



LAKE MINNETONKA CONSERVATION DISTRICT

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AGENDA
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, August 9, 2023
Wayzata City Hall
600 Rice Street, Wayzata, MN 55391

PUBLIC PARTICIPATION

Those attending the meeting, please complete the attendance sheet. Those desiring to participate in the meeting should complete the *Public Comment Form* at the meeting if the online [Public Comment Form](#) was not submitted. The Chair may choose to reorder the agenda for a specific agenda item if it would benefit the needs of those in attendance. Please see *Public Comments* Section for more information.

WORK SESSION AGENDA

6:00 p.m.

The purpose of the Work Session is to allow staff to seek input from the Board and for the Board to discuss matters in greater detail than generally available at the formal Board Session. The Board may give staff direction or express a preference but does not formally vote on matters during Work Sessions. While all meetings of the Board are open to the public, Work Session discussions are generally limited to the Board, staff, and designated representatives. Work Sessions are not videotaped. The work session may be continued after the formal meeting, time permitting.

No Work Session

FORMAL MEETING AGENDA

7:00 p.m.

The purpose of the Formal Session is to allow the Board to conduct public hearings and to consider and take formal action on matters coming before the LMCD.

- 1) **CALL TO ORDER**
- 2) **PLEDGE OF ALLEGIANCE**
- 3) **ROLL CALL**
- 4) **APPROVAL OF AGENDA**
- 5) **CHAIR ANNOUNCEMENTS**
- 6) **APPROVAL OF MINUTES (07/12/2023 LMCD Regular Board Meeting)**
- 7) **APPROVAL OF CONSENT AGENDA**
 - A) **Audit of Vouchers (07/16/2023 – 07/31/2023 & 08/01/2023 – 08/15/2023)**

- B) Resolution Accepting Save the Lake Contributions (06/10/2023 – 07/31/2023)
- C) Findings of Fact and Order for New Multiple Dock License for Reconfiguration of Non-Conforming Structure, Groveland HOA

8) PUBLIC COMMENTS – *Provides an opportunity for the public to address the board on items that are not on the agenda. Public comments are limited to 5 minutes. Please direct all comments to the Board Chair. The Board generally will not engage in public discussion, respond to or correct statements from the public, or act on items not on the agenda. The Board may ask for clarifications or direct staff to report back on items at future meetings.*

9) PRESENTATIONS

10) PUBLIC HEARING

11) OTHER BUSINESS

12) OLD BUSINESS

- A) Admin Fines History
- B) Strategic Plan Adoption

13) NEW BUSINESS

- A) Watercraft for Hire Work Group

14) TREASURER REPORT

- A) June & July 2023 Balance Sheets
- B) July 2023 General & STL Income and Expense Reports

15) EXECUTIVE DIRECTOR UPDATE

- A) James J. Hill Days (Sept. 8th-10th) – Volunteers for September 9th & 10th
- B) Excelsior Apple Day (Sept. 15th-17th) – Volunteers September 16th & 17th (Gregg/Mark)
- C) Employee Org. Chart
- D) Flex Time
- E) Tonka Bay Boat
- F) Scanning

16) ADJOURNMENT

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**
6:00 P.M., JULY 12, 2023
Wayzata City Hall

WORK SESSION

6:00 p.m. to 7:00 p.m.

Members Present: Ann Hoelscher, Victoria; Jake Walesch, Deephaven; Rich Anderson, Orono; Gabriel Jabbour, Spring Park; Mark Kroll, Excelsior; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also Present: Maisyn Reardan, Administrative Coordinator; Raina Arntson, Administrative Intern, and Jim Brimeyer, Interim Executive Director.

Members Absent: Mike Kirkwood, Minnetrista; Ben Brandt, Mound; Dan Baasen, Wayzata; Dennis Klohs, Minnetonka Beach; Ryan Nellis, Tonka Bay; Deborah Zorn, Shorewood; and Bill Cook, Greenwood.

Persons in Audience: Eric Evenson, Dan Gustafson.

1. DISCUSSION

A) Revised Strategic Plan

Board Directors present discussed making language changes to the second desired outcome listed under the first strategic priority on the Strategic Plan that states "Analyze competing lake uses and lake management options." After heavy discussion, the Board of Directors agreed to remove the language all together so that there is only one desired outcome remaining under the first strategic priority.

B) Future Workshop Discussion List

Chair Hoelscher asked Board members to provide topics of discussion for upcoming workshop sessions.

Director Kroll suggested the Board consider imposing quiet days of the week for small bays on Lake Minnetonka.

Director Newell suggested having Eric Evenson present on AIS management options.

Director Jabbour suggested a statutory change to have each Board Member be elected instead of appointed by their affiliated City.

Director Anderson suggested switching all staff members to salaried income and implementing flex time for summer and winter seasons.

Chair Hoelscher commented about public walk-in hours and questioned whether they need to be reduced.

ADJOURNMENT

The work session was adjourned at 6:51 p.m.

FORMAL MEETING

7:00 p.m.

1. CALL TO ORDER

Chair Hoelscher called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Ann Hoelscher, Victoria; Jake Walesch, Deephaven; Rich Anderson, Orono; Bill Cook, Greenwood; Gabriel Jabbour, Spring Park; Mark Kroll, Excelsior; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also present: Thomas Tully, Environmental Administrative Technician; Maisyn Reardan, Administrative Coordinator; Raina Arntson, Administrative Intern, and Interim Executive Director Jim Brimeyer.

Members absent: Mike Kirkwood, Minnetrista; Ben Brandt, Mound; Dan Baasen, Wayzata; Dennis Klohs, Minnetonka Beach; Ryan Nellis, Tonka Bay; and Deborah Zorn, Shorewood.

Persons in Audience: Eric Evenson, Dan Gustafson, Mike Jilek, Dennis Nelson, Major Shane Magnuson, Lt. Rick Rehman, Sgt. Rick Waldon, and Mary Santiago.

4. APPROVAL OF AGENDA

Hoelscher requested to add an item to the agenda, 135 Mound Avenue Variance, under Old Business. She noted that there has been an agreement between the applicant and the staff.

MOTION: Hoelscher moved; Walesch seconded to amend the agenda, making the change noted by Hoelscher above.

VOTE: Motion carried unanimously.

MOTION: Walesch moved; Stone seconded to approve the agenda as amended.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Hoelscher invited Water Patrol to provide an update on the Fourth of July.

Major Magnuson noted that the statistics were much higher than they wanted, with over 800 violations observed. He commented that there were almost as many BUIs over Fourth of July as there had been during the entire last boating season. He noted that there were 642 verbal warnings, 123 citations, and 160 calls for service answered by water patrol. He acknowledged that it was a longer "weekend" as they counted it as a five-day weekend, but the numbers were much higher than they would have liked. He commented that having paramedics on the boats during weekends has been a great program.

Hoelscher and the Board thanked the Water Patrol. She noted that she and Kirkwood participated in a ride along with Water Patrol last week, which was very educational. She encouraged other Board members to participate in a ride along as well. She noted that one of the largest safety violations is lack of throwable cushions. She stated that in the past, Save the Lake distributed throwable cushions as a promotion and perhaps they could provide some throwable cushions to Water Patrol to provide to those that are found without.

Anderson noted the two mentioned medical calls and asked if there were other medical issues that were addressed but not classified as a medical call.

Magnuson replied that there were no additional issues during the weekend. He noted that the paramedics have assisted in other instances, but thankfully they did not have any large medical issues during that weekend.

Jabbour asked if the DNR is also providing coverage and whether those hours were included in the totals.

Magnuson replied that the DNR was also out in addition to Water Patrol and that was not counted in these totals. He believed there were six DNR individuals on the water during the holiday weekend.

Jabbour commented that they should be cognizant that if the DNR pulls their people, LMCD and Water Patrol will need to increase coverage. He referenced the recent changes to marijuana law and asked if that is a concern and how testing would be done for BWI.

Magnuson replied that currently there is no roadside testing other than observation. He stated that legislation is ahead of the testing process. He noted that the current process is long and drawn out. He noted that they can still pull impaired drivers off the water. He confirmed that if they arrest someone for driving under the influence on the water, that deputy is off the water for about half the day. He commented that they do have partnerships with lake communities and the office at the Orono Police Department. He explained that BWIs are tracked separately from the written citations and noted 11 BWIs.

Hoelscher noted that the Lake Minnetonka Association (LMA) provided a letter to the Board and that has been entered into the record.

