



**CITY OF NEWPORT
REGULAR COUNCIL MEETING
NEWPORT CITY HALL
OCTOBER 3, 2013 – 5:30 P.M.**

MAYOR: Tim Geraghty
COUNCIL: Tom Ingemann
Bill Sumner
Tracy Rahm
Steven Gallagher

City Administrator: Deb Hill
Supt. of Public Works: Bruce Hanson
Chief of Police: Curt Montgomery
Fire Chief: Mark Mailand
Executive Analyst: Renee Helm

AGENDA

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. ADOPT AGENDA
5. ADOPT CONSENT AGENDA – All items listed under this section are considered routine and non-controversial by the Council and will be approved by a single motion. An item may be removed from the consent agenda and discussed if a Council member, staff member, or citizen so requests.
 - A. Minutes of the September 19, 2013 Regular City Council Meeting
 - B. List of Bills in the Amount of \$84,727.26
 - B. Approval of the Stipulation and Order dated September 27, 2013 in the matter of Greg T. Kryzer, et al. v. Frederic W. Knaak, et al., currently pending before the Ramsey County District Court as Court File No. 62-CV-12-7537; ratification of George C. Hoff's signature on the Stipulation as attorney for the City of Newport; and approval of payment in the amount of \$31,200.00 for legal services provided by Holstad and Knaak, PLC to the City for the period between April 1, 2013 through September 30, 2013, \$21,580.83 of which shall be paid directly to the Ramsey County District Court pursuant to the terms of the Stipulation and the remainder paid to Holstad and Knaak, PLC.
6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE
7. MAYOR'S REPORT
8. COUNCIL REPORTS
9. ADMINISTRATOR'S REPORT
 - A. **Resolution No. 2013-46** – Approving a Conditional Use Permit Requested by J & J Temperature Control, 100 7th Avenue for Property Located at 100 7th Avenue
 - B. **Resolution No. 2013-47** – Approving a Variance Requested by Brian Domeier, 1040 10th Avenue, for Property Located at 615 8th Street
 - C. **Resolution No. 2013-48** - Approve a Deferment Request for the 2013 Street Assessment
 - D. **Resolution No. 2013-49** – Authorizing the Sale of the 1986 F-1 Rescue (Resolution will be handed out at the meeting)
 - E. Restated Bylaws of the Newport Firefighters Relief Association

Agenda for 10-03-2013

10. ATTORNEY’S REPORT

11. POLICE CHIEF’S REPORT

- A. August 2013 Activity Report

12. FIRE CHIEF’S REPORT

13. ENGINEER’S REPORT

- A. Update on 2013 Street Improvement Projects and Partial Payment #1

14. SUPERINTENDENT OF PUBLIC WORKS REPORT

A. Personnel Items

- 1. Accept Chuck Johnson’s Resignation
- 2. Approve the Hiring of Nate Peterson

- B. **Resolution No. 2013-50** – Authorizing the Mayor and City Administrator to Execute and Enter into an Agreement for Services with the Board of Water Commissioners of the City of Saint Paul for Contract Services

15. NEW / OLD BUSINESS

16. ADJOURNMENT

Upcoming Meetings and Events:

- | | | |
|--------------------------------|------------------|------------------------|
| 1. Planning Commission Meeting | October 10, 2013 | 6:00 p.m. |
| 2. City Council Meeting | October 17, 2013 | 5:30 p.m. |
| 3. Park Board Meeting | October 24, 2013 | 7:00 p.m. |
| 4. Buckthorn Removal Day | October 26, 2013 | 9:00 a.m. – 12:00 p.m. |



**City of Newport
City Council Minutes
September 19, 2013**

1. CALL TO ORDER

Mayor Geraghty called the meeting to order at 5:30 P.M.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL -

Council Present – Tim Geraghty; Tom Ingemann; Bill Sumner, Tracy Rahm, Steven Gallagher

Council Absent –

Staff Present – Deb Hill, City Administrator; Bruce Hanson, Supt. of Public Works; Fritz Knaak, City Attorney; John Stewart, City Engineer;

Staff Absent – Curt Montgomery, Police Chief; Mark Mailand, Fire Chief; Renee Helm, Executive Analyst;

4. ADOPT AGENDA

Motion by Gallagher, seconded by Sumner, to adopt the Agenda as presented. With 5 Ayes, 0 Nays, the motion carried.

5. ADOPT CONSENT AGENDA

Motion by Sumner, seconded by Ingemann, to approve the Consent Agenda as presented which includes the following items:

- A. Minutes of the September 5, 2013 Regular City Council Meeting
- B. List of Bills in the Amount of \$129,952.24
- C. **Resolution No. 2013-44** – Authorizing the Mayor and City Administrator to Execute and Enter into Mn/DOT Agreement No. 04428 with the State of Minnesota, Department of Transportation in Regards to the Mississippi River Trail

With 5 Ayes, 0 Nays, the motion carried.

6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE

A. Mr. Keith Jacobus, ISD 833 Superintendent of School

Mr. Keith Jacobus, ISD 833 Superintendent of School, presented on this item as attached.

Mayor Geraghty – I know during the budget cuts for the State there were some shifts with K-12 Funding, will the District get anything back if the State pays it back?

Mr. Jacobus – Yes. Any new money that is coming, the State has to pay the shift back first. We've been fortunate because we didn't have to take out any loans. That's the first obligation of the State.

Mayor Geraghty – What's the magnitude of those dollars and would they go back to the reserve fund?

Mr. Jacobus – It's not new money, its money we're already utilizing so we would just be shifting funds. We have a policy to stay within a 5% to 9% fund balance of our general fund.

Councilman Rahm – I think as elected officials we struggle with the same thing. We need to invest in our future and we look at raising taxes or levies at a certain percentage and people go home and look at their wages and ask how fast government is growing versus how fast their wages are growing. I would suggest that you try to show that in a percentage form and show the breakout of instructional funding per pupil and compare it to other districts because that's something I like to see and make sure to include the administrative costs.

Mr. Jacobus – We do have the data on administrative. Out of 48 districts, we were 46 out of 48 so we're way down there. Our budget \$175 million, 82% of that is in people to make sure we have the resources for kids. We have all of that information on our website. I do think it's important for people to know our view of not coming very often and cutting money and only asking for what we think we need. Out of this increase, a great percentage of this is to maintain where we are.

Mayor Geraghty – In regards to the long-term growth, we are a community school and I think it's important to have the consistency to go on to Oltman and on to East Ridge, do you see any changes there?

Mr. Jacobus – There's going to have to be some adjustments but I can't say what until we take a look at this. I'm proud of how supportive and loyal our communities are to their schools.

Mayor Geraghty – I think it's important to have that long-term, consistent flow.

Councilman Rahm – Thank you for coming.

Admin. Hill – I would like to introduce Jamie Smith, our new Library Attendant. She has worked at both Hennepin and Washington County libraries.

Jamie Smith – I'll be the new Library Attendant starting September 30. I'm coming from 12 years experience at Hennepin County and 3 years at Washington County. I look forward to something different and learning and hopefully using my current knowledge for good here. I really look forward to the experience it's going to give me and getting to know the community.

Mayor Geraghty – Thanks for coming in and accepting the job.

Virgil Voller, 1685 Kolff Street – First off, the Fire Department with the tickets they sold for the drawing, I never heard anything for the drawing.

Councilman Ingemann – I have a list that I can get to Virgil.

Mr. Voller – The Booya, it was kind of oily. Five years ago, I told one of you that all you need to do is add some feed. You would think somebody would have label on Booya after 60 years.

Mayor Geraghty – They always sell out.

Councilman Ingemann – I don't think it was greasy.

Mr. Voller – Our street, the lines in it around the curves on Woodbury, its local neighbors that are cutting the corners. Anybody who comes around it is always way across the line. Then with the streets, you're tearing up the tar curbs and putting in cement? In Woodbury, they're tearing up the cement and putting in tar. There must be a cut somewhere in the line here; someone has to be pocketing something. The deer hunt, the bow hunters get a bonus to shoot or do they come here and shoot them freely with no charge?

Mayor Geraghty – They don't get any bonus that I know of.

Mr. Voller – I know you were going to pay them.

Mayor Geraghty – We're not paying them anything.

Mr. Voller – I think it's a farce the way you're going around it but who am I?

Mayor Geraghty – You're a Newport resident.

Mr. Voller – I voted for all of you but it won't happen again.

Mayor Geraghty – That's your right.

Councilman Ingemann – I don't see anything from the Planning Commission on here.

Admin. Hill – No, they are not ready.

7. MAYOR'S REPORT – Nothing to report.

8. COUNCIL REPORTS –

Councilman Rahm – Nothing to report.

Councilman Ingemann – I was at the Planning Commission last week and I thought some of the stuff would be forwarded.

Councilman Sumner – I want to let people know that we had a HPC meeting on September 11. We're still looking forward to the 125 year anniversary of Newport. On September 13, I attended the Fire Department meat raffle and finally got a winning ticket.

Councilman Gallagher – Nothing to report.

9. ADMINISTRATOR'S REPORT –

A. Resolution No. 2013-45 – Providing for the Issuance and Sale of \$1,480,000 General Obligation Improvement Bonds, Series 2013A, and Pledging Special Assessments and Levying a Tax for the Payment Thereof

Todd Hagen, Ehler's and Associates presented on this item as outlined in the September 19, 2013 City Council packet and as attached. He also presented the City with its new Bond Rating. Prior to this, Moody's rated the City at an A-1 level. Standard and Poors rated the City at an AA level. The amount of the General Obligation Bond was reduced from \$1,480,000 to \$1,350,000 due to the number of assessments that were paid within the first 30 days with no interest. The interest rate for the bond is 2.652% so the assessment interest rate will be 4.152%.

Councilman Sumner – Can you state again why the amount went down?

Mr. Hagen – If you add up the net proceeds, the prepaid assessments, the premium that came in, the cost of issuance, and the discount you come to \$130,000 which you don't need to bond for. We have the ability to fluctuate like that on the day of sale.

Motion by Geraghty, seconded by Rahm, to approve Resolution No. 2013-45 as amended providing for the issuance and sale of \$1,350,000 General Obligation Improvement Bonds, Series 2013A, and pledging special assessments and levying a tax for the payment thereof. With 5 Ayes, 0 Nays, the motion carried.

Admin. Hill – We'll be putting the 1986 Fire Rescue Truck up for auction. Bruce will be coordinating that. Also, I had mentioned last week that the A & W site has been cleared off and I would be cutting a check for \$6,500 of the \$10,000 for the demolition. I was going to ask the Council to verbally approve of cutting the check for \$6,500 when he puts up a silt fence, which is required. It helps secure the site for future vegetation.

Tim Murphy, 1156 Hastings Avenue – I just wanted to say that I understand that there's some requirement for a silt fence. Is that a requirement no matter what the grade is and it's for a month?

Engineer Stewart – It is required until you get the vegetation. You don't need the fence for the upside of a property, only on the sides in which the runoff would drain off. It is a very flat piece of property and I think we would require the fence to put on the three sides that run off.

Councilman Gallagher – What is a silt fence?

Engineer Stewart – You'll see a black material fabric that is about 18 inches high during construction to prevent runoff.

Mayor Geraghty – So it could be removed next May?

Engineer Stewart – Typically, it's removed once the vegetation takes hold.

Mr. Murphy – This thing has kind of spiraled out of control for me. I understand the silt fence. The thought process was that if we plant seed before frost that it would germinate better and grow better and that was on advice from a number of different landscapers so I thought we'd wait until November 1 to plant and then in it'll come up in the spring. That's an increased cost on my side and I understand the need for it but I want you to understand that I went through some hazardous waste issues that I wasn't expecting so anything we can do to keep the costs down I would appreciate. There was talk about a MNDot standard where I need 4 inches of topsoil and I don't know if that's going to become a requirement now. I have the black dirt there, I don't know if I have 4 inches worth. According to the people I talked to the rye grass would grow in the dirt that is there. I brought in 4 loads of black dirt.

Engineer Stewart – To clarify, there are two different issues here. The first is the silt fence. We do not have the ability to vary from State Standards. Each project that comes into town, the City is responsible for ensuring that it is protected from erosion and the City has been scolded previously for not doing it as well as the State requires. This program started five years ago so we do not have a choice. When we specify the 4 inches, that's the minimum that MNDot requires for seed to grow. We're looking for a long-lived seed not just a rye growth and that's why you need 4 inches.

Councilman Ingemann – We're also looking at a possible sale of the property and a building going in there which would take everything out. This is a temporary position correct?

Engineer Stewart – How long do you think it'll take to sell the property?

Councilman Gallagher – That's unknown. I seem to remember that when we talked about the transit station, they reduced the amount of topsoil from 4 inches to 2 inches.

Engineer Stewart – I believe they went from 6 to 4.

Mayor Geraghty – What's the different in cost? What kind of mix are you recommending?

Engineer Stewart – Standard MNDot mix that runs in the order of \$200 per 50 lbs and it wouldn't need more than that.

Mayor Geraghty – Did you buy the seed yet?

Mr. Murphy – Yes. When this thing started we talked about leaving the blacktop there but that wasn't the right thing to do and then the gravel became an issue and then you said to throw some dirt and seed on there and now it's become this. It's spiraling out of control and I don't know where it'll end, this thing is costing me twice what I originally budgeted and I'm being penalized for trying to do it right. If I had left the blacktop I maybe could have rented it out to Imperial Campers for parking but I didn't do that, I tried to do the right thing to make you guys happy and in turn it is costing me money.

Councilman Gallagher – How much black dirt do you have now?

Mr. Murphy – I have enough for two inches.

Councilman Gallagher – And what's the soil underneath that?

Mr. Murphy – Sand, it's pretty loose.

Engineer Stewart – We are looking at performance standard here. If you want to give the applicant the ability to go with what he has and require him to put down more if it doesn't grow that would be fine.

Councilman Rahm – I would try with what you have now and we'll see how it looks then.

Admin. Hill – I'm holding back \$3,500 for the seed; do I hold that back until we know it's seeded? Otherwise we lose our leverage.

Mayor Geraghty – I think we could release it in November.

Mr. Murphy – I have the receipt for the seed.

Admin. Hill – Seeding and growth are two different things.

Mr. Murphy – If you talk to Martin he'll tell you that I've already talked with him about spreading the black dirt.

Mayor Geraghty – Was the seeding part of the agreement?

Admin. Hill – Yes.

Mayor Geraghty – Then we could go back and look at the forgiveness part if he doesn't comply.

Councilman Sumner – Do we anticipate any more costs?

Engineer Stewart – I don't know of any other erosion control issues.

Superintendent Hanson – Has the garage issue been satisfied?

Admin. Hill – That is another issue, the garage has never been part of the discussion. Per our ordinances, we cannot have an accessory structure without a principal structure.

Councilman Ingemann – The principal structure was just torn down.

Admin. Hill – He also put a new roof on the garage without a permit so that could have been corrected.

Mr. Murphy – I talked with Martin who did the work and he didn't think he needed a permit.

Admin. Hill – That's incorrect.

Mayor Geraghty – The City pushed the demolition which did not include the garage so I'm not inclined to tear that down.

Councilman Rahm – Does he need to come back for a variance because it doesn't meet our code?

Mayor Geraghty – The scope of the demolition should have included the garage but we didn't.

Admin. Hill – To reiterate, I can release the \$3,500 once it's seeded?

Mayor Geraghty – Yes, and you can issue the \$6,500 now.

Mr. Murphy – I don't need 4 inches of top soil?

Mayor Geraghty – No.

10. ATTORNEY'S REPORT – Nothing to report

11. POLICE CHIEF'S REPORT – Nothing to report

12. FIRE CHIEF'S REPORT – Nothing to report.

Councilman Gallagher – Do we need Curt and Mark to come to each meeting?

Mayor Geraghty – They can provide an update once a month.

13. ENGINEER'S REPORT –

A. Task Order for the Well Head Protection Project

John Stewart, City Engineer, presented on this item as outlined in the September 19, 2013 City Council packet.

Mayor Geraghty – What does this program do and what if we don't do it?

Engineer Stewart – If you don't do it you'll run into problems with the Department of Health if you ever need to do anything with your water system. What you get is a document that shows where you cannot locate hazardous material producers or users, where you can put in ponds that have infiltration systems. You don't have any control over it, the State is mandating it. We have to have GIS mapping that shows everyone who uses hazardous materials in town and we applied for a grant to do that.

Councilman Rahm – This will be done by August next year?

Engineer Stewart – Yes, I believe I'll be done by next spring.

Councilman Rahm – So will we pay for it this year or next year?

Engineer Stewart – I would propose to start in October if you were to issue it tonight. We can postpone billing until next year but we could get it done by December 31.

Councilman Rahm – This is an example of an unbudgeted expense so I would ask where it fits better.

Councilman Gallagher – This is an example of an unfunded mandate.

Councilman Rahm – So do we do it now or next year?

Councilman Gallagher – Do we have \$15,000 in this year's budget?

Admin. Hill – This would come out of the water fund.

Mayor Geraghty – I say we do it this year.

Councilman Gallagher – Have you done this for other cities?

Engineer Stewart – Deb asked us how much we could do it for St. Paul Park and that came in at \$25,000, I do believe we're being cognizant of the City's budget. We did the previous model and have everything to load in we just need a different computer model to put it into it.

Councilman Rahm – This new model, does it take into consideration the water table?

Superintendent Hanson – The model tells us what we're doing with ground water.

Engineer Stewart – The previous model was two dimensional and this one considers up flow and down flow. It sounds like something you don't need to do but you do.

Councilman Sumner – Does this identify all of the hazardous producers in town?

Engineer Stewart – This does not include it, we've applied for a grant for \$6,500 to do that and that will come out next month.

Councilman Sumner – You feel strongly that that grant will come through?

Engineer Stewart – I can't guarantee it.

Mayor Geraghty – When is the next time you'll need to do this?

Engineer Stewart – Ten years.

Motion by Ingemann, seconded by Gallagher to approve the Well Head Protection Task Order for \$15,000. With 5 Ayes, 0 Nays, the motion carried.

Engineer Stewart – Just an update on the street projects. All of the underground work has been done, the contractor is moving ahead with curbs and they're anticipating being done by frost. Did the newsletter you receive answer the questions you thought were out there?

Councilman Gallagher – Yes.

14. SUPERINTENDENT OF PUBLIC WORKS REPORT –

Superintendent Hanson – They did mill Century today north of Glen Road. The bricks have been delivered to Braham Monument and they are being etched. We bought 60 bricks this time. We'll do another order next year.

Mayor Geraghty – It looks good.

Councilman Gallagher – Has there been any more vandalism up at Bailey School Forest?

Superintendent Hanson – We’ve had some more attempts but it’s been slow the last week or so.

Mayor Geraghty – Could we put some cameras up there?

Superintendent Hanson – That’s a possibility.

15. NEW/OLD BUSINESS

16. ADJOURNMENT

Motion by Ingemann, seconded by Gallagher, to adjourn the regular Council Meeting at 6:50 P.M. With 5 Ayes, 0 Nays, the motion carried.

Signed: _____
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm
Executive Analyst



STEPPING Into the FUTURE

igniting a passion



NOV. 5, 2013 ELECTION

2018 » And beyond

2017 » Operating Levy expires
\$14.9 million

2016 » Tech Levy expires \$1 million

2015 » Potential bond for
new building

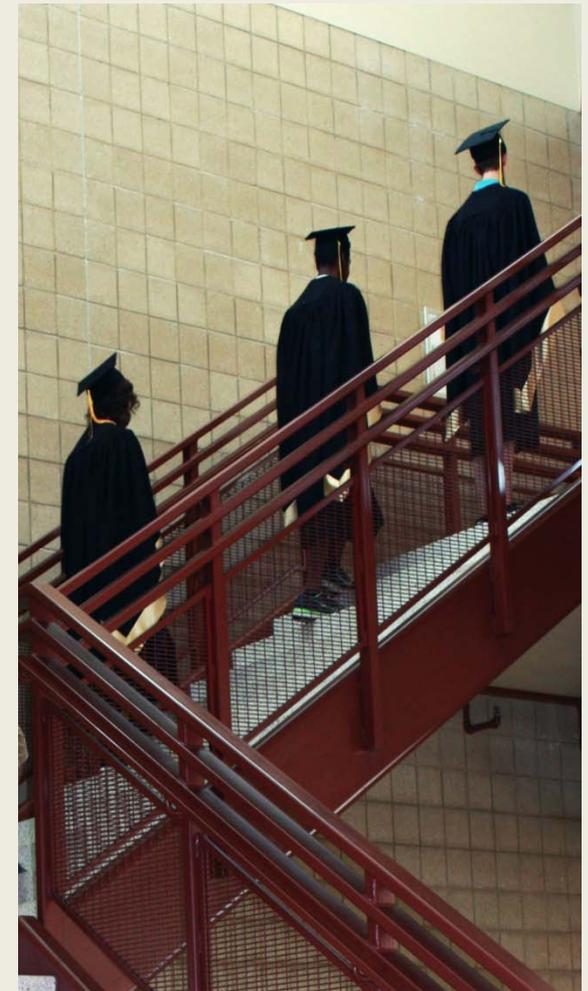
2013 » Renew operating \$4.6 million (Question 1)
» Add operating \$6.9 million (Question 2)
» Land \$8 million (Question 3)



Fall 2013 Referendum Questions



- **Q¹** Renewal of the district's expiring referendum, which generates approximately \$4.6 million annually for the general fund.
- **Q²** Increases the operating referendum by \$337 per pupil or a total of approximately \$6.9 million for the general fund, beginning in 2014-15 annually for the next ten years.
- **Q³** Requests \$8 million for the purchase and betterment of land to meet future building needs.



What will this cost taxpayers?

Estimated Monthly Taxes for 2014			
	\$125,000 Valued Home	\$250,000 Valued Home	\$400,000 Valued Home
Change from 2013 taxes*	-\$8.80	-\$18	-\$28.25
Q1 renewed	+\$3.60	+\$ 7	+\$11.40
Q2 approved	+\$7.80	+\$16	+\$25.00
Q3 approved	+\$.35	+\$ 1	+\$ 1.50
Total if all three approved	+ \$3 / month	+ \$6 / month	+ \$10 / month

*Property tax relief due to legislative action allowed for a decrease in your school portion of your property taxes beginning in 2014.

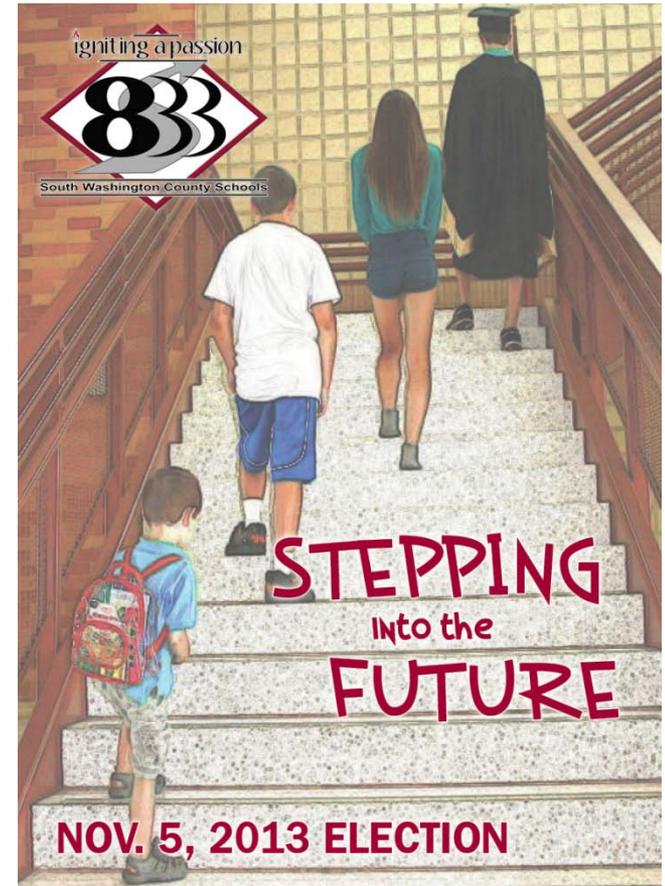


- Approval of the three questions will support District 833 students through:
 - Instructional excellence;
 - Safe and secure schools;
 - Services to support the academic and mental health needs of students;
 - Technology infrastructure to support personalized learning; and
 - Support for future facility needs.

Stepping Into the Future



- Up-to-date information:
 - www.sowashco.k12.mn.us/Election2013
- Parent University Meetings
 - Sept. 23 – East Ridge High School, 6 p.m.
 - Sept. 25 – District Service Center, 10 a.m.
 - Sept. 30 – Woodbury High School, 6 p.m.
 - Oct. 2 – Park High School, 6 p.m.
- Email: Election2013@sowashco.k12.mn.us
- Phone: 651-458-6360



September 19, 2013

Bond Sale Report

City of Newport, Minnesota

\$1,350,000 General Obligation
Improvement Bonds, Series 2013A



City of Newport, Minnesota Results of Bond Sale – September 19, 2013

\$1,350,000

General Obligation Improvement Bonds, Series 2013A

Purpose: The purpose of financing the 2013 Road Reconstruction Projects in the City.

Rating: Standard & Poor's "AA" w/Stable Outlook/"Strong" FMA

Number of Bids: 2

Low Bidder: United Bankers' Bank, Minneapolis, Minnesota

True Interest Cost: 2.6520%

Interest Savings from Lowest to Highest Bid:	Low Bid 2.6199%	High Bid 2.7142%	Interest Savings \$5,772
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Summary of Results:	Projected 8/22	Results of Sale	Difference
Principal Amount:	\$1,480,000	\$1,350,000	-\$130,000
Net Proceeds:	\$1,427,240	\$1,426,401	-\$839
Prepaid Assessments:	\$0	\$75,268	\$75,268
Premium Offered:	\$0	\$32,067	\$32,067
Discount Allowance:	\$17,760	\$0	-\$17,760
Cost of Issuance:	\$35,000	\$30,934	-\$4,066
True Interest Cost:	3.0039%	2.6520%	-0.35%
BBI Trend:	4.80%	4.93%	0.13%

Closing Date: October 15, 2013

Council Action: Resolution Providing for the Issuance and Sale of \$1,350,000 General Obligation Improvement Bonds, Series 2013A, and Pledging Special Assessments and Levying a Tax for the Payment Thereof

Attachments:

- Bid Tabulation
- Updated Debt Service Schedules
- Rating Report
- BBI Graph
- Bond Resolution (Distributed in Council Packets)

BID TABULATION

\$1,480,000* General Obligation Improvement Bonds, Series 2013A

CITY OF NEWPORT, MINNESOTA

SALE: September 19, 2013

AWARD: UNITED BANKERS' BANK

RATING: Standard & Poor's Credit Markets "AA"

BBI: 4.93%

NAME OF BIDDER	MATURITY (February 1)	RATE	REOFFERING YIELD	PRICE	NET INTEREST COST	TRUE INTEREST RATE
UNITED BANKERS' BANK Bloomington, Minnesota	2015	0.450%	0.450%	\$1,515,325.00	\$300,782.04	2.6199%
	2016	0.750%	0.750%			
	2017	0.950%	0.950%			
	2018	1.350%	1.350%			
	2019	1.700%	1.700%			
	2020	1.850%	1.850%			
	2021**	3.500%	1.950%			
	2022**	3.500%	1.950%			
	2023**	3.500%	1.950%			
	2024**	3.500%	1.950%			
	2025***	3.500%	3.500%			
	2026***	3.500%	3.500%			
	2027***	3.500%	3.500%			
	2028***	3.500%	3.500%			
2029***	3.500%	3.500%				
BAIRD Milwaukee, Wisconsin	2015	2.000%		\$1,485,906.60	\$306,553.66	2.7142%
	2016	2.000%				
	2017	2.000%				
	2018	2.000%				
	2019	2.000%				
	2020	2.000%				
	2021	2.250%				
	2022	2.500%				
	2023	2.750%				
	2024	3.000%				
	2025	3.450%				
	2026	3.450%				
	2027	3.450%				
	2028	3.450%				
2029	3.450%					

*Subsequent to bid opening the issue size was decreased to \$1,350,000.

