

CITY COUNCIL WORK SESSION AGENDA

AFTON CITY COUNCIL CHAMBERS
3033 St. Croix Trail South

Wednesday, June 12, 2019
At 5:30 p.m.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF AGENDA – June 12, 2019 Council Work Session**
- 4. CITY COUNCIL BUSINESS**
 - A. Solar Garden Subscription Agreement
 - B. House at Treatment Site
 - C. Afton Creek Preserve Subdivision Construction Monitoring
 - D. 3M Settlement Work Group Topics
- 5. Adjourn**

A quorum of one or more City commissions or committees may be present to receive information at this meeting

City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Meeting Date June 12, 2019

Council Memo

To: Mayor Palmquist and Members of the City Council
From: Ron Moorse, City Administrator
Date: June 5, 2019
Re: Solar Garden Subscription Agreement for Xcel Bill Credits

Bill Credit Subscription Program

Xcel Energy has created a Value of Solar (VOS) Program to provide bill credits for community solar gardens. The City is eligible to subscribe to up to 40% of the Xcel Energy bill credits related to the solar garden planned for construction by Novel Energy Solutions on the Mn/DOT property on the south side of Hudson Road, east of Shepherd of the Valley Church. Under the bill credits program, Xcel Energy remains the City's electricity provider and bill credits are issued on the City's Xcel invoice based on the subscription amount. There is no cost to the City for participation in the program.

Subscription Amount and Energy Usage

Staff has met with Rick Masloski, a representative of Novel Energy Solutions, regarding the bill credit program. While the City is eligible to subscribe to up to 40% of the bill credits, the subscription amount is tied to the amount of energy the City uses. The City's current energy use is substantially below the amount necessary to take advantage of the full 40% of the bill credits. However, in discussing this with Novel, because the City's energy use will increase as more properties are connected to the sanitary sewer system, the subscription amount has been based on 120% of the City's projected energy use in 12 months.

Bill Credit

The total Xcel bill credit rate is 9.76 cents per kWh. Of this, Novel receives 8.76 cents/kWh as revenue for constructing and operating the solar garden. The City receives 1.00 cent /kWh through its subscription. Based on the 1.00 cent/kWh credit, and the projected usage of 310,000 kWhs, the City's annual savings would be about \$3,000 per year.

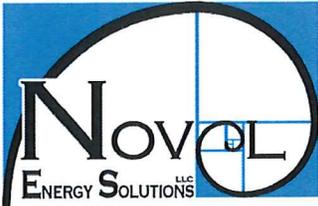
Subscription Agreement

The subscription agreement is attached. The agreement has a term of 25 years, but can be terminated with a maximum two year notice any time after ten years. Rick Masloski, of Novel Energy Solutions, will attend the work session to present information regarding the Value of Solar bill credit program and the subscription agreement. The City Attorney has the agreement for review and will attend the work session to provide comments and answer questions regarding the agreement. The Council's formal consideration of the subscription agreement will be included on the agenda of the June 18 regular Council meeting.

Attachments

The following materials are attached:

1. City of Afton Summary (6/12/19) Novel Energy Solutions (NES) Value of Solar (VOS) Program
2. Minnesota Community Solar Garden Program PowerPoint slides and additional materials
3. Subscription Agreement



612.345.7188
NovelEnergy.biz

1633 South Robert Street • Suite A • West Saint Paul, MN • 55118

City of Afton Summary (6/12/19)

Novel Energy Solutions (NES) Value of Solar (VOS) Program

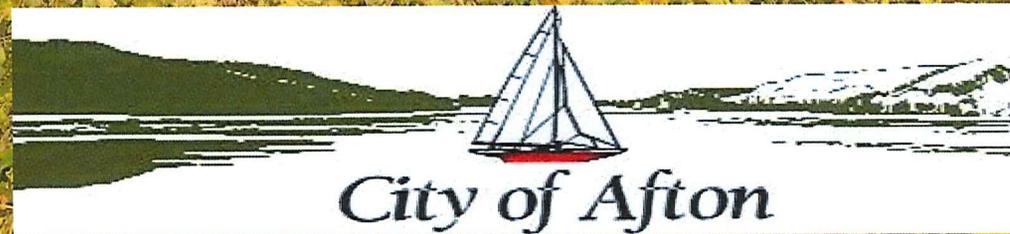
- ❑ In 2013, Minnesota legislation directed Minneapolis-based utility, Xcel Energy, to create a program for community solar gardens (“CSGs”). The program is regulated by the MN Public Utility Commission
 - The current program is referred to as the Value of Solar (VOS) Program
 - Under the program Xcel Energy remains the customer’s electricity provider
 - Bill credits are issued on your Xcel Invoice based on your subscription amount
 - **NO Cost to the Subscriber**
- ❑ The Xcel VOS Bill Credit rate for 2018 projects is 9.76/kWh cents and will escalate each year for 25 years at a fixed rate of 2.27%.
- ❑ Customer's Subscription rate will **always be a half cent or 1 cent** below the VOS Bill credit rate thus **guaranteeing** a half cent or 1 cent/kWh savings
- ❑ Offering Options
 - One cent/kWh discount: 10-year contract, 2-year replacement period, NES finds replacement, extends to 25 years
 - Half cent/kWh discount: 5-year contract, 2-year replacement period, NES finds replacement, extends to 25 years
- ❑ Locally owned Minnesota made company with its office in St. Paul, MN
- ❑ One of the largest CSG developers in the country with over 100 MW of CSGs developed
- ❑ Can be an important marketing tool, now and particularly in the future as more pressure is put on organizations for environmental leadership
- ❑ **Subscribing to 310,363 kWhs at 1 cent/kWh will produce an estimated annual savings of about \$3,000/year**



Winona, MN (350kW)

Minnesota Community Solar Garden Program

6/12/19



Summary

- This Community Solar Garden (CSG) program was created in 2013 with direction from the Minnesota Legislature and is regulated by the Public Utilities Commission
- **\$0 upfront**
- **No pricing risk-** guaranteed 1 cent/kWh savings (about 10%)
- **No production risk**
- Solar panels are located off-site and you still receive power from Xcel
- A Subscription amount of **310,363 kWhs will produce an estimated savings of about \$3,000/year.**

	Discount Rate	Initial Term*	Term Replacement Period
Option 1	\$0.01 / kWh	10 Year	2 Year
Option 2	\$0.005 / kWh	5 Year	2 Year

**You can choose to take advantage of these savings for up to 25 years*



Community Solar is an opportunity to save money over the next 25 years, help protect the environment and support local business

Who we are: Novel Energy Solutions

Novel Energy Solutions is a Minnesota-owned, St. Paul based, full-service energy management company providing customers community solar subscriptions, on-site solar construction, solar project financing and energy conservation.

- ❑ Founded in 2012 by Cliff, Ralph, and Mena Kaehler. The Kaehler family are century cattle farmers with over 130 years of history in southern Minnesota
- ❑ Novel Energy Solutions is a leader in the Minnesota solar market
 - NES developed first 4 community solar gardens in Xcel program
 - One of the largest CSG developers in Minnesota with over 100 MW of CSGs developed
 - NES was founded on providing profitable, reliable energy solutions to agricultural communities



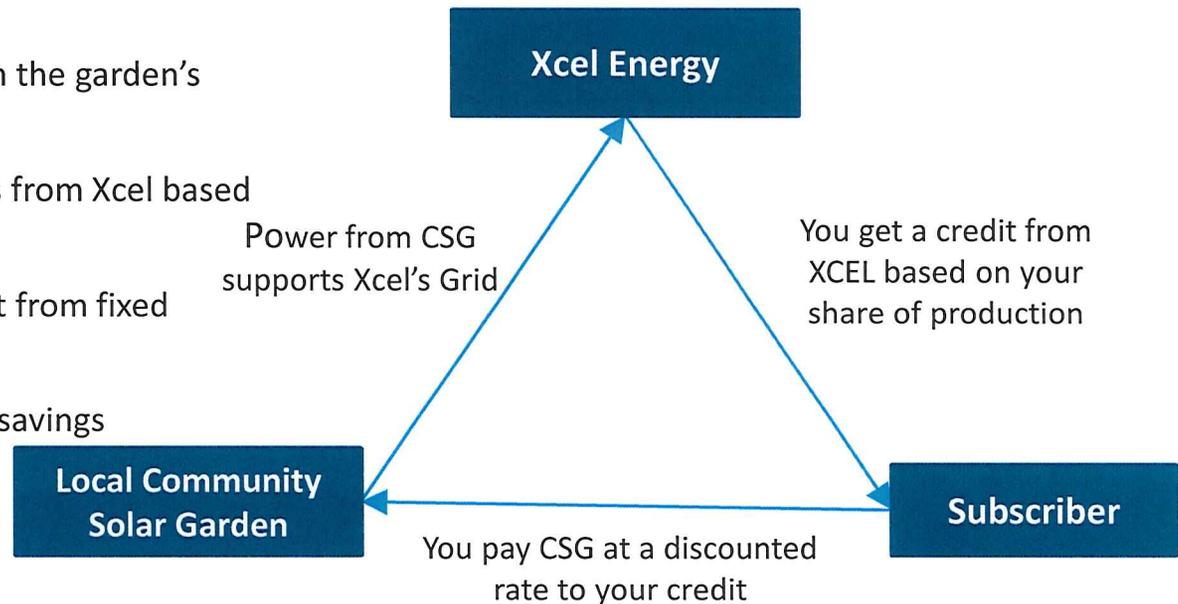
Buhl Hog Farm Tyler, MN



Locally produced renewable energy saves your organization money

MN Community Solar Garden Program

- ❑ The Community Solar Garden model aims to combine the environmental and cost benefits of large scale solar energy production with the individual cost savings of rooftop or ground mount direct solar generation
- ❑ Participating local businesses, organizations and residents can manage electric costs with no upfront investment and no production risk
- ❑ In 2013, Minnesota legislation directed Minneapolis-based utility, Xcel Energy, to create a program for community solar gardens (“CSGs”). The program is regulated by the MN Public Utility Commission
 - Each CSG must have a minimum of five subscribers with no one subscriber accounting for more than 40% of generation
 - CSG subscribers must be located in the garden’s county or adjacent counties
 - CSG subscribers receive bill credits from Xcel based on their subscription size
 - Subscribers to NES gardens benefit from fixed electricity rates savings
 - NES Subscription anticipated 10% savings



Subscription Opportunity

Subscription Pricing

- Opportunity to lock in Savings**
 - The 2018 VOS bill credit is \$0.0976/kWh with annual escalation of 2.27%
 - Subscription rate for the first year is set based on a one cent/kWh discount to the VOS rate on the commercial operations date of the applicable CSG
 - **In future years the subscription rate WILL always remain one cent below the VOS bill credit rate.**
 - Billing is monthly and the City of Afton will only pay for electrical credits actually received

Additional Benefits

- Creates environmental marketing opportunities**
 - The City of Afton can support green energy AND lower electricity rates
 - Can be an important marketing tool, now and particularly in the future as more pressure is put on organizations for environmental leadership

Other Terms

- Assignment and Termination**
 - Allows assignment of contract to new subscriber at limited, administrative charge
 - Lowered termination fees in the event of moving business and no termination fees if terminated due to NES fault

Flexibility

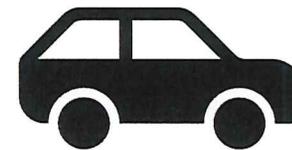
- NES is open to discussing the City of Afton's needs and priorities and creating a custom subscription solution**

Value of Solar Estimated Annual Savings—310,363 kWhs (120% of projected usage in 12 months)