6. APPROVAL OF MINUTES- 06/28/2023 LMCD Regular Board Meeting

MOTION: Walesch moved; Stone seconded to approve the 06/28/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

Anderson referenced the bill from Your Computer Hero for \$750. He stated that he would pay the bill but is going to follow up as he believed that was going to be \$500.

MOTION: Anderson moved; Walesch seconded to approve the consent agenda as presented. Items approved included: **7A)** Audit of Vouchers (07/01/2023 – 07/15/2023).

VOTE. Motion carried unanimously.

8. PUBLIC COMMENTS - Persons in attendance, subjects not on the agenda (limited to 5 minutes)

There were no public comments.

9. PRESENTATIONS

There were no presentations.

10. PUBLIC HEARING

A) New Multiple Dock License Groveland HOA – Reconfiguration of Non-Conforming Structure

Tully presented a request from Groveland HOA for a new multiple dock license. He provided background information on the site which has a nonconforming dock structure that currently has 32 BSUs and a density of 1:15. He stated that the applicant is proposing a reconfiguration based on water depth, navigation, as well as use and safety. He provided the current approved site plan and compared that to the newly proposed site plan. He noted that no additional BSUs or change to the BSU dimension is proposed. He stated that they would maintain the existing variance for the site. He stated that no comments were received from public agencies, or the general public and staff recommends approval of the request based on the conditions noted in the staff report.

Cook asked if there has been discussion about the backside of the dock as it seems that would be an opportunity for BSU creep.

Tully commented that because this is a nonconforming structure, the applicant would not be able to expand in BSU count. He commented that the applicant is not exceeding what exists, just reconfiguring.

Cook stated that he would like a condition that there is a maximum number of BSUs.

Mike Jelik, Dock Director for Groveland HOA, commented that they require boatlifts therefore there would not be any creep and they would not exceed the approved number of BSUs. He stated that there are a good number of boat slips in shallow water, which is the reason for this request, along with safety. He also believed this will look better and clean up the shoreline a bit.

Newell commented that he believes that one of the concerns of the neighborhood was the swimming area and how exposed that was, but the new configuration would better protect that area.

Anderson commented that this would also be better for the littoral zone.

Jabbour commented that this is a great plan. He noted that in 1992 the previous HOA director sat on a committee with him to make this type of thing allowed.

Hoelscher opened the public hearing at 7:27 p.m.

Mary Santiago, Groveland resident, commented that she does not support this plan. She believed that only one option had been proposed and she would prefer not to see boats lined up along the entire lakeshore. She stated that they also need a location for visiting boats to drop off and pick up, which she believes this plan is lacking.

No additional comments were offered, and the public hearing was closed at 7:28 p.m.

MOTION: Walesch moved; Jabbour seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the multiple dock license from Groveland HOA for the property located at PID 0711722440158 in Woodland for final action at the next LMCD Board meeting, with the added condition that parking on the inside of the dock can only occur at slips 10 and 30.

VOTE: Motion carried unanimously.

11. OTHER BUSINESS

A) Moratorium on New Charter Boat Applications

Brimeyer stated that this has become an issue of discussion for several months, as to what is allowed or not allowed. He stated that at the June 28th work session, the Board directed staff to prepare moratorium language, which has been done by legal counsel. He noted that this would become effective the date of passing and publication. He stated that he met with Water Patrol earlier today to identify areas where the LMCD Code could be changed to make enforcement easier.

MOTION: Jabbour moved; Kroll seconded to approve the Moratorium on Watercraft for Hire ordinance.

VOTE: Motion carried unanimously.

12. OLD BUSINESS

A) Administrative Fines

Brimeyer provided a brief background on this item which has been discussed at multiple recent meetings. He provided an overview of the fine schedule proposed including the option to appeal for an administrative hearing. He noted that he has reached out to Minnetonka and that city seems willing to serve in that capacity as they do for other municipalities. He stated that the ordinance is quite long and suggested that the Board authorize publication of title and summary.

Kroll stated that he supports this and hopes that it will encourage people to come into compliance. He asked a question related to consistency and provided an example.

Brimeyer noted that was a typo and confirmed that the maximum should be \$25,000 in each instance.

Kroll asked if White Bear Lake Conservation District has ever had to enact a property lien.

Brimeyer replied that the entity has not enacted that measure.

Hoelscher stated that she spoke with legal counsel and that would be done through judgement. She noted that the numbers for the daily fines need to be updated to correlate within the ordinance to match the staff memorandum.

Brimeyer noted that he would make that change.

Cook asked for clarification on the different steps for fines.

Brimeyer provided that clarification.

Jabbour asked if the city of Tonka Bay requested that this be tabled.

Brimeyer stated that he spoke with the City Manager for Tonka Bay this morning and stated that he would be happy to speak with the City Council to provide an explanation. He did not believe that this would need to be tabled tonight.

Jabbour stated that if the LMCD wants to partner with cities, and a request is made to table, that should be acknowledged. He asked what would be done with fine revenue.

Brimeyer stated that an account would need to be set up for that.

Jabbour asked if the LMCD could be accused of extortion to generate revenue.

Brimeyer noted that the current process would take these people to court and the revenue would be granted in that manner.

Jabbour commented that the LMCD cannot use the fine system to subsidize its budget.

Brimeyer noted that could be said about every item they collect.

Jabbour stated that he is a stickler for the law and there would need to be justification. He stated that the LMCD manages docks which is the only responsibility.

Brimeyer asked why it should then be made a criminal offense.

Jabbour commented that the code was written in that manner. He acknowledged that perhaps the code should be redone. He stated that he does support this concept because there are cases that have been ongoing for multiple years, some current cases are three and four years. He stated that he just wants to ensure that this would be bullet proof.

Newell stated that conceptually he is in favor of this. He stated that this would provide a process rather than just going to court.

Anderson provided a scenario and asked for details on how the process would work.

Brimeyer commented that the violator would receive a letter with a deadline for compliance.

Anderson commented that is similar to the current process with the exception that the current process has no teeth as the only option is to go to court and violators often do not care if they go to court against the LMCD. He stated that he strongly supports this as this will assist staff in tracking violations and hopefully gaining compliance. He believed that this was well written. He stated that perhaps a maximum of \$25,000 is too steep and \$15,000 may be better.

Stone stated that she is generally in favor of this, but also had questions about the \$25,000 fine structure. She believed that this would streamline things and give the LMCD power where it has been absent. She noted that while she would support this method, she does have pause if a member city has requested that this be tabled.

Walesch commented that he has not read the ordinance and therefore would abstain, but conceptually this makes sense. He understood the comments of Jabbour but did not think would result in the LMCD collecting tens of thousands of dollars from multiple, multiple people. He commented that things can always be contested as unfair, and a judge could make that determination if needed.

Kroll referenced the criminal option, which states that the charged person could withdraw at any time and choose to go to court. He believed that the threat of a fine would make more people think about fixing the violation. He noted that this could also help avoid unnecessary court cases. He believed that this tool would

help a lot.

Brimeyer commented that he spoke with the prosecutor today and he also supports this tool. He noted the expense of going to court for the LMCD.

Hoelscher stated that she agrees with the comments thus far and this will provide the LMCD with another tool. She shared the concern that a city has raised an issue. She stated that she is also concerned with approving this with the small number of members present tonight and would prefer to table this to the next meeting when there will be more people on the Board in attendance.

Cook reiterated the concern that a city has requested the LMCD to postpone action until they could learn more about this process and would also be interested in tabling this to the next meeting, with direction for staff to provide that information to the city.

Anderson noted that this recommendation was made by Brimeyer years ago and does not want to see this be delayed and skipped over again. He stated that the entire Board had the opportunity to be here tonight. He stated that he will defer to Cook and Jabbour if they feel strongly that this should be postponed.

Cook stated that he would like this to have a short timeline for approval and therefore would want staff to work with Tonka Bay to resolve their questions.

MOTION: Cook moved; Walesch seconded to table the consideration of Administrative Fines to the next Board meeting and direct staff to collaborate with member cities to ensure they have appropriate notification and the information they need.

Further discussion: Jabbour asked if this would require a public hearing.

VOTE: Motion carried unanimously.

B) 135 Mound Avenue Variance

Brimeyer stated that at the last Board meeting this request was tabled with direction for staff to collaborate with the applicant.