Adjusted Price - \$1,382,066.55

Adjusted Net Interest Cost - \$284,443.02

Adjusted TIC - 2.6520%

**\$500,000 Term Bond due 2024 with mandatory redemption in 2021-2023 (Adjusted amount of \$455,000)

***\$310,000 Term Bond due 2029 with mandatory redemption in 2025-2028 (Adjusted amount of \$305,000)

www.ehlers-inc.com



Minnesota
Offices also in Wisconsin and Illinois

phone 651-697-8500
fax 651-697-8555

3060 Centre Pointe Drive
Roseville, MN 55113-1122

City of Newport, Minnesota

\$1,350,000 General Obligation Improvement Bonds, Series 2013A

Sources & Uses

Dated 10/15/2013 | Delivered 10/15/2013

Sources Of Funds

Par Amount of Bonds	\$1,350,000.00
Reoffering Premium	65,479.05
Prepaid Assessments	75,268.00
Total Sources	\$1,490,747.05

Uses Of Funds

Total Underwriter's Discount (2.475%)	33,412.50
Costs of Issuance	30,934.00
Deposit to Project Construction Fund	1,422,911.00
Deposit to Project Fund (Rounding)	3,489.55
Total Uses	\$1,490,747.05



City of Newport, Minnesota

\$1,350,000 General Obligation Improvement Bonds, Series 2013A

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
10/15/2013	-	-	-	-	-
08/01/2014	-	-	26,838.32	26,838.32	-
02/01/2015	75,000.00	0.450%	16,891.25	91,891.25	118,729.57
08/01/2015	-	-	16,722.50	16,722.50	-
02/01/2016	100,000.00	0.750%	16,722.50	116,722.50	133,445.00
08/01/2016	-	-	16,347.50	16,347.50	-
02/01/2017	100,000.00	0.950%	16,347.50	116,347.50	132,695.00
08/01/2017	-	-	15,872.50	15,872.50	-
02/01/2018	105,000.00	1.350%	15,872.50	120,872.50	136,745.00
08/01/2018	-	-	15,163.75	15,163.75	-
02/01/2019	105,000.00	1.700%	15,163.75	120,163.75	135,327.50
08/01/2019	-	-	14,271.25	14,271.25	-
02/01/2020	105,000.00	1.850%	14,271.25	119,271.25	133,542.50
08/01/2020	-	-	13,300.00	13,300.00	-
02/01/2021	110,000.00	3.500%	13,300.00	123,300.00	136,600.00
08/01/2021	-	-	11,375.00	11,375.00	-
02/01/2022	110,000.00	3.500%	11,375.00	121,375.00	132,750.00
08/01/2022	-	-	9,450.00	9,450.00	-
02/01/2023	115,000.00	3.500%	9,450.00	124,450.00	133,900.00
08/01/2023	-	-	7,437.50	7,437.50	-
02/01/2024	120,000.00	3.500%	7,437.50	127,437.50	134,875.00
08/01/2024	-	-	5,337.50	5,337.50	-
02/01/2025	55,000.00	3.500%	5,337.50	60,337.50	65,675.00
08/01/2025	-	-	4,375.00	4,375.00	-
02/01/2026	60,000.00	3.500%	4,375.00	64,375.00	68,750.00
08/01/2026	-	-	3,325.00	3,325.00	-
02/01/2027	60,000.00	3.500%	3,325.00	63,325.00	66,650.00
08/01/2027	-	-	2,275.00	2,275.00	-
02/01/2028	65,000.00	3.500%	2,275.00	67,275.00	69,550.00
08/01/2028	-	-	1,137.50	1,137.50	-
02/01/2029	65,000.00	3.500%	1,137.50	66,137.50	67,275.00
Total	\$1,350,000.00	-	\$316,509.57	\$1,666,509.57	-

Yield Statistics

Bond Year Dollars	\$10,422.50
Average Life	7.720 Years
Average Coupon	3.0367913%
Net Interest Cost (NIC)	2.7291247%
True Interest Cost (TIC)	2.6520154%
Bond Yield for Arbitrage Purposes	2.3027302%
All Inclusive Cost (AIC)	2.9860809%

IRS Form 8038

Net Interest Cost	2.2819151%
Weighted Average Maturity	7.772 Years

City of Newport, Minnesota

\$1,350,000 General Obligation Improvement Bonds, Series 2013A

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	105% of Total	Assessments	Utility Revenue	Levy/(Surplus)
02/01/2014	-	-	-	-	-	-	-	-
02/01/2015	75,000.00	0.450%	43,729.57	118,729.57	124,666.05	33,578.83	22,380.30	68,706.92
02/01/2016	100,000.00	0.750%	33,445.00	133,445.00	140,117.25	48,585.62	22,380.30	69,151.33
02/01/2017	100,000.00	0.950%	32,695.00	132,695.00	139,329.75	48,585.61	22,380.30	68,363.84
02/01/2018	105,000.00	1.350%	31,745.00	136,745.00	143,582.25	48,585.62	22,380.30	72,616.33
02/01/2019	105,000.00	1.700%	30,327.50	135,327.50	142,093.88	48,585.61	22,380.30	71,127.97
02/01/2020	105,000.00	1.850%	28,542.50	133,542.50	140,219.63	48,585.62	22,380.30	69,253.71
02/01/2021	110,000.00	3.500%	26,600.00	136,600.00	143,430.00	48,585.61	22,380.30	72,464.09
02/01/2022	110,000.00	3.500%	22,750.00	132,750.00	139,387.50	48,585.61	22,380.30	68,421.59
02/01/2023	115,000.00	3.500%	18,900.00	133,900.00	140,595.00	48,585.62	22,380.30	69,629.08
02/01/2024	120,000.00	3.500%	14,875.00	134,875.00	141,618.75	48,585.61	22,380.30	70,652.84
02/01/2025	55,000.00	3.500%	10,675.00	65,675.00	68,958.75	-	-	68,958.75
02/01/2026	60,000.00	3.500%	8,750.00	68,750.00	72,187.50	-	-	72,187.50
02/01/2027	60,000.00	3.500%	6,650.00	66,650.00	69,982.50	-	-	69,982.50
02/01/2028	65,000.00	3.500%	4,550.00	69,550.00	73,027.50	-	-	73,027.50
02/01/2029	65,000.00	3.500%	2,275.00	67,275.00	70,638.75	-	-	70,638.75
Total	\$1,350,000.00	-	\$316,509.57	\$1,666,509.57	\$1,749,835.05	\$470,849.36	\$223,803.00	\$1,055,182.69

Significant Dates

Dated	10/15/2013
First Coupon Date	8/01/2014

Yield Statistics

Bond Year Dollars	\$10,422.50
Average Life	7.720 Years
Average Coupon	3.0367913%
Net Interest Cost (NIC)	2.7291247%
True Interest Cost (TIC)	2.6520154%
Bond Yield for Arbitrage Purposes	2.3027302%
All Inclusive Cost (AIC)	2.9860809%

City of Newport, Minnesota

\$1,350,000 General Obligation Improvement Bonds, Series 2013A

Revenue Summary

DATE	Assessments	Sanitary Sewer	Watermain	Storm Sewer	TOTAL
02/01/2014	-	-	-	-	-
02/01/2015	33,578.83	16,730.70	2,747.40	2,902.20	55,959.13
02/01/2016	48,585.62	16,730.70	2,747.40	2,902.20	70,965.92
02/01/2017	48,585.61	16,730.70	2,747.40	2,902.20	70,965.91
02/01/2018	48,585.62	16,730.70	2,747.40	2,902.20	70,965.92
02/01/2019	48,585.61	16,730.70	2,747.40	2,902.20	70,965.91
02/01/2020	48,585.62	16,730.70	2,747.40	2,902.20	70,965.92
02/01/2021	48,585.61	16,730.70	2,747.40	2,902.20	70,965.91
02/01/2022	48,585.61	16,730.70	2,747.40	2,902.20	70,965.91
02/01/2023	48,585.62	16,730.70	2,747.40	2,902.20	70,965.92
02/01/2024	48,585.61	16,730.70	2,747.40	2,902.20	70,965.91
Total	\$470,849.36	\$167,307.00	\$27,474.00	\$29,022.00	\$694,652.36

City of Newport, Minnesota

\$376,907 General Obligation Improvement Bonds, Series 2013A

Issue Summary

1.5% Over TIC - Equal P&I

Total Issue Sources And Uses

Dated 01/01/2014 | Delivered 01/01/2014

	2014 Assessments	Deferred Assessments	Issue Summary
Sources Of Funds			
Par Amount of Bonds	\$270,332.00	\$106,575.00	\$376,907.00
Prepaid Assessments	72,368.00	2,900.00	75,268.00
Total Sources	\$342,700.00	\$109,475.00	\$452,175.00
Uses Of Funds			
Deposit to Project Construction Fund	342,700.00	109,475.00	452,175.00
Total Uses	\$342,700.00	\$109,475.00	\$452,175.00

City of Newport, Minnesota

\$270,332 General Obligation Improvement Bonds, Series 2013A

2014 Assessments

1.5% Over TIC - Equal P&I

Assessments

Date	Principal	Coupon	Interest	Total P+I
12/31/2014	22,360.05	4.150%	11,218.78	33,578.83
12/31/2015	23,287.99	4.150%	10,290.84	33,578.83
12/31/2016	24,254.45	4.150%	9,324.38	33,578.83
12/31/2017	25,261.01	4.150%	8,317.82	33,578.83
12/31/2018	26,309.34	4.150%	7,269.49	33,578.83
12/31/2019	27,401.18	4.150%	6,177.66	33,578.84
12/31/2020	28,538.32	4.150%	5,040.51	33,578.83
12/31/2021	29,722.66	4.150%	3,856.17	33,578.83
12/31/2022	30,956.16	4.150%	2,622.68	33,578.84
12/31/2023	32,240.84	4.150%	1,337.99	33,578.83
Total	\$270,332.00	-	\$65,456.32	\$335,788.32

Significant Dates

Filing Date	1/01/2014
First Payment Date	12/31/2014

City of Newport, Minnesota

\$106,575 General Obligation Improvement Bonds, Series 2013A

Deferred Assessments

1.5% Over TIC - Equal P&I

Assessments

Date	Principal	Coupon	Interest	Total P+I
12/31/2014	-	-	-	-
12/31/2015	6,161.06	4.150%	8,845.73	15,006.79
12/31/2016	10,839.60	4.150%	4,167.18	15,006.78
12/31/2017	11,289.45	4.150%	3,717.34	15,006.79
12/31/2018	11,757.96	4.150%	3,248.82	15,006.78
12/31/2019	12,245.91	4.150%	2,760.87	15,006.78
12/31/2020	12,754.12	4.150%	2,252.66	15,006.78
12/31/2021	13,283.41	4.150%	1,723.37	15,006.78
12/31/2022	13,834.68	4.150%	1,172.10	15,006.78
12/31/2023	14,408.81	4.150%	597.97	15,006.78
Total	\$106,575.00	-	\$28,486.04	\$135,061.04

Significant Dates

Filing Date	1/01/2014
First Payment Date	12/31/2015

RatingsDirect®

Summary:

Newport, Minnesota; General Obligation

Primary Credit Analyst:

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Katilyn Pulcher, ASA, CERA, Chicago (1) 312-233-7055; katilyn.pulcher@standardandpoors.com

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Rationale

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Summary:

Newport, Minnesota; General Obligation

Credit Profile

US\$1.48 mil GO imp bnds ser 2013A

Long Term Rating

AA/Stable

New

Rationale

Standard & Poor's Ratings Services assigned its 'AA' long-term rating to Newport, Minn.'s series 2013A general obligation (GO) improvement bonds based on our recently released local GO criteria. The outlook is stable.

A pledge of the city's full-faith-credit-and-resources and an agreement to levy ad valorem property taxes without limitation as to rate or amount secure these bonds. For the series 2013A, the city expects to pay debt service from a combination of special assessments levied against properties that benefit from improvements financed by the bonds and from ad valorem property taxes. It is our understanding that officials will use series 2013A bond proceeds for various public improvements within the city.

The rating reflects our assessment of the city's:

- Strong economy, which benefits from access and participation in the broad and diverse Minneapolis-St. Paul (Twin Cities) metropolitan area economy;
- Very strong budgetary flexibility with 2012 audited reserves at 67% of general fund expenditures;
- Very strong budgetary performance, which has produced consistent general fund results;
- Very strong liquidity providing very strong cash levels to cover both debt service and expenditures;
- Strong management conditions with good policy and consistent ability to maintain balanced budgets; and
- Adequate debt and contingent liabilities position, driven mostly by the city's high net direct debt.

Strong economy

We consider Newport's economy to be strong with access to the broad and diverse economy of the Minneapolis-St. Paul (Twin Cities) metropolitan area. The city is 3.88 square miles, is located in Washington County, and serves an estimated current population of 3,460. Traditionally, county unemployment has tracked with the state and below the nation and was 5.3% for 2012. The city has what we consider to be good per capita incomes reflective of the ability of some residents accessing jobs in the neighboring areas. Newport has projected per capita Effective Buying Income spell out as a percent of U.S. at 91%. Net tax capacity has decreased by an average rate of 4% annually between 2010 and 2012, reflecting a recent recession and state legislative changes. The economic market value in 2012 is \$289.2 million and despite the recent decline in tax capacity, the per capita market value for the city was \$83,588 for fiscal 2013, which we consider very strong. City officials expect another slight decline in fiscal 2014 before stabilizing.

Very strong budget flexibility

In our opinion, the city's budgetary flexibility remains very strong with reserves above 30% of expenditures for the past several years and no plans to significantly spend the reserves down. The city anticipates slightly higher reserves for

2013 than in 2012. For audited fiscal 2012, reserves were \$1.7 million or 67% of expenditures.

Very strong budgetary performance

The city's budgetary performance in our view has been very strong overall with a surplus of 21% for the general fund in fiscal 2012 and a 14% surplus for the total governmental funds. Property tax revenues represented 65% of the total general fund revenues for fiscal 2012 while local government aid (LGA) contributed 21%. LGA has been consistent since 2010 after the state cut back the city's aid by nearly 24% in 2010. The city has been able to produce general fund surpluses despite drop in LGA and decrease net tax capacity. Officials say that recent state legislation that caps the raising of a property tax levy at 3% starting in fiscal 2014 will not affect the city. In addition, officials expect LGA to increase by 6.5% in fiscal 2014. We expect revenues from property taxes to remain at least flat to slight increases over the next several years as well as consistent LGA revenues and expect the city to continue to have similar surpluses as they have in the past few years.

Very strong liquidity

Supporting the city's finances is what we consider to be very strong liquidity with total government available cash as a percent of total governmental fund expenditures and as a percent of debt service both above 100%. We believe the city has exceptional access to external liquidity. Newport has issued bonds over the past 10 years, all general obligation bonds.

Strong management

We view the city's management conditions as strong with good financial practices, combined with a consistent ability to maintain balanced budgets. The city works closely with the assessor to collect assessed values and prepares its budget on a line by line item basis. Management provides the board with monthly reports on its budget to actuals. The city, with the help of a financial advisor, has developed and utilizes a 10-year long-term financial and capital plan, which it updates on an annual basis and shares with its board. The city does have a debt management policy that adheres to state guidelines. Management has a reserve policy whereby its goal is to maintain at least 50% of current budgeted operating expenditures in the general fund.

Adequate debt and contingent liability profile

In our opinion, the city's debt and contingent liabilities profile is adequate with total governmental funds debt service as a percentage of total governmental funds expenditures at 9.5% and with net direct debt as a percentage of total governmental funds revenue at 59% and slated to rise. The city expects to have a bond issuance in 2014 for various public improvements. We expect debt issuance within the next two years will bring the net direct debt, including the new issuance, to roughly 83% of total governmental funds revenue. In 2011, the city had its first self-supporting debt to upgrade and modernize its infrastructure.

The city participates in the Minnesota Public Employees' Retirement Association to provide pension benefits for its general and police employees. Firefighters are covered by the Newport Firemen's Relief Assoc., which is the administrator of a single-employer defined-benefit pension plan. It has contributed 100% of the annual required contribution for each plan in each of the past three years. The city provides post-employment benefits (OPEB) through a defined-benefit plan administered by the city and is currently funding these obligations on a pay-as-you-go basis. As of Jan. 1, 2012, the city has an unfunded accrued liability of \$223,699 for this OPEB plan. The combined ARC pension

costs and OPEB pay-as you-go for fiscal 2012 were less than 10% of expenditures and we do not expect these costs to increase substantially in the near term.

Adequate institutional framework

We consider the Institutional framework score for Minnesota cities as adequate. See Institutional Framework score for Minnesota.

Outlook

The stable outlook reflects our view of the city's continued consistent financial performance and underlying economy supported by strong management.

We do not expect to change the rating in our two-year outlook horizon because we expect the city to maintain strong reserves and continue to participate in the broad and diverse Twin Cities metropolitan area economy.

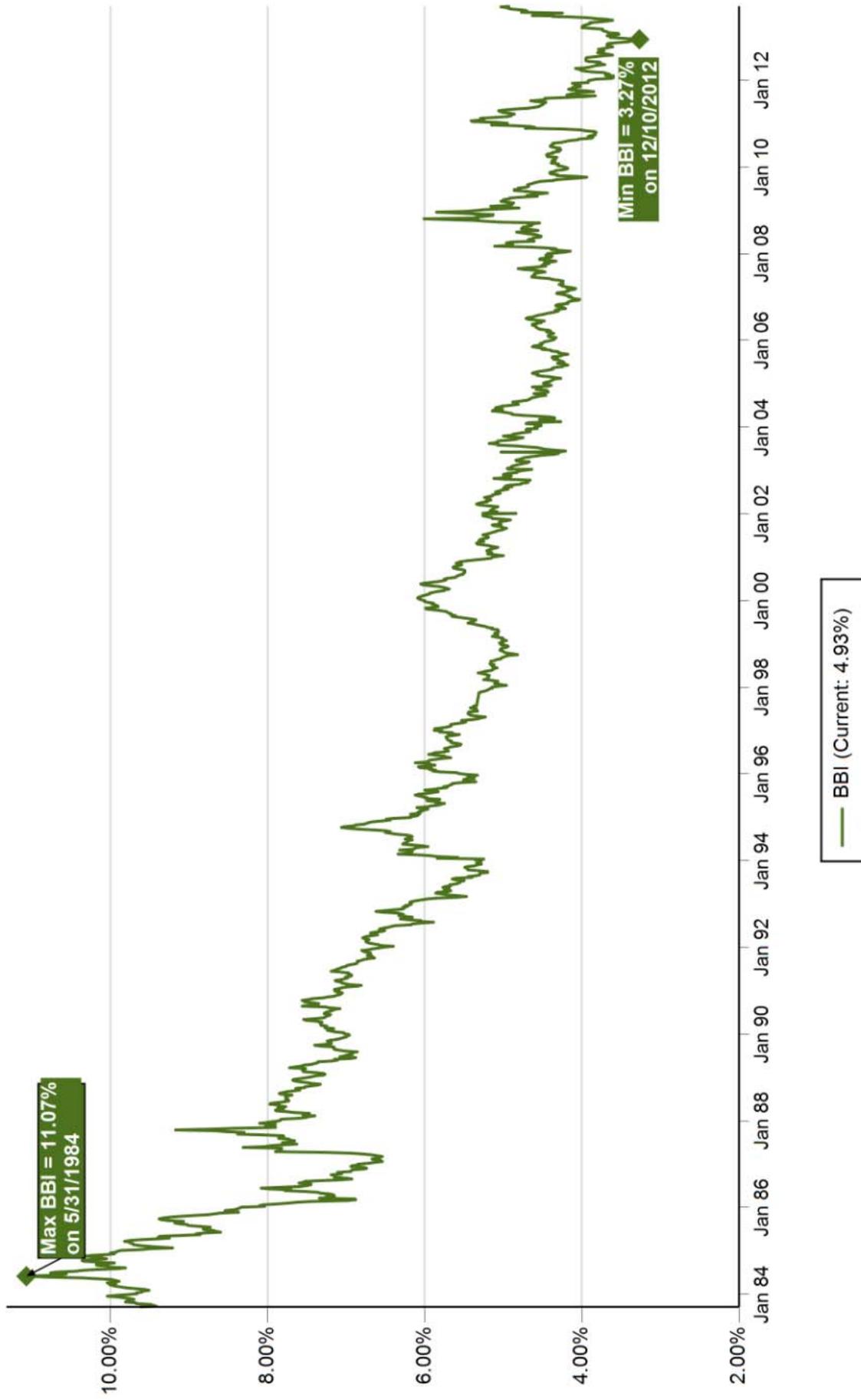
Related Criteria And Research

- USPF Criteria Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013
- S&P Public Finance Local GO Criteria: How We Adjust Data For Analytic Consistency, Sept. 12, 2013
- Institutional Framework Overview: Minnesota Local Governments

Complete ratings information is available to subscribers of RatingsDirect at www.globalcreditportal.com. All ratings affected by this rating action can be found on Standard & Poor's public Web site at www.standardandpoors.com. Use the Ratings search box located in the left column.

30 YEAR TREND IN MUNICIPAL BOND INDICES

Weekly Rates September, 1983 - September, 2013



The Bond Buyer "20 Bond Index" (BBI) shows average yields on a group of municipal bonds that mature in 20 years and have an average rating equivalent to Moody's Aa2 and S&P's AA

Source: The Bond Buyer



EHLERS
LEADERS IN PUBLIC FINANCE

Non-Recurring Bills

Paid Chk# 015427	DAHLEN, DWYER & FOLEY INC.	41536	2,500.00	Former PW site appraisal
Paid Chk# 015463	ADVANCED GRAPHIX INC.	41522	184.89	Pioneer Banner and numbers
Paid Chk# 015464	AGGREGATE INDUSTRIES MIDWEST	41522	1,992.52	Veterans memorial concrete
Paid Chk# 015465	BAUER BUILT, INC	41522	725.02	Police tires
Paid Chk# 015466	Dawn Bergmann	41522	69.50	Reimburse televising fee
Paid Chk# 015467	DIETRICH ELECTRIC, INC	41522	506.55	Electrical Inspections
Paid Chk# 015468	FERGUSON WATERWORKS #2516	41522	248.45	Water System Supplies
Paid Chk# 015469	FIRSTLAB	41522	50.95	Testing
Paid Chk# 015470	GERLACH OUTDOOR POWER EQUIP.	41522	110.32	Mower repair
Paid Chk# 015471	HAWKINS	41522	10.00	Chlorine cylinder
Paid Chk# 015472	HOFF, BARRY & KOZAR P.A.	41522	211.50	Legal fees for Knaak
Paid Chk# 015473	INVER GROVE FORD	41522	132.36	Fix Ac in patrol vehicle
Paid Chk# 015474	JOHN BARTL HARDWARE	41522	607.15	Parks supplies
Paid Chk# 015475	KEEPRS, INC.	41522	861.99	Body armor
Paid Chk# 015476	MASTERTECH AUTO & TIRE INC.	41522	109.98	PD AC
Paid Chk# 015477	MENARDS - COTTAGE GROVE	41522	2,471.20	War memorial
Paid Chk# 015478	RIVER COUNTRY COOPERATIVE	41522	2,141.16	Fire Department
Paid Chk# 015479	TBS OFFICE AUTOMATIONS	41522	169.00	Copier service
Paid Chk# 015480	THE LOCK SHOP	41522	109.90	Relock for the new door at the
Paid Chk# 015481	Washington Cty Public Safety	41522	1,500.30	Radio use
Paid Chk# 015482	WELLS FARGO INS SERVICES	41522	2,000.00	safety training
Paid Chk# 015483	WINZER	41522	353.09	

Recurring Bills

Paid Chk# 000210E	ING LIFE INSURANCE & ANNUITY	41534	433.80	MSRS
Paid Chk# 000211E	MN REVENUE	41534	1,935.48	State tax withholding
Paid Chk# 000212E	FEDERAL TAXES	41534	9,298.18	Fed, Medicare and SS taxes
Paid Chk# 000213E	DELTA DENTAL OF MN	41543	1,209.57	Dental insurance
Paid Chk# 015428	ING LIFE INSURANCE & ANNUITY	41536	1,523.00	
Paid Chk# 015429	LAW ENFORCEMENT LABOR SERVICES	41536	270.00	
Paid Chk# 015430	MINNESOTA BENEFIT ASSOC.	41536	61.43	Neska life
Paid Chk# 015431	PERA	41536	7,884.93	
Paid Chk# 015432	SELECTACCOUNT	41536	733.67	
Paid Chk# 015433	SELECTACCOUNT	41536	31.11	
Paid Chk# 015434	XCEL ENERGY	41536	5,335.53	Gas and electric
Paid Chk# 015435	TIMOTHY MURPHY	41541	6,500.00	Reimbursement for tear down of
Paid Chk# 015436	DEB MCDONALD	41543	42.94	Mileage reimbursement
Paid Chk# 015437	LEAF	41543	619.83	
Paid Chk# 015438	NCPERS MINNESOTA	41543	80.00	Extra life insurance
Paid Chk# 015439	ON SITE SANITATION	41543	443.54	Sanitation
Paid Chk# 015440	STANDARD INSURANCE CO.	41543	531.15	LTD and Life Insurance
Paid Chk# 015441	VERIZON	41543	399.29	Cell phone and wireless
	Staff		30,327.98	
			84,727.26	

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Greg T. Kryzer and
Jessica A. Johnson,

Case Type: Employment
Court File No: 62-CV-12-7537

Plaintiffs,

vs.

STIPULATION AND ORDER

Frederic W. Knaak,
Knaak & Associates, P.A.,
Holstad and Knaak, PLC,
City of Newport,
City of Afton,

Defendants.

Plaintiffs Greg T. Kryzer and Jessica A. Johnson ("Plaintiffs") and Defendants Frederic W. Knaak ("Knaak"), Knaak & Associates, P.A. ("Knaak & Associates"), Holstad and Knaak, PLC ("Holstad"), City of Newport ("Newport") and City of Afton ("Afton") (collectively, the "Parties"), through their undersigned counsel, stipulate and agree as follows:

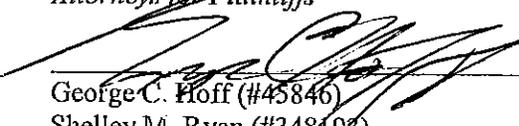
1. On or about June 24, 2013, Plaintiffs initiated the above-captioned action against Newport and Afton currently pending before the Ramsey County District Court as Court File No. 62-CV-12-7537 (the "Litigation");
2. Plaintiffs in the Litigation assert claims against Newport and Afton under the Minnesota Fraudulent Transfers Act, Minn. Stat. §§ 513.44, 513.45 and 513.47 and seek declaratory and injunctive relief prohibiting distribution or transfer of any assets or property in which Knaak, Knaak & Associates and/or Holstad, or any successors thereof, have an interest;
3. Afton is holding \$16,000.00 owed to Knaak, Knaak & Associates and/or Holstad for legal services provided to Afton between February 26, 2013 and May 25, 2013;
4. The Parties have agreed that pursuant to Minn. R. Civ. P. 22, upon Afton's payment of \$13,226.96 into the court by check made payable to the Ramsey County District Court, Afton shall be discharged and dismissed from the Litigation with prejudice and Afton's obligation to Knaak, Knaak & Associates and/or Holstad for legal services rendered to the extent of the payment to the Court shall be fully satisfied. Monies so deposited shall be distributed pursuant to an order of the court;

5. Newport is holding \$26,000.00 owed to Knaak & Associates and/or Holstad for legal services provided to Newport between December 31, 2012 and April 25, 2013;
6. The Parties have agreed that pursuant to Minn. R. Civ. P. 22, upon Newport's payment of \$21,580.83 into the court by check made payable to the Ramsey County District Court, Newport shall be discharged and dismissed from this Litigation with prejudice and Newport's obligation to Knaak, Knaak & Associates and/or Holstad for legal services rendered to the extent of the payment to the Court shall be fully satisfied. Monies so deposited shall be distributed pursuant to an order of the court; and
7. The Parties have agreed that \$7,721.11 of the total amount of \$34,807.79 paid into the court pursuant to this stipulation is for costs and attorneys fees associated with the appeal of this matter pursuant to Minn. Stat. 181.171. The city of Newport shall contribute \$4787.09 of the \$7721.11. The city of Afton shall contribute \$2934.02 of the \$7721.11. Upon decision and order of the appellate court regarding such fees and costs such monies will be immediately released pursuant to such order. In the event that such order does not award all of the amounts described in this paragraph to Plaintiffs, any portion of the \$7721.11 remaining shall be immediately released and returned to the cities pursuant to their contributions of 62% by Newport and 38% by Afton respectively.
8. Plaintiffs intend to seek an order from the court determining their entitlement to funds in the future payable by Newport and Afton to Knaak, Knaak & Associates and/or Holstad. Newport and Afton agree to be bound by the court's order with respect to such future payment obligations.

