 3. APPLICATION.

3.1 This ordinance applies to all customers of public water suppliers who own or control water use on any premises.

3.2 No person shall make, cause, use, or permit the use of water received from a public water supply for residential, commercial, industrial, governmental, or any other purpose in any manner contrary to any provision in this ordinance.

3.3 Mandatory emergency conservation measures shall be implemented based upon the declaration of a critical water emergency by the governor.

## SECTION 4. DECLARATION OF CRITICAL WATER DEFICIENCY.

Upon the declaration of a critical water deficiency by the governor, the public water supplier shall immediately post notice of the emergency declaration at the usual meeting place of the city council, or the official city bulletin board. The city shall provide notification to the public as quickly as possible or through established water supply plans emergency response plans or procedures.

## SECTION 5. MANDATORY EMERGENCY WATER CONSERVATION MEASURES.

Upon declaration of a water emergency and notification to the public, the following mandatory restrictions upon nonessential water use shall be enforced:

- (1) Outdoor irrigation of yards, gardens, golf courses, parklands, and other non-agricultural land, except for those areas irrigated with reclaimed water, is prohibited.
- (2) Washing or spraying of sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas with water from any pressurized source, including garden hoses, except to alleviate immediate health or safety hazards, is prohibited.
- (3) The outdoor use of any water-based play apparatus connected to a pressurized source is prohibited.
- (4) Restaurants and other food service establishments are prohibited from serving water to their customers, unless water is specifically requested by the customer.
- (5) Operation of outdoor misting systems used to cool public areas is prohibited.
- (6) The filling of swimming pools, fountains, spas, or other exterior water features is prohibited.
- (7) The washing of automobiles, trucks, trailers, and other types of mobile equipment is prohibited, except at facilities equipped with wash water recirculation systems, and for vehicles requiring frequent washing to protect public health, safety, and welfare.

#### SECTION 6. VARIANCES.

The City Clerk or their designee, is authorized to grant variances to this ordinance where strict application of its provisions would result in serious hardship to a customer. A variance may be granted only for reasons involving health or safety. An applicant may appeal the denial of a variance within five (5) days of the decision by submitting a written appeal to the City Clerk. The City Council shall hear the appeal at the next City Council meeting. The decision of the City Council is final.

#### SECTION 7. VIOLATION.

7.1 Violations shall be determined and cited by the City Clerk or his/her designee. A violator may appeal the citation within five (5) days of its issuance by submitting a written appeal to the City. The City Council shall hear the appeal at the next City Council meeting. The decision of the City Council is final. Violators may be granted an administrative waiver if evidence is provided that equipment failure was the cause of the violation. A letter from a qualified vendor or equipment invoice will be required to show proof of equipment failure.

7.2 Upon discovery of a first violation, the violator shall be issued, either personally or by mail, a warning letter that sets forth the violation and which shall describe the remedy and fines for future violations.

7.3 Upon subsequent violations at the same location, the violator shall be issued, either personally or by mail, a citation that sets forth the violation and shall describe the remedy. Fines shall be added to the monthly water bill of the owner or current occupant of the premises where the violation occurred. The imposition of the fine shall in no way limit the right of the City to pursue other legal remedies.

SECTION 8. ENFORCEMENT.

The City Clerk or his/her designee is authorized to designate city employees or law enforcement personnel to enforce the provisions of this ordinance.

SECTION 9. SEVERABILITY.

If any provision of this ordinance or the application of any provision to a particular situation is held to be invalid by a court of competent jurisdiction, the remaining portions of the ordinance and the application of the ordinance to any other situation shall not be invalidated.

SECTION 10. This ordinance shall be in force and effect from and after its passage, approval, and publication.

On vote being taken, the resolution was unanimously passed.

**RESOLUTION NO. 7-153-18: APPROVAL OF ORDINANCE NO. 112, 3<sup>RD</sup> SERIES, OF THE CITY OF THIEF RIVER FALLS, MINNESOTA, AMENDING CITY CODE CHAPTER 152 ENTITLED "ZONING CODE" BY AMENDING 152.097, A, (6), TO ALLOW A CHURCH WITHIN A RESIDENTIAL DISTRICT TO HAVE A DYNAMIC DISPLAY, SUBJECT TO RESIDENTIAL SPACING REQUIREMENTS, AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 10 AND SECTION 152.998, WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS**

Councilmember Howe motioned, being seconded by Councilmember Aarestad, to call for the second reading of an ordinance amending city code chapter 152 entitled "zoning code" by amending 152.097, a, (6), to allow a church within a residential district to have a dynamic display, subject to residential spacing requirements. The motion was unanimously carried. City Attorney Sparby read the proposed ordinance.

Councilmember Brown introduced Resolution No. 7-153-18, being seconded by Councilmember Prudhomme, that:

THE CITY COUNCIL OF THIEF RIVER FALLS ORDAINS:

Section 1. City Code Chapter 152.097, A, (6) is hereby amended to read as follows:

(6) Spacing from residential uses: No Dynamic Display shall be located within 100 feet of a residential district. The distance shall be measured based upon a horizontal line beginning at the nearest residential property line and the leading edge of the Dynamic Display, or viewing radius of 45 degrees, whichever is closer. A church located in a residential zone may be allowed a Dynamic Display, subject to the spacing requirements, as applied to the nearest adjacent residential property line.

Section 2. City Code Chapter 10 entitled "General Provisions" and Section 152.998 entitled "Violation" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall be in force and effect from and after its passage, approval,

and publication.

On vote being taken, the resolution was unanimously passed.

**RESOLUTION NO. 7-154-18: APPROVAL OF LOW QUALIFYING BIDS FOR WATER TREATMENT CHEMICALS**

Presented as an addition to the agenda, Councilmember Brown introduced Resolution No. 7-154-18, being seconded by Councilmember Prudhomme, that:

WHEREAS, the following low bids were received for the purchase of Water Treatment Plant chemicals:

Liquid Ferric Sulfate: Hawkins	\$3.05/gallon	\$91,500.00 TOTAL BID
Sodium Tripolyphosphate: Shannon Chemical	\$2,052.52/ton	\$4,105.04 TOTAL BID
Chlorine: DPC Industries	\$1,380.00/ton	\$9,660 .00 TOTAL BID
Hydroflourosillicic Acid: Hawkins	\$3.50/gallon	\$3,150.00 TOTAL BID
Anhydrous Amonia: Hawkins	\$1.85/pound	\$4,625.00 TOTAL BID
Liquid CO2: Praxair	\$225.00/ton	\$15,750.00 TOTAL BID
Potassium Permanganate: Shannon Chemical	\$1.54/pound	\$21,560.00 TOTAL BID
Pebble Quicklime: Graymont	\$272.50/ton	\$76,300.00 TOTAL BID

THEREFORE, BE IT RESOLVED, that the City Council, hereby accepts the low bids for the purchase of the Water Treatment Plant chemicals as listed above.

On vote being taken, the resolution was unanimously passed.

**PARKING BOATS/TRAILERS ON CITY STREETS DISCUSSION**

Councilmember Howe questioned the adequacy of enforcement of the City Ordinance prohibiting long-term parking of boats and trailers on City streets. The Council referred the matter to the Public Safety/Liquor Committee for further discussion.



**UPCOMING MEETINGS/EVENTS**

- Utilities Committee Meeting – July 9<sup>th</sup> at 7:00 a.m.
- Public Safety/Liquor Committee Meeting – July 9<sup>th</sup> at 4:30 p.m.
- Administration Committee Meeting – July 10<sup>th</sup> at 4:30 p.m.
- Public Works Committee Meeting – July 11<sup>th</sup> at 4:30 p.m.
- City Council Meeting – July 17<sup>th</sup> at 5:30 p.m.

**ADJOURNMENT**

There being no further discussion, Councilmember Prudhomme moved, being seconded by Councilmember Howe to adjourn. On vote being taken, the Chair declared the motion unanimously carried.

\_\_\_\_\_  
Brian D. Holmer, Mayor

Attest: \_\_\_\_\_  
Rodney Otterness, City Administrator



# City of Thief River Falls

#7.03

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

PHONE: 218-681-2943  
FAX: 218-681-6223  
email: [jnelson@citytrf.net](mailto:jnelson@citytrf.net)  
[www.citytrf.net](http://www.citytrf.net)

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## REQUEST FOR COUNCIL ACTION

**DATE:** July 17, 2018

**SUBJECT:** Chamber of Commerce Temporary Liquor License

**RECOMMENDATION:** It is respectfully requested the Council consider the following:

**MOTION TO:** to approve a Temporary Intoxicating Liquor License effective August 3 – August 4, 2018 for Riverfest.

**BACKGROUND:** The Thief River Falls Chamber of Commerce applies for a temporary liquor license each year for Riverfest.

**KEY ISSUES:** None

**FINANCIAL CONSIDERATION:** The license fee is \$35 per day.

**LEGAL CONSIDERATION:** Contingent on fees and certificate of insurance

**DEPARTMENT/RESPONSIBLE PERSON:** Jennifer Nelson/Deputy City Clerk



CITY OF THIEF RIVER FALLS

Temporary Intoxicating Liquor License Application

City Code Section 111.086

APPLICANT: Thief River Falls Chamber of Commerce

(must be a club, charitable, religious, or non-profit organization, duly incorporated as a nonprofit or religious corporation under the laws of Minnesota and in existence for at least three years or a political committee registered under MS 10A.14 and applicant must sponsoring the event that alcohol is being served)

CONTACT PERSON: Ashley Nerhus

ADDRESS: 102 Main Ave N Thief River Falls MN 56701

PHONE: 218-681-3700

TYPE OF EVENT: RiverFest

LICENSING PERIOD: Aug. 3 6pm - Midnight and Aug. 4 4pm - Midnight

HOURS OF OPERATION: " "

FACILITY/PLACE TO BE USED: Hertz Park

Applicant will present this request to the City Administrator's Office who will forward the application to the Public Safety Committee for review. The application must be presented to the City Administrator's Office at least one month before the event.

If approved, the license will not become valid until approved by the Commissioner.

If approved, the applicant must provide suitable Proof of Insurance covering liquor liability. The City of Thief River Falls shall be named as an additional insured.

Cost of the license is \$35.00 per day.

Applicant shall comply with all restrictions, limitations, and regulations for the sale of liquor under the City Code and State Statutes.

Applicant hereby agrees to obtain a resolution of its governing board wherein applicant agrees to indemnify and hold harmless the City of Thief River Falls and its elected officials, employees, and agents, from and against any and all liabilities, judgements, settlements, losses, costs, or charges, including attorneys' fees, incurred by the City of Thief River Falls, and/or any of its elected officials, employees, and agents, as a result of any claim, demand, action, or suit relating to any bodily injury (including death), loss of property, and/or property damage caused by, arising out of, or relating to or associated with the granting of a temporary liquor license to applicant.

Applicant also understands that all information contained on this application is public data according to Chapter 13 of the Minnesota State Statute.

Ashley Nerhus  
SIGNATURE OF APPLICANT

7-9-18  
DATE

**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#7.03

**RESOLUTION NO. : APPROVAL OF TEMPORARY INTOXICATING LIQUOR  
LICENSE TO CHAMBER OF COMMERCE DURING RIVERFEST**

Presented as part of the Consent Agenda, Councilmember \_\_\_\_\_ introduced Resolution No., being seconded by Councilmember \_\_\_\_\_, that:

RESOLVED, by the City Council, to grant the Chamber of Commerce a Temporary Intoxicating Liquor License, effective August 3 - 4, 2018 at Hartz Park during Riverfest.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#7.04

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

**DATE:** July 17, 2018

**SUBJECT:** Electric Department Facility – Change Order No. 1 and 2

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Public Works Committee recommendation:

Motion to: Approve Change Order No. 1 and No. 2 with Winkelman Building Company, LLC for the Electric Department Facility construction in the amounts of \$13,407.60 and \$4,253.00, and authorize the Public Works Director to execute the change orders.

**BACKGROUND:** Digi-Key Electronics has purchased the former Electric Department facility and has constructed a new parking lot to support their existing business and current expansion. The Electric Department is currently functioning out of several locations on a temporary basis until a new facility can be completed. The city awarded the construction contract for this facility to Winkelman Building Company and the project is currently under construction.

The City Council appointed Mayor Brian Holmer, along with Councilmen Don Sollom and Steve Narverud to serve on the Building Committee.

**KEY ISSUES:** During the early stages of construction the contractor and architect proposed an upgrade in the roof system to a standing seam roof over the heated portion of the building along with added insulation and revised roof slope. There were also some increased roof loads that required an increase in footing sizes. The city requested Styrofoam insulation under the exterior sidewalk as well as rain gutters adjacent to the front entrance to the building. Rip Rap was substituted for “Flexamat” at the storm water pond outlet as a reduction in cost. These items make up Change Order No. 1 in the amount of \$13,407.60. Two inches of rigid Styrofoam was recommended at the top of the footings and extended horizontally 24” on both the interior and exterior sides of the footings for added frost protection. This work makes up Change Order No. 2 in the amount of \$4,253.00.

**FINANCIAL CONSIDERATIONS:** Outlined in Change Order.

**LEGAL CONSIDERATION:** None.

**DEPARTMENT/RESPONSIBLE PERSON:** Dale Narlock, Electric Superintendent and Mark Borseth, Community Services Director

Encl: (2)



**AIA**<sup>®</sup>

# Document G701™ – 2017

## Change Order

**PROJECT:** *(Name and address)*  
0680C0971.001-Electrical Maintenance Facility  
1711 First Street West, Thief River Falls, MN 56701

**CONTRACT INFORMATION:**  
Contract For: General Construction  
Date: January 17, 2018

**CHANGE ORDER INFORMATION:**  
Change Order Number: 001  
Date: May 21, 2018

**OWNER:** *(Name and address)*  
City of Thief River Falls  
405 Third Street East  
PO Box 528  
Thief River Falls, MN 56701-0528

**ARCHITECT:** *(Name and address)*  
Wiseth Smith Nolting  
315 5th Street NW  
Bemidji, MN 56601

**CONTRACTOR:** *(Name and address)*  
Winkelman Building Company, LLC  
340 Highway 10 South  
St. Cloud, MN 56304

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

**1. Proposal Request #1**

Roof Panel Change: install a galvalume finish standing seam roof panel system - Add \$3,500.00.

Building Insulation Change: increase roof and wall insulation thickness over purlins and under panels - Add \$5,208.00.

General Contractor's markup is included in above pricing.

**Subtotal - Add \$8,708.00.**

**2. Proposal Request #3**

Increase footing size due to increased loads from the building supplier - Add \$3,360.00.

General Contractor's markup is included in above pricing.

**Subtotal - Add \$3,360.00.**

**3. Proposal Request #4**

Furnish and install 4" styrofoam insulation under sidewalk along office segment; also provide vapor retarder under entire cold storage building - Add \$4,070.00.

Furnish and install Class III riprap in lieu of 'Flexamat' - Deduct (\$4,345.85).

Add rain gutter system at the west end of the office segment - Add \$1,551.66.

Add 5% General Contractor's markup to above pricing - Add \$63.79.