Tully explained that legal counsel, LMCD staff, and the applicant worked hard to come to agreement on the language. He noted that some changes were also made to the Board memo as reflected in the findings of fact.

Dennis Nelson, 135 Mound Avenue, thanked the Board for allowing him to collaborate with the staff. He stated that while he did not get everything he wanted, he was educated on other ways he could solve those problems. He commented that Tully was very professional, and he believed this process worked well.

Hoelscher opened the public hearing.

No comments.

Hoelscher closed the public hearing.

MOTION: Jabbour moved; Walesch seconded to adopt the new resolution and finding of fact with direction that the variance will be recorded against the property per the new policy.

VOTE: Motion carried unanimously.

13. NEW BUSINESS

A) Scanning Agreement

Brimeyer provided background information on the impetus to consider scanning documents and the process they followed to obtain quotes. He stated that they considered the low bid but also considered whether the company would create usable files that would be user friendly for staff. He noted that ARC was both the low bidder and the company that staff feels most comfortable with in terms of understanding the needs of the LMCD. He stated that the staff recommends hiring ARC, noting that part of the proposal includes storage of the documents for 90 days and then document shredding. He noted that he did consult with Nellis because of his professional experience, and he also supports this action.

Anderson commented that he suggested digitizing the documents because of a fire he experienced at his marina.

MOTION: Anderson moved; Walesch seconded to approve the Scanning Agreement with ARC with the additional contingency as mentioned.

VOTE: Motion carried unanimously.

14. TREASURER REPORT

Anderson stated that he was hoping to have six-month data on a report and hopes to have that at the next meeting.

15. EXECUTIVE DIRECTOR UPDATE

Brimeyer provided an update on changes in banking as previously discussed. He noted that there is no meeting on July 26th as that has been canceled.

A) Boat Slip Applications

Brimeyer stated that the Park Commission and Dock Commission, but the City still wanted the LMCD to follow the formal application process. He stated that the Tonka Bay City Council have reviewed the request it as well.

He stated that Excelsior Fire currently rents a resident slip and the Tonka Bay City Council requested that LMCD and Excelsior Fire work together to place a permanent dock for these two slips which would open up the resident slip currently occupied by Excelsior Fire to a resident. He stated that he did provide the option of a temporary dock for the use for the remainder of this season, and they could then work together for a permanent dock for next season.

Jabbour commented that he had given Excelsior Fire a slip for a decade or decade and a half. He stated that Excelsior Fire has the desire to move to a fire lane and perhaps there should be a dialogue with Excelsior Fire.

B) Letter of Support – Subbasin Numbers on Lake Minnetonka Bays

Brimeyer provided information on data that is being gathered on subbasins and a request has been made for a letter of support from the LMCD. He stated that after speaking with Hoelscher, it was suggested that he speak with Erik Evenson.

Erik Evenson, LMA, stated that after speaking with Doctor Newman it was explained that he would like to see consistency between different agencies. He expressed concern with how that could impact bay treatments and there was additional discussion. He commented that he believes that numbering these basins would be good and provide a uniform platform to work with. He acknowledged that it might create a bit more work for bay treatments, but he is supportive of the request.

Brimeyer stated that draft language for the letter of support was provided in his memorandum.

MOTION: Jabbour moved; Cook seconded to approve the LMCD letter of support for Doctor Newman and authorize submission to the appropriate entities.

VOTE: Motion carried unanimously.

Hoelscher noted that information was included in the packet related to a drought update.

Tully commented that the dam has been closed because of the water levels.

Jabbour commented that he was confused with the setup of the agenda. He stated that he was appalled that 10 out of 11 Board members eliminated a good regulation about water skiing. He stated that Water Patrol made a recommendation and asked if that is going to be followed.

Hoelscher stated that she would hope that there is support for the Water Patrol. She noted that the action will still come back before the Board for final consideration as there were two parts to the update of the ordinance.

Jabbour commented that the LMCD is one group, and he does not support pockets of information. He asked for an update on Schussler.

Hoelscher stated that legal counsel was going to provide an update, but he was unable to attend tonight.

Tully stated that the Minnetonka Beach attorney and another attorney are collaborating with that individual.

Jabbour asked for an update on Petra.

Tully commented that is being managed by the prosecuting attorney.

16. ADJOURNMENT

MOTION: Cook moved; Newell seconded to adjourn the meeting at 8:24 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Jake Walesch, Vice Chair

9:31 AM
07/18/23

Lake Minnetonka Conservation District
Check Detail
July 16 - 31, 2023

Num	Date	Name	Memo	Account	Paid Amount	Class
	07/18/2023	US Bank		Alerus Checking		
				1087M10 · US Bank (Credit Card)	-1,802.48	Admin.
TOTAL					-1,802.48	
EFT-23-76	07/27/2023	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	-20,704.38	Admin.
			PERA	2020 · Payroll Liabilities -	2,890.46	Admin.
			ER PERA	4022M10 · ER PERA - Admin	-1,548.46	Admin.
			ER/FICA/Medicare - Admin	4021M10 · ER Share of Admin FICA/M...	-1,579.44	Admin.
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	58.13	Admin.
			Contract Labor	4024 · Contract Labor	-2,520.00	Admin.
TOTAL					-23,403.69	
EFT-23-77	07/27/2023	ADP Service Fee		Alerus Checking		
			Payroll 7/16/23 - 7/31/23	4180M10 · Professional Services - Adm...	-92.25	Admin.
TOTAL					-92.25	
EFT-23-78	07/27/2023	P.E.R.A		9236-00		
			Payroll 7/16/23 - 7/31/23	2020 · Payroll Liabilities -	-2,890.46	Admin.
TOTAL					-2,890.46	
EFT-23-79	07/27/2023	WEX Health, Inc. Service Fee		Alerus Checking		
			HSA Service Fee July 2023 (Duncan)	4380M10 · Employee Benefits - Admin.	-2.75	Admin.
			HSA Service Fee July 2023 (Tully)	4380M10 · Employee Benefits - Admin.	-2.75	Admin.
TOTAL					-5.50	
22398	07/16/2023	Chris Meyer		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-29.95	STL
TOTAL					-29.95	
22399	07/16/2023	Christine Quandt		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-29.95	STL
TOTAL					-29.95	

9:31 AM
07/18/23

Lake Minnetonka Conservation District
Check Detail
July 16 - 31, 2023

Num	Date	Name	Memo	Account	Paid Amount	Class
22400	07/16/2023	Cyndy Hansen		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-29.95	STL
TOTAL					-29.95	
22401	07/16/2023	Laurie Davis		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-29.95	STL
TOTAL					-29.95	
22402	07/16/2023	Paula Inman		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-29.95	STL
TOTAL					-29.95	
22403	07/16/2023	Sheila and Brian Wentz		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-29.95	STL
TOTAL					-29.95	
22404	07/16/2023	Kimberly Lesinski		Alerus Checking		
	07/16/2023		Boater Safety Exam Reimbursement	4160M20 · Public Health/Safety- SL	-59.90	Admin.
TOTAL					-59.90	
22405	07/27/2023	Chuck Struck		Alerus Checking		
INV0048	07/27/2023		Board Meeting 07/12/2023	4182M10 · Media (Cable/Internet) - Ad...	-90.00	Admin.
TOTAL					-90.00	
22406	07/27/2023	City of Mound		Alerus Checking		
00002525	07/27/2023		Rent, August 2023	4320M10 · Office Rent - Admin.	-1,733.48	Admin.
TOTAL					-1,733.48	
22407	07/27/2023	LMCC		Alerus Checking		
1552	07/27/2023		VOD Service for 07/12/2023 Board Meeting	4182M10 · Media (Cable/Internet) - Ad...	-200.00	Admin.
TOTAL					-200.00	

Lake Minnetonka Conservation District
Check Detail
July 16 - 31, 2023

Num	Date	Name	Memo	Account	Paid Amount	Class
22408	07/27/2023	Minnesota Trophies & Gifts		Alerus Checking		
	07/27/2023		Nameplate for Raina	4230M10 · Meeting Exp. - Admin.	-24.46	Admin.
TOTAL					-24.46	
22409	07/27/2023	Premier Materials Technology Inc.		Alerus Checking		
48648	07/27/2023		Solar Lights (9 Green) & Light Freight	4160M20 · Public Health/Safety- SL	-2,025.00	STL
TOTAL					-2,025.00	
22410	07/27/2023	Steven M. Tallen Attorney At Law		Alerus Checking		
	07/27/2023		Prosecution Cost, June 2023	4640M10 · Prosecution Legal Fees - Ad...	-4,751.44	Admin.
TOTAL					-4,751.44	
22411	07/18/2023	Bridgewater Bank		Alerus Checking		
			Initial Transfer From Alerus	Bridgewater Savings	-500,000.00	Admin.
TOTAL					-500,000.00	
22412	07/18/2023	Bridgewater Bank		Alerus Checking		
			Initial Transfer From Alerus	Bridgewater Checking	-75,000.00	Admin.
TOTAL					-75,000.00	

