

COUNCIL PROCEEDINGS

Tuesday, July 20, 2021

CALL TO ORDER

This meeting is officially called to order at 5:30 p.m. on July 20, 2021. This meeting is being presided over by Mayor Brian Holmer.

PLEDGE OF ALEGIANCE

ROLL CALL

The following Councilmembers were present: Holmer, Lorensen, McCraw, Aarestad, Prudhomme, Howe and Narverud. Bolduc was absent. Mayor Holmer chaired the meeting.

PUBLIC FORUM

PRESENTATIONS/PROCLAMATIONS/PUBLIC INFORMATION ANNOUNCEMENTS

TRF ZEHLIAN'S ART & WINE WALK - CHERYL LEE

TRF Downtown Art & Wine Walk includes 20 plus Businesses and Artists. Each participant receives a wine glass with a sample of wine as they look at all the art. The event takes place on August 12, 2021 from 4:00 p.m. to 8:00 p.m. Cost is \$15.

MAK CONSTRUCTION PROJECT (DAYCARE) ANGLE APARTMENTS - MARC KUHN

The Angle Apartments is a 4 story building with 130,000 sq. ft. space, 93 family units, with commercial space on the 1st floor. A separate building on the north side would include a daycare. Asking for a Pilot Style Abatement.

- 0-5 years 0% taxes
- 6-10 years 50% taxes

APPROVE AGENDA

Councilmember Lorensen motioned, being seconded by Councilmember Narverud, to approve the agenda with the additions of 8.8 and 8.9.

On vote being taken, the agenda with additions was unanimously passed.

CONSENT AGENDA

Approval of Consent Agenda, Councilmember Prudhomme introduced Resolution No. 6-138-21, being seconded by Councilmember McCraw, that:

BE IT RESOLVED, by the City Council, to approve with exception to move item 7.6 Approval of Temporary On Sale Intoxicating Liquor License & Street Dance - Ecklund-Holstrom American Legion Post 117 - 7/16 & 7/17/21 to new business.

On vote being taken, the resolution was unanimously passed.

APPROVAL OF JULY 6, 2021 COUNCIL PROCEEDINGS

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-161-21, being seconded by Councilmember McCraw, that:

BE IT RESOLVED, by the City Council, to approve July 6, 2021 Council Proceedings as presented.

On vote being taken, the resolution was unanimously passed.

CITY OF THIEF RIVER FALLS BILLS AND DISBURSEMENTS AND COUNCIL PER DIEMS

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-162-21, being seconded by Councilmember McCraw, that:

BE IT RESOLVED, by the City Council, to authorize payment of bills and disbursements in the total amount of \$631,685.71 and council per diem in the amount of \$325.00. A printout of the approved payments, disbursements and per diems are attached hereto and made a part hereof.

On vote being taken, the resolution was unanimously passed.

APPROVAL OF TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE TO VFW POST 2793 - 7/30/21

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-163-21, being seconded by Councilmember McCraw, that:

RESOLVED, by the City Council, to accept the Public Safety/Liquor Committee recommendation to grant the VFW Post #2793 a Temporary Intoxicating Liquor License with Dance, effective July 30, 2021 from 8 pm to 12 am.

On vote being taken, the resolution was unanimously passed.

APPROVAL OF TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE TO VFW POST 2793 - 8/12/21

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-164-21, being seconded by Councilmember McCraw, that:

RESOLVED, by the City Council, to accept the Public Safety/Liquor Committee recommendation to grant the VFW Post #2793 a Temporary Intoxicating Liquor License with Dance, effective August 12, 2021 from 6 pm to 10 pm.

On vote being taken, the resolution was unanimously passed.

APPROVAL OF TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE TO VFW POST 2793 - 8/20/21

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-165-21, being seconded by Councilmember McCraw, that:

RESOLVED, by the City Council, to accept the Public Safety/Liquor Committee recommendation to grant the VFW Post #2793 a Temporary Intoxicating Liquor License with Dance, effective August 20, 2021 from 8 pm to 12 am.

On vote being taken, the resolution was unanimously passed.

APPROVAL OF ON SALE INTOXICATING LIQUOR LICENSE - RIVERS AND RAILS BREWING COMPANY LLC

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-167-21, being seconded by Councilmember McCraw, that:

RESOLVED, by the City Council, to accept the Public Safety/Liquor Committee recommendation to grant the Rivers and Rails Brewing Company LLC an On Sale Intoxicating Liquor License, date to be determined.

On vote being taken, the resolution was unanimously passed.

APPROVE THE PURCHASE OF A VIDEO/AUDIO REDACTION APP BY THE POLICE DEPARTMENT

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-168-21, being seconded by Councilmember McCraw, that:

WHEREAS, the police department currently has all the elements in place for use of body cameras except for a redaction solution which is needed to fully manage recorded data.

WHEREAS, the company that furnishes the body camera systems for the TRF Police Department, Arbitrator, has indicated that their version of redaction software will potentially be available on July 31 of this year. However, this product has been late in the making and the police department wishes to move forward with use of body cameras. A product called Spotlight by MotionDSP will provide full redaction capabilities, is available on a month-to-month contract basis, and is licensed to a PD workstation to maintain security.

THEREFORE, BE IT RESOLVED, by the City Council, to approve the purchase of a video/audio redaction app by the police department.

On vote being taken, the resolution was unanimously passed.

APPROVAL OF SATISFACTION OF MORTGAGE DEED DREW AND DANAE
TORKELSON

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-169-21, being seconded by Councilmember McCraw, that:

WHEREAS, that the undersigned, the City of Thief River Falls, a body corporate and politic of the State of Minnesota having its principal office in Pennington County, for a valuable consideration, receipt of which is hereby acknowledged.

THEREFORE, BE IT RESOLVED, by the City Council that a certain Mortgage Deed, bearing the date May 20, 2019, made and executed Drew and Danae Torkelson, a married couple, as owners, the City of Thief River Falls, Minnesota filed for record in the office of the County Recorder in and for the City of Thief River Falls and State of Minnesota and entered as Document Number 217247 on April 9, 2020, together with the lien provided is, with the indebtedness described in and secured by said Mortgage Deed, fully paid, discharged the same upon the record thereof. Document Number 217247.

On vote being taken, the resolution was unanimously passed.

APPROVE FOR THE CITY OF THIEF RIVER FALLS ARCHIVE SOCIAL NEW
ECONOMY SOFTWARE FOR UP TO 12 SOCIAL MEDIA ACCOUNTS FOR ONE YEAR.

Presented as part of the Consent Agenda, Councilmember Prudhomme introduced Resolution No. 7-170-21, being seconded by Councilmember McCraw, that:

WHEREAS, we presently have social media accounts for our police department, fire department, and a few council member's professional pages. Social media is considered public record and should comply with open record laws. If we receive a public request, we are required by law to be able to produce social media content. Social media archive software ensures our communications are saved so we can easily respond to record requests. This will help us comply with record-keeping regulations and mitigate the risk related to social media and include blocked senders.

THEREFORE, BE IT RESOLVED, by the City Council, to approve the for the City of Thief River Falls Archive Social New Economy Software for up to 12 social media accounts for one year.

On vote being taken, the resolution was unanimously passed.

NEW BUSINESS

APPROVAL OF TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE & STREET
DANCE - ECKLUND-HOLSTROM AMERICAN LEGION POST 117 - 7/16 & 7/17/21

Following discussion Councilmember Howe asked that further discussion be held at Public Safety/Liquor Committee regarding submission requirements, Councilmember Prudhomme introduced Resolution No. 7-166-21, being seconded by Councilmember Aarestad, that:

RESOLVED, by the City Council, to accept the Public Safety/Liquor Committee recommendation to grant the Ecklund-Holstrom American Legion Post #117 a Temporary Intoxicating Liquor License with Dance, effective July 16, 2021 from 9 pm to 12 am.