**Subtotal - Add \$1,339.60.**

**Grand Total - Add \$13,407.60.**

The original Contract Sum was	\$	3,850,000.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	3,850,000.00
The Contract Sum will be increased by this Change Order in the amount of	\$	13,407.60
The new Contract Sum including this Change Order will be	\$	3,863,407.60

The Contract Time will be increased by Zero (0) days.

The new date of Substantial Completion will be N/A

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract

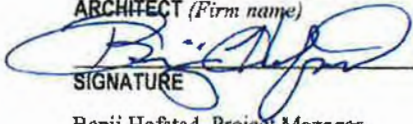
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User Notes: (3B9ADA2E)

Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Widseth Smith Nolting

ARCHITECT (Firm name)



SIGNATURE

Benji Hofstad, Project Manager

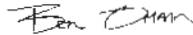
PRINTED NAME AND TITLE

5-21-18

DATE

Winkelman Building Company, LLC

CONTRACTOR (Firm name)



SIGNATURE

Ben Omann - Project Manager

PRINTED NAME AND TITLE

May 21st, 2018

DATE

City of Thief River Falls

OWNER (Firm name)

SIGNATURE

Mark Borscch, Engineering Services  
Director

PRINTED NAME AND TITLE

DATE



# AIA Document G701™ – 2017

## Change Order

<b>PROJECT:</b> <i>(Name and address)</i> 0680C0971.001-Electrical Maintenance Facility 1711 First Street West, Thief River Falls, MN 56701	<b>CONTRACT INFORMATION:</b> Contract For: General Construction Date: January 17, 2018	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 002 Date: July 3, 2018
<b>OWNER:</b> <i>(Name and address)</i> City of Thief River Falls 405 Third Street East PO Box 528 Thief River Falls, MN 56701-0528	<b>ARCHITECT:</b> <i>(Name and address)</i> Widseth Smith Nolting 315 5th Street NW Bemidji, MN 56601	<b>CONTRACTOR:</b> <i>(Name and address)</i> Winkelman Building Company, LLC 340 Highway 10 South St. Cloud, MN 56304

### THE CONTRACT IS CHANGED AS FOLLOWS:

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*


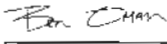
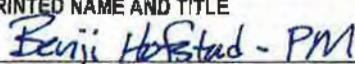
#### Owner Requested Cold Storage Foundation Insulation Option #1

Proposal Request #5: Add 2" Rigid Insulation (R-10) at top of footing and extend horizontally 24" on both interior and exterior sides. Total Add of \$4,253.00.

The original Contract Sum was	\$	3,850,000.00
The net change by previously authorized Change Orders	\$	13,407.60
The Contract Sum prior to this Change Order was	\$	3,863,407.60
The Contract Sum will be increased by this Change Order in the amount of	\$	4,253.00
The new Contract Sum including this Change Order will be	\$	3,867,660.60
The Contract Time will be increased by Zero (0) days.		
The new date of Substantial Completion will be N/A		

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

### NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Widseth Smith Nolting <b>ARCHITECT</b> <i>(Firm name)</i>	Winkelman Building Company, LLC <b>CONTRACTOR</b> <i>(Firm name)</i>	City of Thief River Falls <b>OWNER</b> <i>(Firm name)</i>
 <b>SIGNATURE</b>	 <b>SIGNATURE</b>	 <b>SIGNATURE</b>
Benji Hofstad, Project Manager	<b>Ben Omann - PM</b>	Mark Borseth, Engineering Services Director
<b>PRINTED NAME AND TITLE</b>	<b>PRINTED NAME AND TITLE</b>	<b>PRINTED NAME AND TITLE</b>
	<b>7-3-18</b>	
<b>DATE</b> 7-3-18	<b>DATE</b>	<b>DATE</b>



**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#7.04

**RESOLUTION NO. : APPROVAL OF CHANGE ORDER NO. 1 AND 2 WITH  
WINKELMAN BUILDING COMPANY LLC FOR THE ELECTRIC DEPARTMENT  
FACILITY**

Presented as part of the Consent Agenda, Councilmember \_\_\_\_\_ introduced Resolution No., being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, Digi-Key Electronics has purchased the former Electric Department facility and has constructed a new parking lot to support their existing business and current expansion. The Electric Department is currently functioning out of several locations on a temporary basis until a new facility can be completed. The city awarded the construction contract for this facility to Winkelman Building Company and the project is currently under construction; and

WHEREAS, during the early stages of construction the contractor and architect proposed an upgrade in the roof system to a standing seam roof over the heated portion of the building along with added insulation and revised roof slope. There were also some increased roof loads that required an increase in footing sizes. The city requested Styrofoam insulation under the exterior sidewalk as well as rain gutters adjacent to the front entrance to the building. Rip Rap was substituted for "Flexamat" at the storm water pond outlet as a reduction in cost. These items make up Change Order No. 1 in the amount of \$13,407.60. Two inches of rigid Styrofoam was recommended at the top of the footings and extended horizontally 24" on both the interior and exterior sides of the footings for added frost protection. This work makes up Change Order No. 2 in the amount of \$4,253.00.

THEREFORE, BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve Change Order No. 1 and No. 2 with Winkelman Building Company, LLC for the Electric Department Facility construction in the amounts of \$13,407.60 and \$4,253.00, and authorize the Public Works Director to execute the change orders.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

#7.05

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

---

**DATE:** July 17, 2018

**SUBJECT:** Public Works Department Maintenance Facility – Change Order No. 1 and Final Payment

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Public Works Committee recommendation:

Motion to: Approve Change Order No. 1 with Schmitz Builders, Inc. for the Public Works Department Maintenance Facility construction in the amount of \$17,692.00 and approve Final Pay Request No. 7, which includes Change Order No. 1, in the amount of \$423,692.00.

**BACKGROUND:** The City of Thief River Falls recently sold the Electric Department building on Barzen Avenue to facilitate a major expansion of Digi-Key Electronics. This building also housed the Park Department, which now needs a facility to function. The city council established a Public Works Department that consolidated Community Services, Street/Sanitation and Park into one department.

Due to this consolidation the most logical location for the park employees is at the street/sanitation location at 1121 Atlantic Avenue North, now known as the Public Works Department Maintenance Facility, to better enhance communication, sharing of duties and utilization of equipment. The location is attached to the heated storage building that was constructed in 2010. This project was done as a design build.

**KEY ISSUES:** Throughout the building process several items came up for consideration as code compliance requirements or improvements requested by the city. These items were discussed and approved with the committee as they came up, to be included in one change order at the end of the project for final approval, along with approval of final payment. The contract award was for \$406,000.00. Change Order No.1 is for \$17,692.00. The final payment amount is \$423,692.00.

**FINANCIAL CONSIDERATIONS:** Outlined in Change Order.

**LEGAL CONSIDERATION:** None.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director

Encl: (2)

**APPLICATION AND CERTIFICATE FOR PAYMENT**

TO OWNER:  
 City of Thief River Falls  
 PO Box 528, 405 3rd St. E  
 Thief River Falls, MN 56701

PROJECT:  
 TRF Heated Shop  
 Thief River Falls, MN 56701

APPLICATION #: 7 - FINAL  
 PERIOD TO: 08/30/18  
 PROJECT NOS:

Distribution to:  
 Owner  
 Const. Mgr  
 Architect  
 Contractor

FROM CONTRACTOR:  
 Schmitz Builders, Inc.  
 210 3rd Street NE  
 Red Lake Falls, MN 56750

VIA ARCHITECT:  
 Design Build-WSN

CONTRACT DATE:

CONTRACT FOR:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
 Continuation Sheet is attached.

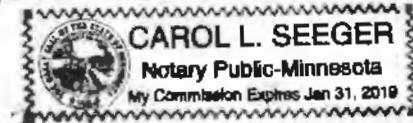
1. ORIGINAL CONTRACT SUM-----	\$	406,000.00
2. Net change by Change Orders-----	\$	17,692.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2)	\$	423,692.00
4. TOTAL COMPLETED & STORED TO DATE-\$ (Column G on Continuation Sheet)	\$	423,692.00
5. RETAINAGE:		
a. _____ of Completed Work (Columns D+E on Continuation Sheet)	\$	
b. _____ of Stored Material (Column F on Continuation Sheet)	\$	
Total Retainage (Line 5a + 5b or Total in Column 1 of Continuation Sheet)-----	\$	
6. TOTAL EARNED LESS RETAINAGE----- (Line 4 less Line 5 Total)	\$	423,692.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)-----		
	\$	370,889.50
8. CURRENT PAYMENT DUE-----	\$	52,802.50
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)		

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month	\$17,692.00	
TOTALS	\$17,692.00	
NET CHANGES by Change Order	\$17,692.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR:  
 By: Archie Schmitz Date: 7-11-18

State of: Minnesota  
 County of: Red Lake  
 Subscribed and sworn to before me this 11th day of July, 2018



Notary Public: Carol L. Seeger  
 My Commission expires: 1-31-2019

**CERTIFICATE FOR PAYMENT**  
 In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ----- \$  
 (Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:  
 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

**CONTINUATION SHEET**

ATTACHMENT TO PAY APPLICATION

PROJECT:  
TRF Heated Shop  
Thief River Falls, MN 56701

APPLICATION NUMBER: 7 - FINAL  
APPLICATION DATE: 06/30/18  
PERIOD TO: 30-Jun-18  
ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed And Stored To Date (D + E + F)	% (G/C)	H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period					
1	General Conditions	34,000.00	34,000.00			34,000.00	100%		
2	Excavation & Backfill	6,500.00	5,875.00	625.00		6,500.00	100%		
3	Cast in Place Concrete	67,750.00	60,975.00	6,775.00		67,750.00	100%		
4	Rough Carpentry	78,000.00	78,000.00			78,000.00	100%		
5	Insulation	14,775.00	11,082.00	3,693.00		14,775.00	100%		
6	Roof & Wall Steel	35,850.00	35,850.00			35,850.00	100%		
7	Steel Doors & Frame	16,000.00	16,000.00			16,000.00	100%		
8	Window	6,500.00	6,500.00			6,500.00	100%		
9	Overhead Doors	13,500.00	13,500.00			13,500.00	100%		
10	Sheetrock & Drywall	17,500.00	17,500.00			17,500.00	100%		
11	Resilient Flooring	11,400.00	11,400.00			11,400.00	100%		
12	Painting	7,500.00	7,500.00			7,500.00	100%		
13	Bathroom Partitions & Accessories	5,000.00	5,000.00			5,000.00	100%		
14	Kitchen Casework	4,000.00	3,800.00	200.00		4,000.00	100%		
15	Mechanical, HVAC	53,900.00	51,308.00	2,592.00		53,900.00	100%		
16	Plumbing	33,825.00	32,120.00	1,705.00		33,825.00	100%		
17									
18	Change Order #1	17,692.00		17,692.00		17,692.00	100%		
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
SUBTOTALS PAGE 2		423,692.00	390,410.00	33,282.00		423,692.00	100%		

# Change Order: 1

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**Project:** Thief River Falls Shop      **Contractor:** Schmitz Builders, Inc  
1121 Atlantic Ave      210 3<sup>rd</sup> Street NE  
Thief River Falls, MN 56701      Red Lake Falls, MN 56750

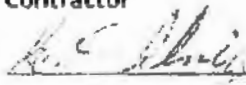
**Owner:** City of Thief River Falls      **Architect:** WSN- Design Build  
PO Box 528, 405 3<sup>rd</sup> St E  
Thief River Falls, MN 56701

**THE CONTRACT IS CHANGED AS FOLLOWS:**

#1 Flooring	\$3,972.00
#2 Cabinet Break Room	\$2,895.00
#3 Enclose Mezzanine	\$5,060.00
#4 Change Door Office #9	\$ 188.00
#5 Change Doors to Hollow Metal(3)	\$ 737.00
#6 Frame roof to accommodate snow load	\$3,436.00
#7 Install Marble counter tops in bathrooms	\$1,404.00
The Original Contract Price	\$406,000.00
Net change by previous Change Orders	0.00
Contract Sum Prior to this Change Order	\$406,000.00
The Contract Sum will be INCREASED by this Change Order	\$ 17,692.00
The New Contract Sum will be	\$423,692.00

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Owner \_\_\_\_\_

Contractor  \_\_\_\_\_

Date \_\_\_\_\_

Date 7/1/10 \_\_\_\_\_

## Change Proposal

**Schmitz Builders, Inc.**  
210 3<sup>rd</sup> St. NE  
Red Lake Falls, MN 56750  
218 253-2474 (2484 Fax)

7/5/2018

Proposal Submitted to:

City of Thief River Falls, MN  
Mark Borseth  
405 3<sup>rd</sup> St East

**Project: Maintenance Building Addition**

We hereby propose to furnish the materials & perform the labor necessary for the completion of:

---

### Change Proposal Request

#1 Change to Mohawk Radiant style 20 mil flooring in lieu of VTC

Materials	\$ 3,454.00
P/OH & Bonds	\$ 518.00
Total Add to Base Bid	\$ 3,972.00

#2 Add 6 Lin Ft of Cabinets in Break Room. Includes Uppers, Base and counter top  
And 12' of additional counter top and micro wave shelving.

Labor	\$ 250.00
Materials	\$ 2,300.00
P/OH & Bonds	\$ 345.00
Total Add to Base Bid	\$ 2,895.00

# 3 Enclose North 20' of Mezzanine area with 2x6 wall and a pair of 3'-0" doors.

Labor	\$ 1,850.00
Materials	\$ 3,210.00
Total Add to Base Bid	\$ 5,060.00

# 4 Switch Door swing in Office Room # 9

Martials	\$ 188.00
Total Add to Base Bid	\$ 188.00

# 5 Change Wood Doors in Shop Area to Hollow Metal (3 Total)

<u>Materials</u>	\$ 737.00
Total Add to Base Bid	\$ 737.00

# 6 Frame new Roof over existing Roof to accommodate for snow load

Labor	\$ 2,500.00
<u>Materials</u>	\$ 936.00
Total Add to Base Bid	\$ 3,436.00

# 7 Install 2- 72"x 22" Double Bowl Marble Counter tops in bathrooms  
In lieu of 4 Wall Hung Sinks

<u>Materials</u>	\$ 1,404.00
Total Add to Base Bid	\$ 1,404.00

**Total Amount for Change Order No. 1 = \$17,692.00**

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings & specifications submitted for above work and completed in a suitable workmanlike manner.

**Submitted by: Kent Schmitz, President**



# CERTIFICATE OF FINAL ACCEPTANCE

CONTRACT NUMBER: 1502017.01 CONTRACTOR: SCHMITZ BUILDERS, INC  
210 3<sup>RD</sup> STREET NE  
RED LAKE FALLS, MN 56750

DATE CERTIFIED: 7-11-18  
PAYMENT NUMBER: #7

THE UNDERSIGNED CONTRACTOR DOES HEREBY CERTIFY THAT HE HAS PERFORMED AND COMPLETED ALL THE WORK DESCRIBED HEREIN IN ACCORDANCE WITH AND PURSUANT TO THE TERMS OF HIS CONTRACT, AND DOES HEREBY ACCEPT THIS FINAL VOUCHER AS BEING CORRECT, FULL AND COMPLETE AND DOES MAKE CLAIM FOR FINAL PAYMENT ON THIS CONTRACT IN ACCORDANCE WITH THE FINAL VOUCHER.