11:00 AM
08/08/23

Lake Minnetonka Conservation District
Check Detail
August 1 - 15, 2023

ITEM 7A
Amended

Date	Num	Name	Memo	Account	Class	Paid Amount
08/04/2023	EFT-23-80	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-10,949.74
			P.E.R.A	2020 · Payroll Liabilities -	Admin.	1,532.35
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-820.90
			ER/FICA/Medicare - Admin	4021M10 · ER Share of Admin FICA/Medicare	Admin.	-837.33
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	4.10
			Contract Labor	4024 · Contract Labor	Admin.	-2,220.00
TOTAL						-13,291.52
08/04/2023	EFT-23-81	P.E.R.A		Alerus Checking		
			Payroll 8/1/23 - 8/15/23	2020 · Payroll Liabilities -	Admin.	-1,532.35
TOTAL						-1,532.35
08/04/2023	EFT-23-82	ADP Service Fee		Alerus Checking		
			Payroll 8/1/23 - 8/15/23	4180M10 · Professional Services - Admin.	Admin.	-92.25
TOTAL						-92.25
08/04/2023	EFT-23-83	Unum Life Insurance	0510159	Alerus Checking		
			Long Term Disability August 2023 (Tully)	2020-LT · Payroll Liabilities - UNUM	Admin.	-8.20
TOTAL						-8.20
08/11/2023	EFT-23-84	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-10,720.98
			P.E.R.A 8/16/23 - 8/31/23	2020 · Payroll Liabilities -	Admin.	1,500.35
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-803.76
			ER/FICA/Medicare - Admin	4021M10 · ER Share of Admin FICA/Medicare	Admin.	-819.85
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	4.10
			Contract Labor (Jim)	4024 · Contract Labor	Admin.	-3,880.00
TOTAL						-14,720.14
08/11/2023	EFT-23-85	ADP Service Fee		Alerus Checking		
			Payroll 8/16/23 - 8/31/23	4180M10 · Professional Services - Admin.	Admin.	-92.25
TOTAL						-92.25
08/11/2023	EFT-23-86	P.E.R.A	9236-00	Alerus Checking		
			Payroll 8/16/23 - 8/31/23	2020 · Payroll Liabilities -	Admin.	-1,500.35
TOTAL						-1,500.35
08/10/2023	22413	NCPERS Group Life Insurance		Alerus Checking		
08/10/2023	923600082023		Life Insurance (Duncan)	4380M10 · Employee Benefits - Admin.	Admin.	-16.00
			Life Insurance (Tully)	4380M10 · Employee Benefits - Admin.	Admin.	-16.00
TOTAL						-32.00

11:00 AM

08/08/23

Lake Minnetonka Conservation District
Check Detail
 August 1 - 15, 2023

Date	Num	Name	Memo	Account	Class	Paid Amount
08/10/2023	22414	Ratwik, Roszak & Maloney, P.A.		Alerus Checking		
08/10/2023	07012023		Civil Legal Fees June 2023	4620M10 · Civil Legal Fees - Admin.	Admin.	-3,588.67
TOTAL						-3,588.67
08/10/2023	22415	Sta-Safe Locksmiths		Alerus Checking		
08/10/2023	013988		Building Keys for Raina	4220M10 · Office Supplies -Admin.	Admin.	-28.50
TOTAL						-28.50
08/10/2023	22416	Your Computer Hero		Alerus Checking		
08/10/2023	7952		July 2023 Computer Maintenance	4181M10 · Professional Comp. Serv.-Admin.	Admin.	-510.00
TOTAL						-510.00
08/10/2023	22417	AIS Advanced Imaging Solutions		Alerus Checking		
08/10/2023	507265122		Copier Contract 7/20/2023 - 8/20/2023	4140M10 · Office Equipment R&M - Admin.	Admin.	-492.75
TOTAL						-492.75
08/10/2023	22418	American Mailing Machines		Alerus Checking		
08/10/2023	IN118477		Inkjet Cartridge For Postage Meter	4080 · Postage	Admin.	-313.67
TOTAL						-313.67
08/10/2023	22419	ECM Publishers, Inc.		Alerus Checking		
08/10/2023	957423		Ordinance No 245 Public Notice (Sun Sailor) Ordinance No 245 Public Notice (Laker Pioneer)	4110M10 · Public Info Legal Fees- Admin. 4110M10 · Public Info Legal Fees- Admin.	Admin. Admin.	-153.60 -99.00
TOTAL						-252.60
08/10/2023	22420	Innovative Office Solutions LLC		Alerus Checking		
08/10/2023	IN4264548		Business Cards (Maisyn & Raina) & Shipping Copy Paper	4220M10 · Office Supplies -Admin. 4220M10 · Office Supplies -Admin.	Admin. Admin.	-132.56 -44.09
TOTAL						-176.65
08/10/2023	22421	TimeSaver Off Site Secretarial, Inc.		Alerus Checking		
08/10/2023	28418		07/12/2023 Board Meeting Minutes	4230M10 · Meeting Exp. - Admin.	Admin.	-198.75
TOTAL						-198.75
08/10/2023	22422	Goff Public		Alerus Checking		
08/10/2023	18630		Project Management, Summer Rules Brochure, and Boater Education C...	4183M10 · Prof/ Serv. - Communications	Admin.	-3,870.00
TOTAL						-3,870.00



RESOLUTION 255

A RESOLUTION ACCEPTING CONTRIBUTION(S) TO THE LAKE MINNETONKA CONSERVATION DISTRICT (LMCD)

WHEREAS, the LMCD is a regional government agency established by Minnesota Statutes Section 103B.605, Subd. 1; and

WHEREAS, contributions to the LMCD "Save the Lake" fund are generally tax deductible to individuals under the IRS Code 26 USC Section 170 (b)(1)(a) because contributions to any political subdivision of any state for exclusively public purposes are deductible; and

WHEREAS, municipalities are generally authorized to accept donations of real and personal property pursuant to Minnesota Statutes Section 465.03 for the benefit of its stakeholders, and is specifically authorized to accept gifts; and

WHEREAS, LMCD wishes to follow similar requirements as established for municipalities for accepting donations; and

WHEREAS, the attached listed person(s) and entity(ies) have offered to contribute the cash amount(s) set forth with any terms or conditions as outlined in Attachment I to the LMCD; and

WHEREAS, such contribution(s) have been contributed to the LMCD for the benefit of the public, as allowed by law; and

WHEREAS, the LMCD Board of Directors finds that it is appropriate to accept the contribution(s) offered.

NOW THEREFORE, BE IT RESOLVED BY THE LMCD BOARD, STATE OF MINNESOTA AS FOLLOWS:

1. The contribution(s) described with Attachment I is/are accepted and shall be used to establish and/or operate services either alone or in cooperation with others, as allowed by law.

RESOLUTION #255

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2. The executive director is hereby directed to issue receipt(s) acknowledging the LMCD's receipt of the contributor's contribution(s).

Adopted by the Board this 9th day of August 2023.