On vote being taken, the resolution was unanimously passed.

SUMMARY OF PERFORMANCE APPRAISAL OF POLICE CHIEF MARISSA ADAM

At the July 6, 2021 meeting of the City Council, the meeting was closed by the council to evaluate the job performance of Marissa Adam, Chief of Police. As required by Minnesota Statute 13D.05 Subd. 3 (a), at its next open meeting, the public body shall summarize its conclusions regarding the evaluation.

The council conducted an evaluation of Chief Adam and as a summary of its conclusions, the council found that Chief Adam was performing exceptionally well. Her communication with the council and community were praised. She acts very professionally and is transparent with her department. Morale is high within the department and her leadership was praised. The council indicated that Chief Adam has found a good balance with the deputy chief and with her other officers. The only critique was a request to do more with campers and boats parked on the streets. Overall, the council indicated they were very pleased with Chief Adam's performance.

APPROVE A \$7.00/MONTH FLAT RATE CREDIT, NO SUB METER OR METER CHARGE, CONTROLLED WITH RIPPLE FOR EV HOME CHARGING STATIONS.

Following discussion, Councilmember Prudhomme introduced Resolution No. 7-171-21, being seconded by Councilmember Lorenson, that:

WHEREAS, first request for a home charging station would be located on Taft Street. Home charger will be a class two charger. Meetings were conducted with NMPA (Dalene Monsebroten), PKM Electric and Cass County Electric to see what options were available to home owners with home charging stations. After the reviewing of several options it would be my recommendation to follow with Cass County Electric with a \$7.00 flat credit with no additional meters or meter charge. Note this credit would only apply for those who will be controlled by an EV rate. Ripple controlled by Minnkota Power during peak demand.

WHEREAS, As home EV charging stations become more prevalent the demand on the electric system has to be monitored closely to prevent overloads on transformers within the system.

THEREFORE, BE IT RESOLVED, by the City Council, to approve a \$7.00/month flat rate credit, no sub meter or meter charge, controlled with ripple for EV Home Charging Stations. The cost of the ripple control receiver estimated at \$125-\$150, on all new installations the affidavit cost would be included in the installation of the charging unit by Electrical Contractor.

On vote being taken, the resolution was unanimously passed.

OXBOW RESTORATION AND STORM WATER TREATMENT PROJECT

Following discussion, Councilmember Narverud introduced Resolution No. 7-172-21, being seconded by Councilmember Howe, that:

WHEREAS, The City of Thief River Falls has been planning and designing the Oxbow cleaning and restoration for about three years. The project was identified in the Stormwater assessment that was completed in 2018. With the Red Lake Watershed District as the lead agency, funding was sought from the Red River Watershed Management Board and the Board of Water and Soil Recourses.

WHEREAS, The Oxbow Stormwater channel has silted in after years of the Southeast quadrant of the City draining into it before entering the Red Lake River across from Hartz Park. The City's snow dump area also drains into the Oxbow. This project will clean the silt/debris, dead trees and cattails from the channel and create a pool for stormwater treatment. Also, two cyclone separator manholes will be installed for debris removal and a sand filter/drain tile system under the snow dump area. The City of Thief River Falls will be responsible for the maintenance of this system for the next 25 years per BOWSR Agreement.

WHEREAS, The City of Thief River Falls is responsible for \$50,000 which will be taken from the Stormwater Utility Fund. Grants will cover the remainder of the project costs.

THEREFORE, BE IT RESOLVED, by the City Council, to approve the Utility Committee recommendation for Spruce Valley Corporation's low bid of \$597,272.00 for the Oxbow Restoration and Stormwater Treatment Project and the City of Thief River Falls contributing \$50,000 from the Stormwater Utility Fund.

On vote being taken, the resolution was unanimously passed.

RFP FOR STRATEGIC PLAN

Following discussion, Councilmember Howe introduced Resolution No. 7-173-21, being seconded by Councilmember Narverud, that:

WHEREAS, the purpose of this Request for Proposal (RFP) is to solicit proposals from consultants experienced in strategic planning to lead the City of Thief River Falls Council and staff (City) through a long-range strategic planning process.

THEREFORE, BE IT RESOLVED, by the City Council, to approve the recommendation of the Administrative Services Committee to issue the attached request for proposal for a Strategic Plan.

On vote being taken, Lorensen, Aarestad Narverud, Howe, McCraw and Holmer voted aye. Councilmember Prudhomme stepped out of meeting. The resolution was passed.

INDEPENDENT SERVICE CONTRACT WITH MARK BORSETH

Following discussion, Councilmember Howe introduced Resolution No. 7-174-21, being seconded by Councilmember McCraw, that:

INDEPENDENT SERVICE CONTRACT

THIS CONTRACT, To be effective the 21st day of July, 2021, by and between Mark Borseth,

hereinafter referred to as "Contractor", and the City of Thief River Falls, a Minnesota Political Subdivision, hereinafter referred to as "City", WITNESSETH:

WHEREAS, Contractor desires to render certain services for zoning and economic development as an independent contractor, and City desires to contract with Contractor for the performance of certain services, and

NOW, THEREFORE, In consideration of the conditions and covenants expressed herein, the parties hereto, their heirs, personal representatives, successors, and assigns, agree as follows:

1. SERVICES TO BE PROVIDED. Contractor shall provide to City services related to zoning and economic development within the City and shall do so according to the terms and conditions of this Contract.
2. PLACE OF WORK. Contractor shall provide services at Thief River Falls City Hall, Thief River Falls, Minnesota, or where necessary to perform the services to be provided.
3. TERM. The term of this Contract shall commence on the 21st day of July, 2021, and either party may terminate this Contract, with or without cause, upon thirty days written notice to the other party.
4. COMPENSATION. The City shall pay Contractor the sum of Seventy-five dollars (\$75.00) per hour for the services provided herein. City will pay for a maximum of sixteen (16) hours per week. Additional hours may be paid only upon written consent from City.
Contractor shall submit to City on a monthly basis an itemization stating number of hours worked and specified services performed during those hours. City shall pay Contractor for approved services within 30 days of submission of the statement.
5. EXPENSES. City shall pay Contractor the usual City rates for mileage incurred while performing the services herein. Contractor shall be responsible for his own expenses incurred in commuting to and from work.

Any other expenses incurred by Contractor in performing the services herein must be preapproved by City in order to be paid.
6. MATERIALS AND EQUIPMENT. Contractor shall have use of an office space and office equipment to include a computer, printer, and related office supplies to be supplied by the City.
7. RELATIONSHIP BETWEEN PARTIES. The parties intend that Contractor be an independent contractor and not an agent or employee of City. City is interested only in the results obtained under this Contract. The manner and means of obtaining the results are under the control of Contractor, but shall be consistent with generally accepted procedures for supplying such services. The benefits provided by City to its employees, including, but not limited to, worker's compensation insurance, unemployment insurance, health insurance, and pension plans, are not available to Contractor or Contractor's employees. Contractor, as an independent contractor, shall be responsible for his own mandated withholdings, FICA, and other similar payments.

8. WORK STANDARDS. Contractor shall control the conduct and means of performing the services required under this Contract. Contractor shall adhere to professional standards and will perform all services required under this Contract in a manner consistent with those professional standards.

9. ADDITIONAL OUTSIDE SERVICES AND CONFIDENTIALITY. Contractor is free to provide non-competing services similar to those being provided herein to third parties.

However, Contractor shall keep all information concerning City confidential and shall not release, in any fashion, any such information to any third party, unless compelled to do so by proper legal process.