Schmitz Builders, Inc.  
CONTRACTOR: Kathleen Schmitz, V. Pres DATE: 7-11-18

BY: Kathleen Schmitz  
AND Kent Schmitz - President

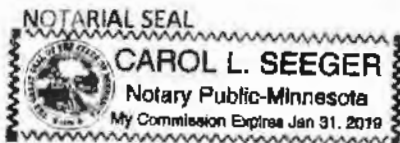
STATE OF MINNESOTA  
COUNTY OF Red Lake

### INDIVIDUAL ACKNOWLEDGEMENT

ON THIS 11<sup>TH</sup> DAY OF July, 2018, BEFORE ME PERSONALLY APPEARED Kathleen & Kent TO ME KNOWN TO BE THE PERSON WHO EXECUTED THE FOREGOING ACCEPTANCE AND ACKNOWLEDGED THAT They EXECUTED THE SAME AS Their FREE ACT AND DEED.

### CORPORATE ACKNOWLEDGEMENT

Kathleen Schmitz AND Kent Schmitz TO ME PERSONALLY KNOWN, WHO, BEING EACH BY ME DULY SWORN, EACH DID SAY THAT THEY ARE RESPECTIVELY THE V. President AND President OF Schmitz Builders, Inc. CORPORATION NAMED IN THE FOREGOING INSTRUMENT, AND THAT THE SEAL AFFIXED TO SAID INSTRUMENT IS THE CORPORATE SEAL OF SAID CORPORATION AND THE SAID INSTRUMENTS WAS SIGNED AND SEALED IN BEHALF OF SAID CORPORATION AND BY AUTHORITY OF ITS President, AND SAID V. President AND They ACKNOWLEDGE SAID INSTRUMENT TO BE THE FREE ACT AND DEED OF SAID CORPORATION.



SIGNATURE: Carol L. Seeger  
MY COMMISSION EXPIRES 1-31-2019



**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#7.05

**RESOLUTION NO. : APPROVAL OF CHANGE ORDER NO. 1 AND FINAL PAYMENT  
WITH SCHMITZ BUILDERS INC. FOR THE PUBLIC WORKS DEPARTMENT  
MAINTENANCE FACILITY**

Presented as part of the Consent Agenda, Councilmember \_\_\_\_\_ introduced Resolution No., being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, the City of Thief River Falls recently sold the Electric Department building on Barzen Avenue to facilitate a major expansion of Digi-Key Electronics. This building also housed the Park Department, which now needs a facility to function. The city council established a Public Works Department that consolidated Community Services, Street/Sanitation and Park into one department; and

WHEREAS, throughout the building process several items came up for consideration as code compliance requirements or improvements requested by the city. These items were discussed and approved with the committee as they came up, to be included in one change order at the end of the project for final approval, along with approval of final payment. The contract award was for \$406,000.00. Change Order No.1 is for \$17,692.00. The final payment amount is \$423,692.00.

THEREFORE, BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve Change Order No. 1 with Schmitz Builders, Inc. for the Public Works Department Maintenance Facility construction in the amount of \$17,692.00 and approve Final Pay Request No. 7, which includes Change Order No. 1, in the amount of \$423,692.00.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#7.06

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

**DATE:** July 17, 2018

**SUBJECT:** 2019 HRA Levy Legislation

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Public Works Committee recommendation:

Motion to: Approve a resolution supporting legislative action to extend the current HRA levy through 2024.

*A resolution of support was provided by the city council for inclusion in the 2018 request that was part of a larger bill that was vetoed by the Governor.*

**BACKGROUND:** The HRA is a public non-profit entity serving the counties of Kittson, Polk, Marshall, Pennington, Roseau and Red Lake in Northwestern Minnesota. Their mission includes creation and operation of housing programs, along with community and economic development. In addition, they have contracted with various cities and counties to manage programs, such as the Small Cities Housing Redevelopment Program for the City of Thief River Falls.

**KEY ISSUES:** The HRA has had the ability to levy for funds to carry out their mission and leverage several outside funding sources. This ability was established in 2008 for five years and extended five more years in 2013. This legislation was part of a larger bill in 2018 that was vetoed by the Governor. In order to continue the state legislature will need to approve another five year extension in 2019. The HRA is asking the cities and counties they serve to approve resolutions of support as they approach the legislature for the proposed five year extension.

**FINANCIAL CONSIDERATIONS:** The HRA needs the levy extension to function effectively. There is no cost to the city for this resolution of support.

**LEGAL CONSIDERATION:** None

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director

Encl: (1)



**Main Office:**  
205 Garfield Ave.  
P.O. Box 128  
Mentor, MN 56736  
**Phone:** 218-637-2431  
**Fax:** 218-637-2433

**Satellite Office:**  
1706 River Road NW - Office  
East Grand Forks, MN 56721  
**Phone:** 218-773-2371  
**Fax:** 218-773-9331

---

July 3, 2018

Mark Borseth  
Community Services Director  
405 Third Street East  
PO Box 528  
Thief River Falls, MN 56701-0528

Re: 2019 HRA levy legislation

Dear Mark,

The HRA has had an HRA tax levy since 2008 using the funding to leverage additional dollars from various resources. As you know funders look for investments from other sources to show support and the need of a proposed housing or community development application.

Legislators supported an extension of the current HRA levy in the 2018 legislative session. The HRA levy legislation was part of a larger bill that Governor vetoed so we are asking that you update your letter of support and return to the HRA in the envelope provided by August 15<sup>th</sup> if possible. We discussed the HRA levy legislation with the area legislators and they will again be willing to sponsor the 2019 HRA levy legislation and asked that we update the letters of support.

The HRA appreciates your support and are thankful we've been able to promote community and economic development in our region for the past 30+ years. We look forward to continuing in that role in the future. The HRA levy is a vital part of accomplishing that goal.

I've attached a copy of your 2017 letter for your review. If you have any questions feel free to contact me at 218-289-1014 or by email [lee@nwmnhra.org](mailto:lee@nwmnhra.org).

Thanks Mark.

Sincerely,

Lee Meier  
Executive Director

**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#7.06

**RESOLUTION NO. : APPROVAL OF SUPPORTING ACTION TO EXTEND THE  
CURRENT HRA LEVY LEGISLATION**

Presented as part of the Consent Agenda, Councilmember \_\_\_\_\_ introduced Resolution No., being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, the HRA is a public non-profit entity serving the counties of Kittson, Polk, Marshall, Pennington, Roseau and Red Lake in Northwestern Minnesota. Their mission includes creation and operation of housing programs, along with community and economic development. In addition, they have contracted with various cities and counties to manage programs, such as the Small Cities Housing Redevelopment Program for the City of Thief River Falls; and

WHEREAS, the HRA has had the ability to levy for funds to carry out their mission and leverage several outside funding sources. This ability was established in 2008 for five years and extended five more years in 2013. This legislation was part of a larger bill in 2018 that was vetoed by the Governor. In order to continue the state legislature will need to approve another five year extension in 2019. The HRA is asking the cities and counties they serve to approve resolutions of support as they approach the legislature for the proposed five year extension.

THEREFORE, BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve a resolution supporting legislative action to extend the current HRA levy through 2024.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#8.01

PHONE: 218-681-8506

FAX: 218-681-8507

email: mborseth@citytrf.net

www.citytrf.net

## Request for Council Action

**DATE:** July 17, 2018

**SUBJECT:** Red Lake River Corridor Grant Application

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Public Works Committee recommendation:

**Motion to:** Approve submitting a Grant application to the Red Lake River Corridor Joint Powers Board for the Oakland Park Multi-Use Trail and Bill LaFave Park Splash Pad.

**BACKGROUND:** Oakland Park was acquired from Pennington County in 2008 as an established park. The City of Thief River Falls has been responsible for the maintenance of the park since 1980. This park of approximately 10 acres borders the Red Lake River on three sides. The park amenities include volleyball, picnic shelters, playground equipment, bathroom facilities, paved parking, kayaking, canoeing, fishing, greenspace and trails. This park is open to the public and often serves as a location for weddings, graduations, birthdays and family reunions. There is a paved trail around the perimeter of the park along the river that has deteriorated to the point that it is non-existent in most locations. The estimated cost to reconstruct this ½ mile long trail is \$135,000.

The community has been reviewing construction of a splash pad for consideration since 2016 as an amenity in one of our city parks. Considerable public discussion has occurred regarding the cost and location of a splash pad. The cost of siting a 2,000 square foot (approximate) splash pad including storm water management, water service, bathroom renovations, additional sidewalk, and turf establishment at Bill LaFave Park has been estimated at \$297,000.

**KEY ISSUES:** The Oakland Park Trail has been a key component of the city's trail plan for several years. Recent striped bike lanes have connected this park to the city's trail system and would be a great addition to the community. These trails have been utilized and praised by the community as a recreational amenity that they want to see more of. Private fund raising efforts have taken place with support from the city council for a splash pad. These efforts have recently had an infusion of new energy. The city submitted a DNR Outdoor Recreation Grant in 2017, but was not successful. Both of these projects are eligible for Red Lake River Corridor grant funding. The application for these projects is due at the end of July, 2018.

**FINANCIAL CONSIDERATIONS:** The trail project cost is \$135,000 with a 75% grant request of \$101,000 and a local share of \$34,000. The splash pad project cost is \$297,000 with a 75% grant request of \$222,750 and a local share of \$74,250. The local share would be from private donations.

**LEGAL CONSIDERATION:** None.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director.

**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#8.01

**RESOLUTION NO. : APPROVAL TO SUBMIT GRANT APPLICATION TO THE  
RED LAKE RIVER CORRIDOR JOINT POWERS BOARD FOR THE OAKLAND  
PARK MULTI-USE TRAIL AND BILL LAFAVE PARK SPLASH PAD**

A Request for Council Action was reviewed. Following discussion, Councilmember \_\_\_\_\_ introduced Resolution No. , being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, the Oakland Park Trail has been a key component of the city’s trail plan for several years. Recent striped bike lanes have connected this park to the city’s trail system and would be a great addition to the community. These trails have been utilized and praised by the community as a recreational amenity that they want to see more of. Private fund raising efforts have taken place with support from the city council for a splash pad. These efforts have recently had an infusion of new energy. The city submitted a DNR Outdoor Recreation Grant in 2017, but was not successful. Both of these projects are eligible for Red Lake River Corridor grant funding. The application for these projects is due at the end of July, 2018.

THEREFORE, BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve submitting a Grant application to the Red Lake River Corridor Joint Powers Board for the Oakland Park Multi-Use Trail and Bill LaFave Park Splash Pad.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_Holmer\_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#8.02

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

---

**DATE:** July 17, 2018

**SUBJECT:** Ordinance Amendment – Solar Energy Systems

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Planning Commission recommendation:

**Motion to:** Call for First Reading to consider approval of Ordinance No. xxx to approve amending 152.056 (C) (4) as follows:

The proposed amendment removes the 5' setback requirement from roof all edges and states that they must comply with the Minnesota State Building Code and adds a requirement for 5' pathways when there are solar panels on opposing roof surfaces.

**BACKGROUND:** In 2016 the city established a solar energy systems ordinance to establish land use regulations for these systems. A developer was proposing solar energy homes at that time. Their proposed systems were used a partial basis for the standard. The ordinance currently requires a 5' clearance around all roof edges for roof-mounted systems.

**KEY ISSUES:** The developer that worked with the city in 2016 did not construct any solar homes. Another resident of the city is now proposing to install a roof-mounted system on an existing home. The current ordinance with the 5' buffer on all roof edges does not work well for this application. They have requested the planning commission review the existing requirements to consider an amendment that would for their situation as well as others that may come up.

**FINANCIAL CONSIDERATIONS:** None.

**LEGAL CONSIDERATION:** An ordinance amendment typically receives two readings.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director.

Encl: (1)



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#8.03

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

---

**DATE:** July 17, 2018

**SUBJECT:** MIF Agreement Amendment Hearing – Arctic Cat Expansion

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Public Works Committee recommendation:

**Motion to:** Approve calling for a hearing on August 21, 2018 at 5:30 P.M. to consider an extension to Minnesota Investment Fund Grant Agreement #CDAP-15-0013-H-FY16 with Arctic Cat from August 1, 2018 until August 1, 2019 to allow additional time to meet the new jobs requirement.

**BACKGROUND:** The City of Thief River Falls applied to the Minnesota Department of Employment and Economic Development (DEED) and was awarded Grant #CDAP-15-0013-H-FY16 in the amount of \$850,000 to assist Arctic Cat in their plant expansion. This expansion included a building addition and new powder coat paint system.

**KEY ISSUES:** The grant included a requirement for 39 new full time employees in Thief River Falls in addition to the 985 existing positions at the time of application for a total of 1,024 full time employees by August 1, 2018. Arctic Cat has gone through significant changes with the acquisition by Textron in 2017, which included moving employees around their three locations in Minnesota. They are currently trying to hire approximately 100 new employees in Thief River Falls through an employment agency. After two months of employment they transfer to being qualifying employees of Arctic Cat. They are confident that they will be able to meet the jobs requirement prior to the extended deadline of August 1, 2019.

**FINANCIAL CONSIDERATIONS:** Arctic Cat is subject to repay a portion of the grant, prorated per job, if the requirements are not met.

**LEGAL CONSIDERATION:** An extension to the grant agreement requires a public hearing.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director

Encl. (1)



## Notice of Public Hearing

Notice is hereby given that on August 21, 2018 at 5:30 P.M. at City Hall, 405 Third Street East, Thief River Falls, Minnesota that the City of Thief River Falls will hold a public hearing concerning an extension to the completion date to Grant #CDAP-15-0013-H-FY16 with the Minnesota Department of Employment and Economic Development for a grant with Arctic Cat, Inc. under the Minnesota Investment Fund (MIF) program.

The City of Thief River Falls is considering an extension to the completion date from August 1, 2018 to August 1, 2019 to allow additional time to complete the jobs requirement.

All interested parties are invited to attend the public hearing at which time you will be given the opportunity to express comments on the project.

Written testimony will also be accepted at the public hearing. Written comments must be received by August 20, 2018 at the office of the City Administrator, 405 Third Street East, Thief River Falls, Minnesota 56701. Specific questions can be directed to Rodney Otterness at 218-681-2943.

The City of Thief River Falls makes reasonable accommodation for any known disability and to meet the needs of non-English speaking residents that may interfere with a person's ability to participate in this public hearing. Persons needing an accommodation must notify Rodney Otterness at 218-681-2943 no later than August 20, 2018 to allow adequate time to make needed arrangements.