Dated: September 27, 2013

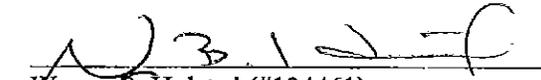

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*Attorneys for Defendants City of Newport
City of Afton*

Dated: September 27, 2013


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Holstad and Knaak, PLC
*Attorneys for Defendants Frederic W.
Knaak, Knaak & Associates, P.A., and
Holstad and Knaak, PLC*



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Memorandum

To:	Newport City Council	Reference:	J&J Temperature Controls Conditional Use Permit
Copies To:	Deb Hill, City Administrator Renee Helm, Executive Analyst Jim Domeier, Applicant Gloria Miller, Owner	Project No.:	15258.005
From:	Sherri Buss, RLA AICP, Planner	Routing:	
Date:	September 23, 2013		

SUBJECT: J&J Temperature Control Conditional Use Permit (CUP) Request

MEETING DATE: October 3, 2013

LOCATION: 100 7th Avenue

APPLICANT: Jim Domeier
910 1st Street
Newport, MN 55055

ZONING: Light Industrial (I-1)

60-DAY PERIOD: September 28, 2013

ITEMS REVIEWED: Application, aerial photo, site visit with applicant

BRIEF DESCRIPTION OF THE REQUEST

Jim Domeier operates a business called J&J Temperature Control at 910-1st Street in Newport. He also stores vehicles, truck trailers, and equipment for his business at other locations in Newport, including 100-7th Avenue and at 1680-4th Avenue (the Dahlen property). His business activities include snow plowing and other maintenance for the South Washington County School District, and the rental of refrigerated truck trailers to Walmart and other business.

Mr. Domeier is proposing to move his office and business activities, including storing vehicles and equipment, from 910-1st Street to 100-7th Avenue and 102-7th Avenue. In order to obtain a required state license for his business, he needs to show that his business complies with the City's zoning requirements. To meet those requirements, he needs to obtain a Conditional Use

Permit (CUP) to store vehicles and equipment at 100- and 102-7th Avenue. The associated office and shop use are permitted uses in the zoning district.

The building at 102 7th Avenue will be used for storage of vehicles and equipment, and the building at 100 7th Avenue will include an office and shop. J & J Temperature Control will also park some vehicles adjacent to the two buildings. The property at 100- and 102-7th Avenue is owned by Gloria Miller.

EVALUATION OF THE CONDITIONAL USE PERMIT (CUP) REQUEST

Zoning District and CUP Standards

The parcels at 100 and 102-7th Avenue are located in the Light Industrial (I-1) District. The City's Zoning Ordinance indicates that the intent and primary use of the Light Industrial (I-1) District is to "provide areas for research laboratories, small-scale processing, fabricating, storage, manufacturing, and assembly of products that do not produce hazardous wastes as by-products."

Section 1310.10 of the code indicates that the city may grant a CUP when the use is consistent with the Zoning Ordinance and Comprehensive Plan, and the City may impose conditions and safeguards to protect the health, safety, and welfare of the community. Criteria for evaluating the proposed uses and developing conditions for the CUP include the following:

1. The proposed use is designated in Section 1330 of the development code as a conditional use in the appropriate zoning district.
2. The proposed use is consistent with the Newport Comprehensive Plan.
3. The proposed use will not be detrimental to or endanger the public health, safety or general welfare of the City, including the factors of noise, glare, odor, electrical interference, vibration, dust, and other nuisances; fire and safety hazards; existing and anticipated traffic conditions and parking facilities on adjacent streets and land.
4. The potential effects of the proposed use on surrounding properties, including valuation, aesthetics and scenic views, land uses, and character and integrity of the neighborhood.
5. The potential impacts of the proposed use on governmental facilities and services, including roads, sanitary sewer, water and police and fire.
6. The potential impacts on sensitive environmental features, including lakes, surface and underground water supply and quality, wetlands, slopes, floodplains and soils.
7. The City may also consider whether the proposed use complies or is likely to comply in the future with all standards and requirements set out in other regulations or ordinances of the City and other governmental bodies having jurisdiction in the city.
8. In permitting a new conditional use, the City may impose additional conditions which it considers necessary to protect the best interest of the surrounding area or community as a whole.

Proposed Uses

The applicant indicated that the proposed uses on the property include office, storage of vehicles, and a repair shop. The proposed office and repair shop uses are allowed in the I-1 District. The Auto (vehicle) Storage use is not currently permitted on the site and requires a Conditional Use Permit in the I-1 District.



The applicant, Jim Domeier, is proposing to rent the buildings and parking areas at the site. The site owner is Gloria Miller. Ms. Miller has indicated that she approves of the proposed use and is willing to accept the Conditional Use Permit to allow the use at the site.

Comprehensive Plan

The Comprehensive Plan supports continuation of the existing Industrial Districts and uses while minimizing potential conflicts with adjacent residential and commercial districts. The uses at 100 and 102-7th Avenue will be surrounded by other industrial areas, and there will be no conflicts with residential or commercial uses. The proposed use is consistent with the Comprehensive Plan.

Dimensional Standards, Setbacks and Requirements

The minimum lot size in the I-1 District is 30,000 square feet, the minimum lot depth is 200 feet, and the minimum lot width is 100 feet. The parcel at 100 7th Avenue is 1.46 acres in size (300'x250') and the parcel at 102 7th Avenue is .77 acres in size (200'x180').

The I-1 District setbacks requirements for buildings include the following:

- Front yard: 20 feet
- Side yard: 20 feet
- Rear yard: 20 feet

Parking lot setbacks include a 20-foot front setback and 5-foot rear and side yard setbacks. The parcels that will include the proposed uses meet the dimensional standard and setback requirements of the Zoning Ordinance.

Traffic

The applicant is proposing to move existing uses from a neighboring property to the buildings at 100 and 102-7th Avenue. The change in location will not increase traffic to the area or change traffic patterns. Existing City streets (1st Street and 7th Avenue) have adequate capacity to continue to handle the traffic from the proposed uses.

Parking Requirements

The Zoning Ordinance requires that off-street parking areas should be improved with a durable and dustless surface and be graded to dispose of stormwater. Warehouse and Industrial Storage uses must provide 1 space for every 2 employees or one space for each 2,000 square feet of gross floor area. The storage building on the site includes approximately 5,000 square feet, and therefore requires 2-3 parking spaces. The parking area exceeds the ordinance requirement, and its surface meets the ordinance requirement.

Buildings

No new buildings are proposed to accommodate the new uses on the site.



Accessory Structures

The applicant is proposing to add a “hoop” structure to store salt and sand for the maintenance activities that are performed for the South Washington County School District. The structure is permitted by the Zoning Ordinance and covered storage is consistent with the District requirements. The applicant will need to obtain a building permit for the structure.

Exterior Storage

The applicant indicated that he will store more of the vehicles on the site within the building at 100-7th Avenue rather than outside. He will also add a “hoop” structure to store the sand and salt at the site. The vehicles that will remain outside will not be visible from residential uses, and will be located in side and rear yards that are adjacent to other business and industrial uses. The applicant emphasized that the additional area for vehicle storage and the addition of the “hoop” structure will help to improve the neatness and appearance of the site. The proposed exterior storage meets the ordinance requirements.

Other Performance Standards

The new use at the site will not affect how refuse is handled, the utility equipment on the site, or loading and service areas. No new lighting, landscaping, signage or fences are proposed. The site currently meets the ordinance requirements and will continue to do so if the new use is permitted.

Infrastructure and Public Services

The addition of the new use at the site will not impact the stormwater generated at the site or impact City infrastructure or public services.

Hours of Operation

The applicant indicated that the hours of operation at the site are generally from 7 a.m. to 7 p.m. during most of the year, and the site operates as needed during snow events in the winter in order to plow school district properties. The hours and use of the site will not impact adjacent residential or commercial uses.

EVALUATION OF THE REQUEST

The Planner's evaluation of the request based on the zoning ordinance criteria for CUP's is as follows:

- *The proposed use is designated in Section 1330 of the development code as a conditional use in the appropriate zoning district.*

The proposed auto (vehicle) storage use is designated as a conditional use in the I-1 Zoning District.

- *The proposed use is consistent with the Newport Comprehensive Plan.*



The Comprehensive Plan supports the continuation of Industrial Uses in the designated districts within the City, as long as the use does not conflict with or negatively impact adjacent residential and commercial uses. There are no residential or commercial uses near the site that will be impacted by the proposed use.

- *The proposed use will not be detrimental to or endanger the public health, safety or general welfare of the City, including the factors of noise, glare, odor, electrical interference, vibration, dust, and other nuisances; fire and safety hazards; existing and anticipated traffic conditions and parking facilities on adjacent streets and land.*

The proposed use will not create noise, glare, odor, dust or other nuisances that could affect public health or welfare. It will not increase the danger of fire or other safety hazards, increase traffic, or increase parking on adjacent streets.

- *The potential effects of the proposed use on surrounding properties, including valuation, aesthetics and scenic views, land uses, and character and integrity of the neighborhood.*

The properties surrounding the proposed use are industrial in nature, and the uses are similar to the proposed use, so it is unlikely to affect the value or aesthetics of the area. The use is consistent with the character of the surrounding neighborhood.

- *The potential impacts of the proposed use on governmental facilities and services, including roads, sanitary sewer, water and police and fire.*

The proposed use is moving from an adjacent site, and will not create new impacts to governmental facilities and services. Existing infrastructure and City services are adequate to serve the site.

- *The potential impacts on sensitive environmental features, including lakes, surface and underground water supply and quality, wetlands, slopes, floodplains and soils.*

The proposed use will not require the creation of new impervious surfaces, and will not increase runoff or impacts to lakes, other surface waters or groundwater. The use will not impact slopes, floodplains or soils.

- *The City may also consider whether the proposed use complies or is likely to comply in the future with all standards and requirements set out in other regulations or ordinances of the City and other governmental bodies having jurisdiction in the city.*

The City has not proposed future changes in zoning or requirements for this area.

- *In permitting a new conditional use, the City may impose additional conditions which it considers necessary to protect the best interest of the surrounding area or community as a whole.*

Proposed conditions are identified in the recommendations, below.



PLANNING COMMISSION PUBLIC HEARING AND DISCUSSION

The Planning Commission held a public hearing on the J&J Temperature Control CUP application at their meeting on September 12. The Commission received no verbal or written comments on the application. The Commission discussed the findings and recommended conditions, and voted to approve the CUP with the recommended conditions.

FINDINGS

The Planning Commission's findings regarding the J&J Temperature Control application based on the criteria for granting CUP's identified in the zoning ordinance are as follows:

- The proposed Auto (Vehicle) Storage use is designated as a Conditional Use in the Light Industrial (I-1) Zoning District.
- The proposed use is consistent with the goals and policies in the City's Comprehensive Plan, and will not have negative impacts on adjacent uses.
- The proposed use will not be detrimental to public health, safety or general welfare. It will not impact safety, traffic or parking on surrounding streets.
- The proposed use is consistent with uses on adjacent properties, and will not negatively impact property values, aesthetics, scenic views or the character and integrity of the neighborhood.
- The proposed use will not impact governmental facilities and services.
- The proposed use will not create new impervious surfaces or increase runoff to surface water bodies or groundwater. It will not impact steep slopes, floodplains or soils.
- The use is likely to comply with the City's standards and ordinances for the foreseeable future.

ACTION REQUESTED FOR THE CUP REQUEST

The City Council can recommend the following for this application:

1. Approval
2. Approval with conditions
3. Denial with findings
4. Table the request

PLANNING COMMISSION RECOMMENDATIONS

The Planning Commission recommends that the City Council approve the request for a Conditional Use Permit (CUP) for the Auto (Vehicle) Storage Use of the site at 100 and 102-7th Avenue.

1. The use at the site shall be consistent with the application submitted to the City on July 30, 2013. The CUP shall include the storage of vehicles and equipment at the buildings located at 100 and 102 7th Avenue.
2. The applicant shall obtain a building permit from the City for the proposed "hoop" structure for storage of sand and salt.
3. The applicant shall pay all fees and escrows for this application.





Parcel ID: 0102722240015

Parcel Address:
100 7TH AVE, CITY OF NEWPORT

Created on 9/4/2013

102-7th AVE
VEHICLE AND
EQUIPMENT
STORAGE

100 7th AVENUE
PROPOSED OFFICE
AND SHOP

910-1st ST.
J+J TEMP CONTROL CURRENT OFFICE

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

100 and 102 7th Avenue



City of NEWPORT Planning Request Application

Newport City Hall ♦ 596 7th Avenue ♦ Newport ♦ Minnesota ♦ 55055 ♦ Telephone 651-459-5677 ♦ Fax 651-459-9883

Application Date: 7-30-13 Public Hearing Date 09/12/13

Applicant Information

Name: J + J - Temperature Control Telephone: 651-769-9564
Mailing Address: 100 7th Ave / 910 - First St Telephone: 651-308-0099
City/State/Zip: Newport, Mn 55055

Property Owner Information

Name: M LORRA Meyers Telephone: 651 459-9101
Mailing Address: 100 7th Ave Newport Telephone: _____
City/State/Zip: Newport, Mn 55055

Project Information

Location of Property: 100 7th Ave
Legal Description of Property and P.I.D. #: 01-027.22.24.0016

Zoning District: _____ Flood Plain: **AE 0.2% Annual Chance Flood Hazard**

- Comprehensive Plan Amendment \$500 or Actual Cost plus \$50 for Additional Staff Hours (10 Hr Min)
- Rezoning \$500 plus Escrow
- Zoning Amendment \$500
- Variance \$300 plus Escrow
- Conditional Use Permit
 - Residential \$300 plus Escrow
 - Commercial \$450 plus Escrow
- Subdivision Approval
 - Minor Subdivision \$300 plus Escrow and \$2,000 for Parkland Dedication Fee
 - Major Subdivision \$500 plus Escrow, \$50 per Lot, \$200 for Final Plat, and 10% of land value or fee for Parkland Dedication Fee
- Other: _____
- Applicable Zoning Code Chapter: _____
- Review by Engineer Cost: _____
- Total Cost: _____

The City of Newport requires that any developer or every person, company, or corporation that is seeking to commence construction or major alterations of a structure, and land subdivisions or lot combinations must first submit detailed site plans to the City. The person submitting site plans must also submit prepayment to the City to cover any expenses that the City incurs by investing extensive amounts of time reviewing these plans. Any funds in excess of those actually reimbursing the City for its expenses will be returned to the applicant upon completion of the project. The fees are as follows:

Site Plan Review - Residential

- 8 Units or Less \$2,000
- 9 to 40 Units \$3,200
- 41 Units or More \$4,500

Site Plan Review - Commercial

- 0 to 5,000 sq ft bldg \$2,000
- 5,001 to 10,000 sq ft bldg \$3,000
- 10,001 to 50,000 sq ft bldg \$3,750
- 50,001 sq ft plus bldg \$4,500

Preliminary Plat

- Under 10 Acres \$3,500
- Over 10 Acres \$6,500

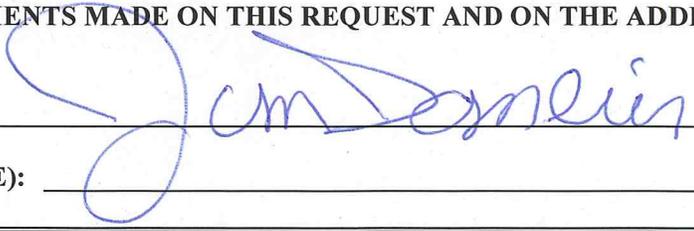
Present Use of Property: Storage of Equipment - Trailers - Trucks.

Have been at present location 15+ years

State Reason for Planning Request: Need to move dealer licenses from 910 FAIST ST. Cost is too High for Rental to 100 7th Avenue, building #2.

ALL MATERIALS/DOCUMENTATION, INCLUDING A SITE-PLAN, MUST BE SUBMITTED WITH APPLICATION THAT IS APPLICABLE TO PLANNING REQUEST.

I HEREBY DECLARE THAT ALL STATEMENTS MADE ON THIS REQUEST AND ON THE ADDITIONAL MATERIAL ARE TRUE.

SIGNATURE OF APPLICANT: _____ 

SIGNATURE OF OWNER (IF APPLICABLE): _____

For Office Use

Fee: \$ 450 Date Paid: 07/30/13 Receipt #: 1445

Publication of Notice Date: 08/28/13

Public Hearing Date: 09/12/13

P.C. Resolution #: _____

Council Action Date: _____

Council Resolution #: _____

RESOLUTION NO. 2013-46

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT REQUESTED BY J & J TEMPERATURE CONTROL, 100 7TH AVENUE, NEWPORT, MN 55055, FOR PROPERTY LOCATED AT 100 7TH AVENUE, NEWPORT, MN 55055

WHEREAS, J & J Temperature Control, 100 7th Avenue, Newport, MN 55055, has submitted a request for a Conditional Use Permit to allow for outside storage of equipment; and

WHEREAS, the property is located at 100 7th Avenue, Newport, MN 55055 and is more fully legally described as follows:

PID #01.027.22.24.0015 - LOTS 1 THRU 6 BLOCK 14 DIV #1 ST PAUL PARK Block 14 Lot 1 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 2 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 3 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 4 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 5 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 6 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK

PID #01.027.22.24.0018 - LOT 7 & THE NORTH 1/2 OF LOT 8 BLOCK 14 DIV #1 ST PAUL PARK INCLUDING THERIN THE PORTION FORMERLY OCCUPIED BY HASTINGS AVE NOW VACATED Block 14 Lot 7 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 8 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK

PID #01.027.22.24.0016 - THE SOUTH B= OF LOT 8 BLOCK 14 DIV #1 ST PAUL PARK LYING EAST OF THE ROAD COMMONLY KNOWN AS HASTINGS AVE & THE EASTERLY B= OF THE VACATED PORTION OF HASTINGS AVE LYING DIRECTLY ADJACENT TO THE SOUTH B= OF LOT 8 BLOCK 14 & LOTS 9 THRU 16 BLOCK 14 DIV #1 ST PAUL PARK INCLUDING THE VACATED STREET COMMONLY KNOWN AS HASTINGS AVE LYING WITHIN SAID LOTS & THE SOUTH B= OF LOT 8 BLOCK 14 DIV #1 ST PAUL PARK LYING WEST OF THE CENTER LINE OF THE VACATED ROAD COMMONLY KNOWN AS HASTINGS AVE & THAT CERTAIN ALLEY LYING BETWEEN LOTS 11 & 12 THRU LOT 16 BLOCK 14 DIV #1 ST PAUL PARK & THAT CERTAIN ALLEY LYING BETWEEN THE CHICAGO & QUINCY RAILROAD RIGHT-OF-WAY & THE EAST LINE OF LOT 12 BLOCK 14 DIV #1 ST PAUL PARK Block 14 Lot 8 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 9 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 10 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 11 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 12 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 13 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 14 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 15 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK Block 14 Lot 16 SubdivisionCd 2674 SubdivisionName DIV #1 ST PAUL PARK

WHEREAS, The described property is zoned Light Industrial (I-1); and

WHEREAS, **Section 1310.10 Subd. 2 Criteria** states the criteria for acting upon a Conditional Use Permit (C.U.P.) application as follows: *“In acting upon an application for a conditional use permit, the City shall consider the effect of the proposed use upon the health, safety, and general welfare of the City including but not limited to the factors of noise, glare, odor, electrical interference, vibration, dust, and other nuisances; fire and safety hazards; existing and anticipated traffic conditions; parking facilities on adjacent streets and land; the effect on surrounding properties, including valuation, aesthetics and scenic views, land uses, character and integrity of the neighborhood; consistency with the Newport comprehensive plan; impact on governmental facilities and services, including roads, sanitary sewer, water and police and fire; effect on sensitive environmental features including lakes, surface and underground water supply and quality, wetlands, slopes flood plains and soils; and other factors as found relevant by the City. The City may also consider whether the proposed use complies or is likely to comply in the future with all standards and requirements set out in other regulations or ordinances of the City or other governmental bodies having jurisdiction over the City. In permitting a new conditional use or the alteration of an existing conditional use, the City may impose, in addition to the*

standards and requirements expressly specified by this chapter, additional conditions which it considers necessary to protect the best interest of the surrounding area or the community as a whole.”; and

WHEREAS, Following publication, posted, and mailed notice thereof, the Newport Planning Commission held a Public Hearing on September 12, 2013; and

WHEREAS, the Planning Commission’s findings related to the request for approval of a Conditional Use Permit included the following:

1. The proposed Auto (Vehicle) Storage use is designated as a Conditional Use in the Light Industrial (I-1) Zoning District.
2. The proposed use is consistent with the goals and policies in the City’s Comprehensive Plan, and will not have negative impacts on adjacent uses.
3. The proposed use will not be detrimental to public health, safety or general welfare. It will not impact safety, traffic or parking on surrounding streets.
4. The proposed use is consistent with uses on adjacent properties, and will not negatively impact property values, aesthetics, scenic views or the character and integrity of the neighborhood.
5. The proposed use will not impact governmental facilities and services.
6. The proposed use will not create new impervious surfaces or increase runoff to surface water bodies or groundwater. It will not impact steep slopes, floodplains or soils.
7. The use is likely to comply with the City’s standards and ordinances for the foreseeable future.

WHEREAS, The Planning Commission recommended Council approval of the proposed rezoning, Resolution No. P.C. 2013-8.

NOW, THEREFORE, BE IT RESOLVED That the Newport City Council Approves a Conditional Use Permit for the Auto (Vehicle) Storage Use of the Site at 100 and 102 7th Avenue with the following conditions:

1. The use at the site shall be consistent with the application submitted to the City on July 30, 2013. The CUP shall include the storage of vehicles and equipment at the buildings located at 100 and 102 7th Avenue.
2. The applicant shall obtain a building permit from the City for the proposed “hoop” structure for storage of sand and salt.
3. The applicant shall pay all fees and escrows for this application.

Adopted this 3rd day of October, 2013 by the Newport City Council.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Deb Hill, City Administrator



444 Cedar Street, Suite 1500
Saint Paul, MN 55101
651.292.4400
tkda.com

Memorandum

To:	Newport City Council	Reference:	Domeier Variance Request
Copies To:	Deb Hill, City Administrator	Project No.:	15258.006
	Renee Helm, Executive Assistant		
	Brian Domeier, applicant and property owner		
	John Stewart, City Engineer		
From:	Sherri Buss, RLA AICP, Planner	Routing:	
Date:	September 23, 2013		

SUBJECT: Domeier Variance Request

MEETING DATE: October 3, 2013

LOCATION: 615-8th Street

APPLICANT: Brian Domeier
1040 10th Avenue
Newport, MN

OWNER: Brian Domeier

ZONING: R-1 Low Density Single Family Residential

60-DAY PERIOD: October 17, 2013

ITEMS REVIEWED: Application Form, narrative, sketch plan and aerial photo

BRIEF DESCRIPTION OF THE REQUEST

The applicant is requesting a variance from the required setback from the side property line to construct a garage 10 feet from the property line rather than the 30 feet required by the Zoning Ordinance. The property does not currently have a garage. It does have an existing driveway on 6th Avenue.

Analysis of the request indicates that construction of a two-car garage on the property may also require a variance from the lot coverage standard in the R-1 zoning district, depending on the setback approved.

EVALUATION OF THE REQUEST

Comprehensive Plan

The property at 615-8th Street is located in the R-1 Low-Density Single-Family Residential District. The Comprehensive Plan generally supports the development of single-family residences and accessory structures in the R-1 District. The proposed use is consistent with the Comprehensive Plan.

Development Code Requirements: Lot sizes and Setbacks

The minimum lot size in the R-1 Zoning District is currently 9,100 square feet. The applicant's lot is 7,000 square feet in size, and is therefore a nonconforming lot.

The setback requirements in the R-1 Zoning District are as follows:

- Front yard setback: 30 feet
- Side yard setback for garages: 5 feet, or 30 feet on a corner lot
- Rear yard setback for garages: 5 feet

The applicant is requesting a variance to locate the garage 10 feet from the property boundary on 6th Street (side yard) rather than the 30-foot setback required by the ordinance.

The City Engineer cited two issues related to the proposed variance request:

- The applicant's proposed 10' side yard setback could result in vehicles being parked on City right-of-way when they are not parked in the garage. A driveway area that is at least 24 feet in length is needed to accommodate most vehicles. The City does not allow parking on the right-of-way. The Engineer recommended that the garage should be setback at least 24 feet from the side lot line, rather than the 10 feet requested by the applicant, to allow for vehicle parking outside the right-of-way.
- The owner would need to utilize the existing driveway for the garage, or remove the existing driveway if the garage is placed in a different location. The City's standards permit one driveway per single-family parcel. The applicant will need to utilize the existing driveway to access the garage, or remove the existing driveway if the garage is placed in another location.

Accessory Structure Requirements

The Zoning Ordinance allows residential lots to have up to 2 accessory structures, and the total footprint of all accessory structures may be no larger than the footprint of the principal structure. (A residential lot may have at least 500 square feet of garage space, as long as the required setbacks and other code requirements are met.) The request proposes one accessory structure that is 576 square feet in size. The existing home on the property is approximately 960 square feet in size. The request meets the ordinance requirements for number and size of accessory structures.



Building Height and Materials

The application does not include a sketch or elevation that indicates the height of the proposed garage. Section 1340.04 of the Zoning Ordinance requires that no garage or accessory structure may be taller than the principal structure. The code also requires that accessory structure be compatible in materials and color to the principal structure. The Planner has included a condition for variance approval that the garage may be no taller than the principal structure, and must be constructed of durable, finished materials that are compatible to the exterior materials and color of the house. The structure height, materials and color should be reviewed and approved as part of the building permit application.

Lot Coverage

The zoning ordinance allows 25% maximum lot coverage in the R-1 District. The analysis of proposed lot coverage for the variance request is as follows:

If the applicant's request is approved (10-foot setback from boundary):

House (24'x40')	960 square feet
Garage (24'x24')	576 square feet
Driveway (10'x24')	<u>240 square feet</u>
TOTAL Coverage	1,776 square feet

The lot is 7,000 square feet in size. If a 576 square-foot garage is added and the requested variance is approved for a 10' setback, the lot coverage will be 25%, meeting the maximum allowed by the ordinance.

The City Engineer proposed that the minimum setback from the parcel boundary be 24'. The impervious cover with a 24' setback would be as follows:

House (24'x40')	960 square feet
Garage (24'x24')	576 square feet
Driveway (24'x24')	<u>576 square feet</u>
TOTAL Coverage	2,112 square feet

The impervious coverage with a 24' setback would be 30% of the lot, and would require a variance.

Stormwater Management

The Planner discussed the potential need for a variance from the coverage requirement with the City Engineer. The Engineer concluded that if the City grants the variance, it would not be practical to require stormwater management practices on the small parcel in order to mitigate for the additional lot coverage. Therefore, based on the Engineer's recommendation, the Planner has not included conditions related to stormwater management for the variance.



ORDINANCE REQUIREMENTS FOR EVALUATING A VARIANCE REQUEST

Section 1310.11 of the Zoning Ordinance states that the City may approve a variance if it meets the following criteria:

- Granting the variance is consistent with the Comprehensive Plan, and in harmony with the general purposes and intent of the zoning ordinance.
- Strict enforcement of the zoning ordinance would result in “practical difficulties, “ which are defined as follows:
 - The property owner is proposing to use the property in a reasonable manner that is not permitted by the Zoning Ordinance.
 - The plight of the landowner is due to circumstances unique to the property and not created by the landowner.
 - Granting the variance will not alter the essential character of the locality.
 - Economic conditions alone shall not constitute the practical difficulties.
 - Granting the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of public streets, or increase the danger of fire, or endanger public safety, or substantially diminish or impair property values within the neighborhood.
 - The requested variance is the minimum action required to eliminate the practical difficulty.
 - Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

Findings

The following are the Planner’s findings based on the request and the conditions for approving a variance

- *Variations shall only be permitted when they are consistent with the Comprehensive Plan and in harmony with the general purposes and intent of the official control.*

The purpose of the R-1 District is to preserve, create and enhance areas for low-density single-family residential dwellings in areas identified in the Comprehensive Plan. The zoning ordinance permits garages and accessory structures in single-family residential districts. The requested variance is consistent with the Comprehensive Plan and in harmony with the general purposes of the development code.