10. INDEMNIFICATION. Contractor assumes the entire responsibility and liability for losses, expenses, demands, and claims in connection with or arising out of any injury, or alleged injury, including death, to any person, or damage, or alleged damage, to property of City or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance of the services by Contractor, or Contractor's agents and employees, including losses, expenses, or damages sustained by City, and agrees to indemnify and hold harmless City, City's elected officials, employees, and agents from any and all such losses, expenses, damages, demands, and claims and agrees to defend any suit or action brought against City, City's elected officials, employees, and agents, or any of them, based on any such alleged injury or damage, and to pay all damages, costs, attorney fees, and expenses in connection therewith or resulting therefrom.

11. RETURN OF RECORDS AND SUPPLIES. Upon termination of this Contract, Contractor shall promptly surrender to City all records, business policies and manuals, supplies, and any other records or materials belonging to City.

12. ENTIRE CONTRACT INVALIDITY. This Contract sets forth the entire arrangement between the parties and there are no representations or warranties except as expressly set forth herein. No amendment or modification of this Contract shall be valid unless in writing and signed by the parties hereto. Should any clause or provision of this Contract become invalid for any reason, such invalidity shall not result in the invalidity or unenforceability of any other clause or provision of this Contract.

13. ASSIGNMENT. Contractor shall not assign this Contract nor any of the rights and duties hereunder without the prior written consent of City.

14. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota.

15. TITLES AND HEADINGS. The titles and headings used herein are for convenience only and do not constitute any part of this Contract.

IN WITNESS WHEREOF, The parties hereto have hereunto affixed their hands the day and year above written.

CITY OF THIEF RIVER FALLS: CONTRACTOR:

By: _____
Its Mayor Mark Borseth

By:
Its City Administrator

On vote being taken, Lorensen, Aarestad Narverud, Howe, McCraw and Holmer voted aye. Councilmember Prudhomme stepped out of meeting. The resolution was passed.

MIF LOAN AGREEMENT - NORTHERN PRIDE

Following discussion, Councilmember Lorensen introduced Resolution No. 7-175-21, being seconded by Councilmember Narverud, that:

LOAN AGREEMENT MINNESOTA INVESTMENT FUND

THIS AGREEMENT (the "Loan Agreement") is made and entered into as the ____ day of _____, 2021 by and between the City of Thief River Falls (the "Lender") and Northern Pride, Inc. (the "Borrower");

Recitals

1. The Lender has applied to the Minnesota Department of Employment and Economic Development (DEED) for a Minnesota Investment Fund Grant (the "MIF Grant") pursuant to an application (the "Grant Application") and received approval for the MIF Grant; and
2. Grant Contract Agreement Number CDAP-21-0003-H-FY21 (the "Grant Contract Agreement") between the Minnesota Department of Employment and Economic Development (the "State") and the Lender has been executed and requires that the Borrower provide sufficient funds to complete financing and agree to loan terms with the Lender regarding the MIF Grant; and
3. The parties hereto agree to incorporate into this Loan Agreement by reference the Grant Application and Grant Contract Agreement; and
4. The work anticipated to be performed for the Borrower's Project is not geographically dependent. It therefore could have been located at any number of locations either within or outside of the State of Minnesota. The subsidy has been provided to enhance the financial attractiveness and financial feasibility of locating or retaining the Borrower's operations in the Jurisdiction, rather than at some other location.
5. Borrower and Lender wish to set forth the terms and conditions upon which Lender will make the Loan to Borrower and for the repayment thereof.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

ARTICLE 1
Definitions

Section 1.1. Definitions. In this Loan Agreement, unless a different meaning clearly appears from the context:

“Bank” means Border Bank.

“Benefit Date” means the earlier of the date equipment financed through a Minnesota Investment Fund loan is fully operational or the date a building certificate of occupancy is issued or real property improvements financed through a Minnesota Investment Fund, or July 1, 2021.

“Benefit” is defined as one or more of the following non-mandated compensation items paid by the Borrower on behalf of employees: health, dental, life and disability insurance, retirement program or profit-sharing.

“City” means Thief River Falls.

“County” means Pennington County.

“Compliance Date” means the date that is two (2) years after the Benefit Date.

“Development Property” means the real property described in Exhibit A attached.

“Effective Date” means April 13, 2021.

“Expiration Date” means three months after the Compliance Date as defined in the Grant Contract Agreement.

“Equipment” means the machinery & equipment purchased by the Borrower with the Loan Proceeds and described in Exhibit B attached.

“Full-Time Equivalent (FTE)” is one or more people working a sum of 2,080 hours in a calendar year, which includes paid time off.

“Grant Contract Agreement” means Minnesota Department of Employment and Economic Development Grant Contract Agreement # CDAP-21-0003-H-FY21 and attached as Exhibit C.

“Initial Disbursement Date” means the date of the first disbursement of any Loan Proceeds by the Lender to the Borrower.

“Jurisdiction” means within the corporate boundaries of the Lender.

“Loan” means the funds loaned by the Lender to the Borrower pursuant to this Loan Agreement.

"Loan Documents" means this Loan Agreement, the Promissory Note, and Security Agreement with UCC filing.

"Loan Proceeds" means the proceeds of the Loan disbursed to the Borrower pursuant to this Loan Agreement.

"MIF Program" means the Minnesota Investment Fund, Minn. Stat. § 116J.8731 and Minn. Rules Chapter 4300.

"MIF Grant" means the award of funds by the State to the Lender pursuant to the Grant Contract Agreement.

"New Jobs" means the new permanent, Full-Time Equivalent, non-contract, non-seasonal jobs to be created by the Borrower.

"Other Project Funds" means all funds required to complete the Project as defined in the Grant Application.

"Project" means the Borrower will repurpose an existing space into a turkey processing facility near their current facility. The new space will allow for the expansion of existing products and add new products for resale in stores. Renovations and Improvements are \$1.53MM plus Machinery and Equipment for \$576k. The expansion will create 20 new jobs.

"Promissory Note" means a legal document that represents the Borrower's promise to repay the Loan per a given payment schedule, in substantially the form set forth by the State.

"State" means the Minnesota Department of Employment and Economic Development.

"Termination Date" means the date of the final payment made by the Borrower to the Lender under the terms of the Loan Agreement and Promissory Note (or the date that the Loan is forgiven by the State).

ARTICLE 2

Loan, Use of Proceeds and Conditions of Repayment

Section 2.1. MIF Loan/Funds. The Lender agrees, on the terms and subject to the conditions hereinafter set forth, to make a loan to the Borrower in an aggregate principal amount not to exceed \$200,000.00 for Machinery and Equipment. The obligation of the Borrower to repay the Loan shall be evidenced by the Promissory Note. The Borrower's obligations under this Loan Agreement are expressly contingent on the Lender's receipt of the MIF Grant from the State in an amount adequate to make the Loan.

Section 2.2. Non-MIF (Other) Project Funds. The Borrower has secured a commitment for the private financing necessary to complete the Project, in a form and under conditions satisfactory to the Bank, Borrower and Lender.

(a) The Borrower shall commit not less than \$442,500.00 of equity and not less than \$1,675,945 of other private financing for the completion of the Project.

(b) Other Project Funds described in the Grant Application must be used at the same amount, for the same purposes and under the same terms, rates and conditions as specified unless written consent is received from the State prior to expenditure.

Section 2.3. Loan Terms. FORGIVABLE LOAN: The Loan shall be forgiven by the Lender and the State upon satisfaction by the Borrower of the terms of this Loan Agreement. In the event the Loan is not forgiven, the Loan shall be repayable as set forth in Section 8.2 of this Loan Agreement. The Loan terms may not be modified without prior written approval from the State.