**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#8.03

**RESOLUTION NO. : APPROVAL TO CALL FOR HEARING TO CONSIDER AN  
EXTENSION TO MIF GRANT AGREEMENT WITH ARCTIC CAT**

A Request for Council Action was reviewed. Following discussion, Councilmember \_\_\_\_\_ introduced Resolution No. \_\_\_\_\_, being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, the City of Thief River Falls applied to the Minnesota Department of Employment and Economic Development (DEED) and was awarded Grant #CDAP-15-0013-H-FY16 in the amount of \$850,000 to assist Arctic Cat in their plant expansion. This expansion included a building addition and new powder coat paint system; and

WHEREAS, the grant included a requirement for 39 new full time employees in Thief River Falls in addition to the 985 existing positions at the time of application for a total of 1,024 full time employees by August 1, 2018. Arctic Cat has gone through significant changes with the acquisition by Textron in 2017, which included moving employees around their three locations in Minnesota. They are currently trying to hire approximately 100 new employees in Thief River Falls through an employment agency. After two months of employment they transfer to being qualifying employees of Arctic Cat. They are confident that they will be able to meet the jobs requirement prior to the extended deadline of August 1, 2019.

BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve calling for a hearing on August 21, 2018 at 5:30 P.M. to consider an extension to Minnesota Investment Fund Grant Agreement #CDAP-15-0013-H-FY16 with Arctic Cat from August 1, 2018 until August 1, 2019 to allow additional time to meet the new jobs requirement.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#8.04

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

---

**DATE:** July 17, 2018

**SUBJECT:** TRF Investments (Barnick Property) – Variance Request

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Planning Commission recommendation:

Motion to: Approve a variance for Barnick property, legally described in the attached Hearing Notice, to receive full credit for each garage stall parking space. This approval is contingent upon their leases stating that garages are to be used for automobile parking and not primarily for storage.

**BACKGROUND:** TRF Investments has secured the former Barnick property to the south of Walmart to construct four 45-unit market rate apartment buildings. The City of Thief River Falls continues to recognize the need for market rate workforce housing. This need is reinforced by the strong local economy and the current expansion of Digi-Key that will add a minimum of 100 new jobs each of the next ten years.

**KEY ISSUES:** The proposed apartment buildings site plan requires the developer to have two parking stalls for each unit, with a garage receiving ½-credit for each stall. The developer is proposing a two car garage for each unit. If they receive full credit for each garage stall they exceed the parking requirement by 92 parking spaces. They are short by 178 parking spaces if they receive ½-credit for each garage stall. The developer could change to one car garages or eliminate garages and meet the requirement, but feel that would be a much less desirable situation and is not consistent with their business model.

**FINANCIAL CONSIDERATIONS:** Costs associated with the variance request are paid by the developer.

**LEGAL CONSIDERATION:** A Public Hearing was held on July 10<sup>th</sup> at the Planning Commission Meeting.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director

Encl: (3)

NOTICE OF HEARING  
PLANNING COMMISSION  
CITY OF THIEF RIVER FALLS

Notice is hereby given pursuant to Chapter 152 of the Thief River Falls ("City") City Code that TRF Investments, 4265 45<sup>th</sup> Street South, Fargo, ND 58104, has applied for a variance to allow one garage stall to equal one parking stall in determining the number of off street parking spaces required for multi-family dwellings. The real property is legally described as follows:

A parcel of land which is part of Government Lots 9, 10, 11, and 12 of Section Thirty-five (35), Township One Hundred Fifty-four (154) North, Range Forty-three (43) West of the Fifth Principal Meridian, bounded as follows: Beginning at a point on the North line of Greenwood Street extended which point lies 744.8 feet Westerly of the Southwest corner of Lot 1, Block 4, Nelson's First Addition to Thief River Falls; thence from said point of beginning North 24 degrees, 54 minutes 49 seconds East a distance of 220 feet; thence North 41 degrees 46 minutes 11 seconds West a distance of 435.75 feet; thence North 48 degrees 13 minutes 49 seconds East a distance of 361.4 feet more or less to the Southwesterly line of Nelson Drive, thence Northwesterly along said Southwesterly line a distance of 1693.9 feet to an angle point in said Nelson Drive; thence South 56 degrees 14 minutes 00 seconds West along the Southeasterly line of Nelson Drive a distance of 715 feet; thence South 41 degrees 37 minutes 55 seconds East a distance of 490 feet more or less to the Northwesterly line of Barnick's First Addition; thence North 48 degrees 22 minutes 05 seconds East a distance of 200 feet along said Northwesterly line; thence South 41 degrees 37 minutes 55 seconds East along the Northeasterly line of Barnick's First Addition a distance of 996.647 feet; thence North 48 degrees 22 minutes 05 seconds East a distance of 100 feet; thence South 41 degrees 37 minutes 55 seconds East a distance of 591.118 feet to the South line of said Section 35; thence South 86 degrees 31 minutes 55 seconds East along said South line a distance of 300.233 feet; thence North 03 degrees 28 minutes 05 seconds East a distance of 56 feet to the point of beginning; containing 36.2 acres more or less;

LESS THE FOLLOWING DESCRIBED SIX TRACTS OF LAND:

The Southwesterly 200 feet of Lot Six (6), Block One (1), Barnick's First Addition;

and

The Northeasterly 200 feet of the Southwesterly 240 feet of the Southeasterly 10 feet of Lot Five (5) of Block One (1) of Barnick's First Addition to the City of Thief River

Falls, Minnesota, said distances being measured parallel and perpendicular to the line common to Lots 5 and 6 of said Block One (1);

and

Lots Seven (7), Eight (8), Nine (9), Ten (10) in Block One (1), Barnick's First Addition;

and

Lot Eleven (11), Block One (1), Barnick's First Addition to the City of Thief River Falls, Pennington County, Minnesota, plus a parcel described as:

That part of Lot Nine (9), Section Thirty-five (35), Township One Hundred Fifty-four (154) North, Range Forty-three (43) West, bounded as follows: Beginning at a point on the North line of Greenwood Street which is also the Easterly most corner of Lot Eleven (11), Block One (1), of Barnick's First Addition to the City of Thief River Falls; thence Northwesterly along the Northeasterly line of said Lot Eleven (11) to the North corner of said Lot Eleven (11), thence Northeasterly along a line perpendicular to said line, a distance of 100 feet; thence southeasterly along a line parallel with the northeasterly line of said Lot 11 to an intersection with the North line of Greenwood Street extended; thence West along said North line to the point of beginning; containing one acre more or less.

Subject to and together with a non-exclusive driveway and ingress and egress easement over a strip of land 25 feet in width, extending from an extension northeasterly of the northwesterly line of said Lot Eleven (11) and running in a southeasterly direction to Greenwood Street extended; the southwesterly line of which is parallel with and 87.5 feet northeasterly from the northeasterly line of said Lot 11, and the northeasterly line of which is parallel with and 112.5 feet northeasterly from the northeasterly line of said Lot Eleven (11), including the right to pave and maintain said easements.

Also subject to an easement for construction and maintenance of underground water and sewer lines over that portion of the tract of land to be conveyed hereby described as follows:

- 1) The strip of land 12.5 feet in width above described, which has been made subject to the above-referred to easement for driveway, ingress and egress.
- 2) The strip of land 12.5 feet in width along the northwesterly side of said Lot Eleven (11) and of said northwesterly line of said Lot Eleven (11) extended

in a northeasterly direction, and the southeasterly line of which is parallel to said northwesterly line of said Lot Eleven (11) a distance of 12.5 feet (measured perpendicularly) southeasterly thereof, extended in a northeasterly direction, to the northeasterly line of the tract to be conveyed hereby as above described.

and

Barnick's Second Addition to the City of Thief River Falls, except for Lots Two (2) and Three (3), Block One (1), Barnick's Second Addition to the City of Thief River Falls.

and

Barnick's 3<sup>rd</sup> Addition, Thief River Falls, Pennington County, Minnesota.

Notice is further given that the Planning Commission will conduct a Hearing on the Variance Request at 5:00 P.M. on Tuesday, July 10, 2018, in the City Council Chambers, City Hall, 405 Third Street East, Thief River Falls, MN 56701. All persons wishing to comment on the Variance Request will have the option to be heard at this time. Persons who wish to submit written comments prior to the Hearing or who have questions should address them to the Office of the Public Works Director, City Hall, P. O. Box 528, Thief River Falls, MN 56701, or telephone 218-681-8506.

If you have a disability and need an accommodation in order to attend this Hearing; please contact the undersigned as soon as possible or at least 3 working days in advance of the Hearing at the above telephone number.

Dated this 22th day of June, 2018

CITY OF THIEF RIVER FALLS

/s/ Mark Borseth  
Mark Borseth  
Public Works Director  
& Zoning Administrator

## CHECKLIST FOR VARIANCE REQUESTS

1. **Applicant (Name/Address/Tel.):** Paces Lodging Corporation, 4265 45<sup>th</sup> Street South – Suite 200, Fargo, ND 58104. Nate Vollmuth, 701-499-3895.
2. **General location of the request:** Barnick Road/Nelson Drive – Barnick Property
3. **Legal description of the location:** Attached as Exhibit A
4. **This request is for a Variance to City Code, Sec. 152.069 (D), Multi-Family parking requirements**
5. **Adjacent land use:** The existing property is vacant. The location borders an apartment site and single family housing to the south, Walmart to the north, Greenwood Crossing to the west, and single family housing to the east.
6. **Adjacent zoning districts:** The location borders Multi-Family Residential (R-4) and General Residential District (R-2) to the south, General Business District (C-2) to the north and west, and Suburban Residential District (R-1) to the east.
7. **Is this a personal hardship?** Yes, the ½ parking stall credit for a garage would require the developer to eliminate garages to meet the parking requirement.
8. **Is this a unique situation?** Yes. This is the first project where a developer is proposing a two car garage for every unit.
9. **Is this a self-created problem?** Yes
10. **Will the Variance create undo hardship on:**
  - A. **The neighborhood?** No.
  - B. **The Comprehensive Plan?** No.
  - C. **The Zoning Ordinance?** No.
11. **Are Wetlands or Shorelands impacted by this request?** No.
12. **Is this a non-conforming use?** No.
13. **Is this a "use" Variance?** No.
14. **Without the Variance, is there a viable economic return?** Not as desirable
15. **Is there a site plan?** Yes – attached.

## **COMMENTS**

See Notice of Hearing, Location Map, and Site Plan.

## **CRITERIA FOR GRANTING VARIANCES**

“Practical difficulties” is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

### **1. Reasonableness**

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

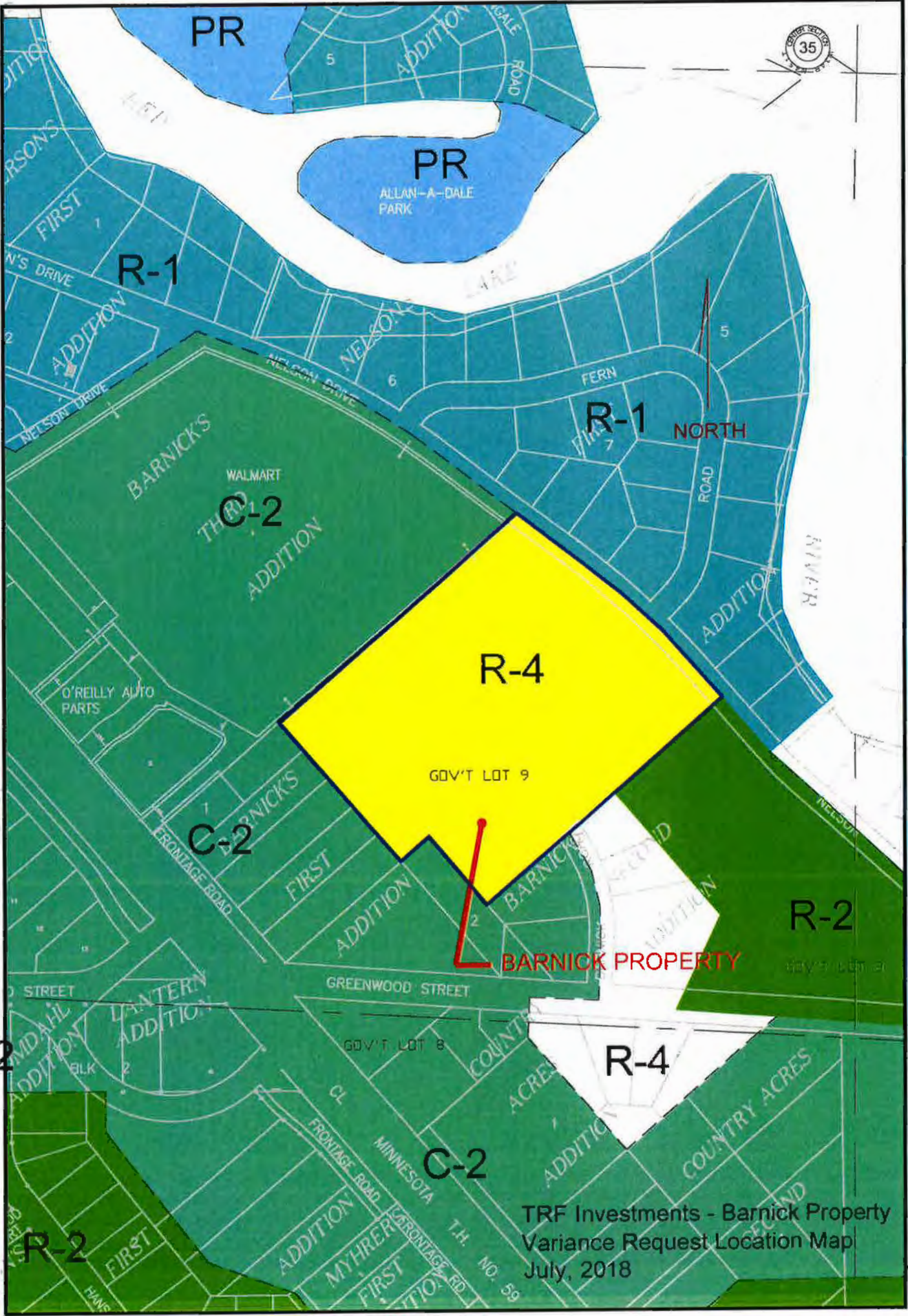
### **2. Uniqueness**

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

### **3. Essential character**

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.





TRF Investments - Barnick Property  
 Variance Request Location Map  
 July, 2018



**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#8.04

**RESOLUTION NO. : APPROVAL OF TRF INVESTMENTS (BARNICK PROPERTY) VARIANCE REQUEST**

A Request for Council Action was reviewed. Following discussion, Councilmember \_\_\_\_\_ introduced Resolution No., being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, TRF Investments has secured the former Barnick property to the south of Walmart to construct four 45-unit market rate apartment buildings. The City of Thief River Falls continues to recognize the need for market rate workforce housing. This need is reinforced by the strong local economy and the current expansion of Digi-Key that will add a minimum of 100 new jobs each of the next ten years; and

WHEREAS, the proposed apartment buildings site plan requires the developer to have two parking stalls for each unit, with a garage receiving ½-credit for each stall. The developer is proposing a two car garage for each unit. If they receive full credit for each garage stall they exceed the parking requirement by 92 parking spaces. They are short by 178 parking spaces if they receive ½-credit for each garage stall. The developer could change to one car garages or eliminate garages and meet the requirement, but feel that would be a much less desirable situation and is not consistent with their business model.

