



## **AGENDA**

### **Greenwood City Council Special Meeting**

Thursday, April 25, 2013

Immediately following the Planning Commission meeting (approximately 7:15pm)

20225 Cottagewood Road, Deephaven, MN 55331

*In accordance with open meeting laws, members of the public are welcome to attend this meeting.*

1. CALL TO ORDER ~ ROLL CALL ~ APPROVE AGENDA
2. SPECIAL MEETING BUSINESS
  - A. 1st Reading: Ordinance 216 Amending Zoning Code Chapter 11 Regarding Residential Uses
  - B. 2nd Reading: Ordinance 217 Home Occupations Ordinance Amending Code Chapters 4 & 12
  - C. 2nd Reading: Ordinance 218 Amending Penal Code Chapter 9 to Add Prohibited Uses of Residential Properties
  - D. Discuss: Excelsior Blvd. Watermain Project Status
  - E. Discuss: St. Alban's Bay Bridge Agreement Status
3. ADJOURNMENT



Agenda Number: **2A-C**

Agenda Date: 04-25-13

- Agenda Item:**
- A. 1st Reading: Ordinance 216 Amending Zoning Code Chapter 11 Regarding Residential Uses
  - B. 2nd Reading: Ordinance 217 Home Occupations Ordinance Amending Code Chapters 4 & 12
  - C. 2nd Reading: Ordinance 218 Amending Penal Code Chapter 9 to Add Prohibited Uses of Residential Properties

**Summary:** In response to information learned at the January planning and zoning workshop, the city council directed staff to draft an ordinance to address "Home Occupations." During the process, staff noticed that several of the items listed as principal, accessory, and conditional uses needed to be updated in the "residential uses" section of the zoning code. Therefore an ordinance for Residential Uses was drafted in addition to the ordinance for Home Occupations. Prior to review by the city council, the city received notification regarding a private residence being marketed as a vacation rental property on Fairview Street. To address this issue, language was added to the drafts of the ordinances. The city council reviewed the draft ordinances at the 04-03-13 city council meeting. The council decided to streamline the process to get ordinances in place as soon as possible. The council also directed the city attorney to draft a penal code (chapter 9) ordinance to prohibit hotel / motel, event centers, etc. in residential districts.

At the 04-11-13 special city council meeting, the council approved the 1st readings of ordinances 217 and 218. A 30-day minimum initial rental term was set by the council. The council directed the city clerk to conduct a survey of current rental property owners to determine current initial rental terms in the city and get their input. The city clerk will present the results of the survey at the 04-25-13 special city council meeting.

#### Timeline

- 04-11-13 City Council Considers 1st Reading, Ordinance 217 Home Occupations, APPROVED
- 04-11-13 City Council Considers 1st Reading, Ordinance 218 Prohibited Residential Uses, APPROVED
- 04-17-13 Planning Commission Review, Ordinance 216 Residential Uses, NO CHANGES FOR PUBLIC HEARING
- 04-25-13 Planning Commission Public Hearing and Recommendation, Ordinance 216 Residential Uses
- 04-25-13 City Council Considers 1st Reading, Ordinance 216 Residential Uses
- 04-25-13 City Council Considers 2nd Reading, Ordinance 217 Home Occupations
- 04-25-13 City Council Considers 2nd Reading, Ordinance 218 Prohibited Residential Uses
- 04-26-13 City Clerk Submits to Sun-Sailor, Ordinance 217 & Ordinance 218
- 05-01-13 City Council Considers 2nd Reading, Ordinance 216 Residential Uses
- 05-02-13 Published in Sun-Sailor, Ordinance 217 & Ordinance 218
- 05-02-13 City Clerk Submits to Sun-Sailor, Ordinance 216
- 05-09-13 Published in Sun-Sailor, Ordinance 216

**City Council Action:** Optional. Potential motions ...

1. I move the city council approves the 1st reading of ordinance 216 regarding residential uses as written (or with the following changes \_\_\_\_\_), and directs that the consideration of the 2nd reading of the ordinance be placed on the 05-01-13 council agenda.
2. I move the city council approves the 2nd reading of ordinance 217 regarding home occupations as written (or with the following changes \_\_\_\_\_), and directs the city clerk to submit the ordinance to the Sun-Sailor for publication.
3. I move the city council approves the 2nd reading of ordinance 218 regarding prohibited residential uses as written (or with the following changes \_\_\_\_\_), and directs the city clerk to submit the ordinance to the Sun-Sailor for publication.
4. Do nothing or other motion ???

*Greenwood code section 1215 requires 2 readings of all ordinances prior to adoption. The 2nd reading shall be within 3 months of the 1st reading. There may be changes between the 1st and 2nd readings. Ordinances go into effect once they are published in the city's official newspaper. The planning commission must hold a public hearing and make a recommendation to the city council regarding any changes to the zoning code chapter 11.*

**AN ORDINANCE OF THE CITY OF GREENWOOD, MINNESOTA AMENDING  
GREENWOOD ORDINANCE CODE CHAPTER 11 REGARDING USES IN RESIDENTIAL DISTRICTS**

THE CITY COUNCIL OF THE CITY OF GREENWOOD, MINNESOTA DOES ORDAIN:

**SECTION 1.**

Greenwood ordinance code section 1102 is amended to add the following definitions:

“Event Center means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public or available for the conduct of public or private gatherings of people or for the conduct of events thereat of any sort or kind in exchange for valuable consideration, provided that the use of a single-family home by the property owner, or, if leased, by a leasehold tenant with leasehold possessory rights of not less than 30 days for private family gatherings, or an occasional party host to specific invitees are excepted.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

“Lake Recreation Center means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public or available for the conduct of public or private gatherings of people or for the conduct of events thereat of any sort or kind of lake use or lake access related activity, including, but not limited to, the hosting of gatherings or events, the provision of food, refreshments, services of any kind, equipment rentals, swimming, fishing, camping, water skiing, personal water craft use, boat launch or docking services, (of whatever length of term), or charter boat passenger collection point, in exchange for valuable consideration.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

“Marina means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public offering power boat, sailboat or personal watercraft launching, mooring (however temporary), or available for the conduct of any sort or kind of lake use or lake access related activity, including, but not limited to, the provision of food, refreshments, ice, fuel, services of any kind, water-related equipment or boat rentals, swimming, fishing, waterskiing, personal watercraft use, or charter boat passenger collection point, in exchange for valuable consideration.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

**SECTION 2.**

Greenwood ordinance code section 1102 definition of “Home Occupation” is amended to read as follows:

“Home Occupation means a business office and related support services of a business located or operated from a residence whose business activity is conducted entirely within the dwelling and carried on by individuals residing therein. Home occupations must be incidental and secondary to the primary residential use of the dwelling and may not in the judgment of the zoning administrator adversely impact or change the residential appearance and character thereof. No dwelling may be used exclusively for a home occupation. The zoning administrator shall have authority to review and approve or disapprove home occupations. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

**SECTION 3.**

Greenwood ordinance code section 1102 definition of ‘Hotel, Motel’ is amended to read as follows:

“Hotel, Motel means any building or portion of a building where residential use, or occupancy, or sleeping accommodations is offered to persons for short-term or transient use in exchange for compensation on a per-use, per-day, per-week, per-month, or per-season basis. A residential property that is rented for 30 days or more is not considered to be a “Hotel / Motel” provided that there is a written lease to a specific tenant(s), without right of sub-letting or assignment. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

**SECTION 4.**

Greenwood ordinance code section 1120.05 is amended to read as follows:

**“Section 1120.05. R-1A Permitted Uses.**

No building shall be used or shall hereafter be erected, altered or converted in any manner, except as provided in section 1120 et seq. Permitted uses shall be:

**Subd. 1. Principal Uses.**

- a) Single-family detached dwellings. ~~excluding the leasing or renting of rooms.~~
- b) Open area, parks and playgrounds owned and operated by a public agency, or by a home association for a subdivision or neighborhood.
- c) Residential subdivisions, including streets, lighting and water service.