ATTEST:

Ann Hoelscher, Chair

Michael Kirkwood, Secretary

Lake Minnetonka Conservation District
Transaction Detail By Account
June 10 through July 31, 2023

Date	Num	Name	Memo	Amount
Contributions				
3001M20 · Donations (General) - S/L				
06/23/2023	PayPal	Deborah Getlin	Transfer from PayPal (50.00)	48.06
06/23/2023	PayPal	Gerald Walsh	Transfer from PayPal (25.00)	23.79
07/05/2023	10001	Excelsior Bay Harbor	STL Donation (General)	1,000.00
07/05/2023	8526147	Gary & Susan Rappaport	STL Donation (General)	250.00
07/05/2023	4845	Denny Newell	STL Donation (General)	500.00
07/18/2023	8569664	Susie & Hal Goldstein	STL Donation (General)	250.00
07/18/2023	PayPal	Gerald Walsh	Transfer from PayPal (25.00)	23.79
07/18/2023	002617	Patricia Alton Baker	STL Donation (General)	1,000.00
				<u>3,095.64</u>
3002M20 · Donations (Photograph) - S/L				
			Total 3002M20 · Donations (Photograph) - S/L	<u>50.00</u>
06/13/2023	06132023	Josh Leddy	Aerial Prints 18 X 24 Print of Black and Seton Lake	
Total 3001M20 · Donations (General) - S/L				<u><u>3,095.64</u></u>

Type: Outlot Association
Reconfiguration of Nonconforming Structure
Date: August 09, 2023
PID(s): 07-117-22-44-0158
Address: 15 Address Unassigned,
Woodland, MN 00000

**LAKE MINNETONKA CONSERVATION DISTRICT
HENNEPIN COUNTY, MINNESOTA**

IN RE:

Application of Groveland Homeowners
Assoc for Reconfiguration of a
Nonconforming Structure located at PID
07-117-22-44-0158 in the City of Woodland

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“LMCD”) received an application from Groveland Homeowners Assoc (collectively, the “Applicant”) for a New Multiple Dock License for property owned by the Applicant located at 15 Address Unassigned, Woodland, MN 55391 (“Subject Property”). The Subject Property includes, and this Order applies to, the parcels identified with PID 07-117-22-44-0158. In 2019 the LMCD Board of Directors (“Board”) issued a Multiple Dock license to the Applicant for the Subject Property in 2006 and carried forward a Variance issued in 1998. The Applicant is now seeking approval for the reconfiguration of dock structure located at the site and the relocation of ten (10) BSUs associated with the dock structure. The Board provided the Applicant and the general public an opportunity to be heard at the public hearing initiated on July 12, 2023. Now, based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

- a. The Subject Property is located in the City of Woodland, on Wayzata Bay, which is part of Lake Minnetonka (“Lake”).
- b. The Subject Property is currently licensed as a Outlot Association.
- c. The Applicant proposes to reconfigure the nonconforming dock structure by Reconfigure 3 Dock Structures into one single dock structure; Relocate the associated BSUs (10); and to reaffirm the variance previously granted to the Subject Property with no changes. The Applicant does not propose to change the outside dimensions of the dock structure.
- d. The Subject Property contains approximately 477 feet of 929.4 NGVD shoreline.

- e. The Board previously determined the Subject Property has a total preserved density of 32 boat storage units (“BSUs”) and a total preserved linear footage of approximately 632 feet.
- f. The Applicant desires to reconfigure the nonconforming Multiple Dock within the same envelope under Article 2, Chapter 8 of the LMCD Code of Ordinances (“Code”).
- g. The Applicant submitted a site plan with its application, which is attached hereto as Exhibit A and is incorporated herein (“Site Plan”). Exhibit A includes the Site Plan (s) for both the 2006 approved configuration and the 2023 proposed configuration.
- h. The Site Plan shows an reconfiguration of subject property dock structure in the previous license, from five (5) in the 2022 configuration, to three (3) in the 2023 configuration.
- i. The Board may approve the proposed reconfiguration under Section 2-8.11 of the Code as the dock will remain within the previously approved dimensional limitations.
- j. The LMCD received no comments from the MN DNR, MCWD, or The City of Tonka Bay.
- k. The proposed reconfiguration, as reflected in the Site Plan, satisfies the limitations in LMCD Code, Section 2-8.11. The proposed reconfiguration does not exceed the maximum allowed total linear footage for the BSUs, remains with the existing perimeter, does not extend further into the Lake than the current structure, does not create any new nonconformities, and Site Plan, with the conditions imposed under this Order.
- l. Pursuant to Section 2-8.19 of the Code, the unused BSUs, linear footage, and perimeter resulting from the reconfiguration is preserved. For the purposes of documentation, the proposed reconfiguration in BSUs for the 2023 configuration results in no unused BSUs, and no unused linear footage. Any proposal to reconfigure this location which may result in banked additional BSUs and linear footage will require the issuance of a new Multiple Dock License and compliance with the applicable provisions of the Code.
- m. The Board finds the requested reconfiguration of the nonconforming structure, as reflected in the Site Plan and supported by the previously issued Variance, complies with Article 2, Chapter 8 of the Code and that it is appropriate to issue the requested Commercial Multiple Dock with the conditions as indicated below.

ORDER

ON THE BASIS OF THE FOREGOING AND THE RECORD OF THIS MATTER, IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

- 1. Approvals. The following approvals requested by the Applicant are hereby approved and issued for the Subject Property, subject to the conditions identified herein:
 - (a) Reconfiguration of a Nonconforming Structure. The new Multiple Dock license for the

reconfiguration of a nonconforming dock includes approval of a final configuration for the 2023 boating season and on. The final configuration includes a total of 32 BSUs, as shown on the Site Plan (Exhibit A). This Order replaces the Order issued in 2006 and all other orders previously issued for the Subject Property, except the previously approved Variance.

(b) Variance. The Variance previously issued for the Subject Property remains in effect and is hereby reaffirmed to approve the continued encroachment of the dock structure across the western extended side site line as shown on Site Plan.

2. Conditions. The approvals granted in this order are subject to, and condition upon, compliance with the following:

- (a) No storage of watercrafts may be allowed anywhere within the subject property, Only those BSUs identified as such in the Site Plan may be used.
- (b) The Multiple Dock License issued herein is unique to the Applicant. Upon transfer of ownership of the Subject Property to another individual or entity, such individual or entity will be required to apply for a new license and any other approvals that may be required.
- (c) Failure of the Applicant to comply with any relevant regulation of the LMCD or other regulatory body may result in revocation of this approval.
- (d) Watercraft stored at this dock facility shall be not extend beyond 100 feet from the 929.4-foot elevation contour. Length overall is defined as the horizontal measurement for the foremost to the outmost points of the watercraft including all equipment and attachments.
- (e) No temporary low water variances shall be granted during the period when the Lake level falls below elevation 928.0 National Geodetic Vertical Datum.
- (f) Dock structures shall be constructed and maintained in strict compliance with the Site Plan (Exhibit A) and in good condition.
- (g) The Subject Property must be maintained and operated in compliance with all other provisions of this Code, and other applicable regulations, ordinances and state law.
- (h) The Applicant shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinance and shall obtain all other permits or permissions that may be required associated with its dock facility and the Subject Property.
- (i) Nothing herein is intended to, or shall be construed as, regulating any land-based activities of this Outlot Association occurring above the ordinary high-water level.

3. Authorizations. The LMCD staff is hereby authorized and directed to issue the approved commercial multiple dock license for the Subject Property and to take such other actions as may be needed to ensure compliance with this Order and the requirements of the Code.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 09th day of August 2023.

Ann Hoelscher, Chair

ATTEST:

Mike Kirkwood, Secretary

EXHIBIT A
Site Plan

(attached hereto)



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • PH: (952) 745-0789

DATE: August 9, 2023 (Prepared August 9, 2023)
TO: LMCD Board of Directors
FROM: Jim Brimeyer, Interim Executive Director
SUBJECT: State of Minnesota Joint Powers Agreement with Criminal Justice Agency and a Court Data Services Subscriber Amendment to CJDN Subscriber Agreement

ACTION

Board approval of a resolution authorizing the LMCD to enter into agreements with the State of Minnesota for a Joint Power Agreement with criminal justice agency and a Court Data Services Subscriber Amendment to CJDN Subscriber Agreement.

BACKGROUND

This agreement is between the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension (BCA) and the Lake Minnetonka Conservation District (LMCD). These agreements allow the prosecuting attorney to access the criminal justice data system in an official capacity as required to perform the duties necessary to prosecute violations for the LMCD.

The entering of these agreements are authorized under Minnesota Statutes §471.59. Under Minnesota Statutes §299C.46, the BCA is required to provide a criminal justice data communications network for authorized agencies in Minnesota. The LMCD is authorized by law to utilize the criminal justice data communications network under certain conditions and limitations. Those items are established in the agreements.

The Court Data Services Subscriber Amendment to CJDN Subscriber Agreement amends the Joint Powers Agreement to allow the BCA tools to be used to access the Court system. This amendment provides additional conditions for the use of the system and data.

The agreement is in effect for five years or until termination by either of the parties as outlined in the agreement. A copy of the agreement document templates are provided for your review.