Section 2.4. Early Repayment. The Promissory Note may be prepaid in whole or in part at any time without penalty. A prepayment shall first be applied against any accrued interest, and then against any outstanding and past due payments which are due and owing hereunder or under the Loan Agreement, and then the remaining portion of such prepayment shall be applied against the remaining outstanding and unpaid principal balance.

Section 2.5. Maintenance and Operation of the Project. As long as any portion of the Loan is still outstanding, Borrower shall maintain and operate the Project and use the Loan Proceeds in compliance with the terms of MIF, this Loan Agreement, and all applicable federal, state and local laws, regulations and ordinances, including but not limited to all environmental laws and regulations.

Article 3

Conditions of Lending

Section 3.1. Condition Precedent to Any Advance. The obligation of the Lender to close the Loan and disburse the Loan Proceeds thereof to Borrower shall, subject to waiver by the State, be subject to the condition precedent that the Lender shall have received on or before the date of such closing the Promissory Note duly executed by the Borrower. The Borrower shall provide identifying information for the equipment prior to disbursement of the Loan Proceeds in accordance with Section 9.3 hereof.

Section 3.2. Further Conditions Precedent to Disbursement. The obligation of the Lender to disburse the Loan Proceeds shall also be subject to the following conditions precedent:

- (a) The Loan which is being made to the Borrower shall be consistent with the provisions of MIF.
- (b) No Event of Default hereunder or event which would constitute such an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, shall have occurred and be continuing.

Section 3.3. Disbursement and Deposit of Loan Proceeds. Upon the execution of this Loan Agreement and the satisfaction of all of the conditions specified in Article 6, the Lender shall disburse the full Loan Proceeds to the Borrower.

Section 3.4. Termination. This Loan Agreement shall automatically terminate without any notice to Borrower:

(a) If no Loan Proceeds have been disbursed to the Borrower prior to the Expiration Date;
or

(b) If the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment.

ARTICLE 4

Acknowledgments, Incorporation, Representations, and Warranties

Section 4.1. Acknowledgments/Incorporation.

(a) The Borrower acknowledges that the Lender, in order to obtain funds for part of the Borrower's activities in connection with the Project, has applied for the MIF Grant to the State under the Minnesota Investment Fund Program, Economic Development Division, and that the Lender has entered into the Grant Contract Agreement with the State attached as Exhibit C, setting forth the terms, conditions, and requirements of the MIF Grant. The Borrower further acknowledges that it has made certain representations and statements in the Grant Application concerning its activities relating to the Project, and that the Borrower is designated and identified under the Grant Contract Agreement.

(b) Under the Grant Contract Agreement, the Lender has undertaken certain obligations with respect to, and among other things, repayment to the State of the Loan Proceeds in the event certain conditions are not met. A copy of the Grant Contract Agreement and this Loan Agreement shall be on file in the offices of the Lender. In the event any provision of this Loan Agreement relating to the Borrower's obligations hereunder is inconsistent with the provisions of the Grant Contract Agreement relating to the Borrower's activities thereunder, the provisions of the Grant Contract Agreement shall prevail.

(c) The Borrower acknowledges that nothing contained in the Grant Contract Agreement or this Loan Agreement, nor any act of the State or the Lender, shall be deemed or construed to create between the State and the Borrower (or, except as Borrower and Lender between the Lender and the Borrower) any relationship, including but not limited to that of third party beneficiary, principal and agent, limited or general partnership, or joint venture. As such, the Borrower agrees to hold the State harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Loan Agreement, any events related to the Project or the Borrower's participation in this Loan, or Borrower's activities on the Development Property.

Section 4.2. Representations and Warranties. The Borrower warrants and represents, in connection with the Loan and for the benefit of the State and the Lender, that:

(a) It is a Corporation registered and in good standing under the laws of the State of Minnesota, and is authorized to enter into this Loan Agreement and perform any of the acts required herein.

(b) It has the legal authority and is duly authorized to operate the Project, to incur the indebtedness of the Promissory Note and to perform its obligations under this Loan Agreement, to execute and deliver the Loan Documents to which it is a party and it has taken all actions necessary and incident to its execution and delivery of the Loan Documents.

(c) Its execution and delivery of the Loan Documents to which it is a party, and its incurrence of the Loan does not violate any provision of law or Borrower's corporate documents.

(d) The Promissory Note was duly and validly authorized, executed and delivered, and it constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms. The Loan Documents to which it is a party, have been duly and validly authorized, executed and delivered, and are the legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except to the extent the enforceability thereof may be limited by bankruptcy, insolvency or other law affecting creditor's rights, or the application of equitable principles generally.

(e) It is not in violation of any provisions of its organizational documents or of the laws of local governments, State of Minnesota or U.S. Government, and there are no actions, suits or proceedings pending, or to its knowledge threatened, before or by any judicial body or governmental authority, against or effecting it, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Loan Agreement or to perform any of the acts required of it in the Loan Documents to which it is a party.

(f) Neither the execution and delivery of the Loan Documents to which it is a party, nor compliance with any of the terms, conditions, requirements or provisions contained herein or in such referenced documents, is prevented by, is a breach of, or will result in a breach of any term, condition or provision of any agreement or document to which it is now a party or by which it is bound.

(g) It will maintain adequate capital for the proper operation and administration of its duties under this Loan Agreement.

(h) It will comply with Minn. Stat. § 116J.8731 and Minn. Rules Chapter 4300 and all of the terms, conditions, provisions and requirements, contained in the Loan Documents to which it is a party.

(i) Representations, statements, and other matters provided by the Borrower relating to those activities of the Project to be completed by the Borrower, which were contained in the Grant Application, were true and complete in all material respects as of the date of submission to the Lender and such representations, statements, and other matters are true as of the date of this

Loan Agreement and there are no adverse material changes in the financial condition of the Borrower's business.

(j) The Borrower acknowledges that the State, in selecting the Lender as recipient of the Grant, relied in material part upon the assured completion of the Project to be carried out by the Borrower, and the Borrower warrants that said Project will be carried out as promised.

(k) The Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Loan Agreement as binding upon it.

(l) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the Other Project Funds, and that any duly authorized representative of the State shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower for seven years after the termination of the Loan Agreement or until such time that the Lender and the State have both determined that all issues, requirements, and close-out procedures relating to or arising out of the Loan have been settled and completed, whichever is later.

(m) The Borrower warrants that no transfer of any or all of the Loan Proceeds by the Lender to the Borrower shall be or be deemed an assignment of Loan Proceeds, and the Borrower shall neither succeed to any rights, benefits, or advantages of the Lender under the Grant Contract Agreement, nor attain any right, privileges, authorities, or interest in or under the Grant Contract Agreement.

Section 4.3. Affirmative Covenants. Borrower further warrants and agrees that:

(a) It has sufficient funds to complete the purposes of the Project and sufficient capacity to administer the Project.

(b) The Project will be performed in full compliance with all applicable federal, state and local laws, regulations, rules and ordinances, which include but are not limited to all applicable environmental laws, regulations and rules.

(c) Borrower agrees to submit reports required in Article 7 and Article 8.