- d) Uses mandated in state statutes as permitted uses.

Subd. 2. Accessory Uses.

- a) Private garages.
- b) Tool house, sheds and similar storage areas for domestic supplies.
- c) Privately-owned swimming pools for the use and convenience of the resident and their guests.
- d) Off-street parking.
- e) Commonly accepted playground equipment and park shelter buildings.
- f) Home occupations as regulated by section 480.
- g) Swimming beaches.
- h) Boat docks.
- i) Signs as regulated in section 1140 et seq.

Subd. 3. Conditional Uses.

- a) Public utilities, including such items as electrical distribution stations or any such similar structure located above ground.
- ~~b) Boat houses.~~
- ~~c) Theaters.~~
- b) Uses mandated in state statutes as conditional uses.”

SECTION 5.

Greenwood ordinance code section 1122.05 is amended to read as follows:

**“Section 1122.05. R-1B Permitted Uses.**

No building shall be used or shall hereafter be erected, altered, or converted in any manner, except as provided in section 1122 et seq. Permitted uses shall be:

Subd. 1. Principal Uses.

- (a) Single-family detached dwellings. ~~excluding the leasing or renting of rooms.~~
- (b) Open area, parks and playgrounds owned and operated by a public agency, or by a home association for a subdivision or neighborhood.
- (c) Residential subdivisions, including streets, lighting, and water service.
- (d) Uses mandated in state statutes as permitted uses.

Subd. 2. Accessory Uses.

- a) Private garages.
- b) Sheds and similar storage areas for domestic supplies.
- c) Privately-owned swimming pools for the use and convenience of the resident and their guests.
- d) Off-street parking.
- e) Commonly accepted residential playground equipment and park shelter buildings.
- f) Boat docks.
- g) Home occupations as regulated by section 480.
- h) Signs as regulated in section 1140 et seq.

Subd. 3. Conditional Uses.

- a) Public utilities including such items as electrical distribution stations or any such similar structure located above ground.
- b) Uses mandated in state statutes as conditional uses.”

SECTION 6.

Greenwood ordinance code section 1125.05 is amended to read as follows:

**“Section 1125.05. R-2 Permitted Uses.**

No building shall be used or shall hereafter be erected, altered or connected in any manner except as provided in this section. Permitted uses shall be:

Subd. 1. Principal Uses:

- a) Uses as permitted in the R-1A district.
- b) Single-family detached buildings.
- c) Uses mandated in state statutes as permitted uses.

Subd. 2. Accessory Uses:

- a) Uses as permitted in the R-1A district.
- b) ~~Home occupations as regulated by section 480.~~

Subd. 3. Conditional Uses:

- a) Churches, chapels, synagogues, temples, and similar religious buildings.
- ~~b) Parking lots.~~
- ~~c) Home nurseries provided the management and supervision is provided completely by the occupants of the principal use.~~
- ~~d) Two-family dwellings.~~
- ~~e) Home occupations.~~
- ~~f) Professional offices and studios provided there is no exterior change in the structure and that not more than 1/4 of the floor area of the dwelling is devoted to the accessory use.~~
- b) Uses mandated in state statutes as permitted uses."

SECTION 7.

Greenwood ordinance code section 1140.05 is amended to read as follows:

**"Section 1140.05. Dwelling/Lot; Prohibited Uses.**

Subd. 1. Dwellings /Lot. In any residence district not more than 1 dwelling shall be permitted to be erected on a single lot. Grouping of buildings designed for dwelling purposes may only be permitted through a conditional use.

Subd. 2. Prohibited Uses, All Districts. No property or lot of record may be put to a use or employed for a use or purpose other than those specifically enumerated as permitted uses, accessory uses, or conditional uses under the applicable respective zoning code regulations for the district host to such property or lot.

Subd. 3. Specifically Prohibited Uses and Activities in Residential Districts. No property or lot of record zoned residential (R-1A, R-1B, or R-2) may be employed for used for or as (1) a "Hotel, Motel," (2) an "Event Center," (3) a "Marina," or (4) a "Lake Recreation Center."

Subd. 4. Leasehold Term Minimums. To preserve the residential character and assure that the city's single-family residential districts will be exclusive of other types of uses, no residentially-zoned property may be leased to third parties for any purpose other than single-family residential use and in no event shall such leaseholds or sub-leaseholds be for an initial term of less than 30 days in exchange for fair market rental value."

SECTION 8.

Effective Date. This ordinance shall be effective upon publication according to law.

Enacted by the city council of the city of Greenwood, Minnesota this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_ AYES \_\_\_ NAYS

CITY OF GREENWOOD

By: \_\_\_\_\_  
Debra J. Kind, Mayor

Attest: \_\_\_\_\_  
Gus E. Karpas, City Clerk

First reading: \_\_\_\_\_, 2013  
Second reading: \_\_\_\_\_, 2013  
Publication: \_\_\_\_\_, 2013

**AN ORDINANCE OF THE CITY OF GREENWOOD, MINNESOTA  
AMENDING GREENWOOD ORDINANCE CODE CHAPTER 4 PERMITS & LICENSES TO ADD  
SECTION 480 HOME OCCUPATIONS AND ADDING RELATED DEFINITIONS TO CHAPTER 12**

THE CITY COUNCIL OF THE CITY OF GREENWOOD, MINNESOTA DOES ORDAIN:

**SECTION 1.**

Greenwood ordinance code chapter 12, section 1205 is amended to add the following definitions:

“Event Center means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public or available for the conduct of public or private gatherings of people or for the conduct of events thereat of any sort or kind in exchange for valuable consideration, provided that the use of a single-family home by the property owner, or, if leased, by a leasehold tenant with leasehold possessory rights of not less than 30 days for private family gatherings, or an occasional party host to specific invitees are excepted.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

“Home Occupation means a business office and related support services of a business located or operated from a residence whose business activity is conducted entirely within the dwelling and carried on by individuals residing therein. Home occupations must be incidental and secondary to the primary residential use of the dwelling and may not in the judgment of the zoning administrator adversely impact or change the residential appearance and character thereof. No dwelling may be used exclusively for a home occupation. The zoning administrator shall have authority to review and approve or disapprove home occupations. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

~~“Hotel, Motel means any building or portion thereof where residential use or occupancy thereof or sleeping accommodations therein is offered to persons for short term or transient use in exchange for compensation on a per use, per day, per week, per month, or per season basis, provided that the lease of residential properties to a specific tenant(s) under a written lease, without right of sub-letting or assignment, for a term of not less than 30 days are excepted.~~

**“Hotel, Motel means any building or portion of a building where residential use, or occupancy, or sleeping accommodations is offered to persons for short-term or transient use in exchange for compensation on a per-use, per-day, per-week, per-month, or per-season basis. A residential property that is rented for 30 days or more is not considered to be a “Hotel / Motel” provided that there is a written lease to a specific tenant(s), without right of sub-letting or assignment. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”**

“Lake Recreation Center means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public or available for the conduct of public or private gatherings of people or for the conduct of events thereat of any sort or kind of lake use or lake access related activity, including, but not limited to, the hosting of gatherings or events, the provision of food, refreshments, services of any kind, equipment rentals, swimming, fishing, camping, water skiing, personal water craft use, boat launch or docking services, (of whatever length of term), or charter boat passenger collection point, in exchange for valuable consideration.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

“Marina means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public offering power boat, sailboat or personal watercraft launching, mooring (however temporary), or available for the conduct of any sort or kind of lake use or lake access related activity, including, but not limited to, the provision of food, refreshments, ice, fuel, services of any kind, water-related equipment or boat rentals, swimming, fishing, waterskiing, personal watercraft use, or charter boat passenger collection point, in exchange for valuable consideration.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)”

**SECTION 2.**

Greenwood ordinance code chapter 4 is amended to add section 480 as follows:

**“SECTION 480. HOME OCCUPATIONS.**

**Section 480.00. Definitions.**

See chapter 12 for definitions.