- *The proposed use is reasonable.*

Single family homes and garages are permitted in the R-1 Zoning District. Garages are a near-necessity in Minnesota’s climate. Therefore, the proposed use is a reasonable use.

- *The request is due to circumstances that are unique to the property, and were not created by the landowner.*



The practical difficulties related to the addition of the garage are related to the small size of the existing lot. The owner/applicant did not create the size of the lot.

- *The variance, if granted, will not alter the essential character of the area.*

The home will remain a single-family residence. Adjacent properties have garages that are similar in size to the proposed garage. Granting the variance would not alter the essential character of the area.

- *Economic considerations alone do not constitute practical difficulties.*

The variance request is based on the small lot size, not on economic considerations.

- *The proposed variance will not impair an adequate supply of light and air to adjacent properties, substantially increase the congestion of public streets, increase the danger of fire or endanger public safety, or substantially diminish or impair property values within the neighborhood.*

The addition of a garage in the proposed location will not impair the supply of light or air to adjacent properties, increase street congestion, increase the danger of fire or endanger public safety, or impair property values within the neighborhood.

- *The requested variance should be the minimum action required to eliminate the practical difficulty.*

The 10' setback from the parcel boundary and 30' setback from the edge of the street allows for vehicle parking off the street and places the structure outside the City right-of-way. The proposed impervious surface area meets the ordinance requirement. The variance would be the minimum action to eliminate the practical difficulty.

- *Practical difficulties include, but are not limited to inadequate access to direct sunlight for solar energy systems.*

Granting the variance request will not affect access to direct sunlight for solar energy systems.

The findings support granting the variance.

PLANNING COMMISSION PUBLIC HEARING AND DISCUSSION

The Planning Commission held a public hearing on the Domeier Variance application at its regular meeting on September 12. One neighbor spoke in support of the applicant's request.

The Commission reviewed and discussed the Engineer's recommendation that the minimum driveway length be 24', so that parking could occur outside the City's right-of-way. The Commission discussed the impacts to the lot if a 24' setback were required, and noted the following:



- The parcel boundary is located slightly more than 20' from the edge of the street. If a 10' setback from the boundary were approved, most vehicles could be parked on the driveway and would not overhang the street.
- Parking occurs within the right-of-way on many similar small lots in the surrounding neighborhood.
- The house is setback only about 5' from the parcel boundary. A garage setback of 24' is significantly greater than the existing building setback on the property.
- A setback of 24' would significantly impact the backyard of the property. The applicant's requested 10' setback would preserve more of the green space and maintain at least a minimal back yard for the home.
- The requested 10' setback would result in a level of impervious coverage that is within the ordinance requirement. A larger setback would require a variance from the coverage requirement.

The Planning Commission recommended approval of a variance for the garage setback. They recommended that the structure be setback at least 10' from the parcel boundary and at least 30' feet from the pavement edge of 6th Avenue.

ACTION REQUESTED

The City Council can recommend the following:

1. Approval
2. Approval with conditions
3. Denial with findings
4. Table the request, if additional information is needed to make a decision

PLANNING COMMISSION RECOMMENDATIONS

The Planning Commission recommends that the City Council approve a variance for the property at 615 8th Street to construct a garage a minimum of 10 feet from the side property line on 6th Avenue, and a minimum of 30' from the eastern edge of the pavement of 6th Avenue.

The Planning Commission finds the following:

1. The variance request is consistent with the Comprehensive Plan's goals to permit single-family uses in the R-1 zoning district, and in harmony with the general purposes of the Zoning Ordinance to permit single-family uses and garages in the R-1 district.
2. The proposed use is reasonable based on the Zoning Ordinance and the need for a garage due to the local climate.
3. The practical difficulties are related to the small size of the existing lot and were not created by the applicant.
4. Granting the variance would not alter the essential character of the area, which includes other single-family homes with similar garages and driveways.



5. The addition of the garage in the proposed location will not impair the supply of light or air to adjacent properties, increase street congestion, increase the danger of fire or endanger public safety, or impair property values within the neighborhood.
6. The variance is the minimum action needed to construct a garage on the parcel and eliminate the practical difficulty.
7. Granting the variance will not affect access to direct sunlight for solar energy systems.

The Planning Commission recommends the following conditions:

1. The garage shall be a minimum of 10' from the side lot line along 6th Avenue, a minimum of 30' from the edge of the pavement on 6th Avenue, and shall meet the other setback requirements of the code. The applicant shall stake the location of the proposed garage so that the City can verify the setbacks before construction begins.
2. The Applicant shall obtain a building permit for the proposed garage.
3. One driveway is permitted on the parcel.
4. The garage shall be no taller than the principal structure, and shall be constructed of durable, finished materials that are compatible to the colors and materials used on the exterior of the home.
5. The applicant shall pay all fees and escrow associated with this application.



Renee Helm

From: John Stewart [jstewart@msa-ps.com]
Sent: Thursday, September 05, 2013 3:43 PM
To: 'sherri.buss@tkda.com'; Renee Helm; Deb Hill
Subject: Variance 615 6th Avenue
Attachments: image001.jpg; image002.gif; document1.pdf; image003.emz; image004.png; image005.emz; image008.png; image009.png

Sherri/ Renee

We have reviewed the information that you supplied, concerning 615 6th Avenue.

I understand that the applicant Brian Domeier has requested a variance to allow the proposed garage to be located 10 feet back from the east right of way line on 8th Avenue.

Permitting a 10 foot setback does not provide sufficient distance to park a vehicle in front the garage without a portion of the parked vehicle occupying the City right of way between the property line and the edge of pavement.

The city boulevard on the eastern side of 6th Avenue in front of 615 6th Avenue is approximately 20 feet wide . Parking a Ford F150, which is 19 feet 4 inches long (232 inches) would overhang 10 feet on to the boulevard.

6th Avenue in front of the Elementary School is 28 - 32 feet wide. During drop off and pick up in the morning and afternoon 6th Avenue in front of 615 is a very congested roadway.

Parents park in the street and on boulevards on both sides of 6th Avenue waiting to pick up their kids.

During morning and afternoon school busses exit the Elementary School. The busses are scheduled to make immediate right or left turns in upon exiting the parking lot. It is not uncommon that parked cars restrict these turns to either only right or left turns.

Allowing driveway parking in the boulevard in front of 615 6th Avenue would make an already critical situation worse.

We note that there is one other property,780 6th Avenue, across from the elementary school that has a driveway onto 6th Avenue. We note that on this property the garage is set back at least 25 feet from the right of way. You will note that the set back on this property allows a utility truck to be parked in front of the garage without encroaching onto the City boulevard.

We called the So Washington County School Transportation Coordinator to collect information on traffic in front of the school Ms. White provided the attached email.

Please advise if you require further input on this issue.

[\[cid:image004.png@01CEAA4E.89763700\]](#)

[\[cid:image002.gif@01CEAA4A.9F9D96D0\]](#)

Thanks:

John Stewart, PE | Team Leader
MSA Professional Services, Inc.
(651) 226 8091

[\[cid:image009.png@01CEAA4E.89763700\]](#)

Renee Helm

From: John Stewart [jstewart@msa-ps.com]
Sent: Thursday, September 05, 2013 3:03 PM
To: Renee Helm
Subject: FW: Variance
Attachments: image001.gif

Renee see attached

[\[cid:image001.gif@01CEAA49.107216D0\]](#)

Thanks:

John Stewart, PE | Team Leader
MSA Professional Services, Inc.
(651) 226 8091

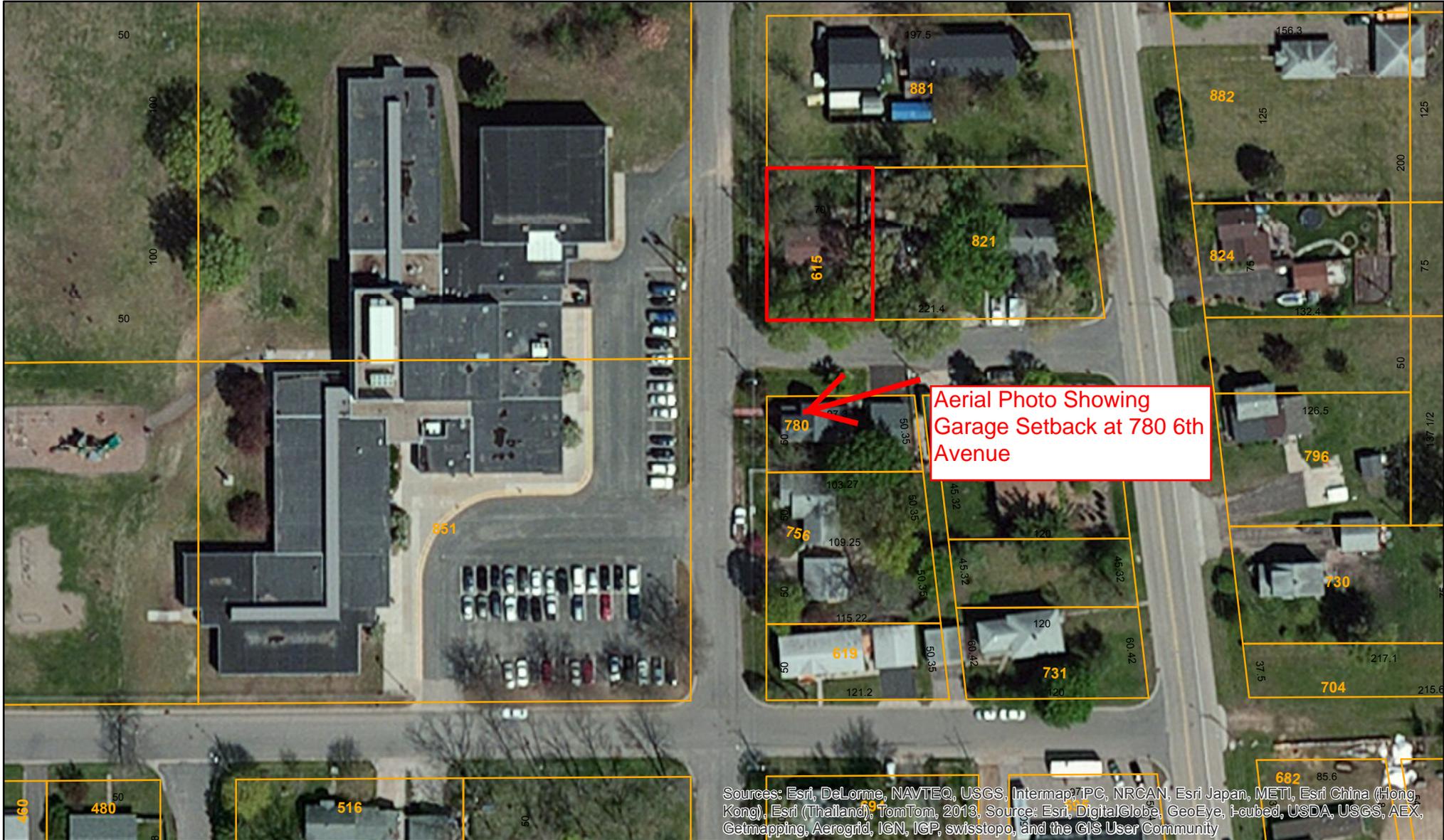
From: White, Emily [<mailto:EWhite@sowashco.k12.mn.us>]
Sent: Thursday, September 05, 2013 2:58 PM
To: John Stewart
Subject: Variance

I understand that a house on 6th Ave was recently sold and the new owner is asking for a 20 foot variance to build a garage. This property is directly across the street from the exit/entrance to Newport Elementary school. I am the safety Manager for South Washington County Schools Transportation and I am writing to oppose this variance. When our buses exit the school it is a very difficult turn to go either direction. It can't be done without using the entire roadway. I would be very concerned if there is a building that close to the street with cars parked in the driveway at times. Thank you for your consideration to deny this request.

Emily White
Transportation Safety/Special Education Manager Transportation
Phone: 651-768-5311 Fax: 651-768-5313

www.sowashco.k12.mn.us<<http://www.sowashco.k12.mn.us>>

ISD833: An east metro school district serving all or parts of the communities of Cottage Grove, Newport, St. Paul Park and Woodbury and Afton, Denmark and Grey Cloud Island Townships, Minnesota



Parcel ID: 3602822330021

Parcel Address:
615 8TH ST, CITY OF NEWPORT

Created on 9/5/2013

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

615 8th Street



City of NEWPORT Planning Request Application

Newport City Hall ♦ 596 7th Avenue ♦ Newport ♦ Minnesota ♦ 55055 ♦ Telephone 651-459-5677 ♦ Fax 651-459-9883

Application Date: ~~11/15~~ ^{Aug 14} 2013 Public Hearing Date 09/12/13

Applicant Information

Name: BRIAN DOMEIER Telephone: 651-398-8731
Mailing Address: 1040 10TH AVENUE Telephone: _____
City/State/Zip: NEWPORT, MN 55055

Property Owner Information

Name: BRIAN DOMEIER Telephone: 651-398-8731
Mailing Address: 1040 10TH AVENUE Telephone: _____
City/State/Zip: NEWPORT, MN 55055

Project Information

Location of Property: 615 8TH STREET NEWPORT, MN
Legal Description of Property and P.I.D. #: PID # 3602822330021
Browns Add to Newport PT of S 1/2 Block 011
Being W 70 ft.

Zoning District: R1 Flood Plain: AE 0.2% Annual Chance Flood Hazard

- Comprehensive Plan Amendment \$500 or Actual Cost plus \$50 for Additional Staff Hours (10 Hr Min)
- Rezoning \$500 plus Escrow
- Zoning Amendment \$500
- Variance \$300 plus Escrow
- Conditional Use Permit
 - Residential \$300 plus Escrow
 - Commercial \$450 plus Escrow
- Subdivision Approval
 - Minor Subdivision \$300 plus Escrow and \$2,000 for Parkland Dedication Fee
 - Major Subdivision \$500 plus Escrow, \$50 per Lot, \$200 for Final Plat, and 10% of land value or fee for Parkland Dedication Fee
- Other: _____
- Applicable Zoning Code Chapter: _____
- Review by Engineer Cost: _____
- Total Cost: _____

The City of Newport requires that any developer or every person, company, or corporation that is seeking to commence construction or major alterations of a structure, and land subdivisions or lot combinations must first submit detailed site plans to the City. The person submitting site plans must also submit prepayment to the City to cover any expenses that the City incurs by investing extensive amounts of time reviewing these plans. Any funds in excess of those actually reimbursing the City for its expenses will be returned to the applicant upon completion of the project. The fees are as follows:

Site Plan Review - Residential

- 8 Units or Less \$2,000
- 9 to 40 Units \$3,200
- 41 Units or More \$4,500

Site Plan Review - Commercial

- 0 to 5,000 sq ft bldg \$2,000
- 5,001 to 10,000 sq ft bldg \$3,000
- 10,001 to 50,000 sq ft bldg \$3,750
- 50,001 sq ft plus bldg \$4,500

Preliminary Plat

- Under 10 Acres \$3,500
- Over 10 Acres \$6,500

Present Use of Property: Single family home there -
without a garage.

State Reason for Planning Request: To improve the city of Newport by
adding a garage to a property where vehicles have been
parked outside for years. To add value to this property &
the city. This Variance will allow this property & its
family living here in Newport to have a garage & a
back yard. Without the Variance the garage will
destroy the back yard, as it would sit almost in the
middle of the back yard. This Variance is a benefit
to the city and the property owner, with
zero negative effects.

The Variance would be to set the garage
back 10 feet instead of 30 feet.

No neighbors are along this street section & no one
would be negatively impacted.

ALL MATERIALS/DOCUMENTATION, INCLUDING A SITE-PLAN, MUST BE SUBMITTED WITH APPLICATION THAT IS APPLICABLE TO PLANNING REQUEST.

I HEREBY DECLARE THAT ALL STATEMENTS MADE ON THIS REQUEST AND ON THE ADDITIONAL MATERIAL ARE TRUE.

SIGNATURE OF APPLICANT: Brian Domercq

SIGNATURE OF OWNER (IF APPLICABLE): Brian Domercq

For Office Use

Fee: \$300 + \$500 escrow Date Paid: 08/14/13 Receipt #: 1500; 1504

Publication of Notice Date: 08/28/13

Public Hearing Date: September 12, 2013

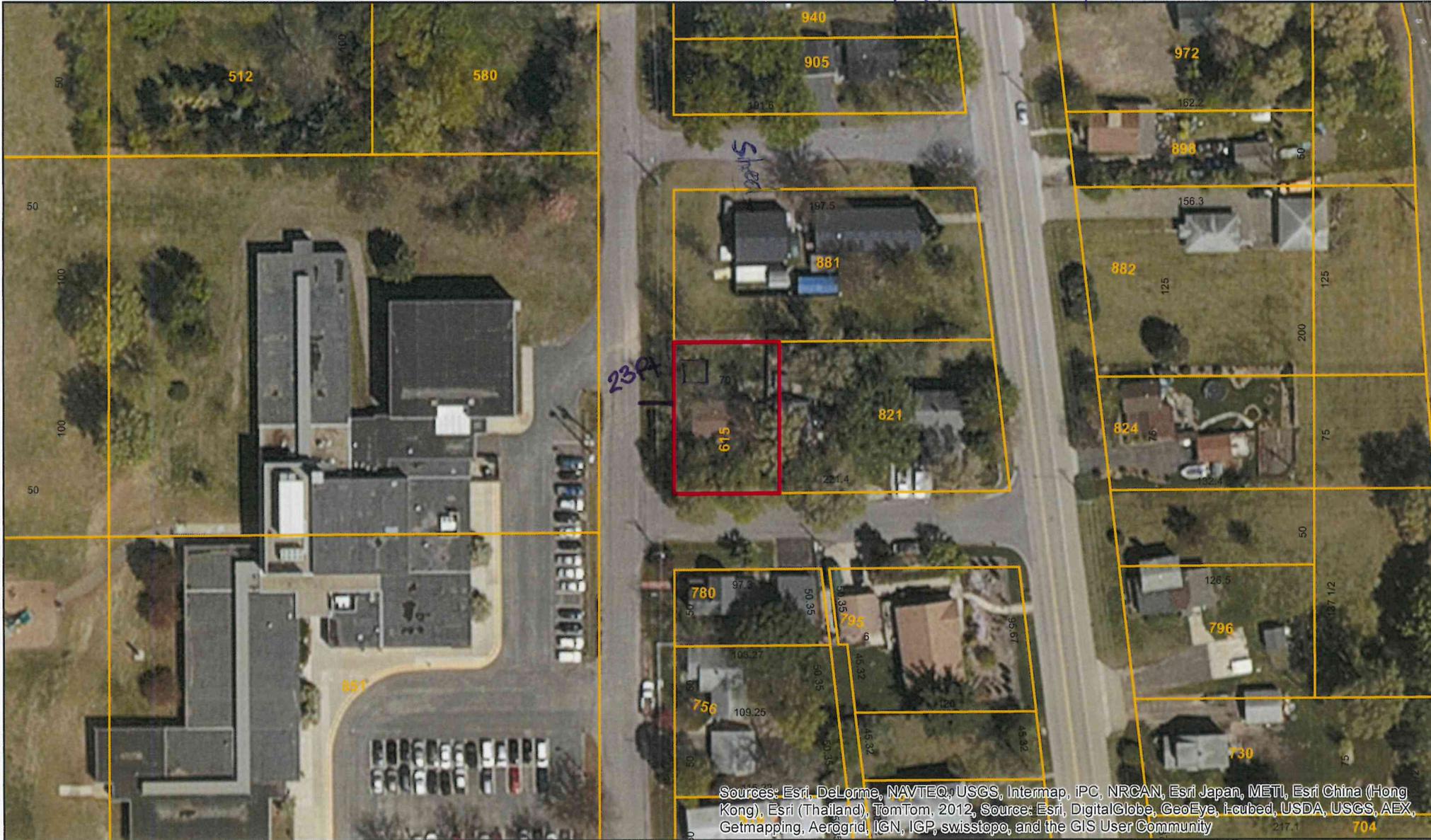
P.C. Resolution #: _____

Council Action Date: _____

Council Resolution #: _____

1 driveway/lot

Ja



Parcel ID: 3602822330021

Parcel Address:
615 8TH ST, CITY OF NEWPORT

Created on 5/15/2013

May 20 for June 13 P.C. Meeting

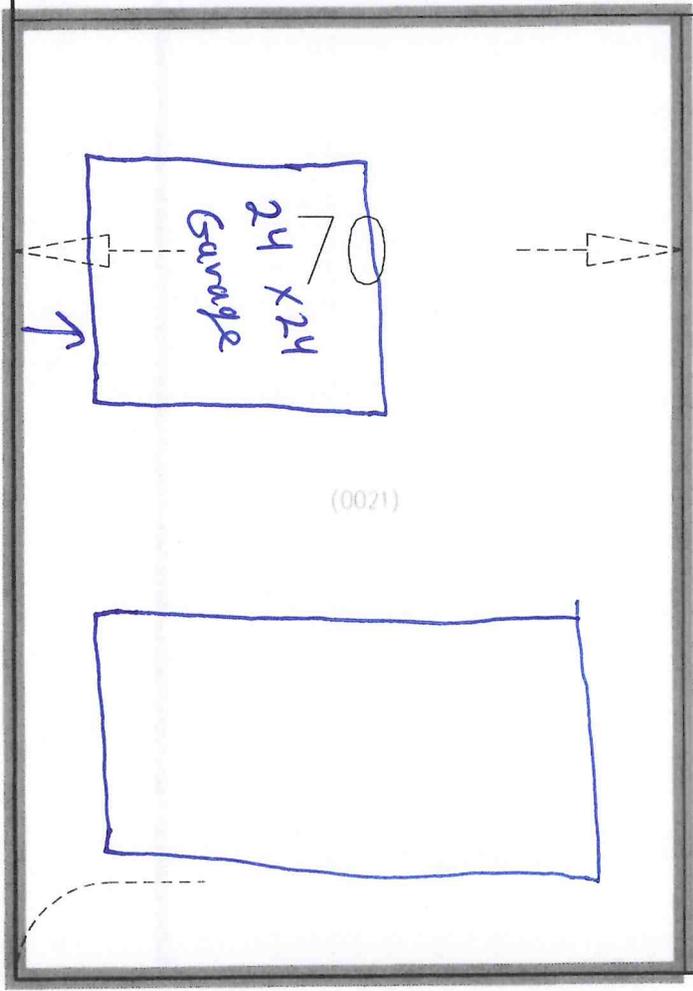
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

1.

221.4

8TH S1



set back 10 feet US 30
 Variance needed because it's
 A corner lot.

6th Street

50

RESOLUTION NO. 2013-47

A RESOLUTION APPROVING A VARIANCE REQUESTED BY BRIAN DOMEIER, 1040 10TH AVENUE, NEWPORT, MN 55055, FOR PROPERTY LOCATED AT 615 8TH STREET, NEWPORT, MN 55055

WHEREAS, Brian Domeier, 1040 10th Avenue, Newport, MN 55055, has submitted a request for a Variance; and

WHEREAS, the property is located at 615 8th Street, Newport, MN 55055, and is more fully legally described as follows:

PID #36.028.22.33.0021 - PT OF S1/2 BLOCK 011 BEING W 70 FT THEREOF SubdivisionName BROWN'S ADD TO NEWPORT SubdivisionCd 54175

WHEREAS, The described property is zoned Low Density Single Family Residential (R-1); and

WHEREAS, **Minnesota Statutes 394.27** states that the criteria for granting a variance include that variances are permitted when they are in harmony with the general purpose and intent of the official control and are consistent with the comprehensive plan; that the request shall be reasonable under the development code; the need for the variance is due to circumstances that are unique to the property and were not created by the landowner; the variance, if granted, will not alter the essential character of the area; economic considerations alone do not constitute practical difficulties; the proposed variance will not impair an adequate supply of light and air to adjacent properties, substantially increase the congestion of public streets, increase the danger of fire or endanger public safety, or substantially diminish or impair property values within the neighborhood; the requested variance should be the minimum action required to eliminate the practical difficulties; and practical difficulties include, but are not limited to inadequate access to direct sunlight for solar energy systems; and

WHEREAS, Following publication, posted, and mailed notice thereof, the Newport Planning Commission held a Public Hearing on September 12, 2013; and

WHEREAS, the Planning Commission's findings related to the request for approval of a Variance include the following:

1. The variance request is consistent with the Comprehensive Plan's goals to permit single-family uses in the R-1 zoning district, and in harmony with the general purposes of the Zoning Ordinance to permit single-family uses and garages in the R-1 district.
2. The proposed use is reasonable based on the Zoning Ordinance and the need for a garage due to the local climate.
3. The practical difficulties are related to the small size of the existing lot and were not created by the applicant.
4. Granting the variance would not alter the essential character of the area, which includes other single-family homes with similar garages and driveways.
5. The addition of the garage in the proposed location will not impair the supply of light or air to adjacent properties, increase street congestion, increase the danger of fire or endanger public safety, or impair property values within the neighborhood.
6. The variance is the minimum action needed to construct a garage on the parcel and eliminate the practical difficulty.
7. Granting the variance will not affect access to direct sunlight for solar energy systems.

WHEREAS, The Planning Commission recommended Council approval of the proposed rezoning, Resolution No. P.C. 2013-9.

NOW, THEREFORE, BE IT RESOLVED That the Newport City Council Approves a Variance for 615 8th Street to Construct a Garage a Minimum of 10 feet from the Side Property Line on 6th Avenue, and a Minimum of 30 feet from the Eastern Edge of the Pavement of 6th Avenue with the following conditions:

1. The garage shall be a minimum of 10' from the side lot line along 6th Avenue, a minimum of 30' from the edge of the pavement on 6th Avenue, and shall meet the other setback requirements of the code. The applicant shall stake the location of the proposed garage so that the City can verify the setbacks before construction begins.
2. The Applicant shall obtain a building permit for the proposed garage.
3. One driveway is permitted on the parcel.
4. The garage shall be no taller than the principal structure, and shall be constructed of durable, finished materials that are compatible to the colors and materials used on the exterior of the home.
5. The applicant shall pay all fees and escrow associated with this application.

Adopted this 3rd day of October, 2013 by the Newport City Council.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Deb Hill, City Administrator

RESOLUTION NO. 2013-48

RESOLUTION OF THE CITY OF NEWPORT, MINNESOTA, DEFERRING AN ASSESSMENT OF PROPERTY LOCATED AT 1102 MARK COURT IN THE CITY OF NEWPORT PURSUANT TO MINNESOTA STATUTES §429.061, Subd. 2, AND CITY OF NEWPORT ASSESSMENT POLICY

WHEREAS, the City of Newport (hereinafter “the City”) has undertaken an improvement project for roads within the City pursuant to its authority under Minnesota Statutes Chapter 429; and

WHEREAS, the City has conducted all necessary hearings for the aforesaid project and passed Resolution No. 2013-34 establishing the assessments for the benefitting properties thereof; and

WHEREAS, the parcel 25.028.22.34.0058, the address of which is 1102 Mark Court (“the Subject Property”), was determined to be one of the benefitting properties and assessed the amount of two thousand nine hundred dollars (\$2900.00); and

WHEREAS, the owner of the Subject Property has applied for an indefinite deferral of the assessment for reasons of age or disability as allowed under Minn.Stat.§429.061, subd. 2; and

WHEREAS, the same owner of the aforesaid Subject Property has provided to the City satisfactory proof of his qualification for the deferral.

NOW, THEREFORE, BE IT RESOLVED, by the City of Newport, acting through and by its City Council,

1. That the assessment levied by the City on the Subject Property will be deferred as long as the current owner occupies it and it is not sold to any third party.
2. At such time as the Subject Property is sold to any third party, the amount of the assessment thereon, plus accruing interest from the time of the Resolution of August 15, 2013, to the day of sale, shall become immediately due and payable.
3. That the deferred assessment may be paid, in full, with interest at any time.