BUDGET

N/A

STRATEGIC PRIORITIES

- Operational Effectiveness, Clear & Timely Communications, Effective Governance (checked), Lake Protection, Other

ATTACHMENTS

- Resolution Authorizing the Agreements
- State of Minnesota Joint Powers Agreement
- Court Data Services Subscriber Amendment to CJDN Subscriber Agreement



RESOLUTION NO. 256

RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS WITH CRIMINAL JUSTICE AGENCY AND COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

WHEREAS, the Lake Minnetonka Conservation District (LMCD), on behalf of its Prosecuting Attorney desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the LMCD is eligible. The Joint Powers Agreements further provide the LMCD with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the LMCD to pay the costs for the network connection

NOW, THEREFORE, BE IT RESOLVED BY THE LAKE MINNETONKA CONSERVATION DISTRICT AS FOLLOWS:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the LMCD on behalf of its Prosecuting Attorney, are hereby approved.
2. That the Executive Director, or his or her successor, is designated the Authorized Representative for the LMCD and Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the LMCD's connection to the systems and tools offered by the State.
To assist the Authorized Representative with the administration of the agreement, Administrative Coordinator Maisyn Reardan is appointed as the Authorized Representative's designee.
3. That Ann Hoelscher, the Chair, and Mike Kirkwood, the Secretary, of the LMCD Board of Directors are authorized to sign the State of Minnesota Joint Powers Agreements.

RESOLUTION #256
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ADOPTED by the LMCD Board this 9th day of August, 2023.

Ann Hoelscher, Chair

ATTEST:

Mike Kirkwood, Secretary

**STATE OF MINNESOTA
JOINT POWERS AGREEMENT
AUTHORIZED AGENCY**

This agreement is between the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension ("BCA") and the Lake Minnetonka Conservation District on behalf of its Prosecuting Attorney ("Agency").

Recitals

Under Minn. Stat. § 471.59, the BCA and the Agency are empowered to engage in those agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46 the BCA must provide a criminal justice data communications network to benefit authorized agencies in Minnesota. The Agency is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized agencies in performing their duties. Agency wants to access these data in support of its official duties.

The purpose of this Agreement is to create a method by which the Agency has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

Agreement

1 Term of Agreement

- 1.1 Effective date:** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 Expiration date:** This Agreement expires five years from the date it is effective.

2 Agreement between the Parties

2.1 General access. BCA agrees to provide Agency with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Agency is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.

2.2 Methods of access.

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

- A. Direct access** occurs when individual users at the Agency use Agency's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
- B. Indirect access** occurs when individual users at the Agency go to another Agency to obtain data and information from BCA's systems and tools. This method of access generally results in the Agency with indirect access obtaining the needed data and information in a physical format like a paper report.
- C. Computer-to-computer system interface** occurs when Agency's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Agency employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Agency will select a method of access and can change the methodology following the process in Clause 2.10.

2.3 Federal systems access. In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Agency with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.

2.4 Agency policies. Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Agency has created its own policies to ensure that Agency's employees and contractors comply with all applicable requirements. Agency ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.

2.5 Agency resources. To assist Agency in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/BCA-Policy-on-Appropriate-Use-of-Systems-and-Data.pdf>.

2.6 Access granted.

A. Agency is granted permission to use all current and future BCA systems and tools for which Agency is eligible. Eligibility is dependent on Agency (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Agency's written request for use of a specific system or tool.

B. To facilitate changes in systems and tools, Agency grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Agency needs to meet its criminal justice obligations and for which Agency is eligible.

2.7 Future access. On written request by Agency, BCA also may provide Agency with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Agency agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.

2.8 Limitations on access. BCA agrees that it will comply with applicable state and federal laws when making information accessible. Agency agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.

2.9 Supersedes prior agreements. This Agreement supersedes any and all prior agreements between the BCA and the Agency regarding access to and use of systems and tools provided by BCA.

2.10 Requirement to update information. The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving a city as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, BCA.ServiceDesk@state.mn.us.

2.11 Transaction record. The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Agency conducted a particular transaction.

If Agency uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Agency's method of access is a computer to computer interface as described in Clause 2.2C, the Agency must

keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If an Agency accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Agency must have a transaction record of all subsequent access to the data that are kept by the Agency. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

2.12 Court information access. Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by Agency under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Agency's access to and/or submission of the Court Records delivered through the BCA systems and tools.

2.13 Vendor personnel screening. The BCA will conduct all vendor personnel screening on behalf of Agency as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Agency.

3 Payment

The Agency understands there is a cost for access to the criminal justice data communications network described in Minn. Stat. § 299C.46. At the time this Agreement is signed, BCA understands that a third party will be responsible for the cost of access.

Agency will identify the third party and provide the BCA with the contact information and its contact person for billing purposes so that billing can be established. The Agency will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Agency chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

4 Authorized Representatives

The BCA's Authorized Representative is Dana Gotz, Department of Public Safety, Bureau of Criminal Apprehension, Minnesota Justice Information Services, 1430 Maryland Avenue, St. Paul, MN 55106, 651-793-1007, or her successor.

The Agency's Authorized Representative is Vickie Schleunig, Executive Director, 5341 Maywood Road, Suite 200, Mound, MN 55364, (952) 745-0789, or his/her successor.

5 Assignment, Amendments, Waiver, and Contract Complete

5.1 Assignment. Neither party may assign nor transfer any rights or obligations under this Agreement.

5.2 Amendments. Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.

5.3 Waiver. If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.

5.4 Contract Complete. This Agreement contains all negotiations and agreements between the BCA and the Agency. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Liability

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466, governs the Agency's liability.

7 Audits

7.1 Under Minn. Stat. § 16C.05, subd. 5, the Agency's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement. Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

7.2 Under applicable state and federal law, the Agency's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.

7.3 If Agency accesses federal databases, the Agency's records are subject to examination by the FBI and Agency will cooperate with FBI examiners and make any requested data available for review and audit.

7.4 To facilitate the audits required by state and federal law, Agency is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

8 Government Data Practices

8.1 BCA and Agency. The Agency and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Agency under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Agency or the BCA.

8.2 Court Records. If Agency chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Agency comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

9 Investigation of alleged violations; sanctions

For purposes of this clause, "Individual User" means an employee or contractor of Agency.

9.1 Investigation. Agency and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Agency and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Agency of the suspected violation, subject to any restrictions in applicable law. When Agency becomes aware that a violation has occurred, Agency will inform BCA subject to any restrictions in applicable law.

9.2 Sanctions Involving Only BCA Systems and Tools.

The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Agency's internal discipline processes, including those governed by a

collective bargaining agreement.

9.2.1 For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Agency must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Agency must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Agency and BCA's determination controls.

9.2.2 If BCA determines that Agency has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Agency's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.

9.3 Sanctions Involving Only Court Data Services

The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Agency. As part of the agreement between the Court and the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Agency. The agreement further provides that only the Court has the authority to reinstate access and use.

9.3.1 Agency understands that if it has signed the Court Data Services Subscriber Amendment and if Agency's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Agency also understands that reinstatement is only at the direction of the Court.

9.3.2 Agency further agrees that if Agency believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

11.1 Termination. The BCA or the Agency may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

11.2 Termination for Insufficient Funding. Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Agency is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

12 Continuing obligations

The following clauses survive the expiration or cancellation of this Agreement: 6. Liability; 7. Audits; 8. Government Data Practices; 9. Investigation of alleged violations; sanctions; and 10. Venue.

The parties indicate their agreement and authority to execute this Agreement by signing below.

1. AGENCY

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

**2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF
CRIMINAL APPREHENSION**

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION
delegated to Materials Management Division

By: _____

Date: _____

COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the Lake Minnetonka Conservation District on behalf of its Prosecuting Attorney (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 127973, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

b. **“Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is www.courts.state.mn.us) or other location designated by the Court, as the same may be amended from time to time by the Court.

c. **“Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

d. **“DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

e. **“Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. “**Rules of Public Access**” means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records or Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is www.courts.state.mn.us.

g. “**Court**” shall mean the State of Minnesota, State Court Administrator's Office.

h. “**Subscriber**” shall mean the Agency.

i. “**Subscriber Records**” means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. REQUESTS FOR AUTHORIZED COURT DATA SERVICES. Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. Activation. Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. Rejection. Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. Requests for Termination of One or More Authorized Court Data Services. The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber’s access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber’s duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.

Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS. During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. Court Data Services Programs. Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

b. Court Data Services Databases. Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

c. Marks. Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks “MNCIS” and “Odyssey.”

d. Restrictions on Duplication, Disclosure, and Use. Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

e. Proprietary Notices. Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. Title; Return. The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. INJUNCTIVE RELIEF. Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

9. LIABILITY. Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

10. AVAILABILITY. Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

11. [reserved]

12. ADDITIONAL USER OBLIGATIONS. The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

a. Judicial Policy Statement. Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

b. Access and Use; Log. Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

c. Personnel. Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

d. Minnesota Data Practices Act Applicability. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

14. MODIFICATION OF FEES. Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

15. WARRANTY DISCLAIMERS.

a. WARRANTY EXCLUSIONS. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

b. ACCURACY AND COMPLETENESS OF INFORMATION. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

16. RELATIONSHIP OF THE PARTIES. Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

18. NON-WAIVER. The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. FORCE MAJEURE. Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

20. SEVERABILITY. Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

21. ASSIGNMENT AND BINDING EFFECT. Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

22. GOVERNING LAW. This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

23. VENUE AND JURISDICTION. Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

24. INTEGRATION. This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

1. SUBSCRIBER (AGENCY)

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

**2. DEPARTMENT OF PUBLIC SAFETY,
BUREAU OF CRIMINAL APPREHENSION**

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION
delegated to Materials Management Division

By: _____

Date: _____

4. COURTS

Authority granted to Bureau of Criminal Apprehension

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with authorized authority)

Date: _____

MALKERSON GUNN MARTIN LLP

5353 GAMBLE DRIVE, SUITE 225
MINNEAPOLIS, MINNESOTA 55416
TELEPHONE 612-344-1111
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August 7, 2023

Board of Directors
Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364

Re: Proposed Administrative Fines Ordinance
Our Client: Lake Minnetonka Association

Dear Members of the Board of Directors:

We represent the Lake Minnetonka Association and write this letter on its behalf in opposition to the proposed administrative fines ordinance (“Proposed Ordinance”) that the Board of Directors of the Minnetonka Conservation District (“LMCD”) will consider at its meeting on August 9, 2023. For the reasons set forth below, the LMCD simply does not have the power to adopt such an ordinance. On behalf of the Lake Minnetonka Association, we therefore respectfully ask that you not adopt the Proposed Ordinance.

The LMCD is a creature of statute and, as such, it only has those specific powers that the Minnesota Legislature has expressly conferred upon it. *See, e.g., Minnesota Chamber of Com. v. City of Minneapolis*, 944 N.W.2d 441, 456 (Minn. 2020) (cities “possess no inherent powers and are purely creatures of the legislature” and “possess only those powers that are conferred by statute.”); *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) (administrative agencies are “creatures of statute and they have only those powers given to them by the legislature”); and *Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984) (A local government entity only has those powers expressly conferred by the Legislature).

Here, the Minnesota Legislature has given the LMCD many powers, but those powers simply do not include the power to enforce its rules with administrative fines. In the statute establishing the LMCD, the Minnesota Legislature specifically itemizes the powers of the board of the LMCD. Minn. Stat. § 103D.611, subd. 3 (2023). The powers listed in this statutory provision do *not* include the power to levy civil fines.

The governing statute also includes a separate provision that specifically addresses the powers of the LMCD to enforce its rules and regulations. This statutory provision states in relevant part as follows: “The rules and regulations of the district may be enforced by the district by injunction in addition to penalties under this section.” Minn. Stat. § 103D.641, subd. 1(c) (2023). The “penalties under this section” are set forth in a later provision of the same statute, which reads in its entirety as follows:

Penalty. A person who violates a rule or regulation that has the force and effect of an ordinance is guilty of a misdemeanor and subject to a sentence of not more than 90 days plus costs or a fine of not more than \$100 plus costs.

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LMCD “may adopt rules and regulations to effectuate the purpose of its establishment and the powers granted to [it].” Minn. Stat. § 103B.641, subd. 1(a) (1998). One such power is “to regulate the types of boats permitted to use the lake.” Minn. Stat. § 103B.611, subd. 3(1) (1998). LMCD may enforce its ordinances through injunctions and misdemeanor criminal penalties. Minn. Stat. § 103B.641, subds. 1(c), 3 (1998).

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The Lake Minnetonka Conservation District is empowered by statute to adopt ordinances to effectuate the powers granted to it. Minn. Stat. § 103B.641, subd. 1(a), (b) (2006). A violation of an ordinance is a misdemeanor offense. *Id.*, subd. 3.

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Reading the statute to include an unstated power to assess administrative fines, as the proponents of the Proposed Ordinance do here, is a gross deviation from the legal principle governing the

Board of Directors
Lake Minnetonka Conservation District
August 7, 2023
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Finally, in the Proposed Ordinance, the staff report dated August 2, 2023, states that the LMCD will have the power to collect unpaid administrative fines by means of certifying such unpaid fines for collection with the offender’s property taxes. (Staff Report, p. 1, stating that “[i]f a fine is not paid, the governing body can place a lien on the property which can be collected in the same manner as taxes.”). The Minnesota Court of Appeals has held that a local government entity lacks the authority to certify an unpaid debt to be assessed with a landowner’s property taxes without express legislative authority to do so. *See Mathews v. City of Vill. of Minnetonka Beach*, 899 N.W.2d 881, 882 (Minn. Ct. App. 2017). This proposed collection method is unlawful, just as the underlying power to assess administrative fines in the first instance is similarly unlawful.

If the LMCD wants the power to enforce its rules with administrative fines, it should lobby the Minnesota Legislature to amend the governing statute to confer that power upon the LMCD. Until the Minnesota Legislature does so, the LMCD does not have to power to adopt or administer the Proposed Ordinance. On behalf of the Lake Minnetonka Association, we therefore respectfully ask that the Board vote in opposition to the adoption of the Proposed Ordinance.

Very truly yours,

/s/: *Bruce D. Malkerson*

Bruce D. Malkerson

/s/: *Patrick B. Steinhoff*

Patrick B. Steinhoff

¹ We are aware that the White Bear Lake Conservation District has adopted an ordinance giving itself the authority to assess civil fines. However, the WBLCD lacks the power to enforce and adopt such an ordinance for the same reasons set forth above with respect to the LMCD.



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: August 9, 2023 (Prepared August 2, 2023)
TO: LMCD Board of Directors
FROM: *James L. Brimeyer*
Jim Brimeyer, Interim Executive Director
SUBJECT: Administrative Fines Ordinance

ACTION

Board consideration of the Administrative Fines Ordinance.

The following motions are offered depending on whether the Board wishes to approve or deny the ordinance:

Approval

I make a motion to approve the Administrative Fines Ordinance <with the following conditions/exceptions...>

Denial

I make a motion to deny the Administrative Fines ordinance <based on the following conditions...>

BACKGROUND

This item was tabled at the June meeting at the request of a member city which requested more information. The staff was directed to send the proposal to all fourteen member cities advising them of the proposal and asking for comments prior to the August 9th board meeting. That communication was sent immediately after that meeting. A few cities responded thanking us for the notice and one city chose to endorse the idea. Most of the cities were familiar with the concept.

The only option available to many public agencies is a criminal prosecution and penalties. The criminal process does not always regard code violations as being important resulting in long delays in resolution. Citizens resent being labeled as criminals for violations of administrative regulations. The burden of proof and the potential for heavy fines or incarceration are not usually appropriate for many administrative violations. The criminal process is too expensive to be useful for violations of administrative regulations. The Administrative Fine process has proven to be more effective at encouraging compliance, is more efficient and less burdensome. If the fine is not paid, the governing body can place a lien on the property which can be collected in the same manner as taxes. Also, the violation could result in the revocation of a license, permit or other approval required by code and possible ineligibility to receive a license or a permit.

Administrative Fines ordinance
LMCD Board Meeting
August 9, 2023

Ultimately, the violator could face a criminal charge and a sentence of up to ninety (90) days in jail.

Staff inquired of White Bear Lake about their experience with this approach. No one on the current board, or staff, could remember if they ever had to use this section of their code.

CONSIDERATIONS

There have been some legal questions posed regarding the LMCD's authority to include this option in the code. There is no express authority to do this or not do it. Many cities, counties, and other public agencies, e.g., White Bear, have included this option in the code. Thus, it is the position of the LMCD "that it has inherent authority under state law to enforce its ordinances in a manner that satisfies due process while also fulfilling its statutory obligations to protect the lake. The \$100 penalty is relevant to criminal proceedings only".