**Section 480.05. Purpose.**

The purpose of this ordinance is to allow people to work out of their home, while maintaining the character of residential zones.

### **Section 480.10. Home Occupations that Do NOT Require a License.**

A business meeting the definition of a home occupation as defined in chapter 12 which is conducted in accordance with the terms and conditions of section 480.15 do not require a license, but are subject to review by the city zoning administrator for code compliance and compatibility with the residential area.

### **Section 480.15. Home Occupations General Regulations.**

All home occupations, licensed or unlicensed, shall be conducted and operated subject to following regulations:

- A. Other than individuals who reside within the residential premises who work for or conduct the business of the home occupation, a home occupation may have no more than 1 employee.
- B. A home occupation shall be conducted in a manner that keeps the related business operations incidental and secondary to the residential use of the premises, and in a manner that does not change the residential character of the area.
- C. No residence host to a home occupation shall be used to store, park, or keep motor vehicles other than passenger cars, pick-up trucks (not greater than half-ton in capacity), snowmobiles, trailers, or boats provided all such vehicles are **vehicles associated with the home occupation unless** kept and stored wholly within a garage upon the premises.
- D. No residence host to a home occupation shall be used to store, park, or keep any industrial or commercial equipment, buses, limousines, motor homes, or commercially licensed vehicles.
- E. A home occupation may receive individual customers or clients by appointment, but the residential premises may not be held open to the general public as a showroom nor serve as an on-demand, walk-in service center.
- F. A home occupation may not be host to more than four members of the general public at any one time nor more than one such gathering weekly. A home occupation may be host to invitation-only private social / sale events (e.g. Tupperware parties) provided such events occur no more than 4 times per year at any given residence and otherwise comply with city code regulating same.
- G. All activity related to the conduct of the home occupation shall be conducted entirely within the principal residential structure and may not be conducted in a garage or accessory building.
- H. No more than one home occupation shall be conducted upon or within any one residential property.
- I. No residential premises may be employed as a shipping or receiving center for goods.
- J. No home occupation shall:
  - (a) Produce light glare, noise, odor or vibration that will have an objectionable affect upon neighboring properties.
  - (b) Use equipment that will create electrical interference to surrounding properties.
  - (c) Require alterations or construction features not customarily found in residential dwellings.
  - (d) Store business-related equipment, vehicles, materials, or supplies upon the premises except within a building.
  - (e) Conduct any activity of a non-residential character discernible from any neighboring property or public street.
  - (f) Display signs related to the home occupation visible from any neighboring property or public street.
- K. A home occupation shall not occupy or employ more than 25% of the area of the total area of the principal and accessory structures upon the premises.
- L. A home occupation shall not be conducted in a manner that would constitute a nuisance or otherwise be in violation of city code.
- M. No home occupation may offer, gift or serve intoxicating or non-intoxicating alcoholic beverages to potential or actual customers or clients, nor serve same at social / sale events.

### **Section 480.20. Home Occupations Requiring a License.**

Home occupations whose business operations require no more than two exceptions to the regulations of section 480.15 may apply for a license authorizing the specific exceptions. Such licenses may be granted or denied in the sole discretion of the city council and may be issued subject to conditions deemed necessary to protect and preserve the residential character of the neighborhood and city. The fee for such license applications and annual license fee shall be established from time to time by the city council and set forth in chapter 5 of this code book.

### **Section 480.25. Prohibited Home Occupations.**

The following business activities may not be conducted as a home occupation:

- (a) Service, repair, or painting of any motor vehicle.
- (b) Dispatch centers where persons come to a site and are dispatched to other locations.
- (c) Medical, dental, or veterinary clinics.
- (d) Rental or mechanical service or repair businesses.
- (e) Contracting, excavating, welding, or machine shops.
- (f) Commercial kennels or boarding.
- (g) Tow truck services.
- (h) The sale, lease, trade, or other transfer of firearms or ammunition.
- (i) Sale of hazardous materials.
- (j) Shipping and/or receiving or delivery services.
- (k) Hotel or motel.
- (l) Event center.

(m) Lake recreation center.  
(n) Marina.”

SECTION 3.

Greenwood ordinance code section 510.00 fee table is amended to add the following:

Type of License, Permit, or Fee	Section	Fee	Conditions & Terms
Home Occupation License	480	\$50	Annual. The city council may impose conditions.

SECTION 4.

Effective Date. This ordinance shall be effective upon publication according to law.

Enacted by the city council of the city of Greenwood, Minnesota this \_\_ day of \_\_\_\_\_, 2013.

\_\_\_ AYES \_\_\_ NAYS

CITY OF GREENWOOD

By: \_\_\_\_\_

Debra J. Kind, Mayor

Attest: \_\_\_\_\_

Gus E. Karpas, City Clerk

First reading: April 11, 2013

Second reading: \_\_\_\_\_, 2013

Publication: \_\_\_\_\_, 2013

ORDINANCE NO. 218

**AN ORDINANCE OF THE CITY OF GREENWOOD, MINNESOTA  
AMENDING GREENWOOD ORDINANCE CODE CHAPTER 9, NUISANCES AND PENAL REGULATIONS,  
BY THE ADDITION OF SECTION 910.70 PROHIBITED USE OF RESIDENTIAL PROPERTY**

THE CITY COUNCIL OF THE CITY OF GREENWOOD, MINNESOTA DOES ORDAIN:

SECTION 1.

Greenwood ordinance code section 910 "Public and Private Property" is amended by the addition of the following section:

"910.70 Prohibited Use of Residential Property. No person, whether a property owner or leasehold tenant, shall offer, promote, use, or employ any residentially zoned property under their ownership, possession, or control for any use or purpose other than single-family residential use or other use specifically enumerated as a permitted principal, accessory, or conditional use under the applicable zoning code. No property owner, or leasehold tenant of same, shall offer, promote, use, or employ any residentially-zoned property as a "Hotel, Motel," "Event Center," "Lake Recreation Center," or "Marina" as those terms are defined in chapter 12 of this code."

SECTION 2.

Effective Date. This ordinance shall be effective upon publication according to law.

Enacted by the city council of the city of Greenwood, Minnesota this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_ AYES \_\_\_ NAYS

CITY OF GREENWOOD

By: \_\_\_\_\_

Debra J. Kind, Mayor

Attest: \_\_\_\_\_

Gus E. Karpas, City Clerk

First reading: April 11, 2013

Second reading: \_\_\_\_\_, 2013

Publication: \_\_\_\_\_, 2013



Agenda Number: **2D**

Agenda Date: 04-25-13

**Agenda Item:** Discuss Excelsior Blvd. Watermain Project Status

**Summary:** On 06-13-12 the city received a petition from several residents between 21380 and 21170 Excelsior Blvd. requesting to hook up to the Excelsior city water system as part of the upcoming Met Council Environmental Services (MCES) sanitary sewer forcemain project. As a result of the petition the city council ordered a feasibility report prepared by the city engineer for a watermain project to the petition zone (Option 1). The city received a 2nd petition dated 03-15-13 from the next 6 properties along Excelsior Blvd. (21150 and 21030 Excelsior Blvd.). The city council accepted the 2nd petition and ordered a feasibility study at the 04-03-13 council meeting. The council accepted the feasibility study and ordered a public hearing at the 04-11-13 special city council meeting. The public hearing for the petition 2 area will be held at the 05-01-13 city council meeting.