Adopted by the Newport City Council this 3rd day of October, 2013.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Deb Hill, City Administrator

APPLICATION FOR ASSESSMENT DEFERRAL

SECTION 1 – INFORMATION ON APPLICANT

APPLICANT'S FULL LEGAL NAME (LAST, FIRST, MIDDLE)	
Schuster Duane Anton	
APPLICANT'S MAILING ADDRESS (STREET ADDRESS, CITY, STATE, ZIP)	
1102 Mark Court, Newport MN 55055	
APPLICANT'S PHONE NUMBER	APPLICANT'S DATE OF BIRTH
651-459-3164	02/23/1954

SECTION 2 – INFORMATION ON PROPERTY

STREET ADDRESS OF PROPERTY	
1102 Mark Court, Newport, MN 55055	
LEGAL DESCRIPTION OF PROPERTY	
Single Family Home	
PARCEL IDENTIFICATION NUMBER	PARCEL CLASSIFICATION
2502822340058	Residential

SECTION 3 – DEFERRAL INFORMATION

TYPE AND LOCATION OF PROJECT
REASON FOR DEFERRAL:
<input type="checkbox"/> Over 65 years of age.
<input checked="" type="checkbox"/> Permanent Disability (Provide proof of permanent disability).
<input type="checkbox"/> Member of Minnesota National Guard or other military reserves who is ordered into active military service.

I certify that the information given herein is true and complete to the best of my knowledge.

Signature of Applicant

Date

Duane Schuster 09/03/13

FOR OFFICE USE ONLY

PROJECT: 2013 Street Improvement	INTEREST RATE: 5.5%
AMOUNT OF PRINCIPAL TO BE DEFERRED: \$2,900	
AMOUNT OF INTEREST TO BE DEFERRED:	
DATE SUBMITTED TO COUNCIL FOR APPROVAL: 10/03/13	
<input type="checkbox"/> APPROVED	<input type="checkbox"/> DENIED
DATE APPROVAL SENT TO COUNTY AUDITOR:	

RESTATED BYLAWS
OF
NEWPORT FIREFIGHTERS
RELIEF ASSOCIATION

The Bylaws of the Relief Association are hereby amended in their entirety and restated effective as of _____, 20_____.

ARTICLE I
NAMES

As provided in the Articles of Incorporation, the name of this organization shall be the Newport Firefighters Relief Association (the "Association").

ARTICLE II
DEFINITIONS

General Definitions

Whenever appropriate, words used herein in the singular shall include the plural, the plural may be read as the singular, and the masculine shall include the feminine.

The following words and phrases when used herein shall have the following meanings except as otherwise required by the context in which they are used:

"Active Member" is a member of the Association who is eligible for benefits and is currently meeting the minimum firefighter and service standards with the Fire Department or the Fire Chief. As of July 1, 2006, Active Members must be Volunteer Firefighters as defined in Section 2.1 of the Plan attached hereto.

"Board of Trustees" or "Board" shall mean the Board of Trustees of the Relief Association, and shall perform the functions and assume the same duties as a Board of Directors under Minnesota Statutes, Chapter 317A.

"Deferred Member" is a member of the Association who has retired or been terminated from the Fire Department but has not taken a distribution of benefits.

"Fire Department" is the Fire Department serving the Municipality.

"General Fund" shall mean the fund established pursuant to Minnesota Statutes, Section 424A.06 that holds the funds received from dues, fines, initiation fees, entertainment revenues and any money or property donated, given, granted or devised by any person, for unspecified uses.

“Material Financial Interest” is a financial interest or expectation of any kind on the part of a Board member or Relative, which is substantial enough to reasonably affect the judgment of the Trustee who has a conflict of interest. The term “financial interest” includes any and all monetary expectations and exists when a Board member or Relative has rights (whether or not a Deferred Member or beneficiary) to be paid compensation, retiree benefits, or to have their expenses reimbursed or obligations or other liabilities repaid, etc. (See Article IX Fiduciary Responsibility.)

“Municipality” is the City of Newport.

“Municipal Trustees,” formerly known as ‘ex-officios,’ are members of the Board of Trustees designated solely by the Municipality and shall include the two appointed or elected officials and the fire chief, as further defined in Section 5.1 herein.

“Relative” is a member of one’s family and includes spouses, parents, children, siblings, in-laws, aunts, uncles, first cousins, step-parents, step-children, and may include other family members such as common-law partners or long-time companions, of a Trustee who has a conflict of interest. (See Article IX Fiduciary Responsibility.)

“Special Fund” shall mean the fund as defined in Section 2.1 of the Plan attached hereto.

“Supermajority” is required when there is a conflict of interest on an item to be voted on by the Board of Trustees because one or more Trustees have a Material Financial Interest. A Supermajority is the majority of those Trustees after subtracting the Trustee(s) who has a conflict of interest (e.g., Nine (9) Trustees less two (2) with a conflict = Seven (7). Supermajority would require four (4) Trustees to vote in favor to pass the motion). (See Article IX Fiduciary Responsibility.)

ARTICLE III PURPOSE

As provided in the Articles of Incorporation, the purpose of the Association is to provide retirement relief and other benefits to members and their dependents. For purposes of Chapter 424A of Minnesota Statutes, the Association is a governmental entity that receives and manages public funds to provide retirement and ancillary benefits for individuals providing the governmental services of firefighting and, if applicable, emergency response. The Association may also raise funds from private sources to furnish fire and emergency equipment for the Fire Department, and for other purposes deemed necessary and appropriate by the Association to the extent permitted by law. Benefits paid to members and their dependents shall be funded exclusively through governmental sources and, to the extent provided by State law, through restricted donations.

ARTICLE IV MEMBERSHIP

4.1 Admission. All firefighters of the Fire Department are members of the Association and shall be eligible for benefits, except as otherwise stated in these bylaws. An application for membership shall be completed on the Membership Application and Beneficiary Designation form to become eligible for benefits in the Association. Upon approval of the member's application, such member shall accrue service credit for all active service while in probationary status.

4.2 Membership Duties. The Association does not require membership duties.

4.3 Membership Dues. The Association does not require membership dues.

4.4 Member Voting Rights. Each Active Member shall be entitled to one (1) vote on any matter voted upon by the membership. Deferred Members are not entitled to vote. Voting by proxy/absentee ballot is permitted following the procedures set forth in Section 4.5.

4.5 Proxy/Absentee Ballot. *Member Voting*: If permitted by the Board prior to a meeting, voting members may cast votes by submitting an absentee ballot provided by the Board that is signed by the member and deposited in the ballot box set out by the Board. Submission of an absentee ballot shall constitute a proxy to the officer of the Association designated and authorized on the ballot who is bound to cast the member's vote in accord with the member's ballot choices. The member may withdraw his/her proxy/absentee ballot by attending a meeting and voting in person. Use of proxies/absentee ballots may only be used on items listed on the ballot and may not be used when trustees and/or officers are elected from the floor during the meeting.

Counting Ballots: If ballots were used because there were more than two candidates for any Trustee position up for election as indicated under Section 7.2, an officer of the Association who is not standing for election shall count the ballots as follows: All first choices are counted, and if no candidate wins a majority of first choices, then the last place candidate is eliminated. Ballots of voters who ranked the eliminated candidate first are redistributed to their next choice candidates, as indicated on each voter's ballot. Last place candidates are successively eliminated and ballots are redistributed to next choices until one candidate remains or a candidate gains a majority of votes.

In case of a tie resulting from the above procedure, the candidates receiving the two highest number of votes shall be placed into new balloting to be effected at the meeting. The previously submitted proxy/absentee ballots shall be recounted using the above procedures for the two candidates who have tied. Simultaneously, members present at the meeting will recast their vote for the two candidates who have tied. Additional balloting including the proxy/absentee ballots for said office shall continue until one candidate shall receive a majority of votes cast on a rebalot and he shall be elected to said office.

4.6 Separation. For records retention and administration of the Association, the Board may request that a Deferred Member complete and submit a Membership Separation Form.

4.7 Member Recognition. The Association may continue to honor members whose status has changed between volunteer/paid on-call and full- or part-time employee of the same Fire Department. The members shall adopt written policies and procedures, including any eligibility or types of recognition.

4.8 Termination. Any member who is terminated by the Fire Department or Municipality shall cease accruing benefits under the Association as of the date of termination.

ARTICLE V BOARD OF TRUSTEES

5.1 Composition. The Board of Trustees shall consist of nine (9) members. Six (6) trustees shall be elected from the membership of the relief association. There shall be three (3) officials drawn from the Municipality. The three (3) Municipal Trustees must be one (1) elected municipal official and one (1) elected or appointed municipal official, who are designated as municipal representatives by the municipal governing board annually, and the chief of the municipal fire department. The Municipal Trustees must be designated annually by the city council of the Municipality.

5.2 Duties. The Board of Trustees shall perform the functions and assume the same duties as a Board of Directors under Minnesota Statutes, Chapter 317A. In addition, the Board of Trustees shall:

- (a) Have exclusive control and management of all funds received by the Treasurer pursuant to the statutes of the State of Minnesota and all moneys or property donated, given, granted or devised for the benefit of the Association.
- (b) Examine the books, papers, funds, securities and property in the custody of the Treasurer, and general accounts, funds and securities, and property of the Association.
- (c) Examine and approve the validity of all claims prior to payment by the Treasurer.
- (d) Provide the forms on which members may submit claims to the Board of Trustees for their approval.
- (e) On an annual basis or more frequently as may be required to determine eligibility for benefits, confirm minimum firefighter and service standards pursuant to the Volunteer Firefighter definition in Section 2.1 of the Plan attached hereto.

- (f) Assume such additional duties as may be described in Article IX herein and in Association policies and procedures or required by state law including the establishment of any committee deemed necessary or appropriate.

ARTICLE VI OFFICERS

6.1 Number. The number of officers of the Association and their duties shall be as set forth below.

6.2 President. It shall be the duty of the President of the Association to:

- (a) Have general active management of the business of the corporation;
- (b) When present, preside at meetings of the Board and of the members;
- (c) See that orders and resolutions of the Board are carried into effect;
- (d) Sign and deliver in the name of the corporation bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the Board to another officer or agent of the corporation;
- (e) Maintain records of and, when necessary, certify proceedings of the Board and the members; and
- (f) Perform other duties prescribed by the Board.

6.3 Pro Tem Officers. In the absence of the President and Vice President, if applicable, the Board of Trustees shall appoint an interim President from the existing Officers and/or Trustees other than the Municipal Trustees, who shall perform the duties applicable to the office.

6.4 Vice President. It shall be the duty of the Vice President to perform the duties of the President in the President's absence.

6.5 Secretary. It shall be the duty of the Secretary of the Association to:

- (a) Keep a record showing the correct addresses of all members and request the names of their beneficiaries.
- (b) Keep or cause to be kept an accurate record of all meetings of the Association and of all meetings of the Board of Trustees.
- (c) Conduct and direct the investigation of all claims.

- (d) Keep a record of all monies received and paid out by the Treasurer.
- (e) Provide access to the Association's Articles, Bylaws, minutes, and financial statement on the last annual accounting period to all members or all Board of Trustees (including the Municipal Trustees), for any proper purposes they may have, in accord with Minnesota Statutes, Section 317A.461.

6.6 Treasurer. It shall be the duty of the Treasurer of the Association to:

- (a) Receive and receipt all monies due the Association from members and other sources and to keep accurate accounts and records of all the money so received.
- (b) Have custody of all monies and securities belonging to the Association.
- (c) Furnish a surety bond in favor of the Association for the faithful performance of all duties involving the Association and for the safekeeping of, or accounting for, all monies and securities that may come into its possession. The bond shall be in an amount equal to at least 10% of the assets up to a maximum of \$500,000.
- (d) Pay all properly approved claims for benefits, and to pay all bills incurred in the way of necessary expenses in the conduct of the business of the Association and to keep accurate accounts and records of all the money so paid.

6.7 General Duties.

- (a) It shall be the duty of any two (2) officers of the Association to countersign all checks issued by the Association.
- (b) The officers shall annually prepare an annual financial report of the Association's receipts, disbursements, and balances in the Special and General Funds for the preceding calendar year on a form prescribed by the Office of the State Auditor. They shall transmit the report to the city clerk or clerk-treasurer of the Municipality for inspection, signature and transmission to the State Auditor pursuant to law.
- (c) Pursuant to the Volunteer Firefighter Relief Association Financing Guidelines Act of 1971, the officers of the Association shall, annually, determine the financial requirements of the Special Fund for the following year. The financial requirements of the relief association and the minimum municipal obligation must be included in the financial report or financial statement.

6.8 Compensation. As compensation for services to the Association by the officers, the membership may at the Annual Association meeting authorize payment of an aggregate salary expense payable from the Special Fund to one (1) or more of these officers. The amount shall be recommended by the Board to the membership and approved by the membership at their annual Association meeting.

ARTICLE VII ELECTIONS

7.1 Trustee Terms. The Trustees shall be elected to staggered three-year terms. There will be two (2) Trustees elected by the membership each year at the annual meeting of the Association, and begin their individual terms at the end of the meeting at which they are elected.

Each appointed Municipal Trustee term is one (1) year or until the person's successor is qualified, whichever is later. The term of a Municipal Trustee shall terminate upon termination of the Trustee's position with the Municipality.

An individual Trustee may serve an unlimited number of terms.

7.2 Voting on Trustees. Each of the positions on the Board of Trustees who are not the Municipal Trustees shall be voted on separately by the Active Members in attendance at the annual meeting. No nominations of slates of candidates or cumulative voting shall be allowed. All votes unless specified prior to the vote, shall be conducted by a voice vote. A simple majority of those present at the meeting is needed to elect. If a simple majority cannot be determined by voice vote, the officer in charge of the vote shall ask for a show of hands or for a secret ballot. A trustee who was elected by the membership may be removed with or without cause by a simple majority vote of the Active Members in any subsequent annual, regular or special meeting.

If allowed by the Board of Trustees under Section 4.5, a proxy/absentee ballot may be used to perform "runoff voting" if there are more than two candidates for any Trustee position up for election and Active Members must rank candidates by order of preference. See Section 4.5 for counting ballots.

7.3 Officer Terms. The offices of President, Vice President, Secretary, and Treasurer shall be elected to one-year terms, and begin their individual terms at the end of the meeting at which they are elected.

7.4 Voting on Officers. Officers are elected by the Active Members each year at the annual meeting of the Association from among the elected Trustees. Each position will be nominated and elected separately at this meeting. All votes unless specified prior to the vote, shall be conducted by a voice vote. A simple majority is needed for an officer to be elected. If a majority cannot be determined by voice vote, the officer in charge of the vote shall ask for a show of hands or for a secret ballot. Voting by proxy/absentee ballot will be allowed under Section 4.5. An officer may be removed with or without cause by a simple majority vote of the Active Members in any subsequent annual, regular or special meeting.

No individual may hold more than one (1) officer position at one (1) time.

7.5 Officer and Trustee Vacancies. In the case of death, resignation or removal from office for any elected officer or Trustee of the Association, except a Municipal Trustee, the vacancy shall be filled by the Board of Trustees from the membership at a Board meeting to be duly called for the purpose of filling out this term. In the event an officer fails to retain his position as an elected Trustee, he must vacate his officer position pursuant to Minnesota Statutes, Chapter 424A Volunteer Firefighters' Retirement.

ARTICLE VIII MEETINGS

8.1 Annual Meeting of the Members. The annual (regular) meeting of the members shall be held on the first Tuesday in January of each year except that if that day is a holiday, said meeting shall be held on the next succeeding Tuesday. The place of the meeting shall be designated and may be changed from time to time by the Board of Trustees.

8.2 Regular Meetings of the Members. The members shall have no regular meetings.

8.3 Special Meetings of the Members. Special meetings of the members may be called at any time upon the written order of the President and one (1) other member of the Board of Trustees, or six (6) voting members of the Association. The place of the meeting shall be designated and may be changed from time to time by the Board of Trustees.

8.4 Notice of Meetings of the Members. A notice of every annual and any special meetings of the members shall include the date, time, place and purpose of the meeting and be *posted* on the bulletin board of the Association, or if no bulletin board, on the door of its usual meeting room; *and* in accord with Minnesota Statutes, Section 317A.433 Subd 4, business at a special membership meeting must be limited to the stated purpose; *and further* in accord with Minnesota Statutes Section 317A.435, each voting member shall be *provided* at least five (5), but not more than sixty (60) days, before the meeting, (excluding the date of the meeting) with notice setting forth the date, time, place, and purpose of the meeting.

8.5 Member Quorum. Forty (40) percent of the Active Members of the Association shall constitute a quorum for the transaction of business at their meetings.

8.6 Member Voting. Each Active Member present at the meeting shall be entitled to one (1) vote. All votes, unless specified prior to the vote, shall be conducted by a voice vote. If a majority cannot be determined by voice vote, the officer in charge of the vote shall ask for a show of hands or for a secret ballot. Voting by proxy/absentee ballot will be allowed under Section 4.5. A voting "majority" is majority of the quorum, not majority of the entire association membership.

8.7 Regular Meetings of the Board of Trustees. Meetings of the Board of Trustees shall be held on the first Tuesday of January, and on the last Tuesday of March, July and November. If any Tuesday is a holiday, said meeting shall be held on the next succeeding Tuesday. Meetings of the Board of Trustees shall be held at the Fire Station unless noticed for another place within the City as designated by the Board.

8.8 Special Meetings of the Board of Trustees. Special meetings of the Board of Trustees may be called at any time upon the written order of the President and one (1) other member of the Board of Trustees. The meeting shall be held at the Fire Station unless noticed for another place within the City as designated by the Board.

8.9 Notice of Meetings of the Board of Trustees. The association is governed by Minnesota Statutes, Section 13D.01 which requires that all meetings of the Association's Board of Trustees be open to the public with rare exceptions. All notices provided for in this Article shall comply with Minnesota Statutes, Section 13D.04 which requires at a minimum that:

- (a) a schedule of any regular meetings of the Board of Trustees be kept on file at the Association offices, and
- (b) for special meetings, a notice stating the date, time, place and purpose of the meeting be *posted* on the bulletin board of the Association, or if no bulletin board, on the door of its usual meeting room; *and* in accord with Minnesota Statutes, Section 317A.231, each Trustee shall be *provided* at least three (3), but not more than sixty (60) days, before the meeting, (excluding the date of the meeting) with notice setting forth the date, time, place, and purpose of the meeting.

8.10 Board Quorum. A majority of the Board of Trustees then in office shall constitute a quorum for the transaction of business at its meetings.

8.11 Board Voting. Unless the Articles or Bylaws specify otherwise, an action of the Board shall be effected by a majority vote of the Trustees present and eligible to vote once a quorum has been achieved. The officer in charge of a vote shall ask for a show of hands *but shall not allow* for a secret ballot *nor proxy*, and each vote shall be recorded in a public journal. No action shall be considered once a quorum has been lost.

8.12 Electronic Meeting Prohibited. Any meeting of the Board of Trustees or the membership by solely electronic means (e.g., e-mail, simulchat or phone conference) that is not accessible to the public at a set meeting location is prohibited.

8.13 Order of Business. At any annual, regular and all special meetings, the order of business shall be as follows:

- (a) Call to order by the President
- (b) Roll call (verify quorum)
- (c) Secretary's Report (reading of previous minutes)
- (d) Treasurer's Report
- (e) Report of the Board (member meeting)
- (f) Report of other committees (Board or member meeting)
- (g) Election of Trustees and Officers, if applicable (annual member meeting)
- (h) Old Business
- (i) New Business
- (j) Adjournment

**ARTICLE IX
FIDUCIARY RESPONSIBILITY**

9.1 Board of Trustees. Each member of the Board of Directors, also acts as a trustee of the Special Fund. The Board of Directors therefore also acts as the Board of Trustees. The Board of Trustees is charged with administering retirement and ancillary benefits under the Special Fund, and the Trustees are fiduciaries subject to the standard of care set forth in Minnesota Statutes, Section 11A. 09 and Section 356A.04. This includes specifically assuming such additional duties as may be described in Association policies and procedures or required by state law, including:

- (a) adopting an investment policy;
- (b) providing written investment restrictions to brokers;
- (c) securing certificates of insurance; and
- (d) establishing a continuing education plan in order to keep abreast of their fiduciary responsibilities.

9.2 Prohibited Transactions. No fiduciary of the Association shall cause the Association to engage in a transaction if the fiduciary knows or should know that a transaction constitutes one (1) of the following direct or indirect transactions:

- (a) sale or exchange or leasing of any real estate between the Association and a Board member;
- (b) lending of money or other extension of credit between the Association and a Board member or member of the Association;
- (c) furnishing of goods, services, or facilities between the Association and a Board member;
- (d) transfer to a Board member, or use by or for the benefit of a Board member, of any assets of the Association. Transfer of assets does not mean the payment of Association benefits or administrative expenses permitted by law; or
- (e) sale, exchange, loan, or lease of any item of value between the Association and a fiduciary of the Association other than for a fair market value and as a result of an arm's-length transaction.

9.3 Fiduciary Responsibilities Apart from the Special Fund. Although the title "Trustee" is applied to members of the Board of Directors of the Association, the fiduciary standard that Directors are subject to is two-tiered as a matter of State law. With respect to the Association's Special Fund, Trustees are required to meet a standard of care that applies to fiduciaries under Minnesota Statutes, Section 11A. 09 and Section 356A.04, as described above. With respect to business and management decisions not including decisions related to the Special Fund, all Trustees are required to meet a standard of care that applies to nonprofit corporation Directors under Minnesota Statutes, Section 317A.251. These decisions include, but are not

limited to, business decisions regarding fund-raising activities, and disposition of and management of the General Fund. Accordingly, in their decision-making and management, Trustees must discharge the duties of their position in good faith, in a manner the Director reasonably believes to be in the best interests of the Association, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Directors are not, in accord with that same statutory section, considered "Trustees" with respect to the Association or with respect to property held or administered by the Association.

9.4 Conflict of Interest Procedures. When a member(s) of the Board of Directors has a conflict:

- (a) Each member of the Board of Directors, whether acting as a Director or as an Officer of the Association, has a duty to disclose to the Board (or to any committee of the Board) the material facts of any proposed transaction or action of the Association in which they or a Relative have a Material Financial Interest.
- (b) The disclosure required under (a) (above) ***must be made, to the extent possible, prior to any consideration of such proposed transaction or action*** by the Board of Directors or by any applicable committee of the Board of Directors. If a Board member does not recognize the existence of a conflict prior to the Board of Director's decision regarding the transaction, that person has a duty to disclose the material facts of the conflict as soon as the conflict is recognized.
- (c) The Board member having a conflict shall not participate in the deliberation or decision regarding the matter under consideration and shall leave the room during deliberations except when he has been invited by the Board or committee to participate, after consideration of the significance to the Association of the disclosed conflict. The Board of Directors or committee may also request that he provide the Association with any relevant information known to the Board member regarding the matter.
- (d) Any proposed transaction or action in which the Board of Directors has determined that a Director has a conflict of interest that is not "de minimis" is to be approved by a ***majority of all the Board of Directors then-serving who would be entitled to vote*** and who are not interested Board members at a meeting at which a quorum is present (i.e., by a Supermajority of the entire Board of Directors not including a Board member(s) who has a conflict of interest), even though the non-conflicted directors may constitute less than a quorum). Deliberations by the Board of Directors regarding the conflict shall be documented in Board minutes no later than 60 days following the subject meeting. The votes of each Board member in support or in opposition to the transaction or action shall be noted.
- (e) All Board members are obligated to notify the Board of Directors if they believe another Board member has failed to disclose a conflict, and this procedure shall be followed by the Board of Directors in all such instances.

ARTICLE X FUNDS

10.1 Funds. All money received by the Association shall be kept in two (2) separate funds, the General Fund and the Special Fund. Disbursements from the funds shall be in accordance with Minnesota Statutes and Rules and the Bylaws of the Association.

10.2 General Fund. The funds received by this Association from: dues, donations, fines, initiation fees, entertainment revenues and any moneys donated for unspecified uses shall be kept in the General Fund and may be disbursed upon a majority vote of the membership or of the Board of Trustees for any purpose reasonably suited to promote the welfare of the Association and its members. All expenses shall be paid out of the General Fund, except as specifically authorized to be disbursed from the Special Fund. These records shall be open for inspection by any member of the relief association at reasonable times and places.

10.3 Special Fund. All funds received by this Association from any tax sources, membership dues, except for dues payable as contributions to the General Fund, and other money that may be directly donated or transferred to said funds, shall be kept in a separate account on the books of the Treasurer known as the Special Fund and shall be disbursed only for the following purposes:

- (a) Payment of members' service pension benefits in accordance with these Bylaws,
- (b) Payment of ancillary benefits in accordance with these Bylaws,
- (c) Payment of fees, dues and assessments to the Minnesota State Fire Department Association and to the Minnesota Area Relief Association Coalition,
- (d) Payment of insurance premiums to the Volunteer Firefighters Benefit Association, or an insurance company licensed by the State of Minnesota offering casualty insurance, and
- (e) All administrative expenses authorized under Minnesota Statutes, Section 69.80.

These records shall be public and open for inspection by any member of the relief association, any officer or employee of the state or municipality, or any member of the public, at reasonable times and places.

10.4 Deposits. All money belonging to this Association shall be deposited to the credit of the Association in such banks, trust companies, or other depositories as the Board of Trustees may designate. Board of Trustees shall make deposits in conformance with Minnesota Statutes, the Bylaws and the investment policy.

**ARTICLE XI
APPENDICES INCORPORATED IN BYLAWS**

The following appendices attached hereto are expressly incorporated herein as a component of these Bylaws, with the same legal force and effect of Bylaws.

Appendix A: Bylaw Amendment History.

Appendix B: Newport Firefighters Relief Association Defined Benefit Lump Sum Retirement Plan.

Appendix C: Benefit Levels.

Appendix D: Intentionally left blank.

Appendix E: Intentionally left blank.

Appendix F: Special Laws

**ARTICLE XII
AMENDMENTS**

12.1 Amendment of Articles of Incorporation by Members. Amendments to the Articles of Incorporation must be approved by a majority of the Board of Trustees and by a majority of the Active Members. The exception is changing the relief association's physical address; in that case, the Board of Trustees may amend the Articles of Incorporation without member approval. If an amendment is initiated by the Directors, proper notice of the proposed amendment must precede a meeting of the members at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed, the members may demand a meeting of the Board of Trustees within 60 days for consideration of the proposed amendment if a regular meeting of the Board would not occur within 60 days.

12.2 Amendment of Articles of Incorporation by Board when Authorized by Members. When authorized by Active Members, the Articles of Incorporation may be amended by the Board of Trustees by the affirmative vote of a majority of the Trustees then in office, at a meeting for which notice of the meeting and the proposed amendment have been given. The members may prospectively revoke the authority of the Board to exercise the power of the members to amend the Articles, with the exception of amending the relief association's physical address, which the Board can amend without member approval. Nothing in this Section shall be construed to permit the Board to adopt, amend, or repeal provisions in the Articles that would alter the rights of the membership.

12.3 Amendment of Bylaws by Board. The Bylaws of the Association may be amended by the Board at any regular or special meeting of the Board by a vote of the majority present and voting, provided that a quorum is present; and provided further that a notice of date, time, place, purpose of the meeting and proposed amendment be *posted* on the bulletin board of the Association, or if no bulletin board, on the door of its usual meeting room, *and* in accord with Minnesota Statutes, Section 317A.231, each Trustee has been *provided* at least three (3), but not more than sixty (60) days, before the meeting, (excluding the date of the meeting) with notice

setting forth the date, time, place, purpose of the meeting and proposed amendment.

Board Limitations of Bylaw Amendments. Nothing in this section shall be construed to permit the Board to adopt, amend or repeal provisions regarding:

- (a) Amending in any way the definition of “Active Service” set forth in the Plan attached hereto
- (b) Decreasing any benefit level set forth in the Plan attached hereto
- (c) Changing the deferred interest percentage set forth in the Plan attached hereto
- (d) Changing the vesting schedule set forth in the Plan attached hereto
- (e) Membership (Article IV)
- (f) Compensation (Section 6.8)
- (g) Elections (Article VII)
- (h) Member Quorum (Section 8.5)
- (i) Revise the number of Members required to amend the Bylaws (Section 12.4)
- (j) or limit the right of at least ten percent of the membership to propose a resolution for action by the members to adopt, amend, or repeal Bylaws that the Board has taken action to adopt, amend or repeal pursuant to this section.