Year	Project Total Energy Production (kWh)	Subscriber Energy Production (kWh)	Bill Credit Rate (\$/kWh)	Estimated Total Bill Credit (\$/yr)	Subscription Rate (\$/kWh)	Subscription Payments (\$/yr)	Estimated Annual Savings (\$/yr)
1	1,785,000	310,363	\$0.09760	\$30,291	\$0.08760	\$27,188	\$3,104
2	1,776,075	308,811	\$0.09980	\$30,819	\$0.08980	\$27,731	\$3,088
3	1,767,195	307,267	\$0.10210	\$31,372	\$0.09210	\$28,299	\$3,073
4	1,758,359	305,731	\$0.10440	\$31,918	\$0.09440	\$28,861	\$3,057
5	1,749,567	304,202	\$0.10670	\$32,458	\$0.09670	\$29,416	\$3,042
6	1,740,819	302,681	\$0.10920	\$33,053	\$0.09920	\$30,026	\$3,027
7	1,732,115	301,168	\$0.11170	\$33,640	\$0.10170	\$30,629	\$3,012
8	1,723,454	299,662	\$0.11420	\$34,221	\$0.10420	\$31,225	\$2,997
9	1,714,837	298,164	\$0.11680	\$34,826	\$0.10680	\$31,844	\$2,982
10	1,706,263	296,673	\$0.11940	\$35,423	\$0.10940	\$32,456	\$2,967
11	1,697,732	295,190	\$0.12210	\$36,043	\$0.11210	\$33,091	\$2,952
12	1,689,243	293,714	\$0.12490	\$36,685	\$0.11490	\$33,748	\$2,937
13	1,680,797	292,245	\$0.12770	\$37,320	\$0.11770	\$34,397	\$2,922
14	1,672,393	290,784	\$0.13060	\$37,976	\$0.12060	\$35,069	\$2,908
15	1,664,031	289,330	\$0.13360	\$38,654	\$0.12360	\$35,761	\$2,893
16	1,655,711	287,883	\$0.13660	\$39,325	\$0.12660	\$36,446	\$2,879
17	1,647,432	286,444	\$0.13970	\$40,016	\$0.12970	\$37,152	\$2,864
18	1,639,195	285,012	\$0.14290	\$40,728	\$0.13290	\$37,878	\$2,850
19	1,630,999	283,587	\$0.14620	\$41,460	\$0.13620	\$38,624	\$2,836
20	1,622,844	282,169	\$0.14950	\$42,184	\$0.13950	\$39,363	\$2,822
21	1,614,730	280,758	\$0.15290	\$42,928	\$0.14290	\$40,120	\$2,808
22	1,606,656	279,354	\$0.15630	\$43,663	\$0.14630	\$40,869	\$2,794
23	1,598,623	277,957	\$0.15990	\$44,445	\$0.14990	\$41,666	\$2,780
24	1,590,630	276,567	\$0.16350	\$45,219	\$0.15350	\$42,453	\$2,766
25	1,582,677	275,185	\$0.16720	\$46,011	\$0.15720	\$43,259	\$2,752
Estimated Total Savings							\$73,109

Environmental Equivalencies Calculator—310,363 kWhs

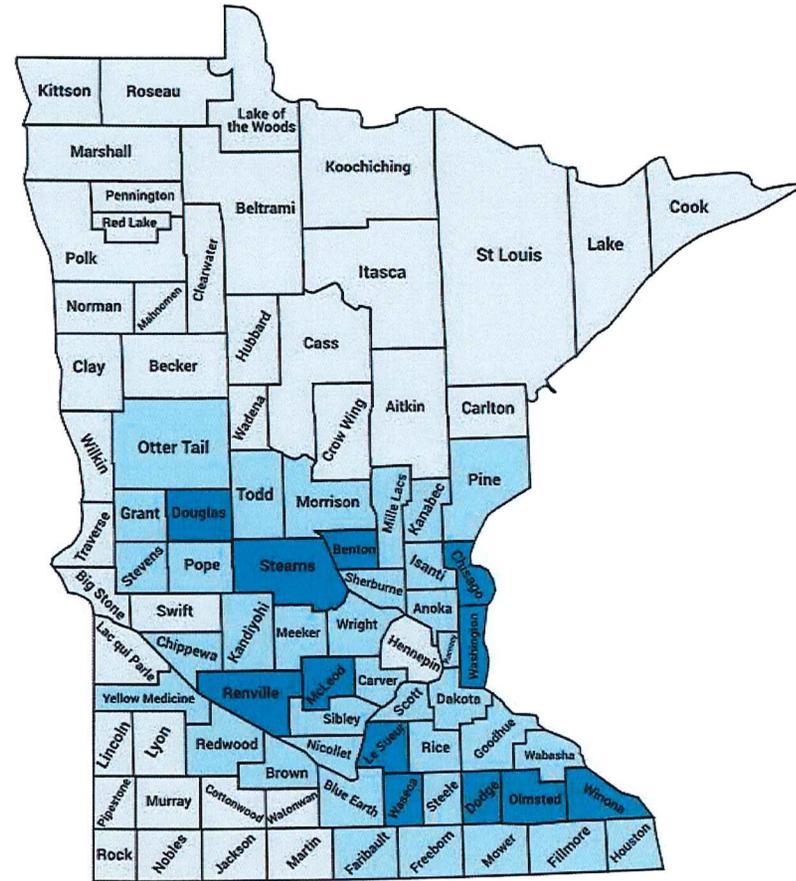
One-year of clean energy production from your subscription is equivalent to the CO2 emissions from:



Pounds of coal burned	Barrels of oil consumed	Passenger vehicles driven for 1 year
239,934	508	46.6

NES Project Locations

County
Benton
Chisago
Dodge
Douglas
Le Sueur
McLeod
Olmstead
Renville
Stearns
Waseca
Washington
Winona



- Subscription Eligible Counties
- NES Project Counties

Contacts



Lead Contact:

Rick Masloski, Business Development Exec.
612-817-6200
rick.masloski@novelenergy.biz

Additional Contact:

Cliff Kaehler, CEO
507-272-5401
cliff.kaehler@novelenergy.biz

More cities across Minnesota are turning to renewable sources of energy

Solar, wind and hydro fill increasing roles in municipal power grids

By **Matt McKinney** Star Tribune staff

JUNE 23, 2018 — 7:39PM



Aaron Lavinsky, Star TribuneA 220-kilowatt solar array powers the St. Cloud Wastewater Treatment Plant, along with a biodigester that turns sewage into energy.

Text size

ST. CLOUD – The sewage plant in this city does something even a non-engineer might find remarkable: It makes so much of its own energy that on some days, when the sun shines bright, the plant’s managers don’t need to buy electricity.

Instead, they sell it.

That’s despite the fact that such plants are notorious energy hogs, burning up the equivalent of a small neighborhood’s monthly electrical use every single day to move and clean city water.

In St. Cloud, though, a pair of powerful solar arrays and a state-of-the-art biodigester that turns sewage into electricity, heat and fertilizer sometimes generate more power than the plant can use.

That happened for the first time on April 12 of last year. Since then, it's happened on 30 additional days, most recently on June 5.

Those "net zero" days in St. Cloud are among a wave of positive anecdotes from municipalities across the state about early efforts to adopt renewable energy. Driven by favorable economics and, to a lesser extent, constituent proddings, many cities have turned to solar and other renewables so quickly that even the people pushing for the change say they're surprised.

"It comes down to how can you say 'no' to saving money and doing something for the environment," said Abby Finis, senior energy planner with the [Great Plains Institute](#) of Minneapolis.

That momentum was driven by the state's 2007 renewable energy standard and solar energy laws passed in 2013 that require public utilities to generate 1.5 percent of electricity from solar by 2021, said Matt Privratsky of Fresh Energy, a Minnesota nonprofit that advocates for renewables.

Solar has grown [so quickly in Minnesota](#), in fact, that between 2016 and 2017 the amount of solar power produced didn't just double or triple, but grew by a factor of 72, according to the Minnesota Department of Commerce. That was enough to raise solar power from .03 percent of all electricity generated in the state in 2016 to 1.2 percent a year later.

The surge has prompted several Minnesota city governments, [including Minneapolis](#), to set bold goals to go 100 percent renewable by a set date.

Of the municipalities racing to get there, St. Cloud may be the leader. Its subscriptions to solar gardens and use of geothermal and conservation measures have it claiming an 83 percent renewable rate for the city government. (This does not include private homes or businesses.)

"Our goal was to be aggressive because we knew what the potential was, particularly in the area of solar," said St. Cloud Mayor Dave Kleis.

As recently as 2014, the city government used just 5 percent renewables for its electrical demand, but that was also the year that the St. Cloud utilities department laid plans to dramatically improve the sewage plant's efficiency. Those plans soon spread across other city departments, and with Xcel Energy's help, St. Cloud began a comprehensive review of energy use.

The city has since subscribed to 32 solar gardens — at least 20 commissioned last year alone — for a total of 23 million kilowatt-hours of solar energy, or enough to meet about three-quarters of demand.

Solar panels were also installed on the roof of the police headquarters, a fire station, a senior center and three other city buildings. A conversion to LED helped cut in half electrical use for streetlights between 2015 and 2017. Efficiencies at the sewage plant lowered its power demands as the new biodigester and solar panels came online. The public transportation system, meanwhile, converted nearly two-thirds of its bus fleet to compressed natural gas. That lowers carbon emissions and has saved St. Cloud Metro Bus about \$450,000 in fuel costs over the past three years.

The savings from the solar garden subscriptions alone amount to \$28 million over 25 years, according to a city analysis. The sewage plant spends about \$400,000 a year less for electricity, money that for 14 years will go to pay a bond issued for the solar panels and biodigester. After that, the city can keep the savings.

And none of these calculations include the city's long-running hydroelectric plant, which generates nearly twice as much electricity as the city needs every day. All of that power goes to Xcel Energy for use on the grid, so the city hasn't considered it in their renewables calculations.

Renewables elsewhere

Few cities in Minnesota can match St. Cloud, but Minneapolis might come closest, where measures already underway will push the city government's use of renewables to about 65 percent by the end of this year.

St. Paul stands at about 25 percent renewable and has subscribed to solar gardens that, once built and put online, will raise the city's number closer to 50 percent. Among other large cities: Mankato will hit 52 percent by next year, Rochester is at about 17 percent and Duluth about 14.

"It's not just the right thing to do, it actually makes a lot of sense financially to do it," said Alison Zelms, Mankato's deputy city manager. Her city will save \$273,000 a year starting in 2019 thanks to subscriptions to solar gardens, a pair of city-owned solar arrays and a suite of conservation measures that include installing LED lights.

Smaller cities have switched to renewables, too. In Red Wing, the city government approved solar garden subscriptions in 2016 that would cover 100 percent of municipal demand. So far, about 40 percent of the gardens have been built, enough for the city to save about \$33,000 on its power bill last year. Once all the gardens are online, the city expects to save \$6.6 million over 25 years.

Meanwhile, a five-megawatt solar garden that went online in February 2017 helps power the Red Wing School District, which expects to save \$7.7 million over 25 years.

In Inver Grove Heights, City Administrator Joe Lynch said his city both subscribed to solar gardens and installed rooftop solar on city buildings, eventually finding that the latter didn't deliver the predicted savings while the solar gardens did. He said conversations are now underway about how to raise their renewable electricity rate of about 48 percent, perhaps by saying 'yes' to one of the solar vendors who call him pitching more solar gardens.

"We're being petitioned regularly," said Lynch.

In Woodbury, the city's subscriptions to solar gardens are expected to deliver about \$67,000 a year in savings, or about \$1.69 million over the life of a 25-year contract. The city recently signed up for more solar gardens and expects to have about 70 percent of its electrical demand matched by its subscriptions.

"Everybody has been really happy with the way that this is going," said Jen McLoughlin, the city's sustainability specialist. "We are seeing the savings."

The city installed its own solar panels on the public safety building, but analysis continues on whether that's a better move than joining more solar gardens, said McLoughlin.

Activism vs. economics

For cities making the plunge into renewables, the economics have often been at the center of the argument. Plummeting costs for wind and solar energy make it about the cheapest way to keep the lights on at City Hall. Some of the solar farms and wind stations also generate lease payments and property taxes that, in places like Jackson County, in the wind-rich region of southwest Minnesota, contribute a substantial amount to local government's bottom line.