THEREFOE, BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve a variance for Barnick property, legally described in the attached Hearing Notice, to receive full credit for each garage stall parking space. This approval is contingent upon their leases stating that garages are to be used for automobile parking and not primarily for storage.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#8.05

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

---

**DATE:** July 19, 2018

**SUBJECT:** Verizon Wireless – Conditional Use Permit

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Planning Commission recommendation:

Motion to: Approve a Conditional Use Permit for Verizon Wireless to construct a tower on property owned by Nordhagen Holdings, LLC, 1345 Highway 32 South, Thief River Falls, Minnesota. It is legally described in the attached Notice of Hearing. This approval is contingent upon the Thief River Falls Regional Airport and Sanford Health having no objections.

**BACKGROUND:** Verizon Wireless has secured a lease with Nordhagen Holdings, LLC at 1345 Highway 32 South, for the construction of a 145' high monopole telecommunications tower.

**KEY ISSUES:** Towers are only allowed in industrial zoning districts and only with a conditional use permit. Setback distances are defined as an accessory use and require an engineered fall distance. This tower also requires airport review for zoning determination.

**FINANCIAL CONSIDERATIONS:** Costs associated with the Conditional Use Permit are paid by the developer.

**LEGAL CONSIDERATION:** A Public Hearing was held by the Planning Commission to review this request.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director

Encl: (3)

NOTICE OF HEARING  
PLANNING COMMISSION  
CITY OF THIEF RIVER FALLS

Notice is hereby given pursuant to Chapter 150 of the Thief River Falls ("City") City Code that Verizon Wireless, 10801 Bush Lake Road, Bloomington, MN 55438, has applied for a conditional use permit to allow the construction of a telecommunications tower in the General Industrial District (I-2) at 1345 Highway 32 South, Thief River Falls, MN 56701. The real property is legally described as follows:

A tract of land in the Southwest Quarter (SW  $\frac{1}{4}$ ) of Section Four (4), Township One Hundred Fifty-three (153) North of Range Forty-three (43) West of the Fifth Principal Meridian, described as follows:

Commencing at the Northwest corner of the said Southwest Quarter (SW  $\frac{1}{4}$ ); thence North 87 degrees 58 minutes 38 seconds East, assumed bearing, along the North line of the said Southwest Quarter (SW  $\frac{1}{4}$ ), a distance of 224.63 feet to the point of beginning; thence continuing North 87 degrees 58 minutes 38 seconds East, along said North line, a distance of 401.26 feet to the westerly 50.00 foot right of way of the Burlington Northern Railroad; thence South 16 degrees 57 minutes 52 seconds West, along said right of way, 318.35 feet; thence southwesterly along said right of way on a tangential curve concave to the southeast, having a chord bearing South 14 degrees 45 minutes 57 seconds West, radius of 5,779.65 feet, and central angle of 4 degrees 23 minutes 50 seconds, a distance of 443.57 feet; thence South 88 degrees 52 minutes 24 seconds West, not tangent to last described curve, 180.93 feet; thence North 1 degree 07 minutes 35 seconds West 722.85 feet to the point of beginning.

Subject to an easement for road purposes over that part of the that part of the Southwest Quarter (SW  $\frac{1}{4}$ ) of Section Four (4), Township One Hundred Fifty-three (153) North, Range Forth-Three (43) West of the Fifth Principal Meridian, said crossroad being 50.00 feet in width, and centerline described as follows:

Commencing at the Northwest corner of the said Southwest Quarter (SW  $\frac{1}{4}$ ); thence South 01 degree 06 minutes 31 seconds East, assumed bearing, along the West line of the said Southwest Quarter (SW  $\frac{1}{4}$ ), a distance of 624.33 feet to the point of beginning of the centerline to be described; thence North 88 degrees 52 minutes 24 seconds East 288.11 feet; thence northeasterly along a tangential curve, concave to the Northwest, having a radius of 125.00 feet and central angel of 32 degrees 50 minutes 48 seconds, a distance of 71.66 feet; thence North 56 degrees 01 minute 37 seconds East 114.12 feet, more or less, to the westerly 50.00 foot Burlington Northern Railroad right of way, and said centerline there terminating.

The sideline of said crossroad shall be lengthened or shortened to terminate at the West line of the said Southeast Quarter (SW ¼) at the point of beginning, and the said railroad right of way at the point of termination.

Notice is further given that the Planning Commission will conduct a Hearing on the Conditional Use Permit Request at 5:00 P.M. on Tuesday, July 10, 2018, in the City Council Chambers, City Hall, 405 Third Street East, Thief River Falls, MN 56701. All persons wishing to comment on the Conditional Use Request will have the option to be heard at this time. Persons who wish to submit written comments prior to the Hearing or who have questions should address them to the Office of the Public Works Director, City Hall, P. O. Box 528, Thief River Falls, MN 56701, or telephone 218-681-8506.

If you have a disability and need an accommodation in order to attend this Hearing; please contact the undersigned as soon as possible or at least 3 working days in advance of the Hearing at the above telephone number.

Dated this 22th day of June, 2018

CITY OF THIEF RIVER FALLS

/s/ Mark Borseth

Mark Borseth  
Public Works Director  
& Zoning Administrator

## CHECKLIST FOR CONDITIONAL USE REQUEST

1. **Applicant (Name/Address/Tel):** Verizon Wireless, 10801 Bush Lake Road, Bloomington, MN 55438. 952-288-8130. Property owner: Nordhagen Holdings LLC.
2. **General location of the request:** 1345 Highway 32 South, Thief River Falls, MN 56701.
3. **Proposed use and/or zoning:** Verizon Wireless is proposing to construct a 154' communication tower.
4. **Dimension of the request:**      **Frontage -** 762'                              **Depth -** 287'
5. **Area of property in request:**      **Sq. Feet -** 206,640                              **Acres -** 4.74
6. **Existing characteristics:**      **Zoning -** General Industrial District (I-2) **Use:** Sanitation/Recycling  
**Conforming -** Yes      **Non-Conforming -** No
7. **Adjacent land use:** The location borders the Arctic Cat test track, Arctic Cat storage to the west, vacant property to the south and the Minnesota Northern Railroad and Highway 32 to the east.
8. **Adjacent zoning districts:** The location borders General Industrial District (I-2) on all sides.
9. **Characteristics of soils:** According to the "Pennington County Soil Survey," soils are predominately Boash Clay Loam. This series consists of poorly drained soils in plane or slightly concave basins on glacial lake plains. Slopes range from 0-2%.
10. **Can the property be adequately serviced by:** **A. Storm and sanitary sewer?** Yes  
**B. Water and electrical?** Yes  
**C. Easement size?** As recorded  
  
**Is the proposed Special Use consistent with the Comprehensive Plan?** Yes, the Comprehensive Plan indicates that the area remain industrial.
11. **Have other pertinent segments of the Comprehensive Plan been considered?** Yes. The property is surrounded by industrial zoned property that is scheduled to remain industrial.
13. **Does the property provide, either now or potentially, enough area for adequate off-street parking?** N/A
  - A. **Will off-street parking be located in the side yard area or the rear yard area?** N/A
  - B. **Will off-street parking be suitably screened from view?** Yes
  - C. **Is there adequate room on the property for loading space(s)?** N/A
14. **If it is a heavy industry, is it readily available to a major thoroughfare and rail lines?** N/A

15. **Should screening be provided along the boundaries of this property?** Currently screened
16. **Are screened storage and trash areas provided?** N/A
17. **Are vehicular accessways adequate?** Yes
18. **Will the use impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district?** No. This use is consistent with current land use and zoning.
19. **Can it be found that there is a public necessity for the Special Use?** Yes
20. **What is the general character of the neighborhood?** The area is primarily industrial.
21. **Are Wetlands or Shore land impacted by this request?** No

**COMMENTS:**

The proposed use of a tower is allowable in the industrial zoning districts with a conditional use permit.

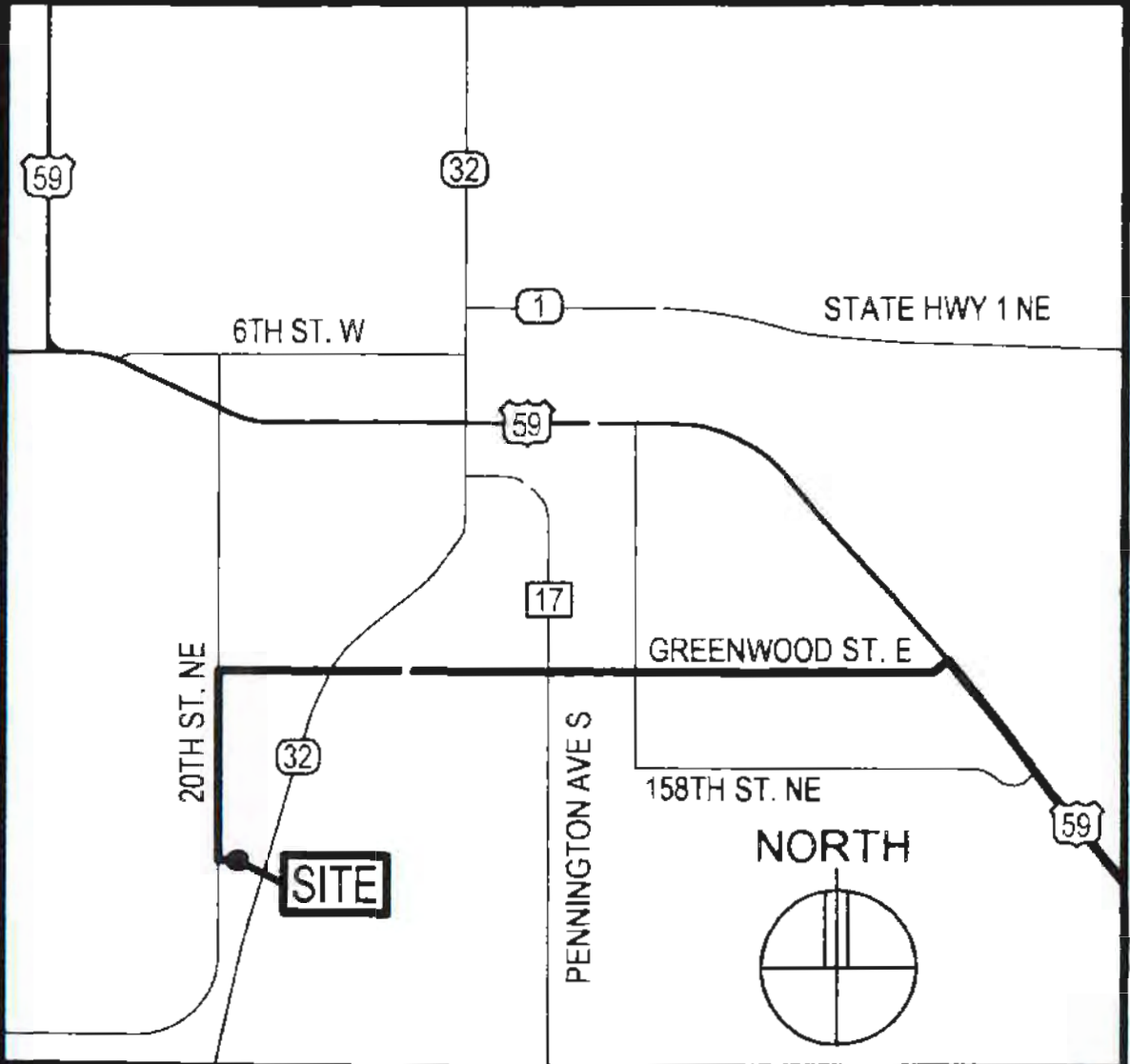
See RCA, Application, Notice of Hearing, Checklist, Plan Set, Airport Response, City Code and Engineer's Certification.



## **CRITERIA FOR GRANTING CONDITONAL USE PERMITS**

1. The establishment, maintenance, or operation of a conditional use will not be detrimental to or endanger the public health, safety, morals, or general welfare.
2. The conditional use will not create an excessive burden on existing parks, schools, streets, and other public facilities and services which serve or are proposed to serve the area.
3. The conditional use will be sufficiently compatible with or separated by distance or screening from adjacent Agriculture or Residential zoned or used land.
4. The structure and site shall have an appearance that will not have an adverse effect upon adjacent agricultural or residential zoned or used land.
5. The conditional use is related to the overall needs of the City and to existing land use.
6. The conditional use is consistent with the purpose of this Chapter and requirements of the Zoning District.
7. The conditional use is not in conflict with the Comprehensive Plan.
8. Adjacent business will not be adversely affected because of curtailment of customer trade brought on by the intrusion of noise, glare, or general unsightliness.

# VICINITY MAP



**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#8.05

**RESOLUTION NO. : APPROVAL OF VERIZON WIRELESS CONDITIONAL USE PERMIT**

A Request for Council Action was reviewed. Following discussion, Councilmember \_\_\_\_\_ introduced Resolution No., being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, Verizon Wireless has secured a lease with Nordhagen Holdings, LLC at 1345 Highway 32 South, for the construction of a 145’ high monopole telecommunications tower; and

WHEREAS, towers are only allowed in industrial zoning districts and only with a conditional use permit. Setback distances are defined as an accessory use and require an engineered fall distance. This tower also requires airport review for zoning determination.

BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve a Conditional Use Permit for Verizon Wireless to construct a tower on property owned by Nordhagen Holdings, LLC, 1345 Highway 32 South, Thief River Falls, Minnesota. It is legally described in the attached Notice of Hearing. This approval is contingent upon the Thief River Falls Regional Airport and Sanford Health having no objections.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhornie \_\_\_ Aarestad \_\_\_ Narverud

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



# City of Thief River Falls

DIRECTOR OF PUBLIC WORKS

405 Third Street East • PO Box 528  
Thief River Falls MN 56701-0528

#8.06

PHONE: 218-681-8506  
FAX: 218-681-8507  
email: mborseth@citytrf.net  
www.citytrf.net

## Request for Council Action

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**DATE:** July 19, 2018

**SUBJECT:** John Kertz Property – Conditional Use Permit

**RECOMMENDATION:** It is respectfully requested that the Council consider the following Planning Commission recommendation:

Motion to: Approve a Conditional Use Permit for the John Kertz property, legally described as the north 60 feet of Lot 2, Block 2, Narverud's First Addition to The City of Thief River Falls to construct a single family home.

**BACKGROUND:** Mr. Kertz purchased this property that is currently zoned Multi-Family Residential District (R-4) to develop housing. The street, Breezy Drive was urbanized in 2015. His original intent was to construct six attached townhomes.

**KEY ISSUES:** Mr. Kertz has now decided to pursue a conditional use for a portion of his property to construct one single family home on the north 60 feet of his development. A single family home is permitted in this zoning district with a conditional use permit. He intends to construct two twin homes at a later date on the remainder of his property, which is an allowable use in this zoning district.