ARTICLE 5

Events of Default and Rights and Remedies

Section 5.1. Events of Default. Any one or more of the following events shall be deemed and shall constitute an "Event of Default":

(a) The interest or principal due under the Promissory Note, or any other payments due and payable under this Loan Agreement or any other document referred to herein, are not paid when due and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower by the Lender;

(b) The Borrower is in breach of any of the requirements, terms, conditions, covenants or other agreements in the Loan Documents and remains in breach in any material respect for thirty

(30) business days after written notice thereof to the Borrower by the Lender; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach in a reasonable period of time;

(c) Any representation or warranty made by the Borrower in the Loan Documents, any other document referred to in such documents, or any financial statement, certificate, or report furnished pursuant to this Loan Agreement, or any representation or warranty made order to induce the Lender to close the Loan or disburse the Loan Proceeds, which proves to have been untrue in any material respect or materially misleading as of the time such representation or warranty was made;

(d) Borrower shall make an assignment for the benefit of its creditors, or shall be dissolved, or shall commit an act of bankruptcy under the United States Bankruptcy Act (as now or hereafter amended), or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall become or be adjudicated as bankrupt or insolvent, however defined, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation, or shall file an answer admitting to or not contesting the material allegations of a petition filed against it in such proceedings, or shall not, within 60 days after the filing of such a petition against it, have the same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties, or shall not, within 60 days after the appointment (without its consent or acquiescence) of a trustee, receiver or liquidator of any material part of its properties, have such appointment vacated;

(e) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Borrower seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or any trustee, receiver or liquidator of such entity, shall be appointed without the consent or acquiescence of State;

(f) Borrower shall refuse to allow the State, at any reasonable time and upon prior written notice, to inspect, audit, copy or abstract, any and all of its books, records, papers or other documents relevant to the Borrower's use of the Loan Proceeds;

(g) Borrower shall refuse to allow the Minnesota Legislative Auditor or the State Auditor for the State of Minnesota, at any reasonable time and upon prior written notice, to inspect, audit, copy or abstract, any and all books referred to in Section 5.1(f);

(h) Borrower shall fail to provide annual reporting information as described herein.

(i) The Borrower sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Development Property or the Equipment without the prior written approval of the State and Lender;

(j) The Borrower merges or consolidates with an entity that is not an affiliate of the Borrower

wherein the Borrower or such affiliate are not the surviving entity after such merger or consolidation without the prior written consent of the Lender;

(k) There is a loss, theft, substantial damage, or destruction of all or any part of the Development Property or the Equipment that is not remedied to the Lender's satisfaction within sixty (60) business days after written notice thereof by the Lender to the Borrower; or

(l) The Borrower is in breach of the requirements of Article 7 and Article 8, the Business Subsidy Agreement and Progress Reporting.

(m) The occurrence of any other act or event that is noncompliant under the MIF Program.

Section 5.2. Rights and Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Lender, the Lender may, at its option, exercise any and all of the following rights and remedies (as well as any other rights and remedies available to it):

(a) The Lender may, by notice in writing to the Borrower, refrain from disbursing any of the Loan Proceeds; provided, however, the Lender may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder, or waiving its right to make any additional disbursements.

(b) The Lender may, by written notice to the Borrower, declare immediately due and payable all principal and interest due under the Promissory Note, together with all other sums payable under the Loan Documents and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.

(c) The Lender shall have the right, in addition to any other rights provided by law or equity, to enforce its rights and remedies under the Loan Documents.

(d) The Lender shall have the right, in addition to any other rights provided by law or equity, to initiate litigation for the breach of any term, condition, covenant, requirement or provision contained in the Loan Documents, and to recover damages for such breach.

(e) The Lender shall have the right, in addition to any other rights provided by law or equity, to apply to any court, state or federal, for specific performance of any term, condition, covenant, requirement or provision contained in the Loan Documents; for an injunction against any violation of any such term, condition, covenant, requirement and/or provision; or for such other relief as may be appropriate, since the injury to the Lender arising from a default under any of the terms, conditions, covenants requirements and/or provisions of the Loan Documents, would be irreparable and the amount of damage would be difficult to ascertain.

Section 5.3. Rights and Remedies Cumulative. The rights and remedies of the parties to this Loan Agreement, whether provided by operation of law or by this Loan Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not be construed to preclude or waive its right to exercise, at the same or different times, any of the other such remedies for the same default or breach, or of any of its remedies for any other

default or breach by the other party.

No waiver made by either such party with respect to the performance, manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Loan Agreement or any document referred to herein, shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party. No delay or failure by either party to exercise any right or remedy shall be a waiver of such right or remedy, and no single or partial exercise by either party of any right or remedy shall preclude other or further exercise thereof for the exercise of any other right or remedy at any other time.

Section 5.4. Collection. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Lender and State, Borrower agrees to pay all costs and expenses of the Lender, including, but not limited to, reasonable attorney's fees, in the collection of any of the obligations or the enforcement of any of the Lender's rights. If any notice of sale, disposition or other intended action by the Lender is required by law to be given to Borrower, such notice shall be deemed reasonably and properly given if mailed to Borrower at the address specified in Section 9.15(b), or at such other address of Borrower as may be shown on the Lender's records, at least 15 days before such sale, disposition or other intended action.

The Lender shall have the right at its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Lender shall have all of the rights and remedies available under the Uniform Commercial Code and any other applicable law.

Section 5.5. Assignment. If, prior to the Termination Date, the Borrower sells, conveys, transfers, further mortgages or encumbers, or disposes of the Development Property, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Borrower shall immediately repay all amounts then outstanding on the Loan. This shall be in addition to any other remedies at law or equity available to the Lender.

Section 5.6. Appointment for Foreclosure. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Lender and State, Borrower agrees that the Lender may appoint an individual or entity to handle the default proceedings.

ARTICLE 6

Disbursement Provisions

Section 6.1. Payment Requisition Documentation. The Lender will disburse the loan funds upon receipt and approval by the Lender and the State of the following documentation:

- (a) This Loan Agreement, fully executed;
- (b) The Promissory Note;
- (c) The Security Agreement with filed UCC;

- (d) Evidence of equity injection in the amount of \$442,400.00;
- (g) Promissory note(s) from Border Bank;
- (h) Invoices for items funded by the Loan and matching funds.
- (i) The Borrower shall maintain insurance in adequate amounts covering loss or damage to the collateral. Provide evidence that the Lender has been listed as loss payee.

Upon receipt of such information, the Loan funds will be disbursed upon approval of the Lender and the State up to a total disbursement amount of \$200,000.00.

Section 6.2. Other Documentation.

- (a) Third party documentation of total project expenditures as outlined in the application sources and uses will be required prior to the Compliance Date.
- (b) Evidence that equipment or other items purchased with the Loan are in the Jurisdiction must be provided on or prior to the Benefit Date.

Section 6.3. Review of Documents. The Borrower shall not be entitled to any disbursement of Loan Proceeds until the Lender's legal counsel and the State have reviewed and approved this Loan Agreement and the exhibits attached hereto.

Section 6.4. Adverse Changes. The Lender and the State will not authorize disbursement of funds if there has been any adverse change in the Borrower's financial condition, organization, operations or their ability to repay the project financing.

ARTICLE 7

Progress Reporting

Section 7.1. Progress Information. The Borrower shall provide to the Lender information for incorporation into the Minnesota Investment Fund progress reports, as required by the State and as needed by the Lender, to monitor the Project for compliance with State and Lender guidelines. This information must be provided until the goals set forth in Section 8.1 have been met or until the Compliance Date, whichever is later. At the discretion of the State or Lender additional reporting may be required. This information must be submitted to the Lender no later than:

- (a) January 15, 2022 for the period ending December 31, 2021;
- (b) January 15, 2023 for the period ending December 31, 2022;
- (c) January 15, 2024 for the period ending December 31, 2023;
- (d) Fifteen days after the Compliance Date.

Section 7.2 Documentation to be provided to the Lender:

- (a) Project status and the status of payments.
- (b) Additional Leverage. The Borrower must provide to the Lender invoices, sworn construction statements, and or any other information, with each progress report, to document Other Project Funds in addition to the originally included project costs.
- (c) Job Creation Documentation. The Borrower shall provide to the Lender information on

the hiring of each New Job on forms provided by the Lender. This information must include:

- (1) Permanent jobs created;
- (2) Job title of each New Job;
- (3) Date of hire of each new employee;
- (4) Hourly base wage paid;
- (5) List of Benefits provided; and
- (6) Hourly value of Benefits paid.