In addition, the cities of Greenwood and Excelsior have been working on language for two agreements -- one for water service *expansion*, and one for ongoing water *services* for existing and new Greenwood customers of Excelsior water. The Greenwood council sent a quorum to Excelsior's 04-01-13 city council meeting to answer questions and build consensus for the agreements. The Greenwood council reviewed the agreements at our 04-03-13 council meeting and approved the agreements with one change to the last sentence of paragraph 4 of the *service* agreement to clarify that the sentence applied only to paragraph 4. Excelsior staff viewed this as a substantive change so the topic was included on Excelsior's 04-15-13 council agenda. Mayor Kind and Councilman Cook attended the meeting to explain Greenwood's concern that the last sentence of paragraph 4 allowed Excelsior to change the agreement by changing their code. At the 04-15-13 meeting, the Excelsior council stood firm on having the sentence apply to the entire agreement and added language to paragraph 15 to make it doubly clear (see attached 04-15-13 draft of the agreement). Other meetings between city officials have been set up for the week of 04-22-13. Mayor Kind will report the results of these meetings at 04-25-13 council meeting.

**Council Action:** Optional. Potential motions ...

1. I move the council approves the 04-\_\_-13 draft of the Excelsior-Greenwood water *service* agreement, and authorizes the mayor and city clerk to sign the agreement.
2. Do nothing or other motion ???



## **EXCELSIOR-GREENWOOD MUNICIPAL WATER SERVICE AGREEMENT**

***DRAFT 04-15-13***

THIS MUNICIPAL WATER SERVICE AGREEMENT ("Agreement"), made the \_\_th day of April 2013, is entered into by and between the CITY OF EXCELSIOR, MINNESOTA, a municipal corporation (hereinafter "Excelsior") and the CITY OF GREENWOOD, MINNESOTA, a municipal corporation (hereinafter "Greenwood"):

### **RECITALS**

Excelsior has an established water treatment plant, water tower, and distribution system and has extended water service beyond its borders to a portion of the Greenwood along Excelsior Boulevard and along Minnetonka Boulevard.

At the request of Greenwood, Excelsior is in the process of extending water service further into Greenwood along Excelsior Boulevard (as illustrated on Exhibit "A") and the cities may agree to further extensions in the future.

The cities desire to establish an agreement addressing the provision of water service by Excelsior to Greenwood residents, for both present and future Greenwood customers.

### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Purpose. The parties adopt the Recitals above set forth as if restated herein.
2. Term. The term of this Agreement shall run for twenty (20) years from the date of this Agreement (the "Initial Term"). The Agreement shall be automatically renewed for successive periods ("Renewal Terms") of ten (10) years unless one of the parties to the Agreement provides written notice to the other at least one year in advance of the expiration of the Initial Term or any Renewal Term that it does not want the Agreement renewed.
3. Relationship of the Parties. Excelsior and Greenwood are independent and separate municipal corporations.
4. Excelsior Water System. Excelsior owns and operates the Excelsior Municipal Public Waterworks (EMPW) which includes watermain and associated service lines that extend into Greenwood. Greenwood acknowledges and agrees that it does not own any of the related pipes or water service infrastructure currently in place in Greenwood or which may be constructed in the future by extension of same. Properties located in Greenwood ("Greenwood Customers") connecting to the EMPW shall be subject to the provisions of Excelsior's City Code, as enacted or amended from time to time, regarding water service including, but not limited to, provisions relating to connection fees, water service pipes, metering, and water billing and rates. Except as provided in paragraph 7, Excelsior's City Code shall control if a conflict with this Agreement exists or develops.
5. Operating Costs. All costs associated with the operation of the EMPW are the sole responsibility of Excelsior including, but not limited to, related construction costs, repair, maintenance, and improvements deemed necessary from time to time.

6. Water Service Invoicing. Excelsior shall have the sole responsibility for invoicing periodic water service fees to individual customers within Greenwood connected to the EMPW. Greenwood shall not be responsible for collection of delinquent EMPW invoices except that, in the event a Greenwood resident fails to pay EMPW invoiced water service fees and Excelsior notifies Greenwood of such delinquency, Greenwood shall notice the delinquency to the respective property owner, and, if not timely paid, certify the delinquency to the respective property's real estate taxes for payment as provided by law. In the event Greenwood receives payment on a delinquent account in advance of the deadline for submission to the County for certification as a special assessment, Greenwood shall, within 30 days, pay to Excelsior the monies received related to such delinquency without deduction or charge. Greenwood shall continue this process as needed to collect the full delinquency. Costs associated with the process of certification by Greenwood may be added to the certification of assessment and, on receipt, retained by Greenwood. Nothing herein shall prevent Excelsior from taking other steps authorized by law (including, but not limited to, shutting off water service) to ensure payment of water service fees by Greenwood Customers.

7. Water Rates. Excelsior shall bill EMPW services rendered to Greenwood Customers at the established non-resident rate provided that the non-resident base rate shall not be more than 121% of the resident base rate as established from time to time by Excelsior and the non-resident usage rates shall not be more than 107% of the resident usage rates as established from time to time by Excelsior. In the event Excelsior finds it necessary to add a surcharge to the EMPW fees charged Excelsior residents, a like fee may be charged Greenwood residential customers and commercial customers.

8. Maintenance, Repair and Improvements. Excelsior shall be responsible for maintaining and repairing the watermain and hydrants located in Greenwood in the same manner that it maintains and repairs that portion of the EMPW located within Excelsior and shall bear all costs associated with same. Excelsior's responsibility for maintaining and repairing the watermain and hydrants located in Greenwood shall include the cost of repairing any right-of-way damage caused by such repair and maintenance. Excelsior may take into account the cost of same in setting service rates and charges. No separate fee shall be charged by Excelsior to Greenwood for normal year-to-year fire hydrant maintenance or periodic flushing of the system. Excelsior's obligation hereunder to maintain and repair the watermain and hydrants located in Greenwood shall not, however, obligate it to maintain or repair service lines connected thereto. Pursuant to the Excelsior City Code, property owners receiving service from the watermain shall be responsible for maintenance and repair of service lines connected to the watermain and costs related thereto.

9. Future Extension of the System. Excelsior agrees to entertain requests from Greenwood for additional water service by extension of service pipes within the Greenwood, from time to time, on written application by Greenwood. Such application may be initiated by petition of Greenwood residents to the City Council of Greenwood (which the City Council of the City of Greenwood may in its sole discretion deny), or by independent Greenwood City Council action. Excelsior shall not be obligated to extend the water service at the request of Greenwood and, in its sole discretion, may grant or reject such a request for any reason or no reason.

10. Public Right-of-Way Access. By terms of this Agreement, Greenwood agrees to grant to Excelsior a continuing permanent easement access to all public right-of-ways hosting EMPW watermain as may be needed from time to time for maintenance, repair, or improvement of EMPW infrastructure. During all repair, maintenance or expansion of EMPW service infrastructure, Excelsior shall maintain for the benefit of adjacent properties reasonable physical access at all times, temporary access disruptions of up to eight hours excepted. In the event public right-of-ways, including pavement, underlayment, supporting road bed, curb and gutter, sidewalk or other public amenities in Greenwood are disturbed in the course of maintenance, repair, or improvement of EMPW infrastructure, Excelsior shall restore same to preconstruction condition within 90 days of completion of the repair, maintenance, or improvement. Greenwood shall grant Excelsior additional time, as needed, for cause or seasonal necessity to complete the repair or maintenance.

11. Legal Costs. Each party shall bear their own legal expenses and costs associated with the drafting and implementing of this Agreement and as otherwise incurred during the term of this Agreement without right of contribution from the other City.

12. Notice. Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, as follows:

If to Excelsior: City Clerk, City of Excelsior, 339 Third Street, Excelsior, MN 55331

If to Greenwood: City Clerk, City of Greenwood, 20225 Cottagewood Road, Deephaven, MN 55331

Each party shall have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

13. Amendment. This Agreement may be amended only in a written instrument signed by all parties setting forth the nature of such amendment or waiver and the specific intent to so amend.

14. Enforcement. Enforcement of this Agreement shall be by any proceeding at law or in equity against the party violating or attempting to violate any covenant or restriction either to restrain an alleged violation or to recover damages.