**FINANCIAL CONSIDERATIONS:** Costs associated with the Conditional Use Permit are paid by the developer.

**LEGAL CONSIDERATION:** A Public Hearing was held by the Planning Commission to review this request.

**DEPARTMENT/RESPONSIBLE PERSON:** Mark Borseth, Public Works Director

Encl: (4)

NOTICE OF HEARING  
PLANNING COMMISSION  
CITY OF THIEF RIVER FALLS

Notice is hereby given pursuant to Chapter 152 of the Thief River Falls ("City") City Code that John Kertz, 325 Maple Avenue North, Thief River Falls, MN 56701, has applied for a conditional use permit to allow the construction of a single family home in a Multi-Family Residential District (R-4). The real property is legally described as follows:

The north 60 feet of Lot 2, Block 2, Narverud's First Addition to the City of Thief River Falls.

Notice is further given that the Planning Commission will conduct a Hearing on the Conditional Use Permit Request at 5:00 P.M. on Tuesday, July 10, 2018, in the City Council Chambers, City Hall, 405 Third Street East, Thief River Falls, MN 56701. All persons wishing to comment on the Conditional Use Request will have the option to be heard at this time. Persons who wish to submit written comments prior to the Hearing or who have questions should address them to the Office of the Public Works Director, City Hall, P. O. Box 528, Thief River Falls, MN 56701, or telephone 218-681-8506.

If you have a disability and need an accommodation in order to attend this Hearing; please contact the undersigned as soon as possible or at least 3 working days in advance of the Hearing at the above telephone number.

Dated this 22th day of June, 2018

CITY OF THIEF RIVER FALLS

/s/ Mark Borseth

Mark Borseth  
Public Works Director  
& Zoning Administrator



- C. Is there adequate room on the property for loading space(s)? N/A
14. If it is a heavy industry, is it readily available to a major thoroughfare and rail lines? N/A
15. Should screening be provided along the boundaries of this property? N/A
16. Are screened storage and trash areas provided? N/A
17. Are vehicular accessways adequate? N/A
18. Will the use impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district? No. The property to the south, west and north is primarily developed.
19. Can it be found that there is a public necessity for the Special Use? Currently Thief River Falls has a housing shortage. This project will be a benefit to address this shortage.
20. What is the general character of the neighborhood? The area is primarily single family residential homes. Mr. Kertz plans to build two twin homes on the remaining property.
21. Are Wetlands or Shore land impacted by this request? The property is in the shoreland. There are no wetlands on the site.

**COMMENTS:**

The proposed use of a single family home is allowable in the Multi-Family Residential District (R-4) with a conditional use permit. Mr. Kertz plans to build two twin homes on the remaining property at a later date, which is a permitted use.

See RCA, Application, Notice of Hearing, Checklist, Zoning Map and Vicinity Map.

## **CRITERIA FOR GRANTING CONDITONAL USE PERMITS**

1. The establishment, maintenance, or operation of a conditional use will not be detrimental to or endanger the public health, safety, morals, or general welfare.
2. The conditional use will not create an excessive burden on existing parks, schools, streets, and other public facilities and services which serve or are proposed to serve the area.
3. The conditional use will be sufficiently compatible with or separated by distance or screening from adjacent Agriculture or Residential zoned or used land.
4. The structure and site shall have an appearance that will not have an adverse effect upon adjacent agricultural or residential zoned or used land.
5. The conditional use is related to the overall needs of the City and to existing land use.
6. The conditional use is consistent with the purpose of this Chapter and requirements of the Zoning District.
7. The conditional use is not in conflict with the Comprehensive Plan.
8. Adjacent business will not be adversely affected because of curtailment of customer trade brought on by the intrusion of noise, glare, or general unsightliness.

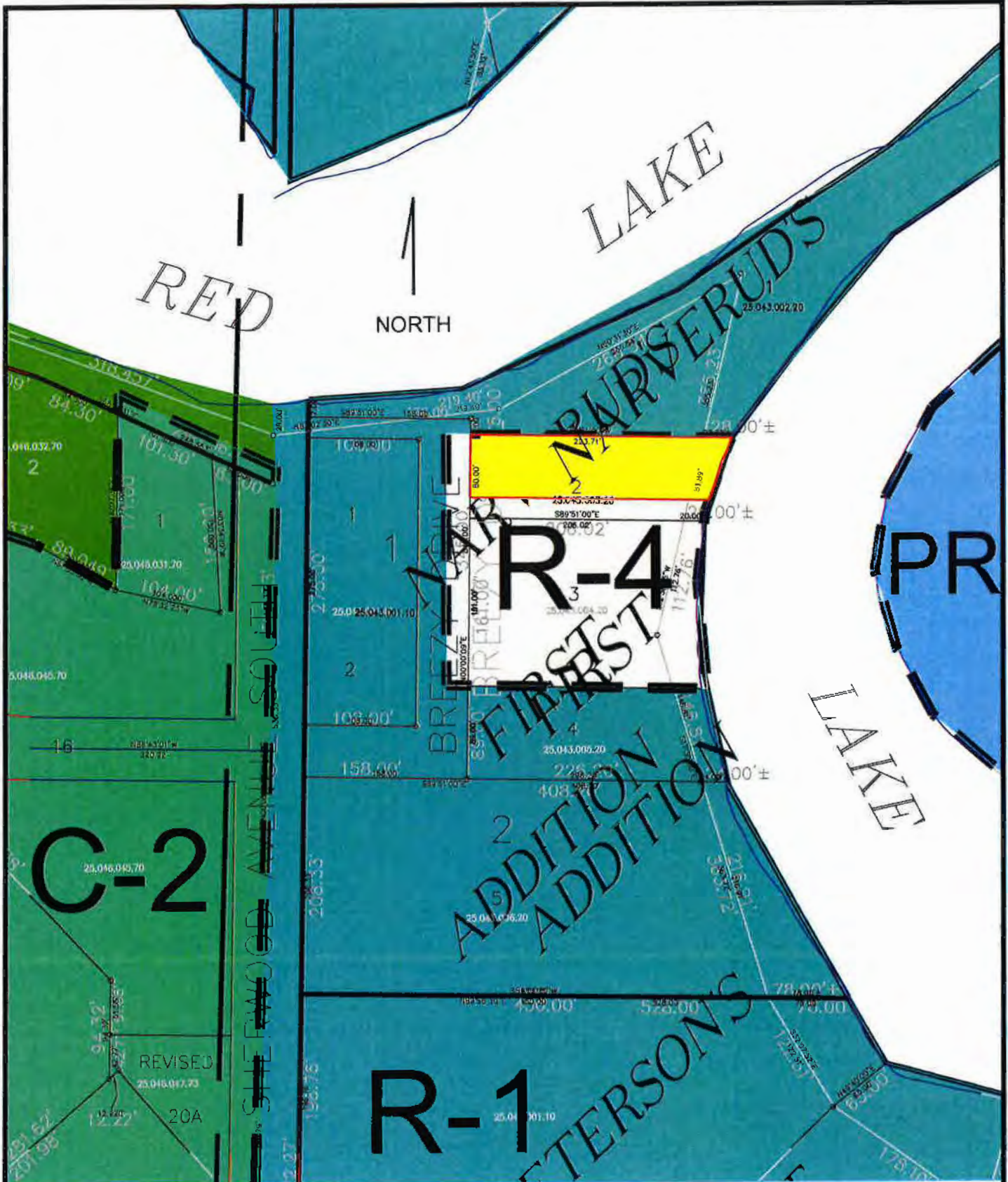




## Conditional Use Permit Sketch

Legal description: The North 60 Feet of Lot 2, Block 2 Narverud's First Addition  
 Request: Single family home in Multi-Family Residential District (R-4)

Dated: June 14, 2018



### Conditional Use Permit Sketch Zoning Map

Legal description: The North 60 Feet of Lot 2, Block 2 Narverud's First Addition  
 Request: Single family home in Multi-Family Residential District (R-4)

**CITY OF THIEF RIVER FALLS**  
**PROPOSED RESOLUTION**

#8.06

**RESOLUTION NO. : APPROVAL OF JOHN KERTZ PROPERTY CONDITIONAL USE PERMIT**

A Request for Council Action was reviewed. Following discussion, Councilmember \_\_\_\_\_ introduced Resolution No. \_\_\_\_\_, being seconded by Councilmember \_\_\_\_\_, that:

WHEREAS, Mr. Kertz purchased this property that is currently zoned Multi-Family Residential District (R-4) to develop housing. The street, Breezy Drive was urbanized in 2015. His original intent was to construct six attached townhomes; and

WHEREAS, Mr. Kertz has now decided to pursue a conditional use for a portion of his property to construct one single family home on the north 60 feet of his development. A single family home is permitted in this zoning district with a conditional use permit. He intends to construct two twin homes at a later date on the remainder of his property, which is an allowable use in this zoning district.

THEREFORE, BE IT RESOLVED, by the City Council, to accept the Public Works Committee recommendation to approve a Conditional Use Permit for the John Kertz property, legally described as the north 60 feet of Lot 2, Block 2, Narverud's First Addition to The City of Thief River Falls to construct a single family home.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# City of Thief River Falls

#8.07

Ralph Engelstad Arena  
525 Brooks Avenue North  
Thief River Falls MN 56701-0528

PHONE: 218-681-2183  
FAX: 218-683-7246  
email: msletten@citytrf.net  
www.citytrf.net

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## Request for Council Action

**DATE:** July 17, 2018

**SUBJECT:** REA Natural Gas Supply Agreement

**RECOMMENDATION:** it is respectfully requested the Council consider the following motion:

**MOTION:** to approve the recommendation of the Administrative Services Committee to authorize execution of contract with Constellation NewEnergy – Gas Division LLC (CNEG) for supply of natural gas to the Ralph Engelstad Arena.

**BACKGROUND:** over the last two year period, the city has purchased \$82,810 in natural gas from Minnesota Energy Resources. Because of the large amount of natural gas used at the arena, the city has the opportunity to purchase natural gas from an alternative supplier, Constellation NewEnergy. Other large natural gas users like Sanford and Arctic Cat purchase gas from Constellation as a cost saving measure.

**LEGAL:** N/A

**FINANCIAL CONSIDERATIONS:** estimated savings equal approximately \$3500 per year.

**DEPARTMENT/RESPONSIBLE PERSON:** Missy Sletten, Arena Manager

**ATTACHMENT:** contract documents

**STRATEGIC PLAN:** the proposed action assists the city goal of developing a sustainable business model for the REA.



9400 Bunsen Parkway  
Suite 100  
Louisville, KY 40220  
Phone: 502-426-4500  
Fax: 502-426-8800  
www.constellation.com

July 9, 2018

City of Thief River Falls  
Attn: Missy Sletten, Recreation Coordinator  
525 BROOKS AVE N  
THIEF RIVER FALLS, MN 56701-1705

**RE: Gas Meter Telemetry Installations (“Telemetry”)**

Dear Ms. Sletten:

Constellation NewEnergy - Gas Division, LLC (“CNEG”) has agreed to pay up to \$1,500 on behalf of City of Thief River Falls (“Customer”) for the installation of the Telemetry and in exchange, Customer agrees to purchase its natural gas from CNEG for at least the next two years beginning November 1, 2018.

To confirm agreement, please have a person with the appropriate authority sign below and return this letter by mail, fax or email to:

Constellation NewEnergy – Gas Division, LLC  
9400 Bunsen Parkway, Suite 100  
Louisville, KY 40220  
Fax: (502) 214-6381  
Email: #CNEGasContracts@constellation.com

If you have any questions, please feel free to contact your sales representative, Cory Koning, at cory.koning@constellation.com.

Yours very truly,

Kirk Stone  
Principal, Commercial Business Enhancement

**READ, ACKNOWLEDGED AND AGREED TO:**

**City of Thief River Falls**

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

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

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

Prepared: MK  
Approved: KS



Agent Verification Agreement

A customer of Minnesota Energy Resources can appoint an agent for the purpose of doing business with Minnesota Energy Resources. The agent can be set up with different levels of authority to act on behalf of the customer. The customer, however, must still sign all written contracts with Minnesota Energy Resources, and any agency relationship created pursuant to this agreement will not allow for signing of written contracts by the agent. The customer shall at all times remain contractually responsible to Minnesota Energy Resources for the actions of its appointed agent.

(Please print or type.)  
Agent Name:

Constellation New Energy Gas Division, LLC

Address: PO Box 6025 De Pere WI 54115  
Street address City State Zip Code  
Phone: (800) 277-5556 Fax: (877) 244-7730

TYPE OF AGENCY (The customer should check all of the following types of agency that apply to the agent named in this agreement.)

- Divert bill to agent
Constraint day notification (notify agent only)
Grant bulletin board / Internet access to agent
Constraint day notification (notify agent and customer)
Other:

Account Number(s): 0507528616-00001 and Meter #NGM401969

TYPE OF SERVICE (Indicate the type of service you will be utilizing after the commencement date)

- Transportation Gas
System Sale

TERM

Commencing: 11 / 01 / 2018 until thirty (30) days after receipt of written notice to Minnesota Energy Resources terminating the agency.

It is the customer's responsibility to notify Minnesota Energy Resources in writing if the term specified here changes.

Customer (company) name: City of Thief River Falls - Ralph Engelstad Arena
Facility address: (print or type) 525 Brooks Ave North, Thief River Falls, MN 56701
Authorized customer signature: Date: / /
Name of person signing: (print or type) Title (print or type)
Name of contact person at company (if different from above): Michael McQuin Gas Operations Group

Address: PO Box 6025 De Pere WI 54115
Street address City State Zip Code
Phone: (800) 277-5556 Fax: (877) 244-7730

Fax this completed agreement to:
Minnesota Energy Resources • Attn: Wade Wiken
Fax: 651-423-3306
If you have questions, call Wade Wiken at 651-322-8930.



## Notice of Intent to Switch Natural Gas Rate Schedules

Beginning November 1st, 2018, please switch the following meters to the rate schedule indicated:

**Please note that this form must be received by Minnesota Energy Resources no later than August 1 each year for rate switches to take effect on or after November 1 of that same year.**

Facility name, address, city and state	Account number	Meter number	Current rate schedule	Requested rate schedule
525 Brooks Ave North Thief River Falls, MN 56701	0507528616-00 001	NGM401969	<input checked="" type="checkbox"/> Firm <input type="checkbox"/> Interruptible <input type="checkbox"/> Transport	<input type="checkbox"/> Firm <input type="checkbox"/> Interruptible <input checked="" type="checkbox"/> Transport
			<input type="checkbox"/> Firm <input type="checkbox"/> Interruptible <input type="checkbox"/> Transport	<input type="checkbox"/> Firm <input type="checkbox"/> Interruptible <input type="checkbox"/> Transport
			<input type="checkbox"/> Firm <input type="checkbox"/> Interruptible <input type="checkbox"/> Transport	<input type="checkbox"/> Firm <input type="checkbox"/> Interruptible <input type="checkbox"/> Transport

We understand that we may need to provide, and pay for, the following:

- an uninterrupted 110v power supply at the metering site, *and/or*
- access to a dedicated telephone line at the metering site for all other rates.