But on top of the talk of dollars and cents are creative campaigns by environmentalists who want to push their cities to move faster.

One of the most successful projects has been led by kids like Olya Wright, 12. Last year, Wright, along with other members of a nature group she started, delivered bad news to her City Council in Grand Marais. Using a questionnaire and directions she took from the youth environmental group iMatter, based in St. Louis Park, Wright told the City Council that she had assessed its environmental efforts and determined that they were nearly failing.

"They got a grade," Wright said recently from her home in Grand Marais. "It was a D-plus."

The council passed a climate resolution that night, vowing to shrink the city's carbon footprint.

mckinney@startribune.com 612-217-1747



May 30, 2019

To Whom It May Concern:

As the Facility Administrator for School Sisters of Notre Dame, I was fortunate to meet Rick Masloski of Novel Energy Solutions when I was researching additional subscriptions to community solar gardens for the sisters. The School Sisters of Notre Dame is a religious organization that maintains a large healthcare/retirement facility in Mankato for 150 retired sisters and also serves as the headquarters for their regional campus. On the Mankato campus is a 40KW rooftop solar system and a 1 MW community solar garden.

Novel Energy Solutions (NES) introduced themselves at just the right time and helped the sisters become 100% renewable in their electrical purchases for the next 25 years. The sister's commitment to sustainable practices and how NES approached development of solar energy very much paralleled each other. The long term commitment of NES in Minnesota and solar energy production was impressive. The leadership of the sisters was also impressed with the professionalism shown by NES in their presentations and written materials. There was never a hard sell and the dedication to providing renewable energy to Minnesota made the decision to work with them quite easy.

Throughout the process, from the first presentation all the way to seeing those first solar credits on the Xcel Energy bills, I was always kept in the loop. I acknowledge Rick Masloski with the majority of credit for that accomplishment. All my questions were answered timely and a presentation suggestion was acted upon for future presentations. The overall experience with Novel Energy Solutions was extremely positive. I have recommended them to a number of other companies as I feel the community solar garden program is something all eligible companies need to take part in. I encourage Novel Energy Solutions to give my name and number to any group looking into the possibility of partnering on a solar project.

Respectfully,

A handwritten signature in black ink that reads "Bill L. Ward". The signature is fluid and cursive.

Bill L. Ward

Facility Administrator

**VOS Commercial
Solar Garden Subscription Agreement**

This Solar Garden Subscription Agreement is entered into on _____.

Customer, **City of Afton** (the “**Customer**”), agrees to subscribe to a community solar garden (“**CSG**”) provided under the MN Value of Solar (“**VOS**”) solar subscription program in accordance with Novel Energy Solutions L.L.C. (the “**Provider**”) VOS Commercial Terms & Conditions provided to the Customer.

Customer wishes to subscribe to and Provider will reserve a maximum of 17 % (the “**Percentage Allocation**”) of the monthly electricity output from the CSG for an estimated total **Subscription Amount** of 243.4 kilowatts (“**KW**”), which is estimated to produce up to 310,363 kilowatt hours (“**kWhs**”) of electricity in the first year of operation.

Xcel will provide, and the Public Utility Commission (“**PUC**”) shall approve, a **Bill Credit Rate (“BCR”)** applicable to each CSG. The Initial Estimated BCR is nine hundred seventy-six ten-thousandths (\$0.0976) dollars per kWh of solar production.

Customer agrees to pay the **Subscription Rate**, which is defined as the difference between the BCR and Discount Rate. The **Discount Rate** shall be equal to one cent (\$0.01) per kWh off of the applicable Bill Credit Rate. The Initial Estimated Subscription Rate is eight hundred seventy-six ten-thousandths (\$0.0876) dollars per kWh.

Customer will be invoiced monthly for the production posted to utility account(s) since the previous invoice date. Customer agrees to pay monthly invoices via an ‘automatic funds transfer’. The first invoice will be issued two months after the garden’s Commercial Operation Date. The Subscription Payment will be calculated by multiplying the total CSG production by the Percentage Allocation and the Subscription Rate.

Customer acknowledges receipt of Novel’s VOS Commercial Terms & Conditions and agrees to their incorporation into the terms of this Agreement.

The Parties agree to receive notice at the Customer and Provider points of contact noted below:

<u>Customer</u>	<u>Service Address</u>	<u>Provider</u>
City of Afton Attn: Ronald Moose 3033 Saint Croix Trail South Afton, MN 55001 administrator@ci.afton.mn.us 651-436-8957	See Exhibit A	Novel Energy Solutions 1633 South Robert Street, Suite A West St. Paul, MN 55118 CustomerService@NovelEnergy.biz 612-345-7188



SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date noted herein.

City of Afton

Novel Energy Solutions L.L.C.

Signature

Signature

Printed Name

Printed Name

Title

Title



VOS Commercial Terms and Conditions

1. **Services:** Subject to the terms hereof, Novel Energy Solutions L.L.C. ("NES"), agrees to provide the Customer with Xcel Value of Solar ("VOS") solar subscription services (hereafter, "Services") as specified in the VOS Commercial Subscription Agreement provided to the Customer to which these terms and conditions are attached (collectively, the "Agreement").
2. **Term:** The term of this Agreement shall commence on the date upon which the applicable community solar garden is authorized by Xcel to generate and deliver electrical energy to the transmission system, the Commercial Operation Date ("COD"); and shall terminate on the date which is twenty-five (25) years thereafter.
3. **Effective Date:** The Effective Date of each Agreement shall be either the COD or the date of execution of the Agreement, whichever date occurs later.
4. **System Production Risk:** Monthly Subscription Payments are based on the actual CSG production posted to the Customer's account(s) since the previous invoice date which ensures the Customer only pays for realized bill credits. The Subscription Rate is a fixed discount to the Bill Credit Rate to provide a guaranteed savings for the Customer on all energy produced by the CSG.
5. **Onsite Electric Usage Guarantee:** NES guarantees that in no way will entering into this contract change or interfere with the Customer's existing electric infrastructure.
6. **Termination:** Customer may terminate this Agreement upon the occurrence of any of the following:
 - 6.1. **Early Termination Option after 120 Months:** If anytime after ten (10) years the customer wishes to terminate the agreement they may do so without penalty by giving Provider twenty-four (24) months notice. Upon giving notice, Customer may leave at the earlier of (a) Provider finding a replacement subscriber or (b) twenty-four (24) months after giving notice. For clarity, this option is only available starting day one (1) of the eleventh (11th) year following the Effective Date, and without a replacement subscriber the earliest Customer may leave without penalty is the end of the twelfth (12th) year.
 - 6.2. **Ceasing to be an Eligible Xcel Customer:** If at any time the Customer moves or relocates outside the utility service area that is eligible to subscribe to the CSG and is no longer eligible to subscribe to the CSG, the customer may leave with a termination fee of two thousand and five hundred dollars (\$2,500).
 - 6.3. **No Fee Termination:** Customer may terminate this Agreement without a fee only under the following circumstances:
 - 6.3.1. In the event the COD is not achieved within twenty four (24) months after the date of execution of this Agreement, either Party may terminate this Agreement, without liability, by providing the other Party with a written notice of termination.
 - 6.3.2. In the event Provider breaches, fails to perform, or fails to comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of forty five (45) days after written notice thereof.
7. **Subscription Amount:** The Subscription Amount is defined as the kilowatts (kW) the Customer subscribes to in each community solar garden (CSG). This is calculated by multiplying the Percentage Allocation by the total CSG production capacity as determined by the Xcel and independent testing.
8. **Percentage Allocation:** This term is defined as the maximum amount of the CSG solar electric production Provider will reserve for customer's Subscription Amount.
9. **Discount Rate:** The Discount Rate off of the Bill Credit Rate is \$0.01 / kWh (one cent per kilowatt hour).
10. **Bill Credit Rate:** The Bill Credit Rate (BCR) will change annually throughout the Term of this Agreement. A new BCR shall be proposed by Xcel to the PUC on or about the first quarter of each calendar year. Once a BCR is set for a CSG, that BCR will not change aside from the predetermined annual increase. Any changes to the BCR do not impact the Discount Rate.
 - 10.1. The BCR is credited to the Customer's utility bill based upon the production of the CSG(s) to which the Customer is subscribed. The Bill Credit amount shall be calculated by Xcel by multiplying the BCR by the kilowatt hours (kWhs) produced by the CSG each billing period and by the CSG Percentage Allocation of corresponding Customer.
11. **Bill Credit Exceptions:** If the amount of Bill Credits exceeds the amount owed on Customer's Xcel electric utility bill in any billing period, the excess shall be governed by the Customer's utility contract with Xcel, or applicable law.
12. **Subscription Rate:** The Subscription Rate shall be determined by subtracting the applicable Discount Rate from the applicable BCR at that time.
13. **Subscription Payment:** Beginning with the second calendar month following the Commercial Operation Date, NES shall invoice Customer for the Monthly Subscription Payment for the bill credits posted to Customer's account since the prior invoice date. Customer shall make all payments through an "automatic transfer of funds" prior to the invoice due date. For clarity, no payments shall be due to NES until 60 days following the CSG's Commercial Operation Date.
14. **Monthly Subscription Payment:** The Monthly Subscription payment is calculated by multiplying the total CSG production accrued since the prior invoice date by the Percentage Allocation and Subscription Rate.



15. **Outstanding Balances/Interest:** Any amounts not paid prior to the invoice due date will accrue interest at a rate of eight percent (8%) per annum (and if less than eight percent (8%) per annum, the maximum rate permitted by law) from the invoice due date until NES receives payment.
16. **Outages:** NES shall not invoice Customer during CSG outages lasting longer than twenty (20) consecutive days. NES shall provide written notice to Customer when it becomes aware that the corresponding CSG is out of service for longer than two (2) consecutive days, which notice shall include an estimate of how long the outage will last and the estimated loss of electricity production.
17. **Subscriber Eligibility Requirements:** As a condition precedent to entering into this Agreement, Customer must meet all applicable Subscriber Eligibility Criteria as provided in MN § 216B.1641 and VOS program regulations. Should Customer no longer qualify under the Subscriber Eligibility Criteria, this Agreement may be subject to termination by NES, Xcel, or a governmental authority having jurisdiction over the Xcel Solar*Rewards Community Program.
18. **Annual Reports:** In the first March which is at least twelve (12) full months following the Effective Date, and each March thereafter until the expiration or earlier termination of this Agreement, NES shall provide Customer an annual report describing the annual energy production of the Project for the prior calendar year.
19. **Environmental Attributes, Tax Credits, etc.** Customer's purchase of the Subscription Amount will not include benefits or derivatives of Renewable Energy Credits ("RECs") or green tags, carbon offset credits, rebates, unsubscribed electrical energy, tax credits, tax or environmental attributes associated with owning or operating the Project, or any other attributes of owning the Project (collectively "Environmental Attributes"). Customer acknowledges and agrees that all RECs and Environmental Attributes shall be retained by NES and that NES will be required to transfer ownership of all RECs to Xcel pursuant to the CSG Contract. All unsubscribed electrical energy generated by the Project shall be treated as unallocated and Xcel will purchase all unallocated energy from NES at the applicable Tariff rate. In addition, Customer agrees to reasonably cooperate with NES so that NES may claim any Environmental Attributes from the Project.
20. **Transfer and/or Assignments:** No Party may assign or transfer this Agreement except as follows:
- 20.1. **Customer Assignment or Transfer:** Customer may only assign or transfer this Agreement with NES's prior written approval, which approval is in NES's sole and absolute discretion, and upon Customer's payment to NES of a two hundred fifty dollar (\$250.00) "Assignment or Transfer Fee," and Customer's payment to NES of all amounts due and owing to NES after reconciliation of the Monthly Subscription Payments for the period prior to the effective date of the assignment or transfer. Upon the

execution of Customer's transfer request, neither NES nor Xcel shall have any liability to Customer or be required to refund Customer any money under this Agreement. In the event the Customer transfers a portion of its subscription, the transfer fee shall be prorated. Customer shall not profit from, or receive any payment as a result of, any assignment or transfer of this Agreement.