(d) Payroll Report. A formal payroll report verifying job information will be due as of the Compliance Date.

ARTICLE 8

Business Subsidy Agreement and Reporting

Section 8.1. Business Subsidy Agreement. The provisions of this Section constitute the “Business Subsidy Agreement” for purposes of the Minnesota Business Subsidy Act (Minn. Stat. § 116J.993 – § 116J.995 and its successor statute.)

(a) The Borrower acknowledges and agrees that the provisions of Minnesota’s Business Subsidy Act apply to this Loan Agreement, as Borrower is receiving government assistance under the terms of this Loan Agreement.

(1) The subsidy provided to the Borrower includes the \$200,000.00 loan made hereunder which will be used for Machinery and Equipment.

(2) The public purposes and goals of the subsidy are to increase Borrower’s net jobs in the City and encourage economic development.

(3) The goals for the subsidy are to create jobs that pay a livable wage, per Section 8.1(b) of this Loan Agreement.

(4) If the goals are not satisfied, the Borrower shall make payment to the Lender as required in Section 8.2 of this Loan Agreement.

(5) The subsidy is needed because the Project cost is economically infeasible without the Loan.

(6) The Borrower must continue operations in the Jurisdiction for at least five years following the Benefit Date.

(7) The Borrower does not have a parent corporation.

(b) On the Compliance Date, the Borrower shall have:

(1) Maintained twenty-two (22) permanent, non-contract, non-seasonal FTE jobs; and

(2) Created at least twenty (20) New Jobs at the Development Property with each job noted once within “wage brackets” as stated below:

a. Seventeen (17) New Jobs must pay a base cash wage of at least \$14.85 per hour (exclusive of Benefits); The Borrower is entitled to forgivable Loan Proceeds in the amount of \$164,312 for 17 jobs (\$9,665/job) created in this wage bracket;

b. Three (3) New Jobs must pay a base cash wage of at least \$18.50 per hour (exclusive of Benefits); The Borrower is entitled to forgivable Loan Proceeds in the amount of \$35,688 for 3

jobs (\$11,896/job) created in this wage bracket

(3) Any job created between the Effective Date and the Compliance Date shall pay at least \$14.01 per hour, including Benefits.

(4) New Jobs created on or after the Effective Date that meet the criteria outlined in 8.1(b)(2) will count toward the Borrower's job creation goal.

Section 8.2. Default on Business Subsidy Act Requirements.

(a) If the Borrower fails to meet the job creation goal and wage level commitment set forth in Section 8.1(b) above on the Compliance Date, the Lender may, after holding a public hearing, extend the Compliance Date for one year, after approval from the State. If no extension occurs, or if after the extension, the Borrower fails to meet the job creation goal and wage commitment, the Borrower will be required to repay to the Lender a pro rata share of the Loan principal plus interest as calculated in Section 8.2 (b) at an accelerated rate, based upon the difference between the wage bracket values defined in Section 8.1(b)(2) above and the wage bracket value of actual jobs created. Forgivable loan proceeds will be subject to collection first; once the forgivable funds are exhausted, repayable loan proceeds will be subject to accelerated repayment.

(b) In an Event of Default occurring as a result of a breach by the Borrower of any provision of Section 8.1 of this Loan Agreement, the Borrower agrees to repay the principal amount as calculated in Section 8.2(a) hereof plus interest set at the greater of three percent (3%) or the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31st of the previous year

(c) Interest required in Section 8.2 (b) shall commence to accrue as of the Initial Disbursement Date;

(d) Nothing in this Section 8.2 shall be construed to limit the Lender's rights or remedies under any other provision of this Loan Agreement, and the provisions of Section 8.2 are in addition to any other such right or remedy the Lender may have available.

(e) The Borrower shall provide to the Lender information regarding job and wage goals and results for two years after the Benefit Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met on the Compliance Date. If the goals are not met, the Borrower must continue to provide information on the Loan until the Loan is repaid. The information must be filed on the Non-JOBZ Minnesota Business Assistance form as found on the MN Department of Employment and Economic Development website and shall include the following:

- (1) the type, public purpose, and amount of subsidies and type of district, if the subsidy is tax increment financing;
- (2) the hourly wage of each job created with separate bands of wages;
- (3) the sum of the hourly wages and cost of health insurance provided by the employer with separate bands of wages;
- (4) the date the job and wage goals will be reached;
- (5) a statement of goals identified in the subsidy agreement and an update on achievement of those goals;
- (6) the location of the recipient prior to receiving the business subsidy;

- (7) the number of employees who ceased to be employed by the recipient when the recipient relocated to become eligible for the business subsidy;
- (8) why the recipient did not complete the project outlined in the subsidy agreement at their previous location, if the recipient was previously located at another site in Minnesota;
- (9) the name and address of the parent corporation of the recipient, if any;
- (10) a list of all financial assistance by all grantors for the project; and
- (11) other information the Commissioner of the MN Dept. of Employment and Economic Development may request.

(f) This information must be provided to the Lender no later than March 1 of each year for the previous year. If the Borrower does not submit the report, the Lender shall mail the Borrower a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Borrower fails to provide a report, the Borrower must pay to the Lender a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

ARTICLE 9

Other Conditions

Section 9.1. Project Time Frame. The time frame outlined in the Grant Application and Grant Contract Agreement pertaining to the Project shall be met by the Borrower.

Section 9.2. Promissory Note. The Borrower shall execute a Promissory Note in substantially the form set forth by the State.

Section 9.3. Collateral. The Borrower shall furnish the Lender description of collateral.

Section 9.4. Annual Financial Statements. For the term of the Loan, upon request of the Lender, the Borrower shall submit the most recent annual financial statement prepared in accordance with generally accepted accounting principles. The annual financial statements shall include a profit and loss statement, balance sheet, and statement of cash flow, notes and an opinion from the accountants of such statements acceptable to the Lender.

Section 9.5. Discrimination on Account of Race, Creed, or Color. The provisions of Minn. Stat. § 181.59 and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Loan Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Loan Agreement.

Section 9.6 Affirmative Action. The Borrower is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled.

Section 9.7. Job Listing Agreement. (Minn. Stat. § Section 116L.66 and any successor statutes). When the Loan is for \$200,000 or more, the Borrower shall enter into a Job Listing Agreement with the local CareerForce Center, MN Department of Employment and Economic Development.

Section 9.8. Prevailing Wage. If the Borrower is awarded \$500,000 or more of Loan Proceeds

and the Loan is used for construction, installation (including equipment), remodeling and or repairs, the Borrower shall fully and completely comply with all applicable prevailing wage requirements contained in Minn. Stat. § 116J.871 and § 177.42, subd. 6.

(a) Documentation. The Borrower shall maintain or ensure access to all documentation necessary to establish that the required prevailing wage was paid and shall allow the Lender, the Commissioner of the Department of Labor and Industry and the State reasonable access to such data.

(b) Penalty. It is a misdemeanor for the Borrower, who has certified that prevailing wages will be paid to laborers and mechanics to subsequently fail to pay the prevailing wage. Each day a violation of this subdivision continues is a separate offense.

Section 9.9. Surety Deposits Required for Construction Contracts. If the Loan is used for construction, and the Borrower is hiring, contracting, or having a contract with a nonresidential person or foreign corporation to perform construction work, the Borrower must comply with Minnesota Statutes 290.9705, as amended, by deducting and withholding eight percent of cumulative calendar year payments to the contractor which exceeds \$50,000.

This condition may be waived if (1) the contractor gives the commissioner a cash surety or a bond, secured by an insurance company licensed by Minnesota, conditioned that the contractor will comply with all applicable provisions of this chapter and chapter 297A, or (2) the contractor has done construction work in Minnesota at any time during the three calendar years prior to entering the contract and has fully complied with all provisions of this chapter and chapter 297A for the three prior years.