12.4 Amendment of Bylaws by Members. The Bylaws of the Association may be amended at any regular or special meeting by a vote of two-thirds of the Active Members present and voting, provided that a quorum is present; and provided further that notice of any proposed amendment(s) shall be given by posting or reading the same at any regular or special meeting not more than thirty-one (31) days preceding that upon which such amendment(s) are to be acted upon (excluding the date of the meeting).

12.5 Ratification of Amendments by Municipality. If the Association amends its bylaws to affect the amount of, the manner of payment of, or the conditions for qualification for service pensions or ancillary benefits or disbursements other than administrative expenses, it may be necessary to obtain ratification of the amendment by the Municipality as described in Section 8.1 of Appendix B.

APPENDIX A

NEWPORT FIREFIGHTERS RELIEF ASSOCIATION

Bylaw Amendment History

For a complete summary of the amendments and, if applicable, the Board's rationale and purpose for the change, refer to the Board of Trustee meeting minutes listed with the effective date of the applicable amendment listed hereunder.

Effective Dates	Meeting Minutes	Summary of Change
_____, 20____ (Document) January 6, 2009 (Benefit level; see Appendix C)	April 30, 2013 (Board of Trustees) _____, 20____ (Membership) See Appendix C for Municipality minutes	Restatement of Bylaws and Appendices in their entirety, moving from version 4 to version 7 of the MNFPC Bylaw Solution™.
February 1, 2009 (Document) January 6, 2009 (Benefit level; see Appendix C)	NR (Board of Trustees) August 4, 2009 (Membership) NR (Municipality)	Correction to Interest Rate for Deferred Pension Benefit column on Appendix C and Bylaws, Appendix B (Plan) Section 4.2 "Deferred Interest"
February 1, 2009 (Document) January 6, 2009 (Benefit level; see Appendix C)	November 25, 2008 (Board of Trustees) January 6, 2009 (Membership) March 19, 2009 (Municipality)	Restatement of Bylaws and Appendices in their entirety as part of subscribing to the MNFPC Bylaw Solution™ that provides model documents, administrative forms, and trustee support.

NA means not available.
NR means not required.
TBD means to be determined

APPENDIX B

NEWPORT FIREFIGHTERS RELIEF ASSOCIATION
DEFINED BENEFIT LUMP SUM RETIREMENT PLAN

These model documents are drafted to conform to Minnesota state laws relating to relief association pension plans for volunteer firefighters. The model documents are not drafted to meet the requirements of tax-qualified retirement plans under the Internal Revenue Code, and it is doubtful that the model documents can meet those requirements. **Minnesota Firefighter Pension Consultants, LLC (MNFPC, LLC) makes no representation regarding the status of the plans under federal or state tax laws. MNFPC, LLC recommends that Relief Associations consult their own tax advisors regarding the treatment of the plan and distributions from the plan under state and federal tax laws.**

MNFPC, LLC is not a law firm. We recommend review by your legal counsel of model documents before adoption.

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**NEWPORT FIREFIGHTERS RELIEF ASSOCIATION
DEFINED BENEFIT LUMP SUM RETIREMENT PLAN**

The Board of Trustees of the Relief Association amends and restates its existing defined benefit pension plan in its entirety for the benefit of its eligible members.

**ARTICLE I
NAMES, PURPOSE AND OTHER GENERAL INFORMATION**

- 1.1 Name of Municipality: City of Newport
- 1.2 Name of Fire Department: Newport Fire Department
- 1.3 Name of Relief Association: Newport Firefighters Relief Association
- Address: 155 – 20th Street, Newport, MN 55055
- 1.4 Federal Taxpayer Identification Number: 41-6042622
- 1.5 Name of Plan: Newport Firefighters Relief Association Defined Benefit Lump Sum Retirement Plan
- 1.6 Original Effective Date of Plan: December 3, 1953
- 1.7 Purpose. The purpose of the Plan is to provide benefits to eligible members of the Relief Association (Participants) and their lawful Beneficiaries.

**ARTICLE II
DEFINITIONS AND INTERPRETATION**

- 2.1 General Definitions. The following words and phrases when used herein shall have the following meanings except as otherwise required by the context in which they are used:
- (a) **“Accrued Benefit”** of a Participant shall mean the benefit determined under the terms of the Plan, as of a specified date.
 - (b) **“Active Service”** shall mean active service as defined by the Fire Department, as stated in its policies and procedures.
 - (c) **“Alternate Payee”** shall mean a spouse or former spouse of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, a Participant’s Beneficial Interest under the Plan, pursuant to Minnesota Statutes, Section 518.58, Subd. 4.

- (d) **“Beneficial Interest”** shall mean the amount of a Participant’s Accrued Benefit that is distributable to the Participant or the Participant’s Beneficiary in accordance with the terms of the Plan.
- (e) **“Beneficiary”** shall mean any person entitled to receive benefits that may be payable upon or after a Participant’s death.
- (f) **“Board of Trustees”** or **“Board”** shall mean the Board of Trustees of the Relief Association.
- (g) **“Break in Service”** shall mean a period as defined by the Fire Department in its policies and procedures, during which the Participant does not meet Active Service requirements. However, service restored pursuant to the uniformed services provisions of Article VII shall be considered Active Service and shall not be considered a Break in Service.
- (h) **“Bylaws”** shall mean the duly adopted bylaws of the Relief Association.
- (i) **“Code”** shall mean the Internal Revenue Code of 1986, and amendments thereto.
- (j) **“Disability”** or **“Disabled”** shall mean the inability of a Participant to engage in the performance of his or her duties by reason of a medically determinable physical or psychological impairment that can be expected to last for a continuous period of not less than twelve months or can be expected to result in death. Disability must have arisen out of or have been causally connected with an act of duty or a service related injury incurred while on leave for uniformed services under Article VII. A Participant’s Disability shall be determined by the Board in its sole discretion.
- (k) **“Disability Benefit”** shall mean the benefit, if any, paid to a Participant in lieu of a Retirement Benefit, pursuant to Section 4.4.
- (l) **“Domestic Relations Order”** shall mean any judgment, decree or order (including approval of a property settlement agreement) that complies with the provisions of Minnesota Statutes Sections 518.58 or 518.581.
- (m) **“Effective Date”** of the Plan shall be the effective date referenced on the first page of the Bylaws.
- (n) **“Entry Date”** shall mean the date of hire as defined in the Fire Department policies and procedures.
- (o) **“Participant”** shall mean a member of the Relief Association who has accrued or is accruing benefits under the Plan.
- (p) **“Plan Year”** shall mean the calendar year.

- (q) **“Qualification Procedures”** shall mean written procedures adopted by the Board of Trustees to:
- (i) determine whether a Domestic Relations Order may be honored under the law and the terms of the Plan; and
 - (ii) to administer distributions under such orders.

The procedures shall be implemented within a reasonable time after receipt of a domestic relations order by the Board of Trustees. Qualification Procedures must permit an Alternate Payee to designate a representative for receipt of copies of notices sent to the Alternate Payee with respect to a Qualified Domestic Relations Order.

- (r) **“Qualified Recipient”** shall mean an individual who receives a lump sum distribution of pension or retirement benefits, including disability benefits, from the Relief Association for service performed as a Volunteer Firefighter, as it relates to Section 4.7 herein.
- (s) **“Resumption of Active Service Requirement”** shall mean the period of time equal to the period of time that elapsed between the Participant’s Separation Date and return to Active Service up to a maximum of five (5) years pursuant to Section 4.2.
- (t) **“Retirement Benefit”** shall mean the benefit payable to a Participant pursuant to Section 4.1, but only after the Participant has met all eligibility requirements of Section 4.1.
- (u) **“Separation Date”** shall mean the date of retirement or termination as defined in the Fire Department policies and procedures.
- (v) **“Special Fund”** shall mean the fund established pursuant to Minnesota Statutes, Section 424A.05 used to fund benefits under the Plan and for other purposes permitted by statute. The assets of the Special Fund shall be invested only in securities authorized by Minnesota Statutes, Section 69.775.
- (w) **“Supplemental Benefit”** shall mean the benefit paid to a Qualified Recipient pursuant to Minnesota Statutes, Section 424A.10, Subd. 2(a), as described in Section 4.7.
- (x) **“Supplemental Survivor Benefit”** shall mean the benefit, if any, paid to a Surviving Spouse or minor Surviving Children pursuant to Minnesota Statutes, Section 424A.10, Subd. 2(b), as described in Section 4.8.
- (y) **“Surviving Children”** shall mean any natural or adopted child of a deceased Participant.

- (z) **“Surviving Spouse”** shall mean the spouse of a deceased Participant who was legally married to the Participant at the time of death.
- (aa) **“Survivor Benefit”** shall mean the benefit paid to a Participant’s Beneficiary pursuant to Section 4.5.
- (bb) **“Volunteer Firefighter”** shall mean any person who:
 - (i) is engaged in providing emergency response services or delivering fire education or prevention services as a firefighter for the Fire Department or Municipality;
 - (ii) is trained in or is qualified to provide fire suppression duties or to provide fire prevention duties under Minnesota Statutes, Section 424A.001, Subd. 8; and
 - (iii) meets any other minimum firefighter and service standards established by the Fire Department or Municipality.
- (cc) **“Year of Active Service”** shall mean each 12-month period of Active Service commencing with a Participant’s Entry Date or anniversary thereof reduced by the Participant’s Break(s) in Service. This definition shall be used for the purposes of calculating the minimum funding requirements and computing benefits or service pensions payable. Service pensions will not be prorated monthly for fractional Years of Active Service pursuant to Minnesota Statutes, Section 424A.02, Subd. 1.

2.2 Interpretation. The words defined in this Article 2 shall have the meanings assigned to them except where specified otherwise in this instrument. Whenever appropriate, words used herein in the singular shall include the plural, the plural may be read as the singular, and the masculine shall include the feminine.

ARTICLE III VESTING

3.1 Full Vesting of Accrued Benefit. A Participant shall have a fully vested and non-forfeitable interest in the Participant’s Accrued Benefit upon completion of 20 Years of Active Service.

3.2 Partial Vesting of Accrued Benefit. The following vesting schedule shall apply to a Participant with fewer than 20 Years of Active Service:

<u>Years of Active Service</u>	<u>Vested Percentage</u>
10 but less than 11	60%
11 but less than 12	64%
12 but less than 13	68%

13 but less than 14	72%
14 but less than 15	76%
15 but less than 16	80%
16 but less than 17	84%
17 but less than 18	88%
18 but less than 19	92%
19 but less than 20	96%
20 or more	100%

3.3 Determining Years of Active Service for Vesting. All Years of Active Service shall be taken into account for purposes of determining a Participant's vested Accrued Benefit, including Years of Active Service with the Fire Department prior to the Effective Date.

ARTICLE IV
BENEFITS

4.1 Retirement Benefit. (a) *Eligibility.* To be eligible to receive a Retirement Benefit a Participant must satisfy each of the following requirements:

- (i) Have retired or ceased Active Service with the Fire Department;
- (ii) Be at least 50 years of age;
- (iii) Have been a Volunteer Firefighter in the Fire Department;
- (iv) Have been a member in the Relief Association; and
- (v) Have the minimum Years of Active Service required for a non-forfeitable interest (vested) in the Participant's Accrued Benefit.

(b) *Amount.* If so provided in Section 3.2, a Participant's Retirement Benefit shall be determined as follows:

Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	multiplied by	Vesting percentage for completed Years of Active Service
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The benefit level is set forth in Appendix C. The Participant's benefit level will be the benefit level in effect at the Participant's Separation Date. However, if the Participant had a Break in Service, the Participant's benefit level shall be determined as described in Section 4.2.

Subject to the provisions of Section 8.1 of this Appendix B, benefit levels are subject to increase and shall be effective as of the agreed upon effective date, provided that such increase shall not apply to any Participant who ceased Active Service before the effective date of the increase.

Such Retirement Benefit shall not be paid before the later of the Participant's Separation Date or the date the Participant attains age 50. The Retirement Benefit shall be paid at the time requested by the Participant in a properly completed and accepted Retirement Benefit Payment Request Form.

4.2 Return To Service. (a) *Return to Service Before Payment of Retirement, Disability or Survivor Benefit.* If a Participant:

- (i) Ceases Active Service with the Fire Department (incurs a Separation Date),
- (ii) Has not received a Retirement Benefit distribution from the Plan of the Participant's vested Accrued Benefit, and
- (iii) Subsequently returns to Active Service after at least 60 days have elapsed, the Participant shall qualify for increases in the benefit level implemented during or after the Separation Date from Active Service and additional Years of Active Service only if the Participant remains in Active Service for the Resumption of Active Service Requirement. If the Participant has not met this requirement by the time of the Participant's later Separation Date, the Participant's benefit shall be the benefit level in effect at the time of the Participant's prior Separation Date and Years of Active Service in effect at the time of the Participant's prior Separation Date plus Years of Active Service after the Participant's resumption of Active Service.

A Participant whose period of Break in Service does not exceed 365 consecutive days is exempt from the minimum period of Resumption of Active Service Requirement.

(b) *Return to Service After Payment of Retirement Benefit.* If a Participant:

- (i) Ceases Active Service with the Fire Department (incurs a Separation Date)
- (ii) Receives a Retirement Benefit distribution from the Plan of the Participant's vested Accrued Benefit,
- (iii) Subsequently returns to Active Service after at least 60 days have elapsed, the Participant shall be credited with additional Years of Active Service. A Participant's Retirement, Disability or Survivor Benefit at the Participant's later Separation Date shall be determined as follows:

Years of <i>Additional</i> Active Service credited to Participant after the return to service	multiplied by	Benefit level in effect for Participant as of the subsequent Separation Date	multiplied by	Vesting percentage for completed <i>Additional</i> Years of Active Service
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No Participant may be paid a service pension twice for the same period of Active Service.

4.3 Deferred Interest.

The Board of Trustees shall adjust only a fully vested Participant's unpaid Retirement Benefit amount at an interest rate up to five percent, compounded annually. The interest rate shall be set by the Board of Trustees, subject to approval by the Municipality. Interest is payable from the first day of the month next following the date on which the Municipality has approved the deferred service pension interest rate established by the Board or from the first day of the month next following the date on which the Participant separated from active Fire Department service and Relief Association membership, whichever is later, to the last day of the month immediately before the month in which the Participant becomes eligible to begin receipt of, and applies for, the Retirement Benefit. The interest rate is set forth in Appendix C.

4.4 Disability Benefit. A Participant who becomes Disabled while in Active Service may be eligible for a Disability Benefit in lieu of a Retirement Benefit. A Participant who becomes Disabled while on leave for uniformed services under Article VII shall be deemed to have become Disabled while in Active Service. A Participant's Disability Benefit shall be determined as follows:

Years of Active Service credited to Participant	multiplied by	Benefit level in effect when Participant becomes Disabled
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The benefit level is set forth in Appendix C. Subject to the provisions of Section 8.1 of this Appendix B, such dollar amount is subject to increase and shall be effective as of the agreed upon effective date, provided that such increase shall not apply to any Participant who ceased Active Service before the effective date of the increase.

Any Disability Benefit paid in accordance with this Section 4.4 shall be in lieu of all rights to further service pension and survivors benefits.

The Participant shall be eligible to receive the Disability Benefit upon approval of the Board of Trustees. A written report of a physician of the Participant's choice shall be required for payment of a Disability Benefit. The report shall set forth the diagnosis and prognosis of the Disability, disease or injury of the Participant and its probable duration of permanence. A Participant's statement as to pain or other symptoms will not alone be conclusive evidence of Disability.

A Disability Benefit Payment Request form shall be submitted to the Board of Trustees within six months after such Participant's Separation Date with the Fire Department. The form shall describe the nature and cause of such Disability. The form shall be under oath by the Participant or his/her immediate family. The determination of Disability shall be tabled until the next Board meeting so that a physician of the Participant's choice may examine the Participant. The Board of Trustees has the discretion to request that another doctor, selected by the Board of Trustees, examine the Participant. Final determination of Disability will be based on the reports of at least one doctor, and shall be determined by the Board of Trustees at the subsequent Board meeting.

If the Participant who applied for a Disability Benefit disagrees with the Board's determination, the Participant may, within sixty (60) days from notice of such action of the Board of Trustees, file a written appeal of the Board of Trustees' determination. The appeal will be decided under the appeal procedures described in Article V.

4.5 Survivor Benefit. (a) *Eligibility.* For a Participant's Beneficiary to be eligible to receive a Survivor Benefit, the Participant must have satisfied the following requirements:

- (i) Have died in Active Service with the Fire Department; or
- (ii) Have died prior to receiving his Retirement Benefit.

A Participant who dies while on leave for uniformed service under Article VII shall be deemed to have died while in Active Service.

(b) *Amount.* If a Participant in Active Service dies, the Participant's Beneficiary shall receive a lump sum payment equal to 100% of the Participant's Accrued Benefit.

The Survivor Benefit paid on behalf of a Participant in Active Service who dies before having completed five Years of Active Service shall be determined as if the Participant had completed five Years of Active Service.

If a Participant who has retired from or ceased Active Service dies, the Participant's Beneficiary shall receive a lump-sum Survivor Benefit determined as follows:

Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	multiplied by	Vesting percentage for completed Years of Active Service
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The Survivor Benefit level will be the benefit level in effect at the Participant's Separation Date. However, if the Participant had a Break in Service, the Survivor Benefit level shall be determined as described in Section 4.2.

Such Survivor Benefit shall be paid to the Participant's Beneficiary as soon as administratively feasible following the Participant's death and the approval of the Survivor Benefit Payment Request form.

A Participant's Beneficiary shall be as follows:

- (i) the Participant's Surviving Spouse; or
- (ii) if no Surviving Spouse, the Participant's Surviving Children or if so designated as a Beneficiary by the Participant, a trust for the benefit of the Participant's Surviving Children created under Chapter 501B; or
- (iii) if no Surviving Spouse or Surviving Children, the Participant's designated Beneficiary or Beneficiaries. To designate a Beneficiary, the Participant

shall complete, sign and file with the Relief Association a designation of Beneficiary on a form to be provided by the Relief Association or by other written form acceptable to the Relief Association. On said form, the Participant shall designate a Beneficiary, which must be a natural person, or a designated trust created under Chapter 501B of the Minnesota Statutes that shall be paid any sum that may be payable on account of the Participant's death (reserving, however, to the Participant the power to change the designation of Beneficiary using the Change of Beneficiary Designation form); or

- (iv) if no designated Beneficiary or Beneficiaries, to the estate of the Participant.

If there is a Surviving Spouse, but no Surviving Children, the Surviving Spouse may waive in writing all or a part of the Survivor Benefit otherwise payable to the Surviving Spouse, in which event, the Survivor Benefit waived shall be paid as if the spouse had predeceased the Participant.

4.6 Funeral Benefit. No Funeral Benefit shall be paid under this Plan.

4.7 Supplemental Benefit. Upon payment of a lump sum distribution, the Relief Association must pay a Supplemental Benefit to the Qualified Recipient. The Supplemental Benefit may be paid from the Special Fund. The amount of the Supplemental Benefit equals ten percent of the lump sum distribution, excluding any interest paid during a period of deferral, but in no case may the Supplemental Benefit exceed \$1,000.

4.8 Supplemental Survivor Benefit. Upon payment of a Survivor Benefit, the Relief Association must pay a Supplemental Survivor Benefit to the Surviving Spouse, or, if none, the Surviving Child(ren) of a Participant who had at least one (1) month of Active Service. The Supplemental Survivor Benefit shall be paid in lieu of the Supplemental Benefit and shall be paid from the Special Fund. The amount of the Supplemental Survivor Benefit equals twenty (20) percent of the lump sum distribution, but in no case may the Supplemental Survivor Benefit exceed \$2,000.

4.9 Benefit Payment Requests. Requests for benefit payment shall be in writing and filed with the Relief Association not less than 90 days prior to the next Board meeting, unless permitted earlier by the Board. Such request shall be made on the appropriate form described below:

<u>Requested Benefit</u>	<u>Required Benefit Form</u>
Retirement	Retirement Benefit Payment Request
Survivor	Survivor Benefit Payment Request
Disability	Disability Benefit Payment Request (if applicable)

Requests for Plan benefits shall be considered valid when approved by the Board. Upon approval of the request, the Board shall pay the Participant within 90 days and provide notices to the Participant as required by state or federal law with respect to pension or benefit payments, including, if required, the Special Tax Notice Regarding Plan Payments.

4.10 Forms of Payment. Plan benefits payable to a Participant or Beneficiary shall be made in single lump sum payment. The Participant shall specify that the payment be made in the manner of:

- (a) a check payment payable to the Participant or Beneficiary, subject to federal income tax withholding, as may be required; or
- (b) a direct rollover to an individual retirement account described in Section 408(a) of the Code to the extent permitted by law, or
- (c) a transfer to the Participant's account in the Minnesota Deferred Compensation Plan, to the extent permitted by law and the Minnesota Deferred Compensation Plan.

No other forms of distributions are allowed under the Plan.

4.11 Maximum Limitation on Benefits. Notwithstanding any provision of the Plan to the contrary, a Participant's benefit under the Plan shall not exceed the maximum amount permitted under Section 415 of the Code. Service pensions shall be further limited to the maximum amounts payable pursuant to Minnesota Statutes, Section 424A.02, Subd. 3.

4.12 Required Distributions. Notwithstanding any provision of the Plan to the contrary, a Participant's benefit shall be paid to the Participant by April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½ or ceases Active Service. Such distributions shall be determined and made in accordance with Section 401(a)(9) of the Code and regulations promulgated there under, including the minimum distribution incidental benefit requirement of Treasury Reg. Section 1.401(a)(9)-2, the provisions of which are incorporated herein by reference.

4.13 Unclaimed Benefits. If the Relief Association is unable with reasonable effort to locate a Participant or person/estate entitled to a Survivor Benefit under the Plan or applicable law, the benefit distributable to such Participant or person/estate shall be forfeited and will be credited to the Special Fund. Efforts to locate a Participant or person/estate must be documented. Forfeiture shall occur no earlier than thirty-six (36) months after the Board concludes the Relief Association was unable to locate such Participant or person/estate despite reasonable efforts to do so.

ARTICLE V
APPEALS PROCEDURE

5.1 Right of Appeal. In the event the Board of Trustees denies a written request for a Retirement, Disability or Survivor Benefit, the Participant or Beneficiary whose request was denied (a "claimant") shall be entitled to appeal the determination.

5.2 Denial of Benefits. If a written request is not approved, the Board shall return the form to the claimant within 30 days, noting which requirements the claimant does not meet. Thereafter, the claimant shall be furnished with the opportunity to be heard by the Board, on the question of whether the claimant meets all of the eligibility requirements. A claimant who intends to appeal must furnish the Board with a written notice of appeal within 30 days of receiving an adverse determination.

5.3 Review Procedure. Upon receipt of the written notice of appeal, the Board of Trustees shall hold a special meeting within 60 days. Timely notice of the meeting shall be given to the claimant at least 15 days prior to the special meeting. The claimant shall have the reasonable opportunity to be heard by the Board of Trustees at the special meeting with regard to the negative determination. The Board shall decide the appeal and shall give the claimant written notice of its decision.

The exhaustion of these claims procedures is mandatory for resolving every claim and dispute arising under these Bylaws. Any legal action to recover benefits or to enforce or clarify rights under the Bylaws must be commenced in the proper forum within 120 days after the claimant has exhausted the claims procedures. For all purposes, knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to every claimant who is or claims to be a beneficiary of the Participant or otherwise claims to derive an entitlement by reference to the Participant. The Board has full discretion to determine benefit claims under the Bylaws. Any interpretation, determination or other action of the Board shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the Board shall be based only on such evidence presented to or considered by the Board at the time it made the decision that is the subject of review.

ARTICLE VI
CLAIMS AGAINST BENEFICIAL INTEREST

6.1 Nonassignability. No Participant or Beneficiary shall have any transmissible interest in the Plan or in the Participant's separate Beneficial Interest therein, either before or after the vesting thereof, or in any of the assets comprising the same prior to actual payment and distribution thereof, and shall have no power to alienate, dispose of, pledge or encumber the same, while in the possession or control of the Plan, nor shall the Plan recognize any assignment thereof, either in whole or in part, nor shall the interest of any Participant or Beneficiary be subject to attachment, garnishment, execution or other legal process while in the hands of the Plan, except as provided in Minnesota Statutes, Section 518A.53 or as otherwise provided herein.

6.2 Charge for Litigation. In the event that any Participant or any person claiming by or through a Participant should commence any equitable or legal proceedings against the Relief Association, the result of which is adverse to the plaintiff, or in the event that the Relief Association should find it necessary to commence any such proceeding against any Participant or any person claiming by or through a Participant, the result of which is adverse to the defendant, the cost to the Relief Association of defending or bringing the proceeding, as the case may be, shall be charged, to the extent possible and permitted by law, to the Accrued Benefit of the Participant and only the excess of such cost over the amount of the Participant's Accrued Benefit shall be included as an expense of administration.

6.3 Domestic Relations Orders. Notwithstanding any provision to the contrary herein, the Board of Trustees may assign the interest of a Participant in the Plan to an Alternate Payee pursuant to a Domestic Relations Order. In the event the Plan receives a Domestic Relations Order with respect to a Participant's Beneficial Interest in the Plan, the following provisions shall apply:

- (a) The Board shall promptly give written notification to the Participant and to the Alternate Payee of receipt of a domestic relations order and of Plan Qualification Procedures. The Board shall then proceed with Qualification Procedures to determine whether the order is a Domestic Relations Order and can be honored. The Board shall then notify the Participant and Alternate Payee (or the Alternate Payee's designated representative) of its determination.
- (b) Disputed funds shall be disposed of as follows:
 - (i) During the period in which the Qualification Procedures are in progress, the Board shall separately account for any amounts that would be payable to an Alternate Payee if the Domestic Relations Order can be honored.
 - (ii) If it is determined the Domestic Relations Order can be honored within the 18-month period commencing on the date payments are to begin under the order, the Board shall pay the amounts designated in the order, including any interest, to the Alternate Payee.
 - (iii) If the Board determines that the Domestic Relations Order cannot be honored or if the 18-month period described in (ii) above elapses and the qualification dispute has not been resolved, the Board shall pay the segregated amounts, together with earnings or losses, if required, to the persons who would have received the amounts if the order had not been issued.
 - (iv) If an order is qualified after expiration of the 18-month period described in (ii) above, payment of benefits to an Alternate Payee shall proceed prospectively and the Plan shall not be liable to an Alternate Payee for benefits attributable to the period prior to qualification.

- (c) Payment of benefits pursuant to a Domestic Relations Order shall be made only as permitted under the Plan. Payment to an Alternate Payee may not commence until the Participant submits a valid Retirement Benefit Payment Request form and the Participant's benefit becomes payable.
- (d) If a Domestic Relations Order does not address and determine the payment of the Supplemental Benefit payable under Section 4.7 in connection with the payment of a Retirement Benefit, the Supplemental Benefit shall be divided between the Participant and the Alternate Payee in the same proportion as the Retirement Benefit is so divided. In addition, the Board cannot honor a Domestic Relations Order requiring that Supplemental Survivor Benefits be paid to anyone other than the persons listed in Section 4.8 in the order there listed.
- (e) To the extent permitted by law and except as otherwise provided under a Domestic Relations Order, the Board may, on a uniform basis, charge the reasonable and necessary expenses associated with the review of a Domestic Relations Order and the implementation of a Domestic Relations Order to the accounts of the Participant and Alternate Payee.

ARTICLE VII **UNIFORMED SERVICE (MILITARY SERVICE)**

Subject to restrictions stated in this section, a Participant who is absent from firefighting service due to service in the uniformed services, as defined in the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), will be granted Active Service credit under the Plan for the period of the uniformed service, not to exceed five years, unless a longer period is required under USERRA.

To be eligible for such credit, the Participant must return to firefighting service with coverage by the Relief Association (or by the successor to the Relief Association) upon discharge from service in the uniformed service within the time frame required in USERRA. However, Active Service credit is not authorized if the Participant separates from uniformed service with a dishonorable or bad conduct discharge or under other than honorable conditions.

Active Service credit is not authorized if the Participant fails to provide notice to the Fire Department that the Participant is leaving to provide service in the uniformed service, unless it is not feasible to provide that notice due to the emergency nature of the situation.