15. Interpretation and Effect. This Agreement sets forth the entire agreement between the cities with respect to the EMPW and supersedes and revokes all prior negotiations, discussions, representations, understandings, and agreements between the cities with respect to same. This Agreement shall bind and run to the benefit of the Cities and their successors and assigns. Any invalidation of any one or more of these covenants and restrictions by judgment or court order shall in no way affect any other provision of this Agreement which shall remain in full force and effect. This Agreement is executed and shall be governed by, and construed in accordance with, the provisions of the Excelsior City Code, as amended and enacted from time to time, and the laws of the State of Minnesota. Headings in this agreement are for reference only and shall not be deemed to alter the interpretation of any provisions of this agreement.

16. Force Majeure. The parties to this Agreement recognize that, notwithstanding the obligations imposed herein, extraordinary events beyond the control of Excelsior may prevent the delivery of water service as described herein. Accordingly, the parties agree that Excelsior shall not be obligated to provide water service as provided herein if there is an occurrence of an extraordinary event or circumstance beyond Excelsior's control, such as a war, strike, riot, crime, or an event described by the legal term "Act of God" (such as hurricane, flooding, earthquake, volcanic eruption, etc.), that prevents Excelsior from fulfilling its obligations under this Agreement provided, however, that Excelsior's obligation shall only be suspended for the duration of the force majeure and, during such suspension, Excelsior and Greenwood customers shall not be treated differently absent logistical reasons related to the need to suspend service.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

Dated: \_\_\_\_\_

CITY OF EXCELSIOR  
A Municipal Corporation

\_\_\_\_\_  
By Mark Gaylord, its Mayor

Attest: \_\_\_\_\_  
Kristi Luger, City Manager

Dated: \_\_\_\_\_

CITY OF GREENWOOD  
A Municipal Corporation

\_\_\_\_\_  
By Debra J. Kind, its Mayor

Attest: \_\_\_\_\_  
Gus E. Karpas, City Clerk

# Excelsior Blvd. Watermain Project Timeline

Updated 02-23-13

1	Petition received from GW Excelsior Blvd. residents	6/13/12
2	GW resolution declaring adequacy of petition and ordering preparation of feasibility report	7/5/12
3	Publish resolution declaring adequacy of petition.	4/11/13
4	GW preliminary feasibility report completed for Option 1 (see footnote)	10/3/12
5	Feasibility report reviewed by GW planning commission for compliance with comp plan	10/17/12
6	GW deadline to submit public hearing notice for <b>Option 1</b> to Sun-Sailor (Thursday before publication)	12/13/12
7	GW publishes notice of hearing for <b>Option 1</b> (Form 6). Per statute, the city clerk must cause notice thereof to be given by TWO publications in the newspaper of a notice stating the time and place of the hearing, the general nature of the improvement, the estimated cost, and the area proposed to be assessed. The two publications must be a week apart, and the hearing must be at least three days after the second publication. NOTE: Typically, cities assess all properties abutting or bordering on the improvement, but the council may wish to levy assessments against adjacent, non-abutting properties if the properties benefit from the improvement. In that event the Notice of Hearing must include the following statement: "The area proposed to be assessed for such improvement is ...."	12/20/12 and 12/27/12
8	GW affidavit of mailing notice to affected property owners for <b>Option 1</b> . Not less than ten days before the hearing, notice of the hearing must also be mailed to the owner of each parcel within the area proposed to be assessed and must contain a statement that a reasonable estimate of the impact of the assessment will be available at the hearing, but failure to give mailed notice or any defects in the notice does not invalidate the proceedings.	12/21/12
9	GW public hearing for <b>Option 1</b> . Minutes of public hearing showing testimony and findings. NOTE: Council action is required within 6 months of the public hearing date.	1/2/13
10	Deadline for drafts of EX-GW cooperative agreement for the <b>Option 1</b> watermain project (including pricing) and agreement for water service for all GW users. Draft created by GW city attorney.	2/6/13
11	GW reviews EX-GW cooperative agreements for submitting to EX.	2/6/13
12	GW considers resolution ordering improvement and preparation of plans (Forms 7, 7A, 8).	2/6/13
13	Deadline to post notice for 2/20 special meeting (72 hours notice required).	2/15/13
14	GW considers resolution approving plans. NOTE: MCES will be advertising for bids.	2/20/13
15	GW considers resolution approving cooperative agreement with MCES to include the Excelsior Blvd. watermain project, sidewalk improvements, and tree replacement plan.	2/20/13
16	MCES advertizes for bids.	3/4/13
17	EX reviews EX-GW cooperative agreements.	3/4/13
18	GW reviews EX edits of EX-GW cooperative agreements.	3/6/13
19	<b>Petition 2</b> received from next 6 properties.	3/15/13
20	EX approves EX-GW cooperative agreements (including option of expansion to <b>Petition 2 Zone</b> ).	3/18/13
21	GW considers resolution declaring adequacy of <b>Petition 2</b> and ordering preparation of feasibility report.	4/3/13
22	GW approves EX-GW cooperative agreements (including option of expansion to <b>Petition 2 Zone</b> ).	4/3/13
23	MCES opens bids.	4/4/13
24	GW and EX go / no-go decision (per co-op agreements with MCES).	4/8/13
25	Publish resolution declaring adequacy of <b>Petition 2</b> to start 30-day appeal clock ticking.	4/11/13
26	GW preliminary feasibility report completed for <b>Petition 2 Zone</b> .	4/11/13
27	GW considers resolution receiving feasibility report and ordering public hearing for <b>Petition 2 Zone</b> (after previously scheduled 6pm Local Board of Appeal meeting)	4/11/13
28	GW deadline to submit public hearing notice for <b>Petition 2 Zone</b> to Sun-Sailor (Thursday before publication)	4/11/13
29	GW publishes notices (2 consecutive weeks) of public hearing for <b>Petition 2 Zone</b> . See line 6 above.	4/18 & 4/25
30	GW affidavit of mailing notice to affected property owners for <b>Petition 2 Zone</b> . See line 7 above.	4/19/13
31	GW public hearing for <b>Petition Zone 2</b> . See line 8 above.	5/1/13
32	GW considers resolution ordering <b>Petition 2 Zone</b> improvement and preparation of plans.	5/1/13
33	GW considers resolution approving <b>Petition 2 Zone</b> plans and "change order" to MCES project.	6/5/13
34	MCES notice to proceed.	6/7/13
35	MCES starts construction.	Before 7/1
36	GW preparation of assessment roll. (Forms 12, 13)	TBD
37	GW resolution for hearing on proposed assessment. (Form 14)	TBD
38	GW affidavit of publication of notice of hearing. (Form 15)	TBD
39	GW affidavit of mailing notice to affected property owners. (Form 15A)	TBD
40	GW minutes of public hearing showing testimony and findings.	TBD
41	GW resolution adopting assessment. (Form 16)	TBD
42	GW notice of final assessment. NOTE: This may be an optional step. (See Form 17A)	TBD
43	GW certification of assessment to county auditor. (Form 18, 18A) NOTE: If annual certification plan is followed, the clerk may wish to include a separate sub-step for each year.	TBD

GW = Greenwood, EX = Excelsior, **Option 1** = 21380 - 21170 Excelsior Blvd, **Petition 2 Zone** = 21150 - 21030 Excelsior Blvd.



Agenda Number: **2D**

Agenda Date: 04-20-13

**Agenda Item:** Discuss St. Alban's Bay Bridge Agreement

**Summary:** On 04-10-12 the city councils from Excelsior and Greenwood met in a joint worksession to discuss the status of our jointly-owned St. Alban's Bay bridge. A June 2006 136-page report from the Minnesota Department of Transportation lists the bridge as "eligible" to be historic because of "aesthetics." Since the 04-10-12 meeting it has been confirmed that the Art Deco detailing of the bridge is the "aesthetics" that makes the bridge eligible to be historic. There is nothing the cities can do to make the bridge "not eligible," and all "eligible" bridges must go through the same review process as bridges that are "listed" as historic. This does not mean that the cities must rehabilitate the bridge. It just means that a few hoops need to be jumped through to prove it would be better to replace the bridge than to rehabilitate it, if that is the course the cities decide to pursue. Based on preliminary numbers it appears that there would be \$200,000 in savings if the cities replace the bridge instead of rehabilitating it. At the worksession the city councils discussed the concept of having an agreement in place, so that we can pull the trigger when the time comes to seek funding to fix the bridge -- maybe next year, maybe 5 years from now, maybe longer. The cities agreed on the following steps:

1. Greenwood city attorney Mark Kelly would draft a mutual agreement that lays out key steps in the process, establishes a method for determining engineers for the project, includes a cost-sharing plan, includes a trigger for when it is time to implement the steps in the agreement, etc.
2. Both cities review the mutual agreement and make revisions.
3. Both cities approve the final mutual agreement.