- 20.2. **Customer New Service Address within Xcel:** The Parties agree this Agreement shall remain in full force and effect and automatically transfer without any fee to Customer's new Service Address in the event Customer's Service Address changes, provided Customer remains an Xcel customer eligible to participate in the corresponding CSG under Minn. Stat. § 216B.1641 and Customer continues to satisfy the Subscriber Eligibility Criteria.

- 20.3. **NES' Assignment, Transfer, or Reallocation:** NES may assign or transfer this Agreement to any affiliate, financial institution, or entity without providing Customer prior notice and without obtaining Customer's prior consent, and upon any such assignment or transfer, NES shall be released from all future obligations under this Agreement. NES may transfer or allocate this Agreement and/or Subscription Amount to multiple CSG's and upon such transfer or reallocation will provide Customer updated disclosure information pursuant to the Agreement. Any assignment, transfer or reallocation shall not alter the Customer Discount Rate, contract length, termination provisions, billing mechanics, customer transfer options, eliminate arbitration as a dispute mechanism, or any key default provision.

21. **Default & Remedies:**

21.1. **Events of Default:**

21.1.1. **Events of Default.** The following shall constitute an "Event of Default":

21.1.1.1.A Party fails to make any payment due under this Agreement and such failure continues for a period of forty-five (45) days;

21.1.1.2.A Party breaches, fails to perform, or fails to comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of forty-five (45) days after written notice thereof by the other Party;

21.1.1.3.A Party has provided false or misleading financial or other information to enter into this Agreement;

21.1.1.4.Customer assigns, transfers, encumbers, or sells this Agreement or any part of its Subscription Amount or Bill Credits in violation of Transfers and/or Assigns section; or

21.1.1.5.Customer makes an assignment for the benefit of creditors, admits in writing its insolvency, or is subject to a petition for dissolution or reorganization, voluntary or involuntary, under the U.S. Bankruptcy Code.



21.2. Remedies: Upon the occurrence of an Event of Default, NES may take any rights and/or remedies available to it at law or in equity. All rights, powers, and remedies provided under this Agreement are cumulative and not exclusive of any rights, powers, or remedies provided by applicable law. NES may terminate the agreement and replace the defaulting Customer, which will not waive payments owed or default fees.

21.3. Attorney's Fees: If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorney's fees and all other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

22. Limitation of Liability, Arbitration, Indemnification

22.1. Limitation of Liability: Except as provided in the Early Termination and Transfer and/or Assigns sections with respect to Customer's liability upon termination or transfer of the Agreement, no Party shall be liable to the other Party for any indirect, special, punitive, exemplary, incidental, or consequential damages, whether arising in contract, tort, under statute, or in equity, and each Party hereby waives its rights to any such damages. To the maximum extent permitted by law, NES' liability arising under or in connection with this agreement cannot exceed the total overpayments made to NES by Customer for electricity produced to date.

22.2. NO WARRANTY: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NES MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE PROJECT OR ITS OBLIGATIONS HEREUNDER. NES DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NES DOES NOT WARRANT OR GUARANTEE THE AMOUNT OF ELECTRICITY PRODUCED BY CSG OR CUSTOMER'S PERCENTAGE ALLOCATION.

22.3. Arbitration: Any dispute, disagreement, or claim between Customer and NES arising out of or in connection with this Agreement shall be submitted to final and binding arbitration, in accordance with the Consumer Arbitration Rules of the American Arbitration Association. This Agreement to arbitrate is governed by the Federal Arbitration Act. This arbitration clause replaces the right to participate in a class action or similar proceeding.

22.4. Indemnification: To the maximum extent permitted by law, each Party agrees to indemnify, protect, defend, and hold harmless the other Party and its successors and assigns, and their employees, officers, directors, and agents, from any and all damages, losses, claims, costs, or expenses (including reasonable attorneys'

fees) or any liability resulting from any action or suit by any third party, of any kind resulting from the failure of such Party to comply with any of the terms or conditions of this Agreement applicable to such Party.

23. Miscellaneous:

23.1. Force Majeure: Except as specifically provided in this Agreement, if by reason of Force Majeure, NES is unable to carry out, either in whole or in part, any of its obligations described in this Agreement, NES shall not be deemed to be in default during the continuation of such inability, provided that, within a reasonable time after the occurrence of the Force Majeure event, NES gives Customer notice describing the particulars of the occurrence and the anticipated period of delay, and uses reasonable efforts to remedy the cause(s) preventing it from carrying out its obligations. "Force Majeure" as used in this Agreement means any event or circumstances beyond the reasonable control of NES not resulting from NES's negligence.

23.2. Waiver: Any delay or failure of a Party to enforce any of the provisions of this Agreement, or to require performance by the other Party of any of the provisions of this Agreement, shall not be construed to

23.2.1. be a waiver of such provisions or a Party's right to enforce that provision; or

23.2.2. affect the validity of this Agreement.

23.3. Severability: If any portion of this Agreement is determined to be invalid or unenforceable in any respect under applicable law, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of the Agreement will be valid and enforceable to the fullest extent permitted by applicable law, unless such invalidity or unenforceability frustrates or negates an essential purpose of this Agreement.

23.4. Notices:

23.4.1. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed delivered:

23.4.1.1. upon receipt, when delivered personally;

23.4.1.2. upon receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or

23.4.1.3. on the second day after mailing if mailed to the parties to whom notice is to be given, by first class mail, postage prepaid, and properly addressed to the Provider address noted within the Subscriber Agreement page.

23.4.2. Any Party may change the address for purposes of this Section by giving the other written notice of the new address in the manner set forth above.

23.5. Entire Agreement: This Agreement and all documents referenced herein contain the entire agreement between Parties with respect to the subject



matter hereof and supersede all other understandings or agreements between the Parties relating to the subject matter hereof.

23.6. Binding Effect: This Agreement is binding upon the Parties and their successors and permitted assigns.

23.7. Survival: The provisions of Limitation of Liability, Arbitration, Indemnification section of this Agreement shall survive the expiration or earlier termination of this Agreement.

23.8. Governing Law: The Agreement is made in the state of Minnesota and will be governed by Minnesota law, without regard to principles of conflicts of law, together with any applicable federal law.

23.9. Counterparts: This Agreement may be executed and delivered in identical counterparts by exchange of electronic copies showing the signatures of the Parties, which shall constitute originally signed copies of the same Agreement requiring no further execution. Each counterpart, when assembled, will be a complete original and fully effective instrument. Any acceptance of this Agreement by affirmation through a DocuSign Electronic Signature, or similar system, shall be deemed a binding acceptance of this Agreement and shall be valid as a signature.

23.10. Headings: The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.



Exhibit A

City of Afton Service Address List

Account	Premise	Address	City	State	Zip
51-0011935180-2	304695145	3418 Saint Croix Trl S	Afton	MN	55001
51-0895345-1	302409557	2318 Saint Croix Trl S	Afton	MN	55001-9697
51-7576371-4	303380051	1675 Stagecoach Trl S	Afton	MN	55001-9337
51-6257802-9	303326671	3420 Saint Croix Trl S	Afton	MN	55001-9658
51-5700429-6	303084797	3033 Saint Croix Trl S	Afton	MN	55001-9674
51-5247622-9	302669711	4105 River Rd S	Afton	MN	55001-9674
51-0011983902-7	304704405	2318 Saint Croix Trl S	Afton	MN	55001-9697
51-0011957819-0	304699630	15995 Upper 34th St S	Afton	MN	55001
51-0011957771-3	304699626	3293 Saint Croix Trl S	Afton	MN	55001



City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Meeting Date June 12, 2019

Council Memo

To: Mayor Palmquist and Members of the City Council
 From: Ron Moorse, City Administrator
 Date: June 6, 2019
 Re: House at Wastewater Treatment Site

At its May 21, 2019 regular meeting, the Council discussed the house at the wastewater treatment site, and particularly vandalism that had recently occurred to the house. The Council directed staff to board up the broken windows and secure the house and garage, and to contact the Department of Natural Resources (DNR) regarding the potential exchange of a five-acre lot with the house for the Gerhke parcel in the Old Village. The windows have been boarded up and the house and garage have been secured. The City Engineer contacted the DNR regarding the potential land exchange. The DNR indicated a land exchange would be possible, but would take some doing. The Minnesota Management and Budget Office would need to be involved. The DNR does not want to do much with the request until the project is closed out.

Comparative Value of the Two Parcels

Staff has worked with the appraiser who did the initial appraisal of the Gehrke property to obtain an estimate of the current value of the property. The parcel is likely one of the smallest buildable sites in the market, especially in terms of the portion of the site that is useable due to the easements on the property. (The City purchased a large permanent easement for the construction of the levee, which left a small footprint for a house.) The appraiser concluded that the value of the property is \$106,000.

Staff recently learned from the Corps of Engineer's review of the easements on the Gehrke property that an additional 10 foot wide permanent easement is needed along the levee. Mr. Gehrke has not been approached regarding this easement.

Regarding the value of a five-acre lot with the house at the treatment site, the WSB right-of-way acquisition engineer has provided sales information for similar parcels in Afton. Based on this information, it appears the value of a five-acre lot would be approximately \$180,000.

While Mr. Gehrke is not aware of the value difference between the two parcels that is suggested above, he has indicated he has some flexibility regarding addressing the difference in value between the two parcels. He also indicated that, if the Council is generally supportive of the land exchange, he is willing to wait until the project is closed out to do the exchange. If the Council is not supportive, he would move forward to build a house on his parcel.

Uncertain Elements

There are a number of elements of a possible land exchange that are uncertain. They include the ability to obtain approval for a land exchange from the DNR, whether the value of the five-acre parcel would affect the grant amount received from the DNR for the purchase of the treatment site parcel, and whether the City and Mr. Gehrke can reach agreement on the financial aspect of a land exchange.

General Direction

It would be helpful to Mr. Gehrke if the Council could provide some direction as to whether, assuming the uncertain issues could be resolved in an acceptable way, the Council would be supportive of the land exchange.

City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Meeting Date June 12, 2019

Council Memo

To: Mayor Palmquist and Members of the City Council
From: Ron Moorse, City Administrator
Date: June 6, 2019
Re: Afton Creek Preserve Plat Improvements Construction Monitoring Process

Concerns have been raised regarding the construction of the plat improvements for the Afton Creek Preserve subdivision. A number of Council members have become involved in following up regarding the concerns. It is important that both the specific concerns and the construction monitoring process itself be discussed by the Council to bring all members up to date and to clarify the construction monitoring process.

The construction-related concerns have not been related to meeting the technical engineering requirements, but rather to meeting the zoning-related requirements set out in the Developer's Agreement and the conditions of the Final Plat approval. To proactively prevent the violation of the zoning requirements, staff has highlighted these requirements in the Developer's Agreement and the Final Plat approval resolution and has provided this information to both the developer and the contractor. These highlighted documents are attached.