Section 9.10. Publicity and Endorsement

(a) Publicity. Any publicity regarding the subject matter of this Loan Agreement must identify the State as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Borrower individually or jointly with others, or any subcontractors, with respect to the MIF Program, publications, or services provided resulting from this Grant Contract Agreement.

(b) Endorsement. The Lender and the Borrower must not claim that the State endorses its products or services.

Section 9.11. Workers Compensation Insurance. The Borrower has obtained workers compensation insurance as required by Minn. Stat. § Section 176.181, subd. 2. The Borrower's workers compensation insurance information is as follows:

- (a) Company Name: SFM
- (b) Policy Number: 24063.216
- (c) Local Agent: North Risk Partners LLC 218-681-1714

Section 9.12. Effect on Other Agreements. Nothing in this Loan Agreement shall be construed to modify any term of any other agreement to which the Lender and the Borrower are parties.

Section 9.13. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the Lender or the negligence or other wrongful act or omission of the following named parties, the Borrower agrees to protect and defend the Lender and the governing body members, officers, agents, servants, and employees thereof, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the acquisition, construction, installation, ownership, maintenance, and operation of the Project and the Borrower's activities on the Development Property.

Section 9.14. Modifications. This Loan Agreement may be modified solely through written amendments hereto executed by the Borrower and the lender and approved by the State.

Section 9.15. Notices and Demands. Any notice, demand, or other communication under this Loan Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

(a) as to the Lender: City of Thief River Falls
ATTN: Angie Philipp
405 Third Street East
Thief River Falls, MN 56701

(b) as to the Borrower: Northern Pride, Inc.
ATTN: Scott Christensen
419 Pennington Ave. South
Thief River Falls, MN 56701

or at such other address with respect to any party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 9.15(b).

Section 9.16 Conflict of Interests; Representatives Not Individually Liable.

(a) No employee, officer or agent of the Lender shall participate in the administration of a contract supported by this loan if a conflict of interest, real or apparent, would be involved. No employee, officer or agent of the Lender may obtain a financial interest in any agreement with respect to the Loan. No employee, officer, or agent of the Lender shall be personally liable to the Borrower or any successor in interest in the event of any default or breach by the Lender or for any amount that may become due to the Borrower or on any obligation or term of this Loan Agreement.

(b) To the best of the Borrower's knowledge, no member, officer, or employee of the Lender, or its officers, employees, designees, or agents, no consultant, member of the governing body of the Lender, and no other public official of the Lender, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any

interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit there from, which is part of the Project.

Section 9.17. Binding Effect. The covenants and agreements in this Loan Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Loan Agreement.

Section 9.18. Provisions Not Merged With Deed. None of the provisions of this Loan Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Loan Agreement.

Section 9.19. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Loan Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.

Section 9.20. Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.21. Choice of Law and Venue. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provisions. Any disputes, controversies, or claims arising out of this Loan Agreement shall be heard in the state of Minnesota, and all parties to this Loan Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.22. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 9.23. Entire Agreement. This Loan Agreement, with the exhibits hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Loan Agreement.

Section 9.24. Separability. Wherever possible, each provision of this Loan Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Loan Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement or any other related document.

Section 9.25. Immunity. Nothing in this Loan Agreement shall be construed as a waiver by the Lender of any immunities, defenses, or other limitations on liability to which the Lender is entitled by law, including but not limited to the maximum monetary limits on liability established by Minn. Stat. § Chapter 466.

IN WITNESS WHEREOF, the Lender has caused this Loan Agreement to be duly executed in its name and behalf and the Borrower has caused this Loan Agreement to be duly executed in its name and behalf as of the date first above written.

City of Thief River Falls

By _____

Its _____

By _____

Its _____

Northern Pride, Inc.

By _____

Its _____

By _____

Its _____

EXHIBIT A

Property located at 419 Pennington Ave South, Thief River Falls, MN. Lots Two (2) and Three (3) of Block Four (4), Millyard Subdivision, City of Thief River Falls.

EXHIBIT B

POSS ProMax 6000: PKR-MP 10hp, 16" screw conveyor with surge hopper and agitator, reversing cross conveyor, dual box filling station, 3" Fortress pipeline metal detector with stand, side load combo dumper, Lee directional product valve, and controls allowance for larger panel and startup assistance.

EXHIBIT C

Grant Contract Agreement

On vote being taken, Lorensen, Aarestad Narverud, Howe, McCraw and Holmer voted aye. Councilmember Prudhomme stepped out of meeting. The resolution was passed.

SANFORD REDEVELOPMENT TIF

Following discussion, Councilmember Narverud introduced Resolution No. 7-176-21, being seconded by Councilmember Lorenson, that:

CITY OF THIEF RIVER FALLS
PENNINGTON COUNTY, MINNESOTA

RESOLUTION NO. __

RESOLUTION OF THE CITY OF THIEF RIVER FALLS MAKING CERTAIN FINDINGS
WITH RESPECT TO A SUBSTANDARD BUILDING

WHEREAS, the City of Thief River Falls, Minnesota (the "City") intends to undertake a redevelopment project in the City (the "Redevelopment Project");

WHEREAS, a part of the Redevelopment Project involves the demolition and clearance of a certain blighted building (the "Building") described on Exhibit A attached hereto located on certain parcels also described on Exhibit A attached hereto (the "Parcels");

WHEREAS, the City intends to create a tax increment financing district including the Parcels as a "redevelopment district";

WHEREAS, the deteriorated condition of the Building creates a health and safety concern necessitating the demolition of the Building prior to the creation of a tax increment financing district;

WHEREAS, Minnesota Statutes, Sections 469.174 to 469.1794 (the "Tax Increment Act") provides that a City may create a tax increment financing district (a "TIF District") as a "redevelopment district" if the City finds by resolution that parcels consisting of 70% of the area of the TIF District are occupied by buildings, streets, paved or gravel parking lots or other similar structures, and more than 50% of the buildings, not including out buildings, are structurally substandard to a degree requiring substantial renovation or clearance;

WHEREAS, Minnesota Statutes, Section 469.174, subdivision 10(d), provides, among other things, that a parcel may be deemed to be occupied by a structurally substandard building if (1) the parcel was occupied by a substandard building within three years of the filing of the request for certification of the parcel as part of the TIF District with the county auditor; (2) the substandard building was demolished or removed by the City, the demolition or removal was financed by the City or was done by a developer under a development agreement with the City; and (3) the City found by resolution, before the demolition or removal, that the parcel was occupied by a structurally substandard building and that after demolition and clearance the City intended to include the parcel within the district.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Thief River Falls, Minnesota, as follows:

1. At least 15% of the area of the Parcels are occupied by the Building or other buildings, streets, paved or gravel parking lots or other similar structures.
2. The Building is "structurally substandard" within the meaning of Minnesota Statutes, Section 469.174, subdivision 10. The reasons and supporting facts for this determination are on file with the staff of the City.
3. Sanford Health (the "Developer") intends to demolish the Building and the City intends to subsequently include the Parcels in a redevelopment tax increment district established pursuant to Minnesota Statutes, Section 469.174, subdivision 10, which TIF District, if established, shall be established within three years of the date hereof.

4. The Mayor and Manager are hereby authorized and directed to execute a Development Agreement with the Developer to provide for the demolition of the Building.
5. Upon filing the request for certification of the tax capacity of the Parcels as part of the TIF District, the City will notify the county auditor that the original tax capacity of the Parcel must be adjusted as provided in Minnesota Statutes, Section 469.177, subdivision 1, paragraph (f). Passed and adopted by the City Council of the City of Thief River Falls, Minnesota, this 20th day of July 2021.