Attached is the draft of the mutual agreement created by Mark Kelly. The Greenwood council approved the draft on 06-06-12 and forwarded it to the Excelsior city council for their consideration. The last communication between the cities was on 02-22-13 (see attached email trail).

At the 04-25-13 special council meeting, the Greenwood council will discuss the status of the agreement and determine next steps if any.

**Council Action:** No action required. Possible motions ...

1. I move the council directs the city clerk to \_\_\_\_\_.
2. I move the council authorizes the mayor to \_\_\_\_\_.
3. Do nothing or other motion ???



## **EXCELSIOR-GREENWOOD ST. ALBAN'S BAY BRIDGE CONSTRUCTION AGREEMENT**

***DRAFT 06-07-12***

THIS AGREEMENT the \_\_\_\_ day of \_\_\_\_\_, 2012 is entered into by and between the CITY OF EXCELSIOR, MINNESOTA, a public corporation (hereinafter "Excelsior") and the CITY OF GREENWOOD, a public corporation (hereinafter "Greenwood"):

### **RECITALS**

Excelsior and Greenwood are co-equal owners of a 1941 road bridge traversing the channel between Excelsior Bay and St. Alban's Bay, Lake Minnetonka, commonly known as the St. Alban's Bay Bridge.

The cities are collectively and exclusively responsible for all bridge maintenance and for planning for rehabilitation and/or reconstruction needed in due course.

The bridge was built under the Federal Works Progress Administration and is eligible for listing on the national register of historic places by reason of its Art Deco aesthetics.

A July, 2011 inspection evaluating functionality and structural soundness gave the bridge a sufficiency rating of 51.5 on a scale of 100. When the rating falls below 50, the bridge is considered structurally deficient. However, such a sufficiency rating does not correlate with a need to post load restrictions, close the bridge, or indicate imminent failure. A more in-depth structural evaluation will soon be conducted.

Due to the bridge's possible historic status, the Minnesota Department of Transportation Cultural Resources Unit (MnDOT CRU) and the State Historic Preservation Office (SHPO) now have an interest in any proposal to rehabilitate or rebuild the bridge and must participate in the planning and review of any such project.

Federal bridge funding for replacement is available when the sufficiency rating is less than 50; the funds may also be used for rehabilitation projects. Federal funds can be applied to cover 80% of construction costs with the remaining 20% of construction costs, and 100% of design and indirect costs, being the responsibility of the cities. The Metropolitan Council processes the application for federal bridge funds.

The state bridge bond fund makes money available when a bridge is functionally obsolete and the sufficiency rating is below 80. These funds can be applied to cover 100% of the "abutment to abutment costs" on eligible rehabilitation/reconstruction projects. Roadway approach construction costs, bridge removal costs, and design costs are the responsibility of the cities. State bridge bond funds can also be used for the 20% local match required for federal bridge funds. State bridge bond funds are available upon application.

The costs of bridge replacement and rehabilitation are estimated on Exhibit "A."

The bridge being eligible to be historically significant will require a study addressing the feasibility of rehabilitation verses reconstruction. Rehabilitation may be required if possible.

Excelsior and Greenwood have a common interest in bridge rehabilitation or replacement and a need to select and agree upon engineers, architects, designers, contracts, apportionment of costs, review process, and decision-making process.

Based upon the foregoing, the cities of Excelsior and Greenwood desire to set forth their agreement for the planning, design, engineering, approval, implementation, financing, contracting, supervision, and apportionment of costs for the St. Alban's Bridge project (hereinafter 'bridge project').

## **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Purpose. The parties adopt the Recitals above set forth as if restated hereat. The parties agree that when the sufficiency rating of the bridge reaches 50 the two parties shall begin the planning for the rehabilitation and/or reconstruction process under the terms of this agreement.

2. Term. The term of this agreement shall run from the date hereof until the rehabilitated or reconstructed St. Alban's Bay Bridge is declared complete by the consulting engineer and all costs associated therewith are paid and related informational filings are complete.

3. Relationship of the Parties. The city of Excelsior and the city of Greenwood and independent separate public corporations.

4. Lead Engineering Consultant. The first order of business under this agreement shall be the selection of a mutually agreeable civil engineering and bridge architectural firm to serve both parties as the lead engineering consultant (LEC). It is anticipated that WSB & Associates, Inc. 701 Xenia Avenue South, Suite 300, Minneapolis, Minnesota 55416, (WSB), city engineer to the city of Excelsior and Bolton & Menk, 2638 Shadow Lane, Suite 200, Chaska, Minnesota 55318, city engineer to the city of Greenwood will provide advice and consulting services to their respective cities as needed in this process. The LEC chosen shall be contracted to serve both the cities in a common fiduciary capacity without favoritism to either city. The LEC shall prepare and present a design, planning, and review process for the anticipated bridge project, and advise the cities on the process, and how best to present the project to reviewing government agencies in the light most favorable to the cities' common interest. The LEC shall exercise due diligence in project planning, engineering, design, consultant and contractor selection, and construction supervision. The LEC shall keep both cities fully informed and consult with their administrators, mayors, council members and consultants as requested from time to time. The LEC shall provide copies of all memoranda hereon to the attention of the city administrators/managers of each party with a carbon copy to the city engineer of each. The LEC shall make periodic bridge project review presentations for the benefit of the cities at special public meetings of the two city councils to be held in common; scheduling to be agreed upon. These common special meetings shall be alternately held in each city. Each city may request special additional presentations or discussion meetings with the LEC representatives from time to time at its own expense.

5. LEC Selection. The cities shall direct their city engineers, (WSB and Bolton & Menk) to consult and in combination identify and recommend three civil engineering firms with bridge architect ability for the cities' consideration. Absent common agreement, this matter shall be referred to mediation and if necessary, arbitration. The cities understand and agree that the quality and character of the LEC, and in particular their available architectural services, is critical to the selection process. The cities agree that these services must be measured by more than mere cost per hour but must consider the LEC/architect's reputation and experience, ability to manage the project and interact with the cities and other interested governmental agencies, and the quality and character of their design abilities based on past work.

6. Apportionment of LEC Engineering Costs. The LEC shall bill the city of Excelsior and the city of Greenwood by common itemized invoice at the agreed engagement professional service rate for all work related to the bridge project. Each city shall be responsible for payment of one-half of all such invoiced professional services and related costs, provided that the cost of special additional consultations or presentations by the LEC to an individual city, as requested from time to time, shall be the sole responsibility of the individual city. Each city shall pay their share of LEC fees in due course. Neither city does hereby indemnify the LEC from loss or damages associated with non-payment by the other city.

7. Additional Advisers and Consultants. Each city may, at its sole expense, engage or hire such additional advisers and consultants, including their city engineer, as it deems appropriate to aid it in reviewing and approving proposed actions of this bridge project, including design review, historic preservation, and aesthetic review, contractor selection, and any other services either city may require. Each city shall assume and pay all such costs without right or expectation of contribution from the other city.