RESOLUTION 2018 - 59

**CITY OF AFTON
COUNTY OF WASHINGTON, MINNESOTA**

A RESOLUTION APPROVING THE FINAL PLAT FOR J.P. HOMES, INC. "AFTON CREEK PRESERVE"

WHEREAS, J.P. Bush Homes, Inc. has made application for approval of a final plat to subdivide 18 lots from 218 acres for a Preservation and Land Conservation Development subdivision to be known as Afton Creek Preserve; and,

WHEREAS, based upon review of the application and evidence received, the Afton City Council now makes the following findings of fact:

- A. The legal description of the property is attached as Exhibit A.
- B. The 2008 Afton Comprehensive Plan allows Preservation and Land Conservation Development subdivisions in the Agricultural District.
- C. The property is zoned Ag, Agricultural District, which allows Preservation and Land Conservation Developments with a Conditional Use Permit and single family dwellings as a permitted use.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Afton that based on the foregoing information and applicable ordinances, the request is hereby **APPROVED** and is subject to the following conditions:

- 1. Access and traffic related issues shall be subject to review and approval by the City Engineer.
- 2. The developer shall obtain and provide an easement providing access to Odell Avenue prior to the approval of the final plat.
- 3. The developer shall provide an acceptable method of ensuring adequate long term maintenance of the 5550 Odell Avenue parcel.
- 4. Street-related designs and specifications, including but not limited to right-of-way width, shall be subject to review and approval by the City Engineer to insure they meet Afton's standards.
- 5. The acceptability of the drainage and utility easement within Lot 4, Block 3 and related maintenance responsibilities shall be subject to review and approval by the City Engineer.
- 6. In accordance with the submitted seeding plan, pre-development seeding with a prairie grass/wildflower mix shall be provided on all lots and on the open space parcels. Maintenance responsibilities associated with the seeded areas shall also be addressed by the applicant (to the satisfaction of the City).
- 7. Wetland-related issues shall be subject to review and approval by the City Engineer.
- 8. The proposed 20-foot wide access easement width between Lots 5 and 6, Block 2 shall be determined acceptable to the City Engineer and/or Fire Chief.
- 9. Easements for drainage and utilities shall be provided over individual lots as recommended by the City Engineer.
- 10. Review of proposed septic designs and final septic permits shall be received from Washington County prior to building permit approval.
- 11. The applicant shall pave 60th Street from Trading Post Trail to Neal Avenue.
- 12. The farm access shall be prohibited as a construction thoroughfare or road during development of the PLCD and redeployed to the benefit of the neighborhood.
- 13. All proposed right-of-way dedication and street construction plans are subject to review and approval of the City Engineer.
- 14. Driveways accessing the proposed lots shall comply with Section 12-84 of the Zoning Ordinance.

15. All grading, drainage and erosion control issues are subject to review and approval by the City Engineer and South Washington Watershed District.
21. All drainage and utility easements shall be subject to review and approval of the City Engineer.
22. Park dedication requirements shall be satisfied at the time of final plat approval.
23. The Developer shall enter into a Developer's Agreement with the City regarding the installation of required improvements, and shall provide financial guarantees as required in Sections 12-1471 to 12-1476 of the subdivision ordinance.
24. The developer shall grant a conservation easement over the required open space parcels to the Minnesota Land Trust, the provisions of which shall be approved by both the City and the Minnesota Land Trust.
25. The homeowner's association restrictive covenants shall contain a provision that in the event the homeowner's association becomes insolvent or ceases operating control shall at its option be transferred to the city of Afton or another method of succession shall be dictated by the City.
26. The homeowner's association documents shall contain a waiver of assessment appeal running in favor of the city.
27. The provision in the homeowner's association restrictive covenants allowing changes in lots upon the vote of 2/3 of the residents shall be changed to comply with Afton's requirements.
28. The public walking paths shall be added to the Final Development Plan.
29. The city of Afton shall be a named insured on the homeowner association insurance policy and the policy shall cover those risks identified by the city, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on the conservation area.
30. The homeowner's association shall be required to indemnify and hold the city of Afton harmless from all losses incurred as a result of the public's use of the conservation area walking trails.
31. Covenant amendment provisions in the homeowner's restrictive covenants permitting changes after a certain number of years have passed shall be amended to remove the current conflict with restrictions on future subdivision of PLCD lots and other provisions of Afton's ordinances.
32. Architectural controls shall be removed from the homeowner's association restrictive covenants.
33. Prairie Restoration shall be the vendor planting the conservation easement and the initial planting of all residential lots with a seed mix matching the one submitted with the preliminary plat application.
34. Provisions on setbacks shall be removed from the homeowner's restrictive covenants and Afton's restrictions shall control.
35. The provisions restricting certain pets shall be removed from the homeowner's restrictive covenants; Afton's ordinances shall control pets.
36. Residential lots shall be subject to restrictive covenants in favor of the other lot owners in the development and the City of Afton requiring that 60% of each lot remain planted in natural prairie, forbs, shrubs and trees, and appropriate language shall be inserted in the homeowners association documents to ensure enforcement of the maintenance of the lots in accordance with these requirements.
37. All bid documents received by the developer must be approved by the City's engineers prior to acceptance.
38. No work shall commence until the final plat has been approved.
39. The letter of credit securing performance shall include amounts necessary to pay the city's engineers for on-site monitoring, review of plans and specifications and intermediate and final certifications of completion required prior to all fund releases.
40. All fund releases shall be based on completion of plans and specifications and sign-off by the city's engineers.
41. The final release of funds shall not occur until all improvements in the development, including construction of homes and accessory structures on all lots, has occurred.
42. The development agreement shall be personally guaranteed by Albert W. Carlson in a form acceptable to the city.

43. Costs of completion shall be calculated based on an assumed annual 4%, year over year, with provision for a 10-year build-out.
44. The final plat application shall include estimated initial costs including but not limited to grading, surface water controls and roads and also a final cost estimate, both of which shall be subject to approval by the city's engineers.
45. No final plat approval shall occur until both the development contract and the tri-party agreement between the developer, the city and the Minnesota Land Trust has been executed by all parties.
46. Plat improvements and off-site improvements shall be separately secured by separate letters of credit.
47. Albert W. Carlson will at his expense install a 60' road access to the development through the lot at 5550 Odell Avenue. Included will be the removal of existing structures, erosion control management, complete road installation, boulevard/tree landscape. Similarly, Albert W. Carlson, at his expense, will install bituminous improvements on 60th Street as determined necessary by the City Council.
48. Albert W. Carlson will provide proof of his funding capabilities to the City of Afton. Funding for the City's security of development completion and any release of funds must be approved by City staff, consultants and City Council.
49. Lots 1,2,3,4 Block 2, abutting the Turner Rhode Horse Farm, will have a 100 foot setback instead of the required 50 foot setback. Will Carlson will install evergreen trees and prairie grass as a screening buffer within the 100 foot setback area. Tree height will be a minimum of 12 feet with proper spacing for screening.
50. Lot 13 Block 2 and lots 1,2,3, 4 Block 3 that are abutting the Graham, Dawson/Lewandowski, McConnell, Rickard, Mettler, Dickes and Forbes properties will also have an increased setback of 100 feet. Albert W. Carlson will also provide evergreen trees in locations that help screen sightlines to new homes.
51. Albert W. Carlson has 2.5 acres of land abutting the Turner Rhode Horse Farm that are not being used in the development site requirements or lots. He shall offer either an easement for use of this land or the sale of this land for \$1.00 to the Turner Rhode Horse Farm owners.
52. Albert W. Carlson will transfer ownership of the farm access road at no cost to either or both Dawson/Lewandowski and McConnell, the abutting property owners.
53. No construction related traffic to be allowed on Odell.
54. Tree border to be provided to block farm access road from the development on eastern boundary.
55. Tree border to be provided along eastern boundary of the development abutting existing properties.
56. The Home Owners Association (HOA) plan and documents to be reviewed and approved by the city attorney.
57. The Home Owners Association shall develop a stormwater pond maintenance plan for eastern boundary.
58. A minimum of a 48 hour notice shall be provided to the Turner Rhode Horse Farm in advance of controlled burns for the maintenance of the prairie grass, and the burning shall be done only when the prevailing winds will carry all or most of the smoke away from the Horse Farm.
59. City to review and approve a tree/vegetation plan for the 100 foot setback area abutting the Turner Rhode Horse Farm, and no tree removals shall be allowed in this area without the approval of the City.
60. The developer/HOA shall be responsible for on-going maintenance of the 5550 Odell parcel.
61. The boundaries of the new lots adjacent to the open space outlots shall be marked by fencing, at minimum at the property corners, as approved by both the City and the Minnesota Land Trust, to enable a visual demarcation of the property boundaries to prevent encroachments into the conservation easement area.
62. A Letter of Credit, in a form and amount acceptable to the City and the City Engineer, shall be provided to ensure sufficient financial security for the completion of the development.
63. All new streets shall be named in accordance with the Washington County street naming conventions.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 18TH DAY OF DECEMBER, 2018.

SIGNED:


Richard Bend, Mayor

ATTEST:


Ronald J. Moorse, City Administrator

Motion by: Bend
Second by: Nelson
Palmquist: Aye
Richter: Nay
Ross: Aye
Nelson: Aye
Bend: Aye

CITY OF AFTON
WASHINGTON COUNTY, MINNESOTA

PRIVATE IMPROVEMENT
DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this 12th day of April, 2019, by and between the

CITY OF AFTON
3033 Saint Croix Trail
PO Box 219
Afton, MN 55001

A Minnesota Statutory City organized under the laws of the State of Minnesota, (the "City"), and

Afton Creek Preserve Development LLC
488 Atwater Circle
St. Paul, MN 55103

A Minnesota Corporation, organized under the laws of the State of Minnesota (the "Developer"), and

Albert W. Carlson
as Trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010
a Trust organized under the laws of the State of Minnesota, (the "Guarantor")

WITNESSETH, That:

WHEREAS, the Developer has made, by its representative, Joseph P. Bush, an application to the City Council, for approval of a Preservation and Land Conservation Development, as allowed under the City's zoning code and within the corporate limits of the City, on land totaling approximately 218.6 acres owned by Guarantor, and legally described in the official records of Washington County, Minnesota, as follows:

LEGAL DESCRIPTION:

PID # 33.028.20.32.0001

PID # 32.028.20.41.0002

PID # 32.028.20.42.0004

PID # 32.028.20.43.0001

PID # 33.028.20.33.0006 (14220 60th St.)

THE PARCEL WITH PID NUMBER TO BE ASSIGNED (33.028.20.33.000X described in document No. 4142813)

WHEREAS, the City Council granted all necessary preliminary and final approvals to the Preservation and Land Conservation Development proposal, on April 17, 2018, upon the condition that certain changes be made to the proposal in accordance with the recommendations of the City's staff prior to Final Plat approval and on the condition that the Developer enter into this agreement stipulating the conditions for land acquisition, the provision for site access to adjacent, existing roadways, the installation of stormwater treatment, roads, paths and other public improvements within and adjacent to the proposed plat, as well as the development of on-site improvements, including landscaping and environment mitigation, hereinafter described, all in accordance with the terms and conditions hereinafter set forth.

Definitions

Completion of the Development: A point in time when a Certificate of Occupancy has been issued and the driveway installed for all buildable lots within the development, and all open area within or disturbed as part of the development is vegetated as provided in the plans provided by Developer and approved by the City.

Improvements: Shall include all Grading, Landscaping, Septic System site preparation, Storm Sewers and Appurtenances, Trails, Public Access and Street and Roadway improvements as shown by the Plans and Specifications prepared by Plowe Engineering, Inc. entitled "Afton Creek Preserve PLCD" dated August 14, 2017 and revised thru November 13, 2018 as approved by the City of Afton and its Engineer.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

Land Acquisition

This development is predicated upon the purchase in fee by the Developer of all of the above-described parcels

The Developer shall furnish the City with evidence of fee ownership of the property being platted by way of an attorney's title opinion or title insurance commitment dated not earlier than 30 days prior to the execution of the Plat.

The Developer shall, prior to the acceptance of the Final Plat, show ownership of the parcel located at 5550 Odell Avenue and provide a perpetual easement over that parcel that will access the Plat with an acceptable roadway built to urban

standards and designs and approved by the Afton City Engineer. The developer will provide an acceptable method to assure the long term use of that easement including maintenance thereof, for a period of not less than 40 years.

Designation of Improvements

The City agrees that prior to construction of any improvements, it will undertake, with Developer's cooperation as necessary, a determination as to whether Developer has sufficient means to construct the minimum improvements noted below.

Improvements to be installed at Developer's expense by the Developer include (but should not be considered to be limited to): Grading, Landscaping, Storm Sewers and Appurtenances, including Holding Ponds, and Street and Roadway Improvements hereinafter noted and attached hereto.