Mayor
Attest:

City Administrator

EXHIBIT A

Description of Building: Former Sanford Hospital Building

Address: 120 Labree Ave. South

Parcel Identification Numbers: 25.003.410.10; 25.003.411.10; 25.003.412.10; and 25.005.001.10

On vote being taken, Lorenson, Aarestad Narverud, Howe, McCraw and Holmer voted aye. Councilmember Prudhomme stepped out of meeting. The resolution was passed.

RESOLUTION OF AGREEMENT WITH CITY OF THIEF RIVER FALLS COOPERATIVE
CONSTRUCTION AND THE STATE OF MINNESOTA DEPARTMENT OF
TRANSPORTATION

Following discussion, Councilmember Lorenson introduced Resolution No. 7-177-21, being seconded by Councilmember McCraw, that:

MnDOT Contract No.: 1047358

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF THIEF RIVER FALLS
COOPERATIVE CONSTRUCTION
AGREEMENT

State Project Number (S.P.): 5703-51 Original Amount Encumbered
Trunk Highway Number (T.H.): 32=032 \$160,345.38

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of Thief River Falls acting through its City Council ("City").

Recitals

1. The City will perform aggregate base, bituminous surfacing, curb & gutter, turf establishment, striping, and other associated construction upon, along, and adjacent to Trunk Highway No. 32 at Oakland Park Road according to City-prepared plans, specifications, and special provisions designated by the City and by the State as State Project No.5703-51 (T.H.32=032) ("Project"); and
2. The City requests the State participate in the costs of the Oakland Park Road realignment construction and the State is willing to participate in the costs of said construction and associated construction engineering; and
3. Minnesota Statutes 5 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits
 - 1.1. Effective Date. This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes 516C.05, subdivision 2.
 - 1.2. Expiration Date. This Agreement will expire when all obligations have been satisfactorily fulfilled.
 - 1.3. Survival of Terms. All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 2.4. State Ownership of improvements; 5. Maintenance by the City; 10. Liability; Worker Compensation Claims; Insurance; 13. State Audits; 14. Government Data Practices; 15. Governing Law; Jurisdiction; Venue; and 17. Force Majeure.
 - 1.4. plans, Specifications, and Special Provisions. State approved City plans, specifications, and special provisions designated by the City and by the State as State Project No. 5703-51 (T.H. 32=032) are on file in the office of the City's Engineer and incorporated into this Agreement by reference ("Project Plans").
 - 1.5. Exhibits. Preliminary schedule "1" is attached and incorporated into this Agreement

On vote being taken, the resolution was unanimously passed.

RESOLUTION ESTABLISHING BAN ON NON-ESSENTIAL WATER USE

Following discussion, Councilmember Howe introduced Resolution No. 7-178-21, being seconded by Councilmember Lorenson, that:

RESOLUTION ESTABLISHING BAN ON NON-ESSENTIAL WATER USE

WHEREAS, the City received notice on July 16, 2021 from the Minnesota DNR that the City is currently in a Drought Warning Phase; and

WHEREAS, when in a Drought Warning Phase, the City is required to implement appropriate water use restrictions and begin working towards the goal of reducing water use to Fifty percent (50%) above January levels; and

WHEREAS, according to the Minnesota Department of Natural Resources (DNR), fifty-two percent (52%) of the State of Minnesota is experiencing severe drought and four percent (4%) of the State is experiencing extreme drought; and

WHEREAS, the Minnesota DNR has indicated under current conditions, it will take approximately
3 to 5 inches of precipitation spread over a period of approximately two (2) weeks to significantly
alleviate this drought; and

WHEREAS, it is in the best interests of the City to ensure conservation of the City's water supply
for essential use.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Thief River Falls,
Minnesota, as follows:

1. All non-essential outdoor municipal water use in the City of Thief River Falls is hereby banned;
specifically, non-essential outdoor water use means:

- a. Irrigation and lawn watering;
- b. Residential car washing;
- c. Pool filling and any recreation use;
- d. Golf courses, parks, athletic fields, and recreation areas;

2. Exemptions from this Water Ban are as follows:

- a. Hand watering of flower pots/baskets and vegetable gardens are permitted.

3. The Council is strongly recommending residents and businesses who are currently utilizing private wells or surface water for irrigation to comply with this water ban in order to conserve water for essential use.

4. This Water Ban shall remain in effect until the Minnesota DNR determines the City is no longer in a Drought Warning Phase or Governor Walz issues an Executive Order pursuant to Minn. Stat. §103G.291, or under further action by the City Council.

The foregoing resolution was offered by Councilmember _____, and

upon due
second by Councilmember _____, was passed by the following
vote:

Yeas:

Nays:

Absent:

Passed:

ATTEST:

APPROVED:

Angela Philipp, City Administrator

Brian Holmer, Mayor

On vote being taken, the resolution was unanimously passed.

**APPROVE LETTER REQUEST TO MNDOT TO CHANGE STREET LIGHTS BACK ON
HIGHWAY 32.**

Following discussion, Councilmember Howe introduced Resolution No. 7-179-21, being
seconded by Councilmember Aarestad, that:

THEREFORE, BE IT RESOLVED, by the City Council, to authorize the Public Works Director
to write a letter to request MnDot to change the Street Light timing back to the way it was on
Highway 32.

On vote being taken, the resolution was unanimously passed.

COUNCIL BOARDS AND COMMISSIONS REPORTS

- Mayor Homer mentioned he would contact appropriate staff to take part in a call with the Corp of Engineers next week on future of our water.
- Councilmember Howe thanked the City of Thief River Falls for their part in the Pennington County Fair. Special thanks to department heads, Dale Narlock Electric Superintendent, Wayne Johnson Water Systems Superintendent, Marty Semanko Co-Fire Chief, Travis Giffen Public Works Director and Marissa Adam Police Chief. Also, thank you to VenuWorks, Nicole Gebeck Executive Director and Bruce Brink Director of Operations.
- Councilmember Prudhomme spoke of the Riverfest on July 31st and August 1st. Two day event at Pioneer Village celebrating the 125th Birthday of Thief River Falls.
- Councilmember Howe would like everyone to drive by and see the #TRF sign at Red Robe Park. Great addition and looks wonderful lit up at night.

UPCOMING MEETINGS

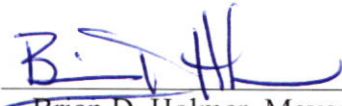
1. CITY COUNCIL MEETING - AUGUST 3RD AT 4:30 P.M. AT PIONEER VILLAGE
2. NIGHT TO UNITE - AUGUST 3RD AT 5:00 P.M.
3. UTILITIES COMMITTEE - AUGUST 9TH AT 7:00 A.M.
4. PUBLIC SAFETY/LIQUOR COMMITTEE - AUGUST 9TH AT 4:30 P.M.
5. ADMINISTRATIVE SERVICES COMMITTEE - AUGUST 10TH AT 3:00 P.M.
6. PUBLIC WORKS COMMITTEE - AUGUST 11TH AT 4:30 P.M.
7. CITY COUNCIL MEETING - AUGUST 17TH AT 5:30 P.M.

INFORMATIONAL ITEMS

INVESTMENT SCHEDULE DATED 06/30/2021

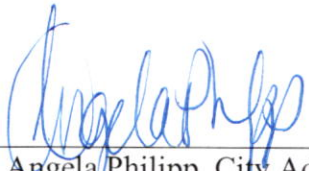
ADJOURNMENT

There being no further discussion, Councilmember Prudhomme moved, being seconded by Councilmember Lorenson to adjourn at 6:30 p.m. On vote being taken, the Chair declared the motion unanimously carried.



Brian D. Holmer, Mayor

Attest:



Angela Philipp, City Administrator