8. Roadway Approach Construction Costs. Each city shall be responsible for all roadway approach construction costs related to the bridge project deemed necessary to permit proper grade and access to the bridge. Roadway approach construction costs includes all road engineering, surveying, contractor fees and material costs, utility improvements and disturbances, excavation, rebuilding, grading, surfacing, and re-striping. Excelsior shall be responsible for all such costs southerly of the centerline of the existing bridge. Greenwood shall be responsible for all such costs northerly of the centerline of the existing bridge. Neither party shall have a claim one against the other for roadway approach construction costs that it may incur as needed for public right of way within its political boundaries.

9. Bridge Contractor and Costs. In the event it is found necessary to rehabilitate or remove the present bridge and related improvements, the cities agree to select and engage a single contractor for the needed work and share equally the cost of the bridge rehabilitation or removal and reconstruction, including all contract fees, renovation and disposal expenses, and related costs, independent of whether or not any particular expense or cost were incurred within the political boundaries one city or the other. The selected contractor shall be instructed to bill the city of Excelsior and the city of Greenwood by common itemized invoice contract work related to the bridge project. Each city shall be responsible for payment of one-half of all such invoiced contract work and related costs. Each city shall pay their share of contractor fees and related costs in due course. Bridge rehabilitation and removal costs include all costs related to deck, pier, and abutment demolition, reconstruction or renovation, repair and improvement, but do not include roadway approach construction costs defined above.

10. Shoreline Fishing Facilities. In the event the cities agree that the shoreline fishing facilities on the south side of the channel between Excelsior Bay and St. Alban's Bay, Lake Minnetonka will be impacted or require removal or modification in the course of the bridge project, the cities agree to seek financial contribution for associated engineering, removal and remodeling cost from Lake Minnetonka Conservation District (LMCD), Minnesota Department of Natural Resources (MnDNR), Three Rivers Park District (TRPD) and other interested governmental agencies. The cities shall share equally all unreimbursed related costs including but not limited to, engineering, design, government approval processing, dredging, abutment re-engineering, and contractor government approval fees. The cities shall cooperate in all needed applications to US Army Corp of Engineers (US Army Corps), LMCD, MnDNR, TRPD, Minnehaha Creek Watershed District (MCWD), or other interested government agency without consideration as to whether or not those costs were incurred in the political jurisdiction of either party.

11. Channel Widening. In the event the cities agree that the channel between Excelsior Bay and St. Alban's Bay, Lake Minnetonka should be dredged or widened for navigation purposes, the cities agree to share equally all related costs including but not limited to, engineering, design, government approval processing, dredging, abutment re-engineering, and contractor government approval fees. The cities shall cooperate in all needed applications to US Army Corps, LMCD, MnDNR, TRPD, MCWD, or other interested government agency without consideration as to whether or not those costs were incurred in the political jurisdiction of either party.

12. Design and Engineering Costs. The parties agree to share equally all bridge design and engineering costs and architectural fees without regard to special or extraordinary expenses associated with construction issues arising within the political jurisdiction of either party. The bridge design shall be uniform in appearance and utility from end to end. However each city may request design and approval of an architectural feature unique to their approach to the bridge not included in the architect design, provided it does not adversely impact the utility and design, and provided the requesting city assumes and pays all related costs of design, engineering and construction of same.

13. Bridge Name. The cities agree the bridge when completed shall officially be named "The St. Alban's Bay Bridge."

14. Public Utilities. In the event either city desires to make improvements to its public infrastructure in the course of the bridge project involving water, sanitary sewer, or storm sewer improvements within their individual political boundaries, all associated costs shall be the sole expense of the city making such improvements. All such improvements shall be under separate contract and by contractor other than the selected bridge project contractor.

15. Application Fees. The parties agree to share equally all application fees and the cost of supporting documentation necessary in seeking historic review, design approval, federal bridge funding applications, Metropolitan Council applications, state bridge fund applications, and any other applications including communications with US Army Corps, TRPD, LMCD, MCWD, MnDNR, MnDOT, Federal Emergency Management Agency (FEMA) or other agencies.

16. Bridge Project Review Committee Established. To manage the bridge project and to provide a forum for public presentations by the LEC, the cities shall form a Bridge Project Review Committee (BPRC). Each city shall appoint two council members of their choosing to the BPRC to serve as voting members on the BPRC. They also may direct their city engineer and request other staff or members of commissions and advisory boards to attend BPRC meetings. The BPRC meetings shall be government meetings conducted in public and duly noticed individually by each city. The BPRC meetings shall be alternately held in each city on a periodic basis as needed as the BPRC may determine or the city councils may direct. Official minutes of action shall be kept. The chair of the BPRC shall rotate between the cities on a meeting-to-meeting basis. The BPRC shall adopt its own rules of order. BPRC members are expected to keep their respective city councils informed. Each city shall have authority to exercise one vote in the BPRC on all critical bridge project approvals. The individual city councils shall have the authority to direct their BPRC representatives to vote in accordance with the instruction of the city council. For the bridge project to proceed, all critical approvals must be mutually agreeable to both cities at the BPRC. Critical approval step decisions must be ratified by both city councils in a timely manner.

With the exception of mayors, city engineer, attorney, and staff, only city council members appointed to the BPRC shall have authority to address the LEC and other presenters at BPRC meetings, only upon the majority vote of the BPRC to receive public comment or accept questions, shall public input be heard. Members of the public shall have the right to observe and at the discretion of the BPRC speak. Members of the public shall pose all comments and questions to the chair and not the LEC representatives. LEC representatives shall attend BPRC meetings and use the meetings to advise the cities on the progress of the bridge project, its review, design, and approval process. All issues requiring critical approval shall be presented to the BPRC by the LEC. The LEC shall make its representatives available at city council meetings for further advice and explanation when either city is addressing the bridge project. In the event there is not mutual agreement on a critical approval step (CAS), the issue shall be referred to the individual city councils for review and consideration. Failing agreement of the city councils on the pending CAS, the issue shall be referred to the Construction Mediation Committee before being referred to binding arbitration.

17. Rebuilding / Rehabilitation Process & Critical Approval Steps. Set forth below are the critical approval steps (CAS) in the bridge rebuilding / rehabilitation process:

1) LEC Selection

- a) Need text for here
- b) Need text for here
- c) etc....

2) Bridge Condition and Public Needs Analysis

- a) Need text for here
- b) Need text for here
- c) etc....

3) Government Approval and Funding Process

- a) Need text for here
- b) Need text for here
- c) etc....

4) Contractor Selection and Construction Process

- a) Need text for here
- b) Need text for here
- c) etc....

Each CAS will require each city to be fully informed and to conduct an efficient and timely review and approval process. The CAS decision process shall be as follows:

- (i) LEC to define and present the CAS project issue to BRPC,
- (ii) City councils to individually consider, consult, and review the CAS,
- (iii) Cities to schedule a vote on the CAS to be held within 60 days of the LEC presentation of CAS to BRPC,
- (iv) Decision to proceed by unanimous consent,
- (v) BPRC vote to reconsider (if needed) held within two weeks of step (iii), provided that in the event the LEC identifies the CAS to be exclusively effecting an individual city, and all cities so agree, then the effected city shall exercise its prerogative on the CAS within sixty days. In the event of a failure of mutual agreement in any one CAS, the cities agree to refer the CAS matter to Construction Mediation, and failing agreement in mediation the parties shall use arbitration to decide the CAS as provided below.

18. Construction Mediation. In the event of a lack of agreement on a pending CAS issue relating to the bridge project, the parties agree to refer the CAS matter to construction mediation on demand of either party. Mediation shall commence within thirty days of demand. Mediation shall be conducted at a neutral non-public location. The mayor of each city and up to one additional council member shall attend and such other advisors and consultants as each city determines beneficial may also attend. Separate meeting rooms for each city are appropriate. Each City's Mayor shall have full binding settlement authority by prior resolution of the city council to exercise the city's prerogative on the pending CAS/ issue. The mediator shall be a mutually agreeable retired Judge of District Court or AIA certified architect or civil engineer trained in mediation. An informed LEC representative shall attend to answer questions and fully inform the cities and mediator. In the event an agreement is not reached, this matter shall be referred to binding arbitration.