1. Developer Improvements.

The Developer shall secure a contractor to install these improvements, hereinafter referred to as the "Developer Improvements," which contractor shall be approved by the City in its discretion, which approval will not be unreasonably withheld. The cost of Developer Improvements is as shown on Exhibit C attached hereto. All Developer Improvements shall require City inspection and approval and, where appropriate, the approval of any other governmental agency having jurisdiction. The Developer shall construct and install at the Developer's expense the following improvements according to the following terms and conditions:

a. Site Grading

- i. No grading shall commence until all requirements of the South Washington Watershed District (SWWD) have been satisfied.
- ii. All site grading shall be conducted in accordance with the grading plan as approved by the City and in accordance with NPDES and SWWD requirements. The Developer shall perform the work in accordance with a Storm Water Pollution Prevention Plan (SWPPP) pursuant to Minnesota Pollution Control Agency (MPCA) requirements.

b. Grading and Erosion Control

- i. The Developer shall grade the site to within 0.2 foot of the grades shown on the approved grading plan. No deviations will be allowed unless a revised plan is submitted and approved by the City and all other regulatory agencies.

- ii. The street right-of-way, storm water storage ponds, and surface water drainage ways shall be graded prior to commencement of utility construction.
 - iii. The Developer shall be responsible for ascertaining that site geotechnical and groundwater conditions are adequate and conforming with the grading and site improvement as proposed.
 - iv. The Developer's engineer shall certify in writing, with an as-built survey, that all grading complies with the approved grading plan prior to issuance of any building permits.
 - v. The Developer shall promptly clear dirt and debris within public rights-of-way and drainage and utility easements resulting from construction by the Developer, its purchasers, builders and contractors within five (5) days after notification by the City. The Developer shall be responsible for all necessary street and storm sewer maintenance, including street sweeping, until all home construction is completed, unless otherwise released by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on them, including detour signs if necessary. If and when the streets become impassable, such streets shall be barricaded and closed. The Developer shall maintain a smooth, hard driving surface and adequate drainage on all temporary streets.
- c. Final street grading, subbase, gravel base, and bituminous base course and wear course, and concrete curb and gutter at the 60th Street median, shall be furnished and installed.
 - d. Paths as required by the City.
 - e. Storm sewers, as required and approved by the City Engineer, including all necessary laterals, catch basins, inlets and other appurtenances, shall be furnished and installed.
 - f. The Developer shall place iron monuments at all lot and block corners and at all other angle points on boundary lines. Iron monuments shall be placed after all street and lawn grading has been completed in order to preserve the lot markers for future property owners. Lot corner irons on the back-property line shall be installed so that the top of the iron corresponds to the finished ground elevation in accordance with the approved grading plan. Guard stakes shall be appropriately installed to mark these irons.
 - g. Landscaping shall be furnished and installed in accordance with the approved plans.

- h. Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time. Such exposed areas shall be identified on the approved grading plan. All utilities must be installed underground.
- i. As part of the mass grading of the site, topsoil shall be removed and set aside for re-spreading over the developed area. Topsoil shall be of a quality at least equal to the soil quality prior to development. Topsoil shall not be removed from the site unless authorized by the City
- j. Failed erosion control structures or apparent need for additional erosion control measures will be addressed within twenty-four (24) hours notification by the City. If the Developer fails to perform the requested corrections in the time frame given, the Developer hereby grants the City consent to enter onto the property to perform the corrective work. The Developer will reimburse the City for all erosion control work performed on their behalf.
- k. The drainage and utility easement within Lot 4, Block 3 shall not be constructed or deemed approved for construction without a separate review and approval by the City Engineer. In addition, such approval will not be deemed to have occurred until the City, by its Attorney, agrees to the means by which the maintenance responsibilities will occur, including a maintenance agreement and any necessary subsequent assessments for repair.
- l. The Developer shall provide a twenty-foot-wide access easement to the City between Lots 5 and 6, Block 2, for fire and emergency access in a configuration approved by the City Engineer.
- m. The Developer expressly recognizes that this subdivision is located on land of exceptional environment sensitivity, particularly with respect to the existence on this site of a natural trout stream. All technically feasible and necessary precautions will be taken during construction on this site to assure that no pollution or other damage to this resource will occur as the result of the construction process.
- n. The Developer shall be responsible for constructing any Roadway, Retaining Ponds, Trails and Signages as described on the Afton Creek Preserve plans and specifications as approved by the City Engineer. Said facilities shall include the roadway base, curb and gutter for the median, signage, parking stalls, if any, and sidewalks, if any, associated with said improvements. Said facilities, which after construction and review and inspection and recommendation of acceptance by the City Engineer shall become the property of the City. The City may assess subsequent property owners in the Development for subsequent repair or maintenance

of any improvements, including any water retention system in the Development.

- o. The Developer shall provide a maintenance agreement to ensure that the permanent stormwater basins will be inspected and maintained long term by the developer or the HOA. The maintenance agreement shall be subject to review and approval by the City Engineer. The agreement at a minimum shall include the following:
 - i. Who will conduct maintenance
 - ii. Inspection frequency
 - iii. Maintenance necessary to ensure effective performance
 - iv. Maintenance intervals
 - v. Removal of settled materials
 - vi. Maintenance of vegetation
- p. Developer shall remove the portable toilet located on Lot 4, Block 3 prior to the initiation of grading activities. If the portable toilet is a pit latrine, it shall be abandoned according to Washington County Public Health requirements.
- q. Developer shall remove all buildings from the 5550 Odell parcel prior to the construction of a roadway through the parcel.
- r. All stored items will be removed from the existing barn located on Lot 4 Block 3 following approval of the Final Plat. Once the stored items are removed, no use of the barn may be made until a building permit has been issued for a house on the parcel, and then the barn may only be used as an accessory building to the house.
- s. The developer will remove the above-ground fuel storage tank located on Lot 4 Block 3 following approval of the Final Plat. The removal process (and the mitigation process if necessary), shall meet all state requirements.
- t. All homes must be located where shown on the Final Development Plan, or if a different house location is desired, an administrative permit is required to ensure the new location does not have adverse effects related to drainage, erosion or vegetation.

2. Record Drawings.

- a. Upon project completion, Developer shall submit record drawings, in electronic and written format, of all public and private infrastructure improvements, including grading, storm sewer and water retention and drainage facilities, and roads and trails, constructed by Developer. The files shall be drawn in Washington County NAD 83 Coordinate system and provided in both AutoCAD .dwg and Adobe .pdf file formats. The plans shall include accurate locations, dimensions, elevations, grades, slopes and all other pertinent information concerning the complete work.
- b. The Developer shall submit certified compaction testing results for the site grading operations.
- c. A summary of the record plan attribute data for the storm sewer, structures and pipes shall be submitted in the form of an Excel Spreadsheet as provided by the City Engineer.
- d. No securities will be fully released until all record drawings have been submitted and accepted by the City Engineer.

3. Iron Monuments and Markers

As per Minnesota State Statute 505.03 the Developer shall place iron monuments at all lot and block corners and at all other angle points on boundary lines. Where lot lines are platted in wetland areas, the Developer shall place approved wetland boundary markers on the designated wetland edge. Markers shall be placed on every other lot line where the wetland boundary intersects with the lot line. Markers shall be placed before grading activities begin and shall remain undisturbed while grading activities continue. All lot lines, including those of the proposed Lot 2, Block 3, shall be drawn substantially at right angles to straight street lines and radial to curved street lines.

The developer shall install signage along the boundaries of the dedicated Conservation Areas in the plat. Signs shall be installed at least every one hundred fifty feet (150') along the Conservation Area boundaries, with at least one sign on each private lot. The signs shall identify the area as a public conservation area where no vegetative cutting, construction, disturbance, or other encroachment is permitted.

The conservation areas shall be designated as two Outlots on the Plat. Their ownership and a management plan must be approved by the City after review and recommendation by the City Attorney as a condition of any final Plat Approval. This will specifically include provision for the participation of the Minnesota Land Trust in the ongoing maintenance and utilization of the conservation areas. Failure to receive any such approval shall void this agreement.

4. Lot Trees/Seeding and Landscaping

The Developer shall complete all vegetative plantings as described by the ap-

proved Landscape Plan. The Developer shall maintain the vegetative plantings installed as described by the Engineering Plans for a period of twelve months following the completion and final acceptance by the City of the development. Any plant stock, which dies or fails to flourish during the twelve-month period shall be replaced by the Developer and maintained through a further twelve-month period. The Developer shall place trees in the front yard of Lot 8, Block 2 unless express approval is given by the City not to include those plantings. The Developer will be responsible for seeding all interior and right-of-way areas that are not paved and all disturbed areas. The Developer will also be responsible for seeding, rip rapping, or similar erosion control, drainage swales and emergency overflow swales as directed by the City. The responsibility for seeding boulevards may be transferred to a building permit applicant when proper security is provided to the City. The seeding limits must extend to the shoulders of all adjacent roadways.

A final detailed landscape plan shall be submitted to and approved by the City before building permits will be issued or by a time as authorized by the City in writing. No less than 60% of each residential lot shall be planted in natural prairie grasses, forbs, shrubs and trees.

Seeding of the open space outlots and all other areas that will not be disturbed by grading shall be completed as soon as practicable in the fall of 2019. Seeding of all areas disturbed by grading shall be completed as soon as practicable after the grading is complete. Prairie Restoration shall be the vendor planting the conservation easement and the initial planting of all residential lots with a seed mix matching the one submitted with the preliminary plat application.

A minimum of a 48 hour notice shall be provided to the Turner Rhode Horse Farm in advance of controlled burns for the maintenance of the prairie grass, and the burning shall be done only when the prevailing winds will carry all or most of the smoke away from the Horse Farm.

The Developer shall provide a financial guarantee for all improvements, as described herein and shall include the estimated cost of the Landscape Plan improvements and seeding described by said plans

5. Signage

The Developer shall be financially responsible for all Public traffic signs and provide other traffic control signs determined to be necessary by the City.

All signs advertising the PLCD and general sales of lots or residences within the development (including lighting of such signs) must comply with the City's sign ordinance and policies and be approved by the City in advance of installation.

6. Tree Protection and Removal

The Developer shall protect existing trees and remove trees as per the approved final grading plan before building permits will be issued or by a time as authorized by the City in writing. The developer shall provide an inventory of existing trees

and vegetation in the areas of lots where house locations, septic systems, etc., may require tree removals, as determined by the City Engineer.

7. Street Maintenance

The Developer shall be responsible for street maintenance, including curbs, seeding of right-of-way areas, and street sweeping until the project is complete. All streets shall be maintained free of debris and soil until the development is completed. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when the street becomes impassible, such streets shall be barricaded and closed. In the event residences are occupied or actively under construction prior to completing streets, the Developer shall maintain a smooth driving surface, adequate drainage, and provide snow and ice control on all incomplete streets.

It is understood that the City will perform snow plowing and any other normal City street maintenance after completion of construction and during the Warranty Period after completion of construction. If the Developer requests and the City agrees to provide any snowplowing or other maintenance prior to completion of construction, such plowing and maintenance shall be at the expense and risk of the Developer. The City shall not be responsible for any damage to any improvements prior to completion of construction.

8. Damage Responsibilities

The Developer shall be financially responsible for the repair of any damage done to the streets and public utilities from the time of installation until the development is fully completed and approved by the City.

9. This paragraph intentionally left blank

10. Park Dedication and Improvements

The developer shall provide a cash park dedication fee to meet park dedication requirements, to be calculated as required by City Code. Based on the park dedication fee calculation, the park fee due to the City is \$180,000. This amount shall be due and payable upon approval of the Final Plat, and prior to recording of the Final Plat.

11. Storm Water Holding Ponds/Groundwater and Wetland Issues

The Developer shall maintain ownership of all storm water holding facilities as located on said property, as required by the City. The Developer shall be responsible for storm sewer cleaning and holding pond dredging, as required by the City prior to completion of the development. Upon completion of the development, the Developer shall submit to the City a certified as built grading plan showing that the facilities meet all design contours as set by the City. To the extent any further maintenance of the facilities were to be required of the City in the future, Developer shall agree for the City to assess those costs to the Developer or to any

future property owner in the Development in a manner proportionate to the overall percentage of the property in the development owned by that individual owner.