We have selected Constellation Energy as our gas supplier. Our point of contact with this supplier is Cory Koning, who can be reached at ( 218 ) 390 - 2392 and email address: Cory.koning@constellation.com

(Please print or type)

Company name: City of Thief River Falls- Ralph Engelstad Arena

Authorized customer signature: \_\_\_\_\_ Date \_\_\_\_\_

Name and title of person signing: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ Email address: \_\_\_\_\_

Return completed form to:  
**Minnesota Energy Resources • Attn: Wade Wiken**  
**Fax: 651-423-3306**  
 If you have questions, call **Wade Wiken** at 651-322-8930.

## SMARTPORTFOLIO PROGRAM (FULL REQUIREMENTS)

This SmartPortfolio Rider ("Rider") is made part of and is subject to the natural gas agreement entered into on July 9, 2018 (the "Master Natural Gas Agreement"), by and between Constellation NewEnergy – Gas Division, LLC ("CNEG") and City of Thief River Falls ("Customer"). The Master Natural Gas Agreement and this Rider together are referred to as and constitute the "Master Agreement" between the Parties. The purpose of this Rider is to set forth the specific terms and conditions related to the SmartPortfolio Program whereby CNEG will supply natural gas to Customer's facilities ("Facilities") listed below in the Facility Listing. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Natural Gas Agreement. In the event of a conflict between this Rider and the Master Natural Gas Agreement, the terms of this Rider shall govern with respect to the services described herein.

**1. SmartPortfolio Overview.** The SmartPortfolio Program ("SmartPortfolio" or "SmartPortfolio Program") is a complete approach for managing physical natural gas purchases and protecting against price volatility. SmartPortfolio manages spot market gas deliveries and, over time, locks in a fixed price for the elected volumes. The intent of SmartPortfolio is to provide a time diversified physical gas price which utilizes a time-proven, systematic, and algorithmic approach to risk management. The "SmartPortfolio Price" includes the commodity price, basis, transportation, fuel, and CNEG's costs to deliver gas and provide SmartPortfolio Services as described herein. The SmartPortfolio Price does not include any applicable taxes or utility distribution charges.

**2. SmartPortfolio Services.** As part of SmartPortfolio, CNEG will designate an Account Manager to provide the SmartPortfolio Services as described herein. The Account Manager will serve as the Customer's point of contact and manage the relationship between CNEG and the Customer. Customer will be provided a username and password to access CNEG's secured web-based portal. Customer will be able to view online reports identifying volumes for which prices have been fixed through the SmartPortfolio Program over time as well as cumulative purchases since the inception of Customer's participation in the SmartPortfolio Program. Account specific information and reports can be viewed and printed. Examples of account specific reports that may be available include: (a) monthly analysis reports, (b) daily usage histories, and (c) monthly usage and peak day analysis. Market based information can also be viewed and printed from the portal. Examples of market based information may include: (a) Weekly Market Summary, (b) Natural Gas Market Update, (c) Natural Gas Futures Update, and (d) historical NYMEX pricing. Annual energy conferences and periodic webinars will be provided covering the latest information on the energy markets, regulatory and legislative changes, and product and service developments.

**3. Volumetric Participation.** CNEG shall be the exclusive natural gas supplier to the identified Facilities during the term of this Rider. The SmartPortfolio Price will apply to all volumes delivered to Customer by CNEG. Forecasted monthly volumes ("Monthly Volumes") are listed below for each Facility in the Facility Listing.

**4. Purchasing Strategy.** SmartPortfolio manages both commodity and basis, which are two main components of physical gas pricing. Each component will be managed in accordance with the following purchasing strategies:

- a. **Commodity.** SmartPortfolio leverages time to diversify physical gas commodity price risk and will fix a commodity price for volumes up to the amount of the Volatility Protection Percentage selected below based on the number of months remaining in the term and Customer's Monthly Volumes ("SmartPortfolio Commodity Price Risk Management Purchasing Strategy"). For example, if at the beginning of the Initial Term there are twenty (20) months remaining before a specific delivery month, approximately 1/20 (5.0%) of Customer's Monthly Volumes in Volatility Protection for that delivery month will be fixed each month prior to the delivery month.

Customer's SmartPortfolio "Volatility Protection Percentage" is indicated below. The Volatility Protection Percentage is the percentage of commodity volumes purchased pursuant to the SmartPortfolio Commodity Price Risk Management Purchasing Strategy. The higher the percentage, the greater the volatility protection. For example, if Customer chooses 75% Volatility Protection, 75% of the Monthly Volumes will have the price fixed in advance of the month of flow pursuant to the SmartPortfolio Commodity Price Risk Management Purchasing Strategy and the remaining 25% will be priced at then-current market prices during the month of delivery.

0%	25%	50%	75%	Custom %
		X		

- b. **Basis.** SmartPortfolio leverages time diversification principles for physical basis requirements by purchasing for forward flow periods using a modified dollar cost averaging methodology whereby SmartPortfolio purchases forward basis during summer months (April through October) but purchases forward basis for all forward flow months (January through December) for a two (2) year forward window. SmartPortfolio does not purchase forward physical gas basis during winter (November through March). SmartPortfolio further diversifies physical gas basis requirements by locking approximately 50% of Customer's Monthly Volumes and floating 50% to be priced at then-current market price ("SmartPortfolio Basis Price Risk Management Purchasing Strategy"); provided, however, CNEG may modify this methodology as needed due to market liquidity constraints. If applicable, Customer will select a reliability level for its purchases from CNEG and CNEG will aggregate Customer's volumes with other customers CNEG is physically serving ("Reliability Pool").

**5. Term of Obligation.** The initial term of this Rider will commence on November 1, 2018 ("Term Start Date") and shall be for a period of twenty-four (24) months ("Initial Term"). Customer acknowledges that any termination of the Master Natural Gas Agreement shall not be effective while this Rider is in effect, unless due to an Event of Default. Following the Initial Term, this Rider will automatically renew for additional twelve (12) month periods (each a "Renewal Term") with the same program elections (e.g., Volumetric Participation and Volatility Protection) unless either party provides the other with written notice of its intent to terminate twelve (12) months prior to the end of the Initial Term or any Renewal Term. For each Renewal Term, CNEG may change the Monthly Volumes based on Customer's actual usage.

**6. Guarantee Period and Rider Modification.** Customer may request modification of the Volatility Protection or Initial Term and/or withdrawal from SmartPortfolio within thirty (30) days following Customer's signature date below (the "Guarantee Period") without an early termination payment. However, any actual amendments to this Rider will be made in accordance with the Master Natural Gas Agreement and will require mutual agreement and signature of both Parties. CNEG will process the written request and will notify Customer of its acceptance or rejection of Customer's request within seven (7) calendar days from CNEG's receipt of the request. Any Rider modification requests after the Guarantee Period including, but not limited to, changes to Volatility Protection, or Initial Term and/or withdrawal from SmartPortfolio may result in an early termination payment with regard to any volumes for which prices have been fixed through the SmartPortfolio Program. Customer acknowledges that, even if Customer terminates during the Guarantee Period when no early termination payment will apply, Customer will remain responsible for payment for any natural gas delivered to Customer prior to termination.



**7. Level of Service and Delivery Point.** All gas delivered pursuant to this Rider shall be Firm and shall be delivered to the applicable Facility's Utility citygate. However, to the extent that Customer owned transportation capacity is used to deliver natural gas to the Customer, the Delivery Point shall be the receipt point of such capacity.

**8. Acknowledgment of SmartPortfolio Purchasing Strategy.** Customer acknowledges and agrees to the SmartPortfolio purchasing strategies and processes set forth in this Rider. No guarantees are made or implied that a specific price will be achieved. The Purchasing Strategy is subject to modification by CNEG at any time, for any reason ("**New Purchasing Strategy**"). Should CNEG issue a New Purchasing Strategy, CNEG shall send Customer written notice and details of the New Purchasing Strategy and Customer will have the option of declining to participate in the New Purchasing Strategy, but may only exercise such option by providing timely written notice of its non-participation to CNEG. If Customer's notice of non-participation in the New Purchasing Strategy is not received by CNEG within twenty (20) calendar days of the date of the New Purchasing Strategy notice, then Customer shall be deemed to have accepted such New Purchasing Strategy and will be subject to the methodologies contained therein.

**9. Transporter Restrictions.** Both parties agree that operational flow orders or other usage or operating instructions (each an "OFO") from a pipeline or utility may require one or both parties to buy or sell gas quantities in the then-current market conditions, which may be appreciably higher or lower than what the SmartPortfolio price would have been absent the OFO. During OFOs, CNEG may (but is not required to) increase or decrease nominations, as appropriate, to avoid penalties.

***This SmartPortfolio Rider shall not be binding or enforceable against CNEG unless and until signed by an authorized representative of CNEG.*** This Rider may be executed by in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(SIGNATURES FOLLOW FACILITY LISTING)

FACILITY LISTING

Annual Volume - 7,749 Dth

Facility Location(s)							Utility	Utility Account Number	Meter Number	CNEG Customer ID		
525 Brooks Avenue North, THIEF RIVER FALLS, MN							MERC	0507528616-00001	NGM401969	RG-247903		
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
1,641	1,365	1,424	324	174	39	17	11	284	277	942	1,251	7,749

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS DOCUMENT THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES.**

**CNEG**

Sign and Print Name: \_\_\_\_\_

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

**CUSTOMER**

Sign and Print Name: \_\_\_\_\_

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

City of Thief River Falls (“**Customer**”) and Constellation NewEnergy – Gas Division, LLC (“**CNEG**”) enter into this Natural Gas Supply Agreement, including the attached General Terms and Conditions (the “**Natural Gas Agreement**”) effective July 9, 2018 (the “**Effective Date**”). Generally the words “you” and “your” refer to the Customer listed above and the words “we” and “us” refer to CNEG, unless the context clearly requires otherwise. This Natural Gas Agreement is intended to govern the purchase and sale of natural gas and related services (“**Gas**”) between us, each a “**Transaction**,” which may be memorialized in a transaction confirmation (“**TC**”) that is subject to this Natural Gas Agreement. Both of us may further agree to implement certain strategies or services which will be set forth in a Rider signed by both of us (each a “**Rider**”). If a conflict arises between (i) a TC, (ii) a Rider, or (iii) the Natural Gas Agreement, the terms shall govern in the priority listed in this sentence. All TCs and Riders together with this Natural Gas Agreement form a single integrated agreement and are sometimes herein collectively referred to as the “**Agreement**”.

**Purchase and Sale of Natural Gas.** You will purchase from us and we will supply, or cause to be supplied, the Contract Quantity for your Facilities as specified in a TC or Rider, subject to the terms and conditions of the Agreement. You authorize us to enroll the Facilities with the Utility so that we can supply those Facilities. You will take such actions as we request to allow us to enroll the Facilities in a timely manner. You authorize us to take such actions we deem necessary to enroll the Facilities with the Utility as Facilities to be served by us and otherwise meet our obligations under this Agreement, including executing on your behalf any documents necessary to effectuate any Facility enrollment or election, undertaking the management of any storage or transportation capacity allocated to you by the Utility or other transporter(s), disposing of storage balances, adding or deleting Facilities as necessary, and receiving Usage Nominations from the Utility relating to your Gas requirements. We shall deliver the Contract Quantity to the Delivery Point(s) where risk of loss and title shall transfer to you. You agree that we may select such sources and service levels of Gas as we deem appropriate to meet our obligations under the Agreement. Our delivery obligation and your receipt obligation under this Agreement shall be set forth on a TC or Rider as Firm, Secondary Firm, Interruptible, or otherwise as agreed in the Transaction.

**Term.** This Natural Gas Agreement will commence on the Effective Date and will continue until terminated by either of us upon thirty (30) days written notice; provided any TC or Rider will continue to be governed by this Natural Gas Agreement until the TC or Rider has been separately terminated or expired. CNEG shall not be liable for any failure to enroll or drop a Facility by any applicable start and end date(s) set forth in the TC or Rider due to circumstances beyond its control.

**Transaction Confirmation Procedure.** You may enter into Transactions with us at any time by written transmission, electronic transmission, facsimile or other written record, or verbally, in person or by telephone (which we both acknowledge may be on a recorded telephone line) with the offer by one party and acceptance by the other party constituting our legally binding agreement. Nothing in this Agreement shall obligate either of us to enter into a Transaction at any time and your mere request to purchase Gas from us hereunder shall not constitute acceptance until we have clearly accepted such offer. Any applicable requirement that a Transaction be “in writing” and “signed” shall be deemed to have been satisfied by this Natural Gas Agreement, by our signatures below and our express agreement to these procedures. You agree that CNEG shall have the exclusive right to confirm any Transaction by sending you a written TC, in the form attached hereto as Exhibit A or otherwise, by facsimile, electronic transmission or other means. Notwithstanding any provision to the contrary in this Agreement, failure to send a TC shall not invalidate a Transaction agreed to by both of us. All agreed upon Transactions shall be subject to the terms and conditions of this Natural Gas Agreement, and each TC is incorporated herein. **If we send a TC and you fail to object in writing to any term in the TC within two (2) business days, the TC shall constitute the definitive written expression of the Transaction.**

**Price.** You will pay the price for Gas (the “**Contract Price**”) as set forth in the applicable TC or Rider. To the extent (a) there are beginning of the month nominated volumes where the price is not fixed, (b) a Facility requires additional gas in excess of the nominated or fixed quantities set forth in a TC or Rider, or (c) a Facility continues to receive Gas from us beyond the term of the TC or Rider (where such Gas will be considered month to month), all such Gas will be priced at the Market Price. In addition to the Contract Price or Market Price, as applicable, you will be responsible to pay all such other amounts related to effectuating Transactions and the purchase and delivery of Gas, which will include, but not be limited to, amounts for (i) Taxes related in any way to the Contract Price, any services provided or the Gas at and after the Delivery Point, and (ii) transportation charges at and after the Delivery Point and related Taxes, which may be billed separately by the Utility.

**Your Invoice.** Your invoices will contain all CNEG charges applicable to Gas usage, including Taxes (which are passed through to you). If you are eligible for and have elected to receive a single bill from us (“**CNEG Consolidated Billing**”), we will invoice you for all Utility charges and related Taxes. Otherwise, the Utility will invoice you for all Utility Charges and related Taxes. All amounts charged are due in full on the fifteenth (15th) day after the date of invoice or such other date set forth in a Rider. Invoices will be based on actual data provided by the Utility, provided that if we do not receive actual data in a timely manner, we shall have the right to invoice you based on estimated information. Once actual data is received, we will reconcile the estimated charges and adjust them as needed in subsequent invoices. If you fail to make payment by the due date, interest will accrue daily on outstanding amounts from the due date until the bill is paid in full at a rate of 1.5% per month, or the highest rate permitted by law, whichever is less; and we may withhold any payments due to the Utility until we receive such payments.