If the Participant does not return to Active Service with the Fire Department within the time frame required in USERRA, then except as otherwise provided in the following sentence, it shall be conclusively presumed that the Participant's Active Service terminated as of the date that the leave for uniformed services began. A Participant who dies or becomes Disabled while the Participant is on leave for uniformed services shall be deemed to have returned to Active Service and shall be deemed to have accrued years of Active Service during the period of leave for uniformed services.

ARTICLE VIII
RIGHT TO AMEND, DISCONTINUE OR TERMINATE

8.1 Amendment. Except as herein otherwise limited, the Relief Association shall have the right to amend this Plan, pursuant to Section 12.3 of the Bylaws, at any time to any extent that it may deem advisable. Such amendment will be stated in an instrument in writing executed by the Relief Association. Upon adoption and execution of such instrument, this Plan shall be deemed to have been amended in the manner therein set forth, and Participants shall be bound thereby.

If the Special Fund does not have a surplus over full funding pursuant to Minnesota Statutes, Section 69.772, Subd. 3, clause (b), or Minnesota Statutes 69.773, Subd. 4, and if the Municipality is required to provide financial support to the Special Fund pursuant to Minnesota Statutes, Section 69.772 or 69.773, no amendment that would affect the amount of, the manner of payment of, or the conditions for qualification for service pensions or ancillary benefits or disbursements other than administrative expenses authorized pursuant to Minnesota Statutes 69.80 payable from the Special Fund shall be effective until it has been ratified by the governing body or bodies of the Municipality.

If the Municipality is not required to provide financial support to the Special Fund, the Relief Association may adopt an amendment of the Plan that increases or otherwise affects the service pensions or ancillary benefits payable from the Special Fund without municipal ratification so long as the changes do not cause the amount of the resulting increase in the accrued liability of the Special Fund to exceed 90 percent of the amount of the prior surplus over full funding and the changes do not result in the financial requirements of the Special Fund exceeding the expected amount of the future fire state aid to be received by the Relief Association.

The financial requirements are to be determined by the Board of Trustees following the preparation of an estimate of the expected increase in the accrued liability and annual accruing liability of the Relief Association attributable to the change. If the Relief Association adopts or amends the Plan without municipal ratification, and, subsequent to the amendment or adoption, the financial requirements of the Special Fund are such so as to require financial support from the Municipality, the provision that was implemented without municipal ratification shall no longer be effective without municipal ratification, and any service pensions or ancillary benefits payable with respect to the unapproved increase shall no longer be effective as of the January 1 of the year for which the Schedules I and II for the municipal contribution became due, and as of that January 1, service pensions or ancillary benefits shall be paid only in accordance with provisions of the Plan as amended or adopted with municipal ratification.

8.2 Consolidation and Plan Benefits. The Relief Association has not been consolidated with another relief association pursuant to Minnesota Statutes, Section 424B.02.

8.3 Termination of Plan. Upon dissolution of the Relief Association, after the settlement of nonbenefit legal obligations of the Special Fund, the Board shall transfer the remaining assets of the Special Fund, as securities or in cash, as applicable, to the chief financial official of the Municipality. The Board shall also compile a schedule of Participants to whom a service pension is or will be owed, any Beneficiary to whom a benefit is owed, the amount of the service pension or benefit payable based on the Bylaws and state law and the service rendered to the date

of the dissolution, and the date on which the pension or benefit would first be payable under the Bylaws and state law.

The Municipality receiving the remaining assets of the Special Fund shall establish a separate account in the municipal treasury to function as a trust fund for Participants and their Beneficiaries eligible for Plan benefits. Upon submission of the proper form, on or after the initial date on which the service pension or benefit is payable, the municipal treasurer shall pay the pension or benefit due, based on the schedule described above and the other records of the dissolved Relief Association. The trust fund must be invested and managed consistent with Minnesota Statutes Section 69.775 and Chapter 356A. Upon payment of the last service pension or benefit due and owing, any remaining assets in the trust fund may be transferred to the general fund of the municipality. If the Special Fund had an unfunded actuarial accrued liability upon dissolution, the Municipality is liable for that unfunded actuarial accrued liability.

ARTICLE IX MISCELLANEOUS

9.1 Governing Law. This Plan shall be construed, administered, and governed in all respects under the laws of the State of Minnesota, except as preempted by federal law.

If any Minnesota laws are applicable solely to the Relief Association, then an Appendix F will be included to describe such laws.

9.2 Binding Effect. This Plan shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of any and all of the parties hereto.

9.3 Effective Date Application. If a member's Separation Date is prior to the Effective Date, the member's status and benefit under the Plan, if any, attributable to Active Service, shall be determined and paid in accordance with the provisions of the Plan in effect at the Separation Date.

If a member had a Separation Date prior to the Effective Date, but returns to complete a Year of Active Service that ends after the Effective Date, the member's status and benefits under the Plan for all Active Service shall be determined in accordance with the provisions of the Plan in effect at the subsequent Separation Date.

9.4 Authority of Board of Trustees. The Board of Trustees shall have full power, authority and discretion to do each and every act and thing which it is specifically required or permitted to do under the provisions of the Plan and to determine conclusively for all parties all questions arising in the interpretation or administration of the Plan.

APPENDIX C

NEWPORT FIREFIGHTERS RELIEF ASSOCIATION

Benefit Levels

Benefit Level Effective Date	Benefit Level per Year of Active Service	Interest Rate for Deferred Pension Benefit	Date Approved by Municipality
January 6, 2009	\$3,000	0%	March 19, 2009
December 21, 2006	\$3,000	5%	December 21, 2006
December 2, 2004	\$2,800	5%	December 2, 2004
January 1, 2004	\$2,500	5%	December 4, 2003
October 1, 1999	\$2,500	Up to 5%	August 19, 1999
January 1, 1998	\$2,100	Up to 5%	November 20, 1997
July 11, 1996	\$1,800	Up to 5%	July 11, 1996
May 14, 1992	\$1,500	Up to 5%	May 7, 1992
June 1, 1988	\$1,400	Up to 5%	May 5, 1988
October 22, 1982	\$1,000	Up to 5%	October 21, 1982
January 3, 1980	\$900	Up to 5%	January 3, 1980

NA means not applicable.
 NR means not required.
 TBD means to be determined

“Material Financial Interest” is a financial interest or expectation of any kind on the part of a Board member or Relative, which is substantial enough to reasonably affect the judgment of the Trustee who has a conflict of interest. The term “financial interest” includes any and all monetary expectations and exists when a Board member or Relative has rights (whether or not a Deferred Member or beneficiary) to be paid compensation, retiree benefits, or to have their expenses reimbursed or obligations or other liabilities repaid, etc. (See Article IX Fiduciary Responsibility.)

“Municipality” is the City of Newport.

“Municipal Trustees,” formerly known as ‘ex-officios,’ are members of the Board of Trustees designated solely by the Municipality and shall include the two appointed or elected officials and the fire chief, as further defined in Section 5.1 herein.

“Relative” is a member of one’s family and includes spouses, parents, children, siblings, in-laws, aunts, uncles, first cousins, step-parents, step-children, and may include other family members such as common-law partners or long-time companions, of a Trustee who has a conflict of interest. (See Article IX Fiduciary Responsibility.)

“Special Fund” shall mean the fund as defined in Section 2.1 of the Plan attached hereto.

“Supermajority” is required when there is a conflict of interest on an item to be voted on by the Board of Trustees because one or more Trustees have a Material Financial Interest. A Supermajority is the majority of those Trustees after subtracting the Trustee(s) who has a conflict of interest (e.g., Nine (9) Trustees less two (2) with a conflict = Seven (7). Supermajority would require four (4) Trustees to vote in favor to pass the motion). (See Article IX Fiduciary Responsibility.)

Rebecca Stenlund 5/18/13 10:56 AM
Deleted: “Municipal Trustees,” formerly known as ‘ex-officios,’ are members of the Board of Trustees designated solely by the Municipality and shall include the two appointed or elected officials and the fire chief, as further defined in Section 5.1 herein.

ARTICLE III PURPOSE

As provided in the Articles of Incorporation, the purpose of the Association is to provide retirement relief and other benefits to members and their dependents. For purposes of Chapter 424A of Minnesota Statutes, the Association is a governmental entity that receives and manages public funds to provide retirement and ancillary benefits for individuals providing the governmental services of firefighting and, if applicable, emergency response. The Association may also raise funds from private sources to furnish fire and emergency equipment for the Fire Department, and for other purposes deemed necessary and appropriate by the Association to the extent permitted by law. Benefits paid to members and their dependents shall be funded exclusively through governmental sources and, to the extent provided by State law, through restricted donations.

**ARTICLE IV
MEMBERSHIP**

4.1 Admission. All firefighters of the Fire Department are members of the Association and shall be eligible for benefits, except as otherwise stated in these bylaws. An application for membership shall be completed on the Membership Application and Beneficiary Designation form to become eligible for benefits in the Association. Upon approval of the member's application, such member shall accrue service credit for all active service while in probationary status.

Rebecca Stenlund 5/18/13 10:56 AM
Deleted: All firefighters of the Fire Department are members of the Association and shall be eligible for benefits, except as otherwise stated in these bylaws.

4.2 Membership Duties. The Association does not require membership duties.

4.3 Membership Dues. The Association does not require membership dues.

4.4 Member Voting Rights. Each Active Member shall be entitled to one (1) vote on any matter voted upon by the membership. Deferred Members are not entitled to vote. Voting by proxy/absentee ballot is permitted following the procedures set forth in Section 4.5.

4.5 Proxy/Absentee Ballot. Member Voting: If permitted by the Board prior to a meeting, voting members may cast votes by submitting an absentee ballot provided by the Board that is signed by the member and deposited in the ballot box set out by the Board. Submission of an absentee ballot shall constitute a proxy to the officer of the Association designated and authorized on the ballot who is bound to cast the member's vote in accord with the member's ballot choices. The member may withdraw his/her proxy/absentee ballot by attending a meeting and voting in person. Use of proxies/absentee ballots may only be used on items listed on the ballot and may not be used when trustees and/or officers are elected from the floor during the meeting.

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Counting Ballots: If ballots were used because there were more than two candidates for any Trustee position up for election as indicated under Section 7.2, an officer of the Association who is not standing for election shall count the ballots as follows: All first choices are counted, and if no candidate wins a majority of first choices, then the last place candidate is eliminated. Ballots of voters who ranked the eliminated candidate first are redistributed to their next choice candidates, as indicated on each voter's ballot. Last place candidates are successively eliminated and ballots are redistributed to next choices until one candidate remains or a candidate gains a majority of votes.

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In case of a tie resulting from the above procedure, the candidates receiving the two highest number of votes shall be placed into new balloting to be effected at the meeting. The previously submitted proxy/absentee ballots shall be recounted using the above procedures for the two candidates who have tied. Simultaneously, members present at the meeting will recast their vote for the two candidates who have tied. Additional balloting including the proxy/absentee ballots for said office shall continue until one candidate shall receive a majority of votes cast on a rebalot and he shall be elected to said office.

4.6 Separation. For records retention and administration of the Association, the Board may request that a Deferred Member complete and submit a Membership Separation Form.

4.7 Member Recognition. The Association may continue to honor members whose status has changed between volunteer/paid on-call and full- or part-time employee of the same Fire Department. The members shall adopt written policies and procedures, including any eligibility or types of recognition.

4.8 Termination. Any member who is terminated by the Fire Department or Municipality shall cease accruing benefits under the Association as of the date of termination.

ARTICLE V BOARD OF TRUSTEES

5.1 Composition. The Board of Trustees shall consist of nine (9) members. Six (6) trustees shall be elected from the membership of the relief association. There shall be three (3) officials drawn from the Municipality. The three (3) Municipal Trustees must be one (1) elected municipal official and one (1) elected or appointed municipal official, who are designated as municipal representatives by the municipal governing board annually, and the chief of the municipal fire department. The Municipal Trustees must be designated annually by the city council of the Municipality.

5.2 Duties. The Board of Trustees shall perform the functions and assume the same duties as a Board of Directors under Minnesota Statutes, Chapter 317A. In addition, the Board of Trustees shall:

- (a) Have exclusive control and management of all funds received by the Treasurer pursuant to the statutes of the State of Minnesota and all moneys or property donated, given, granted or devised for the benefit of the Association.
- (b) Examine the books, papers, funds, securities and property in the custody of the Treasurer, and general accounts, funds and securities, and property of the Association.
- (c) Examine and approve the validity of all claims prior to payment by the Treasurer.
- (d) Provide the forms on which members may submit claims to the Board of Trustees for their approval.
- (e) On an annual basis or more frequently as may be required to determine eligibility for benefits, confirm minimum firefighter and service standards pursuant to the Volunteer Firefighter definition in Section 2.1 of the Plan attached hereto.

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- (f) Assume such additional duties as may be described in Article IX herein and in Association policies and procedures or required by state law including the establishment of any committee deemed necessary or appropriate.

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ARTICLE VI OFFICERS

6.1 Number. The number of officers of the Association and their duties shall be as set forth below.

6.2 President. It shall be the duty of the President of the Association to:

- (a) Have general active management of the business of the corporation;
- (b) When present, preside at meetings of the Board and of the members;
- (c) See that orders and resolutions of the Board are carried into effect;
- (d) Sign and deliver in the name of the corporation bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the Board to another officer or agent of the corporation;
- (e) Maintain records of and, when necessary, certify proceedings of the Board and the members; and
- (f) Perform other duties prescribed by the Board.

6.3 Pro Tem Officers. In the absence of the President and Vice President, if applicable, the Board of Trustees shall appoint an interim President from the existing Officers and/or Trustees other than the Municipal Trustees, who shall perform the duties applicable to the office.

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6.4 Vice President. It shall be the duty of the Vice President to perform the duties of the President in the President's absence.

6.5 Secretary. It shall be the duty of the Secretary of the Association to:

- (a) Keep a record showing the correct addresses of all members and request the names of their beneficiaries.
- (b) Keep or cause to be kept an accurate record of all meetings of the Association and of all meetings of the Board of Trustees.
- (c) Conduct and direct the investigation of all claims.

- (d) Keep a record of all monies received and paid out by the Treasurer.
- (e) Provide access to the Association's Articles, Bylaws, minutes, and financial statement on the last annual accounting period to all members or all Board of Trustees (including the Municipal Trustees), for any proper purposes they may have, in accord with Minnesota Statutes, Section 317A.461.

6.6 Treasurer. It shall be the duty of the Treasurer of the Association to:

- (a) Receive and receipt all monies due the Association from members and other sources and to keep accurate accounts and records of all the money so received.
- (b) Have custody of all monies and securities belonging to the Association.
- (c) Furnish a surety bond in favor of the Association for the faithful performance of all duties involving the Association and for the safekeeping of, or accounting for, all monies and securities that may come into its possession. The bond shall be in an amount equal to at least 10% of the assets up to a maximum of \$500,000.
- (d) Pay all properly approved claims for benefits, and to pay all bills incurred in the way of necessary expenses in the conduct of the business of the Association and to keep accurate accounts and records of all the money so paid.

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6.7 General Duties.

- (a) It shall be the duty of any two (2) officers of the Association to countersign all checks issued by the Association.
- (b) The officers shall annually prepare an annual financial report of the Association's receipts, disbursements, and balances in the Special and General Funds for the preceding calendar year on a form prescribed by the Office of the State Auditor. They shall transmit the report to the city clerk or clerk-treasurer of the Municipality for inspection, signature and transmission to the State Auditor pursuant to law.
- (c) Pursuant to the Volunteer Firefighter Relief Association Financing Guidelines Act of 1971, the officers of the Association shall, annually, determine the financial requirements of the Special Fund for the following year. The financial requirements of the relief association and the minimum municipal obligation must be included in the financial report or financial statement.

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6.8 Compensation. As compensation for services to the Association by the officers, the membership may at the Annual Association meeting authorize payment of an aggregate salary expense payable from the Special Fund to one (1) or more of these officers. The amount shall be recommended by the Board to the membership and approved by the membership at their annual Association meeting.

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**ARTICLE VII
ELECTIONS**

7.1 Trustee Terms. The Trustees shall be elected to staggered three-year terms. There will be two (2) Trustees elected by the membership each year at the annual meeting of the Association, and begin their individual terms at the end of the meeting at which they are elected.

Each appointed Municipal Trustee term is one (1) year or until the person's successor is qualified, whichever is later. The term of a Municipal Trustee shall terminate upon termination of the Trustee's position with the Municipality.

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An individual Trustee may serve an unlimited number of terms.

7.2 Voting on Trustees. Each of the positions on the Board of Trustees who are not the Municipal Trustees shall be voted on separately by the Active Members in attendance at the annual meeting. No nominations of slates of candidates or cumulative voting shall be allowed. All votes unless specified prior to the vote, shall be conducted by a voice vote. A simple majority of those present at the meeting is needed to elect. If a simple majority cannot be determined by voice vote, the officer in charge of the vote shall ask for a show of hands or for a secret ballot. A trustee who was elected by the membership may be removed with or without cause by a simple majority vote of the Active Members in any subsequent annual, regular or special meeting.

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If allowed by the Board of Trustees under Section 4.5, a proxy/absentee ballot may be used to perform "runoff voting" if there are more than two candidates for any Trustee position up for election and Active Members must rank candidates by order of preference. See Section 4.5 for counting ballots.

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7.3 Officer Terms. The offices of President, Vice President, Secretary, and Treasurer shall be elected to one-year terms, and begin their individual terms at the end of the meeting at which they are elected.

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7.4 Voting on Officers. Officers are elected by the Active Members each year at the annual meeting of the Association from among the elected Trustees. Each position will be nominated and elected separately at this meeting. All votes unless specified prior to the vote, shall be conducted by a voice vote. A simple majority is needed for an officer to be elected. If a majority cannot be determined by voice vote, the officer in charge of the vote shall ask for a show of hands or for a secret ballot. Voting by proxy/absentee ballot will be allowed under Section 4.5. An officer may be removed with or without cause by a simple majority vote of the Active Members in any subsequent annual, regular or special meeting.

No individual may hold more than one (1) officer position at one (1) time.

7.5 Officer and Trustee Vacancies. In the case of death, resignation or removal from office for any elected officer or Trustee of the Association, except a Municipal Trustee, the vacancy shall be filled by the Board of Trustees from the membership at a Board meeting to be duly called for the purpose of filling out this term. In the event an officer fails to retain his position as an elected Trustee, he must vacate his officer position pursuant to Minnesota Statutes, Chapter 424A Volunteer Firefighters' Retirement.

**ARTICLE VIII
MEETINGS**

8.1 Annual Meeting of the Members. The annual (regular) meeting of the members shall be held on the first Tuesday in January of each year except that if that day is a holiday, said meeting shall be held on the next succeeding Tuesday. The place of the meeting shall be designated and may be changed from time to time by the Board of Trustees.

~~8.2 Regular Meetings of the Members. The members shall have no regular meetings.~~

8.3 Special Meetings of the Members. Special meetings of the members may be called at any time upon the written order of the President and one (1) other member of the Board of Trustees, or six (6) voting members of the Association. The place of the meeting shall be designated and may be changed from time to time by the Board of Trustees.

8.4 Notice of Meetings of the Members. A notice of every annual and any special meetings of the members shall include the date, time, place and purpose of the meeting and be *posted* on the bulletin board of the Association, or if no bulletin board, on the door of its usual meeting room; *and* in accord with Minnesota Statutes, Section 317A.433 Subd 4, business at a special membership meeting must be limited to the stated purpose; and further in accord with Minnesota Statutes Section 317A.435, each voting member shall be *provided* at least five (5), but not more than sixty (60) days, before the meeting, (excluding the date of the meeting) with notice setting forth the date, time, place, and purpose of the meeting.

8.5 Member Quorum. Forty (40) percent of the Active Members of the Association shall constitute a quorum for the transaction of business at their meetings.

8.6 Member Voting. Each Active Member present at the meeting shall be entitled to one (1) vote. All votes, unless specified prior to the vote, shall be conducted by a voice vote. If a majority cannot be determined by voice vote, the officer in charge of the vote shall ask for a show of hands or for a secret ballot. Voting by proxy/absentee ballot will be allowed under Section 4.5. A voting "majority" is majority of the quorum, not majority of the entire association membership.

~~8.7 Regular Meetings of the Board of Trustees. Meetings of the Board of Trustees shall be held on the first Tuesday of January, and on the last Tuesday of March, July and November. If any Tuesday is a holiday, said meeting shall be held on the next succeeding Tuesday. Meetings of the Board of Trustees shall be held at the Fire Station unless noticed for another place within the City as designated by the Board.~~

8.8 Special Meetings of the Board of Trustees. Special meetings of the Board of Trustees may be called at any time upon the written order of the President and one (1) other member of the Board of Trustees. The meeting shall be held at the Fire Station unless noticed for another place within the City as designated by the Board.

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8.9 Notice of Meetings of the Board of Trustees. The association is governed by Minnesota Statutes, Section 13D.01 which requires that all meetings of the Association's Board of Trustees be open to the public with rare exceptions. All notices provided for in this Article shall comply with Minnesota Statutes, Section 13D.04 which requires at a minimum that:

- (a) a schedule of any regular meetings of the Board of Trustees be kept on file at the Association offices, and
- (b) for special meetings, a notice stating the date, time, place and purpose of the meeting be posted on the bulletin board of the Association, or if no bulletin board, on the door of its usual meeting room; and in accord with Minnesota Statutes, Section 317A.231, each Trustee shall be provided at least three (3), but not more than sixty (60) days, before the meeting, (excluding the date of the meeting) with notice setting forth the date, time, place, and purpose of the meeting.

8.10 Board Quorum. A majority of the Board of Trustees then in office shall constitute a quorum for the transaction of business at its meetings.

8.11 Board Voting. Unless the Articles or Bylaws specify otherwise, an action of the Board shall be effected by a majority vote of the Trustees present and eligible to vote once a quorum has been achieved. The officer in charge of a vote shall ask for a show of hands *but shall not allow* for a secret ballot *nor proxy*, and each vote shall be recorded in a public journal. No action shall be considered once a quorum has been lost.

8.12 Electronic Meeting Prohibited. Any meeting of the Board of Trustees or the membership by solely electronic means (e.g., e-mail, simulchat or phone conference) that is not accessible to the public at a set meeting location is prohibited.

8.13 Order of Business. At any annual, regular and all special meetings, the order of business shall be as follows:

- (a) Call to order by the President
- (b) Roll call (verify quorum)
- (c) Secretary's Report (reading of previous minutes)
- (d) Treasurer's Report
- (e) Report of the Board (member meeting)
- (f) Report of other committees (Board or member meeting)
- (g) Election of Trustees and Officers, if applicable (annual member meeting)
- (h) Old Business
- (i) New Business
- (j) Adjournment

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**ARTICLE IX
FIDUCIARY RESPONSIBILITY**

9.1 **Board of Trustees.** Each member of the Board of Directors, also acts as a trustee of the Special Fund. The Board of Directors therefore also acts as the Board of Trustees. The Board of Trustees is charged with administering retirement and ancillary benefits under the Special Fund, and the Trustees are fiduciaries subject to the standard of care set forth in Minnesota Statutes, Section 11A.09 and Section 356A.04. This includes specifically assuming such additional duties as may be described in Association policies and procedures or required by state law, including:

- (a) adopting an investment policy;
- (b) providing written investment restrictions to brokers;
- (c) securing certificates of insurance; and
- (d) establishing a continuing education plan in order to keep abreast of their fiduciary responsibilities.

9.2 **Prohibited Transactions.** No fiduciary of the Association shall cause the Association to engage in a transaction if the fiduciary knows or should know that a transaction constitutes one (1) of the following direct or indirect transactions:

- (a) sale or exchange or leasing of any real estate between the Association and a Board member;
- (b) lending of money or other extension of credit between the Association and a Board member or member of the Association;
- (c) furnishing of goods, services, or facilities between the Association and a Board member;
- (d) transfer to a Board member, or use by or for the benefit of a Board member, of any assets of the Association. Transfer of assets does not mean the payment of Association benefits or administrative expenses permitted by law; or
- (e) sale, exchange, loan, or lease of any item of value between the Association and a fiduciary of the Association other than for a fair market value and as a result of an arm's-length transaction.

9.3 **Fiduciary Responsibilities Apart from the Special Fund.** Although the title "Trustee" is applied to members of the Board of Directors of the Association, the fiduciary standard that Directors are subject to is two-tiered as a matter of State law. With respect to the Association's Special Fund, Trustees are required to meet a standard of care that applies to fiduciaries under Minnesota Statutes, Section 11A.09 and Section 356A.04, as described above. With respect to business and management decisions not including decisions related to the Special Fund, all Trustees are required to meet a standard of care that applies to nonprofit corporation Directors under Minnesota Statutes, Section 317A.251. These decisions include, but are not

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limited to, business decisions regarding fund-raising activities, and disposition of and management of the General Fund. Accordingly, in their decision-making and management, Trustees must discharge the duties of their position in good faith, in a manner the Director reasonably believes to be in the best interests of the Association, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Directors are not, in accord with that same statutory section, considered "Trustees" with respect to the Association or with respect to property held or administered by the Association.

9.4 Conflict of Interest Procedures. When a member(s) of the Board of Directors has a conflict:

- (a) Each member of the Board of Directors, whether acting as a Director or as an Officer of the Association, has a duty to disclose to the Board (or to any committee of the Board) the material facts of any proposed transaction or action of the Association in which they or a Relative have a Material Financial Interest.
- (b) The disclosure required under (a) (above) *must be made, to the extent possible, prior to any consideration of such proposed transaction or action* by the Board of Directors or by any applicable committee of the Board of Directors. If a Board member does not recognize the existence of a conflict prior to the Board of Director's decision regarding the transaction, that person has a duty to disclose the material facts of the conflict as soon as the conflict is recognized.
- (c) The Board member having a conflict shall not participate in the deliberation or decision regarding the matter under consideration and shall leave the room during deliberations except when he has been invited by the Board or committee to participate, after consideration of the significance to the Association of the disclosed conflict. The Board of Directors or committee may also request that he provide the Association with any relevant information known to the Board member regarding the matter.
- (d) Any proposed transaction or action in which the Board of Directors has determined that a Director has a conflict of interest that is not "de minimis" is to be approved by a *majority of all the Board of Directors then-serving who would be entitled to vote* and who are not interested Board members at a meeting at which a quorum is present (i.e., by a Supermajority of the entire Board of Directors not including a Board member(s) who has a conflict of interest), even though the non-conflicted directors may constitute less than a quorum). Deliberations by the Board of Directors regarding the conflict shall be documented in Board minutes no later than 60 days following the subject meeting. The votes of each Board member in support or in opposition to the transaction or action shall be noted.
- (e) All Board members are obligated to notify the Board of Directors if they believe another Board member has failed to disclose a conflict, and this procedure shall be followed by the Board of Directors in all such instances.

**ARTICLE X
FUNDS**

10.1 Funds. All money received by the Association shall be kept in two (2) separate funds, the General Fund and the Special Fund. Disbursements from the funds shall be in accordance with Minnesota Statutes and Rules and the Bylaws of the Association.

10.2 General Fund. The funds received by this Association from: dues, donations, fines, initiation fees, entertainment revenues and any moneys donated for unspecified uses shall be kept in the General Fund and may be disbursed upon a majority vote of the membership or of the Board of Trustees for any purpose reasonably suited to promote the welfare of the Association and its members. All expenses shall be paid out of the General Fund, except as specifically authorized to be disbursed from the Special Fund. These records shall be open for inspection by any member of the relief association at reasonable times and places.

10.3 Special Fund. All funds received by this Association from any tax sources, membership dues, except for dues payable as contributions to the General Fund, and other money that may be directly donated or transferred to said funds, shall be kept in a separate account on the books of the Treasurer known as the Special Fund and shall be disbursed only for the following purposes:

(a) Payment of members' service pension benefits in accordance with these Bylaws.

(b) Payment of ancillary benefits in accordance with these Bylaws.

(c) Payment of fees, dues and assessments to the Minnesota State Fire Department Association and to the Minnesota Area Relief Association Coalition.

(d) Payment of insurance premiums to the Volunteer Firefighters Benefit Association, or an insurance company licensed by the State of Minnesota offering casualty insurance, and

(e) All administrative expenses authorized under Minnesota Statutes, Section 69.80.