The Developer shall be financially responsible for any corrective action deemed necessary by the City because of groundwater encountered during, or because of, the building phase of development.

All wetland and drainage areas within public drainage easements shall not be filled, altered or disturbed without the prior written consent of the City. In the event that any drainage areas on a lot have been filled, altered, or disturbed without the prior written consent of the City and the same is not corrected within thirty (30) days after notice thereof by the City to the owner(s) of such lot, the City, and its agents and contractors, shall have the right to enter upon such lot for the purpose of performing work necessary to correct the disturbance and repairing any damage caused by the disturbance, and assess the costs thereof against the lot, provided, however, that in the event of an emergency, the City shall not be required to provide notice and an opportunity to the lot owner(s) to perform such necessary work, but may nonetheless assess the cost thereof to the lot.

12. Grading and Surfacing of Roadways

Streets shall be graded to the full width of the right-of-way in accordance with street grades submitted to and approved by the City Engineer. All street grading and gravel base construction will be in accordance with specifications on file in the City and with the review and approval of the City Engineer. Grading must be completed prior to the issuance of any building permits.

Following City Engineer Approval of street grading, streets shall be surfaced, in accordance with the latest recommended plans and specifications provided to and approved by the City. **Developer shall wait to pave the bituminous wear course on streets until the later of the following to occur: (1) three years from the date of installation of the bituminous base course; and (2) the completion of 75% of the residential homes construction for the applicable phase of the development.** Along the curbing of the concrete median at the 60th Street entrance, a bituminous ramping wedge must be installed by the developer along with the bituminous base course. Prior to paving the bituminous wear course, the ramping wedge must be milled off. The City will thoroughly inspect the median for damage prior to the installation of the bituminous wear course and may require repairs and/or replacement by Developer depending on the severity of the damage.

The Developer shall be responsible for paving 60th Street from Trading Post Trail to Neal Avenue according to plans and specifications prepared by a registered engineer retained by the developer. Plans and specifications shall be submitted to the City of Afton and Denmark Township for review and approval. This construction will be deemed separate from the Development and will require separate security be provided to the City in a form and manner acceptable to the City after review by its Engineer and Attorney. The paving of 60th Street shall be included in the "Off-site Improvements" listed under Plan Security Requirements and Description of Improvements below.

The existing farm access road from Trading Post Trail shall not be used for any traffic related to the construction of the development. Upon approval of the final plat, ownership of the farm access road shall be transferred, at no cost, to Mary McConnell, an abutting property owner.

All driveways shall be designed and constructed to fully comply with the provisions of §12-84 of the Afton City Code.

13. Grading and Surfacing of Trails

Trails shall be graded and/or mowed in accordance with the plans approved by the City. The City will thoroughly inspect the trails and may require repairs and/or replacement by the Developer. The Developer shall restore the vegetated areas adjacent to the trails within the trail easement area with a seed mix approved by the City.

14. Landscaping

Revegetation

Prairie Restoration shall be the vendor planting the conservation easement and the initial planting of all residential lots with a seed mix matching the one submitted with the preliminary plat application.

The security for the development shall include the initial planting by Prairie Restoration, as well as three additional years of maintenance of the vegetation by Prairie Restoration.

15. Screening of Abutting Properties

Lots 1,2,3,4 Block 2, abutting the Turner Rhode Horse Farm, will have a 100 foot rear yard setback instead of the ordinance-required 50 foot setback. Albert W. Carlson will install evergreen trees and prairie grass as a screening buffer within the 100 foot setback area. Tree height will be a minimum of 12 feet with proper spacing for screening.

City to review and approve a tree/vegetation plan for the 100 foot setback area abutting the Turner Rhode Horse Farm, and no tree removals shall be allowed in this area without the approval of the City.

Lot 13 Block 2 and lots 1,2,3, 4 Block 3 that are abutting the Graham, Dawson/Lewandowski, McConnell, Rickard, Mettler, Dickes and Forbes properties will also have a rear yard setback of 100 feet instead of the ordinance-required 50 feet. Albert W. Carlson will also provide evergreen trees along the boundary of the development abutting these properties in locations that screen sightlines to new homes.

Will Carlson has 2.5 acres of land abutting the Turner Rhode Horse Farm that are not being used in the development site requirements or lots. He will either provide an easement for use of this land or the sale of this land for \$1.00 to the Turner Rhode Horse Farm owners.

Tree border to be provided to block farm access road from the development on eastern boundary.

Tree border to be provided along eastern boundary of the development abutting existing properties.

The Security for the development shall include all screening of abutting properties, as well as all trees to be planted on the individual lots of the subdivision

16. Other Governmental Jurisdictions

The Developer shall be responsible for securing all necessary approvals and permits from all appropriate Federal, State, Regional, and local jurisdictions prior to the commencement of site grading or construction and prior to the City awarding construction contracts for public utilities. This includes any and all approvals necessary for the preparation or design of the conservation easements.

All grading, drainage and erosion control plans or measures are subject to review and approval by the South Washington County Watershed District.

17. Other Private Improvements

Developer shall be responsible for the installation, pursuant to plans approved by the City, of electricity, telephone, natural gas, and other private utilities for the development. These items shall be installed underground in a common trench to the extent feasible (except for such appurtenant equipment related thereto as is normally installed above ground, such as transformers, meters, and the like) and in the platted utility easements provided in the Plat.

A. Plan Security Requirements for Plat Improvements

Estimated Costs for the Improvements listed below shall be verified as shown by the Developer's Engineer construction estimates.

<u>Description of Improvement</u>	<u>Estimated Cost</u>
1. Removals, Grading and Erosion Control	\$447,485.25
2. Plat Improvements	
a. Storm Sewer and Ponding	\$213,669.50
b. Roadway Construction	\$441,778.00
c. Signage	\$ -

d. Landscaping	\$ 215,642.75
3. Street Sweeping and Debris Control above	\$ Included in Item 1
a. Utility Protection and Repair above	\$ Included in Item 2
b. Wetland Protection, Certification and Cleaning above	\$ Included in Item 1
Subtotal of items 1-3	\$1,318,575.50
Subtotal X 125%	\$1,648,219.38
Estimated Legal, Engineering and Administrative fee (5%)	\$ 66,000
Subtotal plus Legal, Eng., & Admin. Fees	\$1,384,575.50
TOTAL SECURITY REQUIREMENT	\$1,714,219.38

Plan Security Requirements for Off-Site Improvements

Estimated Costs for the Improvements listed below shall be verified as shown by the Developer's Engineer construction estimates.

<u>Description of Improvement</u>	<u>Estimated Cost</u>
Off-site Improvements	
a. Roadway Construction/Improvements	\$250,000

Subtotal X 125%	\$ 312,000
Estimated Legal, Engineering and Administrative fee (15%)	\$ 46,800
Subtotal plus Legal, Eng., & Admin. Fees	\$ 296,800
TOTAL SECURITY REQUIREMENT	\$ 358,800

The letter of credit securing performance shall include amounts necessary to pay the city's engineers for on-site monitoring, review of plans and specifications and intermediate and final certifications of completion required prior to all fund releases.

Plat improvements and off-site improvements shall be separately secured by separate letters of credit.

It is recognized and noted that the funds associated with each category in paragraph B are for estimating the total Plan security. The City reserves the right

to utilize this security partially or wholly to insure the compliance of any and all of the requirements set forth in paragraph A of this document.

B. Construction of Plan Improvements

1. Construction

The construction, installation, materials, and equipment shall be in accordance with Plans and Specifications prepared by the Developer and expressly approved by the City of Afton after approval by its Engineer. All costs associated with said construction; maintenance and operation through Completion of the Development shall be the responsibility of the Developer.

The developer shall give 48-hour notice to the City Administrator prior to start of construction activities.

Under no circumstances will any construction equipment be allowed to use Odell Avenue.

2. Inspection

All of the work shall be under and subject to the inspection and approval of the City and, where appropriate, any other governmental agency having jurisdiction, any costs associated with said inspections shall be borne by the Developer.

Upon notice by the Developer that any of the improvements have been completed, the City Engineer will inspect the improvements in a timely manner to insure that the improvements were constructed in accordance with the approved plans and terms of this Agreement. Stormwater basins will not be accepted until one year after construction has been completed and it is established that they are functioning in accordance with the approved plans.

3. As-built Plans

The Developer shall furnish, at no cost to the City, at least two sets of as-built plans indicating the location of all approved homes, septic systems and utilities in place. The plans shall be in a form approved by the City Engineer who shall certify to the City that said plans correctly represent the locations of the utilities as contracted.

4. Faithful Performance of Construction Contracts

The Developer will fully and faithfully comply with all terms and conditions of any and all contracts entered into by the Developer for the installation and construction of all Improvements and hereby guarantees the workmanship and materials for a period of two (2) years following the City's final acceptance of Improvements.

Concurrently with the execution hereof by the Developer, the Developer will furnish to, and at all times thereafter maintain with the City, an irrevocable Letter of Credit, based on one hundred twenty-five percent (125%) of the total estimated cost of the Improvements as indicated in Section B. The Letter of Credit shall be for the exclusive use and benefit of the City of Afton and shall state thereon that the same is issued to guarantee and assure performance by the Developer of all the terms and conditions of this Developer's Agreement and construction of all required improvements in accordance with the ordinances and specifications of the City. Cash Escrow in the amount of \$75,128.80 shall be deposited with the City for payment of Legal, Engineering, and Administrative fees. The City reserves the right to draw, in whole or in part, on any portion of the Letter of Credit and Cash Escrow for guaranteeing the terms and conditions of this agreement. The Letter of Credit shall be renewed or replaced by not later than thirty (30) days prior to its expiration with a like letter. If the Letter of Credit is not renewed by the Developer and the City elects to undertake legal action to compel renewal of the security or any similar remedy, all the City's Legal and Administrative costs incurred in said action shall be borne by the Developer. Once all improvements and punch list items are complete and accepted by the City, the face-value of the letter may be reduced, upon application of the Developer, to an amount necessary to guarantee the two-year warranty following acceptance of the improvements by the City, or to \$200,000, whichever is greater.

All fund releases shall be based on completion of plans and specifications and sign-off by the city's engineers.

The final release of funds shall not occur until all improvements in the development, including construction of homes on all lots and the construction of any accessory structures for which a building permit was issued prior to obtaining a certificate of occupancy for the house, has occurred.

The development agreement shall be personally guaranteed by Albert W. Carlson in a form acceptable to the city.

Costs of completion shall be calculated based on an assumed annual 4%, year over year, cost escalation, with provision for a 10-year build-out.

18. **Escrow for City's Costs.**

- a. The Developer agrees to establish a non-interest-bearing escrow account with the City in an amount determined by the City Administrator or his designee for the payment of all costs incurred by the City related to the

development of the Subdivision including, but not limited to, the following (See Exhibit 1 for breakdown of costs):

- i. Planning/ Review
 - ii. Administration - 3% of Developer Improvement Costs
 - iii. City Engineering
 - iv. Traffic signing improvements
 - v. Boulevard tree planting
 - vi. Street, storm sewer and pond maintenance
 - vii. Property Taxes. Should the recording of the Final Plat occur after July 1st, any and all property taxes on any public property dedicated as a part of this plat shall be the responsibility of the Developer.
- b. If the above escrow amounts are insufficient, the Developer shall make such additional deposits as required by the City. The City shall have a right to reimburse itself from the Escrow upon notice to the Developer, with suitable documentation supporting the charges.
- c. Reduction of Security Guarantee for Improvements
- The Developer may request reduction of the Security Guarantee based on prepayment or the value of the completed improvements at the time of the requested reduction. If requested by the Developer, the City will perform an evaluation of the work completed only twice per calendar year. If additional evaluations are requested, the Developer will be responsible for the estimated costs incurred by the City for performing the additional evaluations. The amount of reduction will be determined by the City.
- d. Payment of Costs and Assessments for Plan Improvements
- If the construction of the Plan Improvements does not proceed, the Developer hereby agrees to pay the City for the costs incurred by the City for engineering services, detailed design, right-of-way acquisition, and related City and consultant legal, administrative and fiscal costs incurred regarding the proposed Plan Improvements.
- e. Easements
- Prior to approval of the final plat, the Developer shall dedicate to the City, at no cost, all temporary and permanent easements necessary for the construction of the Plan Improvements as determined by the City. All such easements required by the City shall be provided on City easement documents, containing such terms and conditions as the City shall determine.