**CNEG Notice Information:**

9400 Bunsen Parkway, Suite 100  
Louisville, KY 40220  
Attention: Contracts Administration  
Phone: (502) 426-4500  
Facsimile: (502) 214-6381

**Customer Notice Information**

Legal Notice Information

Attention: Missy Sletten  
Title: Recreation Coordinator  
Address: 525 BROOKS AVE N, THIEF RIVER FALLS, MN 56701  
Phone: (218) 681-2183  
Facsimile:  
Email: msletten@citytrf.net

For invoices (if different from Notice Information)

Attention: Sandy Brink  
Title: Accounts Payable  
Address: 405 3RD ST E, THIEF RIVER FALLS, MN 56701  
Phone: (218) 681-2943  
Facsimile:  
Email: sbrink@citytrf.net

For Transaction Confirmations (if different from Notice Information)

Attention:  
Title:  
Address:  
Phone:  
Facsimile:  
Email:

**{SIGNATURES FOLLOW AFTER GENERAL TERMS AND CONDITIONS}**

## GENERAL TERMS AND CONDITIONS

### 1. Definitions.

"Contract Quantity" means the quantity of Gas to be delivered and received as agreed in the applicable TC or Rider.

"Delivery Point(s)" means the city gate interconnection between the Utility and the upstream transporter or such other delivery point(s) as are agreed in a TC or Rider. However, to the extent that you own transportation capacity which is used to deliver Gas to you, the Delivery Point shall be the receipt point of such capacity.

"Facility" means your facility or Utility account to which CNEG is providing Gas under this Agreement (collectively, the "Facilities").

"Firm" means deliveries and receipts may not be interrupted without liability except for reasons of Force Majeure.

"Interruptible" means deliveries and receipts may be interrupted at any time for any reason except for Customer's obligation to take and pay for gas it nominates and CNEG's obligation to honor the price set forth in the TC.

"Market Price" means a price comprised of (i) the spot commodity cost of Gas as determined by us in our reasonable discretion, (ii) all related interstate and intrastate pipeline charges required to deliver Gas to the Delivery Point, and (iii) a reasonable market based margin.

"Secondary Firm" means deliveries and receipts will be on a best-efforts basis. We may interrupt its performance without liability to the extent that one or more of the following conditions are present: i) Force Majeure; ii) curtailment by your Utility; iii) curtailment of supply by a Gas supplier; iv) curtailment of storage by a storage provider; v) curtailment of transportation by a transporter, including, but not limited to, transportation between secondary firm points; vi) recall of transportation capacity release by its releasor; or vii) curtailment of Gas production behind a specific meter. If we interrupt for any other reason, your exclusive remedy shall be that you may recover damages as provided in Section 2.

"Taxes" means all taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of Gas, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts, sales, consumption, use, value added, commercial activity or other privilege tax, and any other tax (whether in effect as of the Effective Date of this Agreement or thereafter) imposed by any governmental entity.

"Usage Nomination" means your nomination of your forecasted Gas requirements, including without limitation (i) any such nomination by the Utility with respect to your Facilities, (ii) any such nomination permitted to be made by us as provided in this Agreement or any TC or Rider.

"Utility" means the local Gas distribution utility owning and/or controlling and maintaining the distribution system required for delivery of Gas to the Facilities.

**2. Failure to deliver or receive Gas.** The sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Gas (other than Interruptible) shall be the following: If we fail to deliver Gas for a reason other than your breach, we shall pay you the "Replacement Cost," which is the amount you actually pay to replace the undelivered Contract Quantity less the amount you would have paid under this Agreement for such Contract Quantity. (b) If you fail to receive Gas for a reason other than our breach, you shall pay us the "Revenue Loss," which is the amount that we would have received for the sale of the unreceived Contract Quantity pursuant to this Agreement less (i) the amount we actually receive in an alternate sale, plus any incremental costs, or (ii) if no alternate sale takes place, the amount we would have received by reselling such Contract Quantity at spot market prices at or near the Delivery Point(s), as we determine in a commercially reasonable manner. Both of us shall exercise commercially reasonable efforts to mitigate any Revenue Loss or Replacement Cost, respectively. If the calculation of the Replacement Cost or Revenue Loss results in a negative number, then the amount shall be deemed to equal zero.

**3. Cash deposit and other security.** At any time, we may require that you provide information to us so that we may evaluate your creditworthiness. We reserve the right to require that you make a cash

deposit or provide other security acceptable to us in an amount acceptable to us immediately following our demand if your financial obligations to us increase under this Agreement, or if, in our opinion, your credit, payment history, or ability to pay your bills as they come due becomes a concern. You will deliver any required cash deposit or other required security (or any increase therein) within three (3) business days of our request.

**4. Nomination and Imbalances.** (a) If you or the Utility fail to provide us with a Usage Nomination for any month in a timely manner, we may establish a nomination for such month in a commercially reasonable manner based upon your historical usage data available to us. We shall be entitled to rely on any Usage Nominations received from the Utility or that we establish in accordance with this paragraph. Usage Nominations may be made verbally, in writing, by facsimile, or by other electronic transmission. (b) We shall both use commercially reasonable efforts to avoid imposition of any fees, penalties, cash-outs, costs or charges assessed by a transporter for failure to satisfy the transporter's balancing and/or nomination requirements ("Imbalance Charges"). If Imbalance Charges are incurred as a result of your receipt of quantities of Gas greater than or less than the quantity of Gas confirmed by transporter(s), then you shall be responsible for such Imbalance Charges. If Imbalance Charges are incurred as a result of our delivery of quantities of Gas greater than or less than the quantity of Gas confirmed by transporter(s), then we shall be responsible for such Imbalance Charges.

**5. Default under this Agreement.** You will be in default under this Agreement if you fail to: pay your bills on time and in full; provide cash deposits or other security as required by Section 3 above; or perform all material obligations under this Agreement (other than a failure to receive gas) and you do not cure such default within five (5) days of written notice from us; or if you declare or file for bankruptcy or otherwise become insolvent or unable to pay your debts as they come due. We will be in default under this Agreement if we fail to perform all material obligations under this Agreement (other than a failure to deliver gas) and do not cure such default within five (5) days written notice from you, or if we declare or file for bankruptcy or otherwise become insolvent or unable to pay our debts as they come due.

**6. Remedies upon default.** If you are in default under this Agreement, in addition to any other remedies available to us, we may terminate this Agreement entirely, or solely with respect to those Facilities affected by such default, and switch your Facilities back to Utility service (consistent with applicable regulations and Utility practices); and/or require that you compensate us for all losses we sustain due to your default, including:

- payment of all amounts you owe us for natural gas provided to you;
- when the Agreement is terminated early (entirely or as to certain Facilities), payment of an amount (that we will calculate using our reasonable judgment) equal to the positive difference between (A) the dollar amount you would have paid to us under this Agreement had it not been terminated early and (B) the dollar amount we could resell such natural gas for to a third party under then-current market conditions; and all costs (including attorneys' fees, expenses and court costs) we incur in collecting amounts you owe us under this Agreement. The parties agree that any early termination payment determined in accordance with this Section is a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect, and that neither party is required to enter into a replacement transaction to determine or be entitled to a termination payment.

**7. Changes in law.** We may pass through or allocate, as the case may be, to you any increase or decrease in our costs related to the natural gas and related products and services sold to you that results from the implementation of new, or changes (including changes to formula rate calculations) to existing, Laws, or other requirements or changes in administration or interpretation of Laws or other requirements. "Law" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, Utility or transporter business practices or protocol, Utility or transporter tariff, rule of any commission or agency with jurisdiction in the state in which the Facilities are located. Such additional amounts will be included in your subsequent invoices. The changes described in this Section may

change any or all of the charges described in this Agreement.

**8. Force Majeure and Transporter Restrictions.** "Force Majeure" means an event that is beyond either of our reasonable control that prevents either of us from performing our obligations under this Agreement. If a Force Majeure event occurs, then the affected party will be relieved from performance until the situation is resolved. Examples of Force Majeure events include: acts of God, fire, war, terrorism, flood, earthquake; declaration of emergency by a governmental entity or the Utility; curtailment, disruption or interruption of Gas transmission, distribution or supply (including without limitation as the result of an OFO, as defined below); regulatory, administrative, or legislative action, or action or restraint by court order or other governmental entity; actions taken by third parties not under either of our control, such as a Utility. Such events shall not excuse failure to make payments due in a timely manner for Gas we supply. Each of us will use commercially reasonable efforts to give notice (which may be by electronic means) to the other in a timely manner of any operational flow orders or other usage or flow restrictions ("OFO") from the applicable pipelines or utilities and shall take all required steps to comply with such orders. Each of us will take all commercially reasonable actions required by the OFO within the time prescribed. If OFO penalties, charges, fees, costs or expenses result from the actions or inactions of one of us, then such party shall be solely responsible for any such penalties, charges, fees, costs or expenses. We both agree that OFOs may require one or both of us to buy or sell Gas quantities in the then-current market conditions, which may be appreciably higher or lower than the original pricing.

**9. Indemnification.** EACH PARTY (THE "INDEMNIFYING PARTY") WILL DEFEND, INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM ANY AND ALL CLAIMS (INCLUDING CLAIMS FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE), LOSSES, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), DAMAGES, SUITS, CAUSES OF ACTION AND JUDGMENTS OF ANY KIND ARISING HEREUNDER WHILE TITLE AND RISK OF LOSS ARE VESTED IN THE INDEMNIFYING PARTY.

**10. Limitations.** IN NO EVENT WILL EITHER PARTY OR ANY OF ITS AFFILIATES BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOST OPPORTUNITIES OR LOST PROFITS. Each party's total liability related to the Agreement, whether arising under breach of contract, tort, strict liability or otherwise, is limited to direct, actual damages. Direct actual damages payable to us will reflect the early termination calculation in Section 5. Each party agrees to use commercially reasonable efforts to mitigate damages it may incur. NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED OR STATUTORY, ON CNEG'S PART IS GIVEN OR INTENDED TO ARISE OUT OF THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. We will have no liability or responsibility for matters within the control of the Utility, which include maintenance of natural gas pipelines, service interruptions, loss or termination of service or meter readings.

**11. Dispute Resolution.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without regard to any choice of law principles. BOTH PARTIES AGREE IRREVOCABLY AND UNCONDITIONALLY TO WAIVE ANY RIGHT TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS WITH RESPECT TO ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

**12. Relationship of Parties.** We are an independent contractor and nothing in this Agreement establishes a joint venture, fiduciary relationship, partnership or other joint undertaking. You will not rely on us in evaluating the advantages or disadvantages of any specific product or service, predictions about future energy prices, or any other matter under this Agreement. Your decision to enter into this Agreement and any other decision or action you take is and will be based only upon your own analysis (or that of your advisors) and not on information or statements from us.

**13. Confidentiality.** Consistent with applicable regulatory requirements, we will keep confidential all information obtained by us from you related to the provision of services under this Agreement and which concern your energy characteristics and use patterns, except that we may disclose such information to our affiliates and such affiliates' employees, agents, advisors, and independent contractors. Except as otherwise required by law, you will agree to keep confidential the terms of our Agreement, including price.

**14. Miscellaneous Provisions.** In the case of CNEG Consolidated Billing, you agree that (i) you remain exclusively liable to the Utility for all Utility charges, (ii) we have no obligation to review Utility charges for accuracy, and (iii) should you dispute Utility charges, that is a matter for you and the Utility to resolve without our involvement. If in any circumstance we do not provide notice of, or object to, any default on your part, such situation will not constitute a waiver of any future default of any kind. If any of this Agreement is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out our mutual intent as expressed in this Agreement. You may not assign or otherwise transfer any of your rights or obligations under this Agreement without our prior written consent. Any such attempted transfer will be void. We may assign our rights and obligations under this Agreement. This Agreement contains the entire agreement between us, supersedes any other agreements, discussions or understandings (whether written or oral) regarding the subject matter of this Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. A facsimile or email copy of your signature will be considered an original for all purposes, and you will provide original signed copies upon request. Both of us acknowledge that any document generated with respect to this Agreement, including this Agreement, may be imaged and stored electronically and such imaged documents may be introduced as evidence in any proceeding as if such were original business records and neither of us shall contest their admissibility as evidence in any proceeding. Except as otherwise explicitly provided in this Agreement, no amendment (including in form of a purchase order you send us) to this Agreement will be valid or given any effect unless signed by both of us. Applicable provisions of this Agreement will continue in effect after termination or expiration of this Agreement to the extent necessary, including those for billing adjustments and payments, limitations of liability, indemnification and dispute resolution. We shall have the right to set-off and net any amounts owed to you against any amounts you owe us under this Agreement or any other agreement. This Agreement is a "forward contract" and we are a "forward contract merchant" under the U.S. Bankruptcy Code, as amended. Further, we are not providing advice regarding "commodity interests", including futures contracts and commodity options or any other matter, which would cause us to be a commodity trading advisor under the U.S. Commodity Exchange Act, as amended ("CEA"). You agree that your purpose in entering into this Agreement is not speculation, but rather price volatility control and/or budget management for procurement of Gas for one or more of your Facilities and if any transaction hereunder gives you the right to adjust the Contract Quantity or to require CNEG to provide some other quantity of gas, your election to exercise such right is based on supply and demand factors related to your business. You represent that you qualify as an "eligible contract participant" as the same is defined under the CEA. We will send all notices, invoices and TCs to the address provided in this Agreement unless you direct otherwise. Your authorization of us to your Utility as a recipient of your gas billing and usage data will remain in effect during the term of this Agreement unless you rescind the authorization upon written notice to us. We reserve the right to cancel this Agreement in the event you rescind this authorization. To the extent you are represented by a broker, agent, association or other third party (collectively, "Broker"), you acknowledges and understand that (i) the broker is your representative and does not represent CNEG, (ii) we may be making a payment to Broker in connection with Broker's facilitation of you and CNEG entering into a Transaction, and (iii) unless otherwise noted, the Contract Price reflects any fee paid to Broker.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS DOCUMENT THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES.**

**CNEG**

Sign and Print Name: \_\_\_\_\_

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

**CUSTOMER**

Sign and Print Name: \_\_\_\_\_

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



**CITY OF THIEF RIVER FALLS  
PROPOSED RESOLUTION**

#8.07

**RESOLUTION NO. : APPROVAL OF RALPH ENGELSTAD ARENA NATURAL  
GAS SUPPLY AGREEMENT WITH CONSTELLATION NEWENERGY – GAS  
DIVISION LLC (CNEG)**

A Request for Council Action was reviewed. Following discussion, Councilmember \_\_\_\_ introduced Resolution No., being seconded by Councilmember\_\_\_\_, that:

WHEREAS, over the last two year period, the city has purchased \$82,810 in natural gas from Minnesota Energy Resources. Because of the large amount of natural gas used at the arena, the city has the opportunity to purchase natural gas from an alternative supplier, Constellation NewEnergy. Other large natural gas users like Sanford and Arctic Cat purchase gas from Constellation as a cost saving measure.

THEREFORE, BE IT RESOLVED, by the City Council, to accept the Administrative Services Committee recommendation to authorize execution of contract with Constellation NewEnergy – Gas Division LLC (CNEG) for supply of natural gas to the Ralph Engelstad Arena.

**Presented at the July 17, 2018 Council Meeting**

Introduced by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Roll Call (if required):**

\_\_\_ Holmer \_\_\_ Howe \_\_\_ Sollom \_\_\_ Hagen \_\_\_ Brown \_\_\_ Prudhomme \_\_\_ Aarestad \_\_\_ Narverud

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_