19. Arbitration. In the event the cities cannot reach an agreement through mediation on any given CAS/issue, the cities agree to refer the pending CAS/issue to binding arbitration by an Arbitration Committee within thirty days of either city declaring Construction Mediation a failure and making a written demand upon the other for arbitration.

The Arbitration Committee shall be comprised of two civil engineers one chosen by each city, neither of whom may be affiliated with the LEC, WSB, Bolton & Menk, or other engineering firm with a past association with either city. A third arbitrator shall be chosen by the common agreement of the two chosen civil engineer arbitrators. The third arbitrator shall be an AIA certified architect. The Arbitration committee shall request written presentations from each city and may in its discretion hear oral argument. The arbitration decision shall be issued in writing. The decision of two out of the three arbitrators shall be final and binding upon the cities on the CAS/issue posed. Each city agrees to be bound by that arbitration decision and does hereby waive all right to resort to or make application to the District Court for relief.

20. Mediation and Arbitration Fees and Costs. Each city shall bear its own costs of mediation and arbitration as needed or incurred hereunder without right of contribution from the other. The cities shall share equally all fees and expenses of the mediator and Arbitration Committee.

21. Rehabilitation vs. Reconstruction Review. The cities agree that it will be necessary to determine the relative benefits of rehabilitation versus reconstruction of the bridge and to do so they must be fully informed as to the historic value of the bridge, the cost of rehabilitation, needed safety improvements, the functionality of the bridge as presently built relative to the future needs of the community and features of a modern bridge design, the necessary and reasonable accommodation of motor vehicles, bicyclists, pedestrians, fisherman, boaters, and needs of the general public, and structural impediments to rehabilitation and efficiencies gained from reconstruction. To aid the cities in determining the cost benefits associated with rehabilitation versus reconstruction and redesign, the parties agree that the LEC shall first consult with the BPRC and the respective city councils. It shall then report to the cities on the character of the existing bridge, its utility, and the potential for rehabilitation, and the distinctions to be expected in a reconstructed bridge. Within sixty days of the conclusion of that presentation and analysis process, the city councils shall vote for either rehabilitation or reconstruction or, if possible and recommended, a hybrid thereof. In the event of no agreement is reached because one city prefers rehabilitation and the other reconstruction, the bridge project may proceed by rehabilitation, with the city advocating rehabilitation bearing all additional costs associated with rehabilitation over reconstruction, (as determined by the LEC and confirmed by the city's respective consultants. The choice of rehabilitation shall not prevent roadway approach improvements and bridge area/local public improvements desired by either city as provided under paragraph 12. In the event of no agreement on how or when to proceed, the cities agree to employ mediation and arbitration as provided herein.

22. MnDOT CRU, SHPO, and US Army Corps Approvals. When tasked by the cities, the LEC shall make inquiries with the MnDOT CRU, SHPO, and US Army Corps as deemed appropriate to determine whether or not those agencies will support the cities' preference for rehabilitation and/or reconstruction and shall then advise the cities of the anticipated design review process needed to gain final approval and funding.

23. Federal Bridge Funding. The LEC shall advise and assist the cities on the process by which federal bridge funding application may be made through the offices of the Metropolitan Council. Each city shall bear one-half of all related application costs as incurred.

24. State Bridge Bond Fund. The LEC shall advise and assist the cities on the process by which state bridge bond funding application may be made through the applicable agency. Each city shall bear one-half of all related application costs as incurred.

25. Road Contractors. The cities agree that there may be cost savings to be obtained through the use of a common contractor, but reserve the right to engage a road contractor of their choice for roadway approach construction associated with the bridge project within their political boundaries. The LEC shall assist the cities in preparation of contract specifications for needed roadway approach construction improvements. The LEC shall review and comment on the tendered construction bids. The cities shall separately select and contract with the roadway approach construction contractor of their choice. In the event the cities choose to use a common contractor, the selected contractor shall be required to invoice the cities separately for their individual roadway approach construction costs.

26. Legal Costs. Each party shall bear their own legal expenses and costs associated with drafting and implementing this agreement and otherwise incurred during the term of this agreement without right of contribution from the other city.

27. Bonding and Insurance. Each party shall obtain full insurance coverage of all related aspects of the bridge project. The cities may elect to combine to issue bonds for the bridge project costs, but are not obligated hereunder to do so and not be ordered to do so by arbitration. In the event they elect to employ bonding and act independently of each other, they shall each be solely responsible for all bonding-related consultant fees and costs without right of contribution from the other city.

28. Interpretation and Effect. This Agreement sets forth the entire agreement between cities with respect to the bridge project and supersedes and revokes all prior negotiations, discussions, representations, understandings and agreements between the cities with respect to same. This Agreement may be amended only in a written instrument signed by all

parties setting forth the nature of such amendment or waiver and the specific intent to so amend or waive. This Agreement shall bind and run to the benefit of the cities and their successors and assigns. This Agreement is executed in and shall be governed by and construed in accordance with the provisions of the laws of the state of Minnesota. Headings in this Agreement are for reference only, and shall not be deemed to alter the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this agreement as of the date and year first above written.

Dated: \_\_\_\_\_

CITY OF EXCELSIOR  
A Public Corporation

\_\_\_\_\_  
By Nicholas Ruehl, Mayor

Attest: \_\_\_\_\_  
Kristi Lugar, City Manager

Dated: \_\_\_\_\_

CITY OF GREENWOOD  
A Public Corporation

\_\_\_\_\_  
By Debra J. Kind, Mayor

Attest: \_\_\_\_\_  
Gus Karpas, City Clerk

On Feb 22, 2013, at 10:41 AM, Mark Gaylord wrote:

Mayor Kind,

The proposed agreement will be addressed by the Excelsior CC the second meeting in March or the first meeting of April, depending on agenda item scheduling. Would you like to discuss before?

Mark

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From: Debra Kind [mailto:dkind100@gmail.com]  
Sent: Thursday, February 21, 2013 10:33 AM  
To: Mark Gaylord  
Subject: St. Alban's Bay Bridge

Mayor Gaylord --

I just realized that you may not be up to speed regarding our shared "historic" bridge. Please review the email trail below and attached draft of a potential agreement and call me at your convenience to discuss. Thank you!

Deb

DEBRA J. KIND  
Mayor, City of Greenwood  
20225 Cottagewood Road  
Deephaven, MN 55331  
www.greenwoodmn.com  
Main: 952.474.6633  
Direct: 612.718.6753

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From: Debra Kind <dkind100@gmail.com>  
Subject: Re: St. Alban's Bay Bridge  
Date: February 21, 2013 10:06:10 AM CST  
To: Kristi Luger <kluger@ci.excelsior.mn.us>  
Cc: Gus Karpas <guskarpas@mchsi.com>

Kristi --

I totally agree. The bridge is not on Greenwood's radar for work anytime in the near future either. But we do think it is important to have an agreement in place for when the bridge needs to be replaced -- hopefully many years from now! The attached draft of the agreement includes triggers for determining when the bridge needs to be replaced. We would like the Excelsior City Council to review the draft and send back comments. Call me if you would like to discuss further. Thanks!

Deb

DEBRA J. KIND  
Mayor, City of Greenwood  
20225 Cottagewood Road  
Deephaven, MN 55331  
www.greenwoodmn.com  
Main: 952.474.6633  
Direct: 612.718.6753

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On Feb 21, 2013, at 9:54 AM, Kristi Luger wrote:

Hello [Deb] -

I wanted to let you know that the City Council did not elect the St. Alban's Bay Bridge as one of their priorities for 2013. At this time, we will be postponing any work on this project.

If you have any questions please feel free to contact me.

Kristi

Kristi Luger, City Manager  
City of Excelsior  
339 Third Street  
Excelsior, MN 55331  
952-653-3672  
PLEASE NOTE: City Hall is now open 7:30 am-5:30 pm, Monday-Thursday.