These records shall be public and open for inspection by any member of the relief association, any officer or employee of the state or municipality, or any member of the public, at reasonable times and places.

10.4 Deposits. All money belonging to this Association shall be deposited to the credit of the Association in such banks, trust companies, or other depositories as the Board of Trustees may designate. Board of Trustees shall make deposits in conformance with Minnesota Statutes, the Bylaws and the investment policy.

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**ARTICLE XI
APPENDICES INCORPORATED IN BYLAWS**

The following appendices attached hereto are expressly incorporated herein as a component of these Bylaws, with the same legal force and effect of Bylaws.

Appendix A: Bylaw Amendment History.

Appendix B: Newport Firefighters Relief Association Defined Benefit Lump Sum Retirement Plan.

Appendix C: Benefit Levels.

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Appendix F: Special Laws

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**ARTICLE XII
AMENDMENTS**

12.1 Amendment of Articles of Incorporation by Members. Amendments to the Articles of Incorporation must be approved by a majority of the Board of Trustees and by a majority of the Active Members. The exception is changing the relief association's physical address; in that case, the Board of Trustees may amend the Articles of Incorporation without member approval. If an amendment is initiated by the Directors, proper notice of the proposed amendment must precede a meeting of the members at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed, the members may demand a meeting of the Board of Trustees within 60 days for consideration of the proposed amendment if a regular meeting of the Board would not occur within 60 days.

12.2 Amendment of Articles of Incorporation by Board when Authorized by Members. When authorized by Active Members, the Articles of Incorporation may be amended by the Board of Trustees by the affirmative vote of a majority of the Trustees then in office, at a meeting for which notice of the meeting and the proposed amendment have been given. The members may prospectively revoke the authority of the Board to exercise the power of the members to amend the Articles, with the exception of amending the relief association's physical address, which the Board can amend without member approval. Nothing in this Section shall be construed to permit the Board to adopt, amend, or repeal provisions in the Articles that would alter the rights of the membership.

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12.3 Amendment of Bylaws by Board. The Bylaws of the Association may be amended by the Board at any regular or special meeting of the Board by a vote of the majority present and voting, provided that a quorum is present; and provided further that a notice of date, time, place, purpose of the meeting and proposed amendment be *posted* on the bulletin board of the Association, or if no bulletin board, on the door of its usual meeting room, *and* in accord with Minnesota Statutes, Section 317A.231, each Trustee has been *provided* at least three (3), but not more than sixty (60) days, before the meeting, (excluding the date of the meeting) with notice

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setting forth the date, time, place, purpose of the meeting and proposed amendment.

Board Limitations of Bylaw Amendments. Nothing in this section shall be construed to permit the Board to adopt, amend or repeal provisions regarding:

(a) Amending in any way the definition of "Active Service" set forth in the Plan attached hereto

(b) Decreasing any benefit level set forth in the Plan attached hereto

(c) Changing the deferred interest percentage set forth in the Plan attached hereto

(d) Changing the vesting schedule set forth in the Plan attached hereto

(e) Membership (Article IV)

(f) Compensation (Section 6.8)

(g) Elections (Article VII)

(h) Member Quorum (Section 8.5)

(i) Revise the number of Members required to amend the Bylaws (Section 12.4)

(j) or limit the right of at least ten percent of the membership to propose a resolution for action by the members to adopt, amend, or repeal Bylaws that the Board has taken action to adopt, amend or repeal pursuant to this section.

12.4 Amendment of Bylaws by Members. The Bylaws of the Association may be amended at any regular or special meeting by a vote of two-thirds of the Active Members present and voting, provided that a quorum is present; and provided further that notice of any proposed amendment(s) shall be given by posting or reading the same at any regular or special meeting not more than thirty-one (31) days preceding that upon which such amendment(s) are to be acted upon (excluding the date of the meeting).

12.5 Ratification of Amendments by Municipality. If the Association amends its bylaws to affect the amount of, the manner of payment of, or the conditions for qualification for service pensions or ancillary benefits or disbursements other than administrative expenses, it may be necessary to obtain ratification of the amendment by the Municipality as described in Section 8.1 of Appendix B.

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7.3 Officer Terms. The offices of President, Vice President, Secretary, and Treasurer shall be elected to three-year terms.

The office of President shall be nominated and elected separately to a three-year staggered term at the annual meeting every third year.

The offices of Vice President and Secretary shall be nominated and elected separately to a three-year staggered term at the annual meeting every third year.

The office of Treasurer shall be shall be nominated and elected separately to a three-year staggered term at the annual meeting every third year.

August 2013

Newport Police Department
Activity Report

		Monthly Total	Yearly Total
ACCIDENTS		7	83
ADMINISTRATIVE		111	814
ALARMS		17	86
ANIMAL CALLS		16	92
ARRESTS	Felony	3	22
	Misdemeanor	9	69
	Gross Misd.	6	29
ASSAULTS	Aggravated	1	2
	Simple		11
ASSIST OTHER DEPT/OFFICER		74	501
ASSIST PUBLIC		185	1409
AUTO THEFT		1	2
	Attempted		
BURGLARY		5	18
	Attempted		3
CHILD ABUSE/NEGLECT			10
CIVIL DISPUTES		11	65
CRIMINAL SEXUAL CONDUCT			3
CURFEW			2
DAMAGE TO PROPERTY		7	36
DEATH INV.		1	4
DISORDER CONDUCT		4	23
DOMESTICS		15	101
DRIVING COMPLAINT		13	71
DRUGS/PARAPHERNALIA			15
DRUNKS/DETOX			13
D.W.I.		5	37
FIRECALLS		10	42
FORGERY			6
FOUND PROPERTY			9
HAR/COMM		1	16
HANG UPS (911)		5	28
HOMICIDE			1
JUVENILE PETTY CITATIONS		3	21
JUVENILE PROBLEMS		4	53
LOCK-OUTS			25
MEDICAL CALLS		24	178
MISSING PERSONS		1	6
ORDINANCE VIOLATIONS		46	302
ORDINANCE WINTER PARK			87
PROWLERS			
ROBBERY		1	3
	Attempted		1
RUN-AWAY			9
STOLEN AUTOS RECOVERED		2	10
SUSPICIOUS ACTIVITY		41	191
THEFT		10	77
	Attempted		
CITATIONS		138	922
TRAFFIC WARNINGS		69	624
		Monthly Total	Yearly Total
Overall Grand Total All Events		845	6132



PROFESSIONAL SERVICES

More ideas. Better solutions.®

MEMO

To: Honorable Mayor and City Council Members
Ms. Deb Hill, City Administrator

From: Jon Herdegen, P.E. Project Engineer

Subject: 2013 Street Improvements Project – Update & Partial Payment No. 1

Date: September 26, 2013

McNamara Contracting and their sub-contractors arrived onsite the week of September 9th and began work on the sanitary sewer repairs. The sewer repairs were completed by the end of the week and the contractor has since began preparing the street edges for the new concrete curb. Based on the tentative schedule provided by McNamara, the curb placement will begin on September 30th.

The contractor has requested the first partial payment for the project. Enclosed for your consideration is an itemized description of the work completed to date. The original contract price was \$984,462.78, after the approval of Change Order No. 1; the contract amount was revised to \$725,308.15. The value of the work completed to date is \$97,478.09. Less 5% retainage, the amount requested by McNamara is \$92,604.19.

We have observed the work performed by McNamara Contracting throughout the duration of construction activities. We have determined the work to be satisfactory and the project is progressing along schedule.

Action Requested: We respectfully request the Council to consider Partial Payment No. 1 in the amount of \$92,604.19. If the payment is acceptable, please sign and return one copy of the enclosed application to McNamara with payment; return one copy to MSA and retain one copy for your records.

Offices in Illinois, Iowa, Minnesota, and Wisconsin

60 Plato Blvd. East, Suite 140, St. Paul, MN 55107-1835

(612) 548-3132 (866) 452-9454

FAX: (763) 786-4574 WEB ADDRESS: www.msa-ps.com

PARTIAL PAY ESTIMATE NO. 1

FROM: August 7, 2013
TO: September 20, 2013

COMPLETION DATE
ORIGINAL: November 15, 2013
REVISED:
WORKING DAYS USED: N/A
WORKING DAYS REMAINING: N/A

AMOUNT OF CONTRACT
ORIGINAL: \$984,462.78
REVISED:

PROJECT: 2013 STREET IMPROVEMENTS
CITY PROJECT NO. 2013-15

CONTRACTOR: MCNAMARA CONTRACTING, INC
ADDRESS: 16700 CHIPPENDALE AVE., ROSEMOUNT, MN 55068
OFFICE: 651-322-5500
FAX: 651-322-5550

OWNER: CITY OF NEWPORT

ITEM NO	SPEC NO.	ITEM DESCRIPTION	UNIT	QTY TOTAL	UNIT PRICE	THIS PERIOD		TOTAL TO DATE	
						QTY	TOTAL	QTY	TOTAL
SCHEDULE 1.0 - STREET									
1	2021.501	MOBILIZATION	LS	1	\$ 77,500.00	0.50	\$ 38,750.00	0.50	\$ 38,750.00
2	2101.502	CLEARING	TREE	15	\$ 200.00		\$ -	0.00	\$ -
3	2101.507	GRUBBING	TREE	15	\$ 200.00		\$ -	0.00	\$ -
4	2104.501	REMOVE CONCRETE CURB	LF	0	\$ 7.00		\$ -	0.00	\$ -
5	2104.503	REMOVE CONCRETE WALK	SF	600	\$ 2.00		\$ -	0.00	\$ -
6	2104.505	REMOVE CONCRETE PAVEMENT	SY	312	\$ 15.00		\$ -	0.00	\$ -
7	2104.505	REMOVE BITUMINOUS PAVEMENT	SY	12,883	\$ 0.01	675.00	\$ 6.75	675.00	\$ 6.75
8	2104.509	REMOVE MAILBOX SUPPORT	EACH	74	\$ 42.00	65.00	\$ 2,730.00	65.00	\$ 2,730.00
9	2104.509	REMOVE SIGN & POST	EACH	40	\$ 27.00		\$ -	0.00	\$ -
10	2104.523	SALVAGE SIGN & POST	EACH	10	\$ 27.00		\$ -	0.00	\$ -
11	2104.523	SALVAGE LANDSCAPING	EACH	5	\$ 600.00		\$ -	0.00	\$ -
12	2104.618	SALVAGE PAVERS (ALL TYPES & SIZES)	SF	120	\$ 10.00		\$ -	0.00	\$ -
13	2105.501	COMMON EXCAVATION (STREET) (EV)	CY	1,403	\$ 20.00	94.00	\$ 1,880.00	94.00	\$ 1,880.00
14	2105.522	GRANULAR BORROW (CV)	CY	1,519	\$ 19.00		\$ -	0.00	\$ -
15	2105.525	TOPSOIL BORROW (LV)	CY	870	\$ 22.00		\$ -	0.00	\$ -
16	2211.501	AGGREGATE BASE CLASS 5	TON	1,691	\$ 13.00	356.68	\$ 4,636.84	356.68	\$ 4,636.84
17	2232.501	MILL BITUMINOUS SURFACE (1.5")	SY	9,264	\$ 0.30		\$ -	0.00	\$ -
18	2360.501	TYPE SP 9.5 WEAR COURSE MIXTURE 2B (D/W)	TON	63	\$ 160.00		\$ -	0.00	\$ -
19	2360.501	TYPE SP 9.5 WEAR COURSE MIXTURE 2B (STREET)	TON	1,032	\$ 45.00		\$ -	0.00	\$ -
20	2360.505	TYPE SP 12.5 BIT MIXTURE FOR PATCHING	TON	1,032	\$ 110.00		\$ -	0.00	\$ -
21	2357.502	BITUMINOUS MATERIAL FOR TACK COAT	GAL	1,085	\$ 2.00		\$ -	0.00	\$ -
22	2521.501	4" CONCRETE WALK	SF	600	\$ 5.00		\$ -	0.00	\$ -
23	2531.507	6" CONCRETE DRIVEWAY PAVEMENT	SY	360	\$ 36.00		\$ -	0.00	\$ -
24	2531.501	CONCRETE CURB & GUTTER DESIGN B618	LF	9,240	\$ 9.00		\$ -	0.00	\$ -
25	2540.602	INSTALL MAIL BOX SUPPORT (SINGLE)	EACH	57	\$ 110.00		\$ -	0.00	\$ -
26	2540.602	INSTALL MAIL BOX SUPPORT (DOUBLE)	EACH	5	\$ 125.00		\$ -	0.00	\$ -
27	2540.602	INSTALL MAIL BOX SUPPORT (MULTIPLE)	EACH	2	\$ 200.00		\$ -	0.00	\$ -
28	2563.601	TRAFFIC CONTROL	LS	1	\$ 20,000.00	0.50	\$ 10,000.00	0.50	\$ 10,000.00
29	2564.533	F&I SIGN PANEL TYPE C	SF	148	\$ 26.00		\$ -	0.00	\$ -
30	2564.602	F&I SIGN PANEL TYPE SPECIAL	EACH	14	\$ 210.00		\$ -	0.00	\$ -
31	2564.602	SIGN POST	EACH	30	\$ 52.00		\$ -	0.00	\$ -
32	2564.602	SIGN POST TYPE SPECIAL	EACH	14	\$ 52.00		\$ -	0.00	\$ -
33	2573.502	SILT FENCE, TYPE MACHINE SLICED	LF	300	\$ 3.00		\$ -	0.00	\$ -
34	2573.540	FIBER LOG	LF	200	\$ 5.00		\$ -	0.00	\$ -
35	2573.603	ROCK LOG	LF	300	\$ 12.00		\$ -	0.00	\$ -
36	2573.602	TEMPORARY ROCK CONSTRUCTION ENTRANCE	EACH	4	\$ 850.00		\$ -	0.00	\$ -
37	2573.602	CONCRETE WASH-OUT AREA	EACH	2	\$ 0.01		\$ -	0.00	\$ -
38	2573.602	INLET PROTECTION	EACH	23	\$ 300.00		\$ -	0.00	\$ -
39	2575.523	EROSION CONTROL BLANKET CATEGORY II	SY	612	\$ 2.00		\$ -	0.00	\$ -
40	2575.505	SODDING TYPE LAWN	SY	10,240	\$ 3.50		\$ -	0.00	\$ -
41	2575.535	WATER	MGAL	343	\$ 48.00		\$ -	0.00	\$ -
42	2575.601	SITE RESTORATION	LS	1	\$ 15,000.00		\$ -	0.00	\$ -
43	2575.601	EROSION & SEDIMENT CONTROL	LS	1	\$ 8,000.00	0.50	\$ 4,000.00	0.50	\$ 4,000.00
44	2575.608	HYDRAULIC SOIL STABILIZER TYPE 6	LB	1,378	\$ 4.00		\$ -	0.00	\$ -
T SCHEDULE 1.0 - STREET - TOTAL CONSTRUCTION							\$ 62,003.59		\$ 62,003.59

PROJECT SUMMARY

	THIS PERIOD	TOTAL TO DATE
T SCHEDULE 1 - STREET - TOTAL	\$ 62,003.59	\$ 62,003.59
T SCHEDULE 2 - SANITARY - TOTAL	\$ 23,074.50	\$ 23,074.50
T SCHEDULE 3 - WATERMAIN - TOTAL	\$ -	\$ -
T SCHEDULE 4 - STORM - TOTAL	\$ -	\$ -
T SCHEDULE 5 - ALTERNATE BID - TOTAL	\$ -	\$ -
T SCHEDULE 6 - MAINLINE JOINT REPAIR - TOTAL	\$ 8,400.00	\$ 8,400.00
T SCHEDULE 7 - MAINLINE CRACK REPAIR - TOTAL	\$ 4,000.00	\$ 4,000.00

AMOUNT EARNED	\$ 97,478.09	\$ 97,478.09
AMOUNT RETAINED - 5%	\$ 4,873.90	\$ 4,873.90
PREVIOUS PAYMENTS		\$ -
AMOUNT DUE	\$ 92,604.19	

CONTRACTOR'S CERTIFICATION

The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates was issued and payments received from the owner, and that current payment shown herein is now due.

Contractor **MCNAMARA CONTRACTING, INC**

By 

Date 9/25/13

ENGINEER'S CERTIFICATION

The undersigned certifies that the work has been carefully observed and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

Engineer: **MSA PROFESSIONAL SERVICES**

By _____

Date _____

APPROVED BY OWNER

Owner: **CITY OF NEWPORT**

By _____

Date _____



MEMO

TO: Mayor and City Council
Deb Hill, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: September 30, 2013

SUBJECT: Public Works Vacancy

BACKGROUND

Chuck Johnson, Public Works, provided the City with a resignation letter stating that he is retiring and his last day will be October 18, 2013. Derek Marson was hired by the City in July 2013 to replace Chuck. Furthermore, the City hired Nathan Peterson on a full-time temporary basis to fill another vacancy in the Public Works Department. Nathan's temporary status will expire at the end of the month.

RECOMMENDATION

It is recommended that the City Council make two motions in regards to the Public Works Vacancies. The first motion is to accept Chuck Johnson's resignation. The second motion is to approve the hiring of Nathan Peterson on a full-time permanent basis effective October 21, 2013. Please note that new employees shall be receive an hourly wage equal to 90% of the current hourly rate for the first year and 95% for the second year. The current rate is \$25.93. Therefore, Nate will start at \$23.34/hour.

Bruce Hanson

City Of Newport Public Works

September 23, 2013

Please accept this letter as my formal notice of retirement due date of October 18, 2013.

As of this date I will be giving up my employment and duties with the Newport Public Works Department.

Thanks,

A handwritten signature in black ink, appearing to read "Charles R. Johnson". The signature is written in a cursive style with a long horizontal line extending to the right.

Charles R. Johnson

RESOLUTION NO. 2013-50

A RESOLUTION BY THE CITY OF NEWPORT AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE AND ENTER INTO AN AGREEMENT FOR SERVICES WITH THE BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL

WHEREAS, in order to reduce costs and improve the quality of certain public water utility related services, the City of Newport wishes to enter into an agreement with the Board of Water Commissioners of the City of Saint Paul (“Board”); and

WHEREAS, the Board has agreed to provide the following services to the City of Newport: repair, relocation or installation of public water mains, water services and hydrants located within the legal boundaries of Newport in a cost-effective manner.

NOW, THEREFORE, BE IT RESOLVED That the Newport City Council Hereby authorizes the Mayor and City Administrator to execute and enter into an Agreement for Services between the City of Newport and the Board of Water Commissioners of the City of Saint Paul for the services listed above..

Adopted by the Newport City Council this 3rd day of October, 2013.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Deb Hill, City Administrator

Finance # _____

AGREEMENT FOR SERVICES

between the

CITY OF NEWPORT

and the

BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL

This **AGREEMENT** is made and entered into on this ___ day of _____, 2013, by and between the **CITY OF NEWPORT, MINNESOTA**, (“Newport”), a municipal corporation under the laws of the State of Minnesota, and the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL**, a municipal corporation under the laws of the State of Minnesota, (“Board”).

WITNESSETH:

WHEREAS, in order to reduce costs and improve the quality of certain public water utility related services, Newport has requested that the Board perform such services within the boundaries of Newport; and

WHEREAS, the Board has demonstrated cost-effectiveness and expertise in providing these services both for itself and its regional customers; and

WHEREAS, Newport has selected public water main and public water service repair from a list of cost-effective water-related services that the Board could perform for Newport.

NOW THEREFORE, in consideration of the mutual terms, covenants, warranties and conditions hereinafter set forth, the parties hereto, intending to be legally bound hereby, mutually agree as follows:

ARTICLE 1
Scope of Services

SECTION 1.01. Scope of Services.

Pursuant to the terms and conditions herein, the Board agrees to perform repair, relocation or installation of public water mains, water services and hydrants located within the legal boundaries of Newport (“Construction Work”), as it is defined and pursuant to ARTICLE 4 of this Agreement.

ARTICLE 2
Term

SECTION 2.01. Term.

This Agreement shall commence upon the date the last required signature is obtained and shall remain in effect until terminated in accordance with SECTION 8.04 of this Agreement.

ARTICLE 3
Responsibility of Newport

SECTION 3.01 Newport Responsibilities.

As a condition precedent to the Board performing Construction Work, Newport agrees it shall accomplish the following tasks:

1. Evaluate and determine the urgency of the problem requiring Construction Work.
2. Locate leaks using its equipment and personnel.
3. Operate its main valves to isolate any water main break and flush and restore service to the main after the Board completes any repair. The Board shall not operate any valves or hydrants without Newport’s direct supervision.
4. Provide the Board with the appropriate Section, Township and Range designation for the Board to call Gopher State One-Call for utilities locations.
5. Review and determine the urgency of the repair and provide the Board’s Saint Paul Regional Water Service Dispatch Office with specific instructions regarding whether Construction Work should be commenced immediately (with possible overtime) or

whether the Construction Work may be, or should be, commenced and performed during regular work hours. In the event that Newport fails to properly notify the Board of the determined urgency of the problem, the Board may, at its sole option, deny the request for Construction Work.

6. Notify affected property owners of necessary repairs and unavailability of water service.
7. Salt and sand street surfaces when and where it is necessary to safeguard vehicular and pedestrian traffic due to a main or service break or due to water pumped from the excavation area of a main or service break.
8. Provide a site for disposal of spoil material from the main or service excavation. In most instances, Newport shall furnish all backfill material and shall provide a front-end loader and operator to load sand into a Board's tandem truck. In cases where the Board provides backfill material, Newport agrees to compensate the Board for said provision.
9. Provide materials, installation and maintenance of all necessary permanent street, sidewalk or boulevard repairs. Newport shall also provide materials necessary to make any temporary repair to streets, boulevards and sidewalks. Newport shall maintain any temporary sidewalk or boulevard repair made by the Board.
10. Provide additional trucks and drivers as needed.

SECTION 4.01 Board Responsibilities.

The Board agrees to perform duly requested Construction Work in accordance with good industry practices and consistent with its own proven methods. The Board agrees to:

1. Report to the work site on a schedule mutually agreeable to Newport and the Board. When responding to an emergency request, reporting to the work site shall be within four (4) hours of initial notification.
2. Provide all street barricades and traffic control devices needed to mark the Construction Work, perform the repair and direct traffic.
3. Contact Gopher State One-Call.
4. Furnish all labor, equipment and material required to excavate safely around any and all located utilities, comply with applicable OSHA regulations, and repair the public water main or public water service break and compact the sand backfill material to a level acceptable to Newport, except for those piping materials described in SECTION 3.01.11 of this Agreement.
5. Furnish a dump truck and operator to haul all excavated material to Newport disposal site and to haul backfill materials to the repair site.

The parties expect to revise the above tasks from time to time during the life of this Agreement. Such revisions shall be authorized by written approval of SPRWS General Manager and Newport City Administrator, or their designated representatives. Such approval shall be in the form of executed revisions to SECTION 4.01 of this Agreement.

ARTICLE 5

Consideration and Payment

SECTION 5.01. Consideration.

In consideration of the Board's performance of Construction Work, Newport shall compensate the Board for any and all labor, materials, equipment, overhead and miscellaneous expenses and charges associated with the Board's performance of same. Labor charges shall be at the rates specified in the appropriate bargaining unit contract with the City of Saint Paul, plus fringe benefits calculated by the City of Saint Paul. Charges for materials, equipment, overhead and miscellaneous charges shall be at rates calculated by the Board.

On October 1 of each year, the Board shall provide Newport an estimate of the expected percentage change in labor, material, miscellaneous, overhead and equipment rates for the next year, and shall provide Newport the actual rates as soon as they become available.

SECTION 5.02. Payment.

Upon receipt of the Board's invoice and verification of the charges, Newport agrees it shall make payment to the Board within thirty (30) days of receipt. Payment shall be in the full amount of the invoice and shall be delivered to the address indicated on the invoice.

ARTICLE 6
Liability and Hold Harmless

SECTION 6.01. Liability.

Each party agrees that it shall be responsible for its own acts and omissions and the results thereof to the extent authorized by law and shall not be responsible for the acts and omissions of the other party and the results thereof. Both Parties' liability shall be governed by and limited to the tort liability provisions found in Minnesota Statutes Chapter 466, as amended from time to time, and any other applicable law. This provision shall survive any termination of this Agreement.

SECTION 6.02. Hold Harmless.

Each party agrees that it shall indemnify and save harmless, protect and defend the other party, its employees and agents from any or all liability, suits or demands, including the legal defense thereof, for bodily injuries, including death, or property damages, including loss of use arising out of any activity by itself or its employees and agents under this Agreement.

ARTICLE 7
Representations and Warranties

SECTION 7.01. Authority, Binding Effect.

Both parties represent and warrant that the individuals executing this Agreement on behalf of each of the parties have the full power and authority to execute and perform this Agreement, and this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms.

SECTION 7.02. Corporate Authorization.

Both Parties represent and warrant that the execution and delivery of this Agreement and the performance of duties contemplated herein have been duly authorized by all necessary

legislative or corporate action. The execution, delivery and performance of this Agreement shall not conflict with or result in the breach or violation of any term or provision of either party's municipal ordinances or state statutes, charter or constitution, any other state or federal law, or any other provision or authority.

ARTICLE 8
Miscellaneous Provisions

SECTION 8.01. Successors and Assigns.

All terms, covenants, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs, executors and assigns. This Agreement and the rights and obligations of any party hereunder shall not be assignable except with the written consent of the other party hereto, which consent shall not be unreasonably withheld.

SECTION 8.02. Notice.

Any notice, request, demand, statement or consent required or permitted to be given hereunder, except for notice of Construction Work as provided for in SECTION 1.01 above, shall be in writing, shall be signed by or on behalf of the party giving notice, and shall be personally delivered or sent by express service, fax, or certified or registered mail, return receipt requested, postage prepaid, to the other party to the respective address given herein below:

If to Board:	Board of Water Commissioners c/o General Manager, Saint Paul Regional Water Services 1900 Rice Street Saint Paul, Minnesota 55113 Fax No. (651) 266-6290
--------------	--

If to Newport:	Deb Hill, City Administrator 596 7th Ave. Newport, MN. 55055 Fax No. (651) 651-459-9883
----------------	--

Any such notice given as aforesaid shall be conclusively deemed to have been given and received on the day on which such notice was delivered. Either party may, from time to time, furnish in writing to the other party such notice of a change in the address or individual to whom such notices are to be given.

SECTION 8.03 Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the extent permitted by law.

SECTION 8.04. Termination.

Except for the provisions contained in ARTICLE 6, which shall survive any termination of this Agreement, this Agreement may be terminated in whole or in part in writing by either party, provided that no termination may be effected unless: (1) The other party is given not less than ninety (90) calendar days written notice of intent to terminate, (2) The non-terminating party is afforded an opportunity to confer with the terminating party prior to termination.

SECTION 8.05. Waivers and Amendments.

This Agreement may be amended or superseded, and its terms or covenants hereof may be waived, only by a written instrument executed by the parties hereto or in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this Agreement or in any other such instrument, whether by conduct or otherwise, in anyone or more

instances, shall be deemed to be, or construed as, a further or continuing waiver of any breach, or a waiver of the breach of any other term or covenant contained herein.

SECTION 8.06. Counterparts.

This Agreement may be executed in two or more counterparts, each of which may be deemed an original but together shall constitute but one and the same instrument.

SECTION 8.07. Force Majeure.

Neither party shall be held responsible for performance of this Agreement if the party's performance is prevented by acts or events beyond the party's reasonable control including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strike and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive or administrative authorities.

SECTION 8.08. Entire Agreement.

It is understood and agreed that this entire Agreement supersedes and replaces any and all agreements and negotiations, whether oral or written, between the parties relating to the subject matters herein.

[The remainder of this page is left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates listed below.

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

By: _____
Stephen P. Schneider, General Manager
Saint Paul Regional Water Services

By: _____
Matt Anfang, President

Date: _____

Date: _____

Approved as to form:

By: _____
Assistant City Attorney

By: _____
Mollie Gagnelius, Secretary

Date: _____

Date: _____

By: _____
Todd Hurley, Director
Office of Financial Services

Date: _____

Approved as to form:

CITY OF NEWPORT, MINNESOTA

By: _____
City Attorney

By: _____
Tim Geraghty, Mayor

Date: _____

Date: _____

By: _____
Deb Hill, City Administrator

Date: _____