All permanent easements necessary for the installation and maintenance of stormwater Improvements shall be shown on the final plat and be granted to the City upon recording of said plat. All other required easements such as roadway, path, trail, scenic, and wetland conservation easements, shall be fully executed by the grantee and submitted to the City on separate documents prior to the execution of the final plat by the City. Copies of the recorded documents shall be provided to the City.

After recording of said plat, additional easements necessitated by Developer initiated changes to the landscaping or grading design shall be provided on an amended final plat and be granted to the City upon recording of said plat. Separate documents in lieu of an amended final plat may be allowed at the City's discretion.

f. Required Prepayment of any Assessment upon Sale of Developer

If a transfer of a lot is made, before a building permit will be issued, all delinquencies shall be paid on said lot in a manner agreeable to the Developer and the City.

19. **Homeowners Association**

a. The homeowner's association restrictive covenants shall contain a provision that, in the event the homeowner's association becomes insolvent or ceases operating, control shall at its option be transferred to the City of Afton or another method of succession shall be dictated by the City.

b. The homeowner's association documents shall contain a waiver of assessment appeal running in favor of the city.

c. The provision in the homeowner's association restrictive covenants allowing changes in lots upon the vote of 2/3 of the residents shall be changed to comply with Afton's requirements.

d. The City of Afton shall be named as an additional insured on the homeowner association insurance policy and the policy shall cover those risks identified by the city, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on the conservation area.

e. The homeowner's association shall be required to indemnify and hold the City of Afton harmless from all losses incurred as a result of the public's use of the conservation area walking trails.

- f. Future subdivision of the PLCD lots shall be prohibited. To enforce this provision, restrictive covenants requiring approval of the subdivision of a PLCD lot by the owners of all adjacent property shall be recorded on the deeds of all PLCD lots.
- g. Architectural controls shall be removed from the homeowner's association restrictive covenants.
- h. Provisions on setbacks shall be removed from the homeowner's restrictive covenants and Afton's restrictions shall control.
- i. The provisions restricting certain pets shall be removed from the homeowner's restrictive covenants; Afton's ordinances shall control pets.
- j. The Home Owners Association (HOA) plan and documents to be reviewed and approved by the city attorney.
- k. HOA to develop a stormwater pond maintenance plan for the permanent stormwater basins that meets the approval of the City Engineer, and shall be responsible for on-going implementation of that plan.
- l. The developer /HOA shall be responsible for on-going maintenance of the 5550 Odell parcel. The parcel will be maintained similar to the two open space outlots. The parcel will not be a City Park.
- M. Sections 3.1.2, 3.1.4, 3.1.5, 3.4, 7.1, 7.2, 7.3, 7.4, 7.5, 7.5.1, 7.14-all, 7.17-all, 12-all, 13.7, 13.10, and 17.6 of the HOA Declaration cannot be modified in any way without the written approval of the City of Afton.
- N. Residential lots shall be subject to restrictive covenants requiring that no less than 60% of each residential lot shall be planted in natural prairie grasses, forbes, shrubs and trees; and appropriate language shall be inserted in the homeowners association documents to ensure enforcement of the maintenance of the lots in accordance with these requirements.
- O. The Conservation Easement requires fencing to be installed along the boundaries between residential lots and the open space outlots. The purpose is to clearly identify ownership boundaries to prevent encroachment into the open space outlots. The Land Trust is open to options that may involve less than a continuous fence along the full property boundaries. Subject to City review and approval, the developer shall provide a fencing solution that balances the need to identify boundaries to prevent encroachment with the desire to maintain the open character of the land.

20. **Conservation Easement**

The developer shall grant a conservation easement over the required open space parcels, to be held jointly by the Minnesota Land Trust, and the City, the provisions of which shall be approved by both the City and the Minnesota Land Trust.

General Provisions:

A. Binding Effect and Modifications

1. The terms and provisions hereof shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the PLCD/ Subdivision and shall be deemed covenants running with the land. References herein to Developer, if there be more than one, shall mean each and all of them. The Developer's Agreement, at the option of the City, shall be placed on record so as to give notice hereof to subsequent purchasers and encumbrances of all or any part of the PLCD/Subdivision and all recording fees, if any, shall be paid by the Developer.

The City and Developer understand and agree that this Development may be constructed in multiple phases and that each phase shall be consistent with the approved preliminary plat. Each additional phase shall be subject to approval by Amendment of this Agreement after review by the City.

2. Final Plat Approval

The City agrees to give final approval to the plat of the Subdivision and approval of the Development Agreement upon execution and delivery of this Developer's Agreement and of all required documents, and security.

3. Incorporation of Reference

All plans, special provisions, proposals, specifications, and contracts for the improvements furnished and let pursuant to this Developer's Agreement shall be and hereby are made part of this Developer's Agreement by reference as fully as if set out herein in full.

4. Conditions of Approval

- a. No grading or building permits shall be issued by the City unless the plans or application are in conformance with the City's Comprehensive Plan, the conditions of PLCD approval, and engineering standards as determined by the City Engineer, this agreement, approval of site clean-up and remediation in whole or in part by the MPCA, and all local, state and federal regulations.
- b. If the Developer does not pay all bills submitted by the City pursuant to the Developer's Agreement within thirty (30) days after receipt, the City may

halt all plat development work until the bills are paid in full, and that the Developer shall reimburse the City for its costs incurred in the enforcement of this Developer's Agreement including reasonable engineering and attorney's fees.

5. Notice/Remedies on Default or Violation of this Developer's Agreement

a. Whenever any event of default or failure to conform to the terms and conditions of this Developer's Agreement occurs, the City shall give written notice of the event of default or failure to perform to the Developer by United States Mail at its last known addresses. If the Developer fails to cure the event of default or failure to perform within fifteen 15 days after the date of the mailed notice, in addition to any other remedy provided in this Developer's Agreement and without waiver of any such right, the City may avail itself of any or all of the following remedies for as long as the Developer is in default.

- 1) Halt all plat development work and construction of development improvements until such time as the event of default is cured.
- 2) Refuse to issue building permits or occupancy permits as to any lot until such time as the event of default is cured.
- 3) Apply to a court of competent jurisdiction to enjoin continuation of the event of default.
- 4) If the event of default is a failure of the Developer to complete, construct, install or correct the development improvements in accordance with the plans and specifications and this Developer's Agreement, the City may perform the construction or work and the Developer shall reimburse the City for its expenses incurred. This provision shall be a license granted by the Developer to the City to act but shall not require the City to take any such action. The Developer consents to such an action by the City and waives any claims Developer may have against the City for damage in the event the City exercises its rights in accordance with this provision. This remedy is in addition to and not in lieu of the City's right to draw on all security referenced in this Developer's Agreement.
- 5) Terminate this Developer's Agreement by written notice to Developer, at which time all terms and conditions as contained herein shall be of no further force and effect and all obligations of the parties imposed hereunder shall be null and void.
- 6) Draw upon and utilize Developer's funds and/or security in order to cover the costs of the City in order to correct the event of default.
- 7) Role of Signed Guarantor. It is expressly understood by the Parties herein that the Guarantor identified by and signing this Agreement as Guarantor is the fee owner of the property and will be providing all or

a portion of the funding needed by the Developer for the completion of the project. If there is a default caused by a failure of the Developer to complete, construct, install or correct the development improvements in accordance with the plans and specifications and this Developer's Agreement, the Guarantor may undertake, with the consent of the City, to complete those improvements under the terms of the Development Agreement and either replace the Developer as the designated Developer herein, or substitute, with the consent of the City, another designated Developer for the purpose of completing the improvements noted herein.

6. Indemnification

To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the City of Afton, its agents and employees from and against any and all claims, damages, losses or expenses, including but not limited to attorney's fees, arising out of the issuance of this Developer's Agreement by the City of Afton.

7. Guarantee and Warranty Bond

The Developer shall guarantee all construction associated with the Improvements for a period of twenty-four months following acceptance of the improvements, based on the recommendation of the City Engineer. The guarantee shall be assured by the provision of a Letter of Credit for the exclusive use and benefit of the City of Afton.

Performance of all obligations under this Development Agreement shall be further guaranteed by Albert W. Carlson, the owner of the property being developed, in a form and manner acceptable to the City.

8. Insurance Coverage

The Developer shall arrange for insurance coverage as required by State Law and shall provide the following minimum coverages:

Policy	Minimum Coverage
General Liability	\$ 1,500,000
Each Occurrence	
Fire	50,000
Medical Expense	1,000/10,000
Limited Pollution	1,000,000
Workers Comp	Statutory
Umbrella Policy	3,000,000

The City of Afton and its Agents shall be Named Insured's on the insurance policies and require that face amount of these policies meet the minimum statutory requirements for local governments.

9. Homeowners Association.

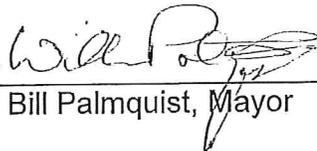
A homeowners association whose membership will consist of owners of the residential parcels of the Development will be created in a manner and form to be reviewed and approved by the City Attorney. The Homeowners Association will own all common areas of the Development, which will include the Outlots created in the Final Plat, subject to any easements thereon. The organizational documents of the Homeowners Association shall provide that in the event of dissolution of the Association, the City may, in its discretion, place the properties under its ownership and control may be transferred to the City. The organizational documents shall further provide for a waiver of any assessment appeals in favor of the City.

The organization documents shall provide for the means by which the members can be assessed for the costs of maintenance of common areas, including the conservations easements. The same documents shall provide a means of enforcement of the requirement that 60% of the surface area of each of the lots created on the plat shall be in prairie grasses, forbs, shrubs or trees.

The homeowners association shall obtain insurance coverage and name the City as an insured against any claims that result from the public's use of the platted conservation area trails. The language of the organizational documents shall not conflict with any requirements of the City Code of the City, including, but not limited to, provisions related to the number of pets allowed, architectural controls, and future lot line configurations within the Development.

IN WITNESS WHEREOF, the City, Developer and Guarantor have caused this agreement to be duly executed on the day and year first above written.

CITY OF AFTON

By 
Bill Palmquist, Mayor

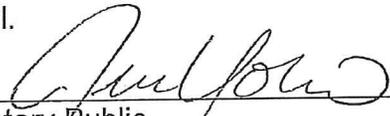
And



Ronald J. Moore, City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

On this 12 day of April, 2019, before me, a Notary Public within and for said County, personally appeared Bill Palmquist and Ronald J. Moore, to me personally known, being each by me duly sworn did say that they are respectively the Mayor and City Administrator of the City of Afton, the Minnesota Statutory City named in the foregoing instrument; and that said instrument was signed on behalf of the above-named statutory city by authority of its City Council.



Notary Public



City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Meeting Date June 12, 2019

Council Memo

To: Mayor Palmquist and Members of the City Council
From: Ron Moorse, City Administrator
Date: June 5, 2019
Re: Government and 3M Working Group Meeting Process Update

The Government and 3M Working Group is now moving into the process of the MPCA's consultant collecting and aggregating the Cities' preferred solutions for addressing PFAS contamination in both the short term and long term. They will use this information to develop alternative scenarios that best implement the solutions. Afton's preferred solution is to plan for and have funding set aside for, over the long term, the installation and maintenance of Granulated Activated Carbon water filters in all homes and businesses with wells contaminated by PFAS. Staff would like to touch base with the Council as this next phase of the Working Group process moves forward.