STRATEGIC PRIORITIES

<input checked="" type="checkbox"/>	Operational Effectiveness	<input checked="" type="checkbox"/>	Clear & Timely Communications	<input checked="" type="checkbox"/>	Effective Governance	<input type="checkbox"/>	Lake Protection	<input type="checkbox"/>	Other
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ATTACHMENT

ORDINANCE 246: AN ORDINANCE RELATING TO ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES FOR VIOLATION OF DISTRICT ORDINANCES.

ORDINANCE 246

AN ORDINANCE RELATING TO ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES FOR VIOLATION OF DISTRICT ORDINANCES.

The Board of Directors of the Lake Minnetonka Conservation District ordains:

Section 1 – Purpose.

Pursuant to the authority granted under Minnesota Statutes section 103B.641, this ordinance creates an administrative fine procedure to enhance LMCD Code enforcement efforts.

Section 2 – Administrative Citations.

The following language shall be added to the LMCD Code as Chapter 4 of Article 1.

PART I.

Purpose

1-4.01. Statement of Purpose. The Board of Directors finds that there is a need for educating the public and for alternative methods of enforcing the District ordinances. There are certain negative consequences for both the District and the accused when criminal fines and penalties are the only available enforcement mechanism. Criminal law enforcement personnel and the criminal enforcement process do not always regard District ordinance violations as having sufficient priority. The delay inherent in that system does not ensure prompt resolution. Reluctance to label citizens as criminals for violations of ordinances may discourage enforcement. The higher burden of proof and the potential of incarceration do not appear appropriate for administrative enforcement. Accordingly, the Board finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy that may be pursued for District ordinance violations. The District thus enacts this ordinance in order to fully execute its duties as provided in Minnesota Statutes, sections 103B.601 to 103B.645.

PART II.

General Provisions

1-4.03. Administrative offense. A violation of a provision of the District ordinances is an administrative offense that may be subject to an administrative citation and civil penalties. Each day a violation exists constitutes a separate offense.

1-4.05. Civil penalty. An administrative offense may be subject to a civil penalty of \$500.00 per day for the first thirty (30) days for a continuing or subsequent and \$750.00 per day for the next

fifteen (15) days for any continuing or subsequent violation, depending on the duration of the violation. Total fines will not exceed a total of \$25,000.00 plus any costs, including restitution or abatement, as provided herein.

1-4.07. Amount of civil penalty. The Board of Directors has adopted by resolution a schedule of civil penalties for offenses initiated by administrative citation. The Board of Directors is not bound by that schedule when a matter is appealed to it for administrative review.

1-4.09. Procedures. The Board of Directors must appoint one or more education and enforcement officers and adopt procedures to administer the administrative citation program.

1-4.11. Enforcement authority. The Board of Directors must authorize by resolution the appointment of one or more education and enforcement officers and any persons other than sworn peace officers who shall enforce District ordinances by means of administrative citation.

Part III.

Administrative Citation

1-4.13. Citation issuance. A person authorized to enforce provisions of the District ordinances may issue an administrative citation upon probable cause that a code violation has occurred. The citation must be issued in person or by mail to the person alleged to be responsible for the violation or may be attached to the watercraft or vehicle in the case of a watercraft or vehicle offense. The citation must state the date, time, and nature of the offense, the name of the authorized enforcement person issuing the citation, the amount of the scheduled civil penalty, and the manner for paying the civil penalty or appealing the citation.

1-4.15. Responsibility of the accused. The person responsible for the violation must either pay the scheduled civil penalty or request a hearing within ten days after personal service of the citation or 13 days after mailed service of the citation. Payment of the civil penalty constitutes admission of the administrative violation. A late payment fee of 10 percent of the scheduled civil penalty amount may be imposed under Section 7.04. Admission of an administrative violation shall not be admission to any crime.

1-4.17. Criminal option. Participation by any charged person in these administrative enforcement proceedings is voluntary. Any charged person may withdraw from these proceedings at any stage and elect to have the matter treated as a criminal proceeding by so informing the District or its representatives. The administrative citation will be withdrawn and a criminal citation or complaint issued for the same offense.

PART IV.

Administrative Hearing

1-4.19. Hearing officer. The Board of Directors will periodically appoint a hearing officer to hear and determine a matter for which a hearing is requested. The accused will have the right to request no later than five days before the date of the hearing that the assigned hearing officer be

removed from the case. One request for each case will be granted automatically by the Board. A subsequent request must be directed to the assigned hearing officer who will decide whether he or she has reason to withdraw. If the hearing officer withdraws, the District Staff will assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by Minn. Stat. §609.415.

1-4.21. Orders. Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue an administrative order served in the manner for serving subpoenas in a civil action for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the order is responsible for serving the order in the manner provided for civil actions and for paying the fees and expenses of a witness. A person served with an order may file an objection with the hearing officer promptly but no later than the time specified in the order for compliance. The hearing officer may cancel or modify the order if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to such an order may be subject to such penalties, including default, as the hearing officer may deem fair under the circumstances. Alternatively, the party requesting the order may seek an order from district court directing compliance.

1-4.23. Notice. Notice of the hearing must be served in person or by mail on the person responsible for the violation at least 10 days in advance, unless a shorter time is accepted by all parties.

1-4.25. Evidence. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including hearsay evidence, that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. In a case of alleged pollution, alleged safety or sanitation violations, or alleged detriment to the quality of waters or wildlife, evidence of an improper or prohibited action may be considered sufficient proof without demonstrating that the action resulted in actual harm.

1-4.27. Determination. The hearing officer has the authority to determine that a violation occurred; to dismiss a citation; to impose the scheduled civil penalty; to reduce, stay, or waive a scheduled civil penalty either unconditionally or upon compliance with appropriate conditions; to refer the matter to the Board for suspension or revocation of a District-issued license; to order the accused person to cease and desist from conduct in violation; to order the performance remedial measures; and to impose or recover costs, including restitution and abatement of a nuisance or hazardous condition, as may be incurred by the District and other parties in conducting these proceedings and in undertaking cleanup or remedial measures. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:

- (a) the duration of the violation;
- (b) the frequency or reoccurrence of the violation;
- (c) the seriousness of the violation;
- (d) the history of the violation;
- (e) subsequent remedial measures taken by the violator after issuance of the citation;
- (f) the good faith effort by the violator to comply;

- (g) the economic impact of the penalty on the violator;
- (h) the impact of the violation upon the community;
- (i) the impact of the violation upon the environment of the lake, shoreland, or watershed; and
- (j) any other factors appropriate to a just result.

1-4.29. Limited appeal. Except for matters subject to administrative review under Part V, the decision of the hearing officer is final without any further right of administrative appeal. In a matter subject to administrative review under Part V, the hearing officer's decision may be appealed to the Board of Directors by submitting a request in writing to the District staff within 10 days after the hearing officer's decision.

1-4.31. Failure to attend hearing. When the accused fails without good cause to attend the hearing, the hearing officer will either renotice the civil citation or refer the matter for criminal prosecution. Failure to appear a second time constitutes withdrawal from these administrative proceedings and the hearing officer will refer the matter for criminal prosecution. Examples of "good cause" are: death or incapacitating illness of the accused or a family member; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include: forgetfulness and intentional delay.

PART V.

Administrative Review

1-4.33. Appeal to the Board. The hearing officer's decision in any of the following matters may be appealed by a party in writing to the Board of Directors for administrative review:

- (a) an alleged failure to obtain a permit, license, or other approval from the Board of Directors as required by an ordinance;
- (b) an alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, that was granted by the Board of Directors; and/or
- (c) an alleged violation of regulations governing a person or entity who has received a license granted by the Board of Directors.

1-4.35. Review by the Board. The review will be conducted by the Board of directors after notice served in person or by mail at least 10 days in advance. The Board may request parties to present oral or written arguments regarding the hearing officer's decision.

1-4.37. Board consideration. The Board of Directors must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Board is not bound by the hearing officer's decision, but may adopt all or part of the officer's decision. The Board's decision must be in writing.

1-4.39. Board finding, penalty, and order. If the Board makes a finding of a violation, it may impose a civil penalty not exceeding a total of \$25,000.00 per the schedule in the Notice of Violation letter and may consider any or all of the factors contained in Section 4.05(a) through (j). The Board may also reduce, stay, or waive a civil penalty unconditionally or based on

reasonable and appropriate conditions. In addition to the civil penalty, the Board may impose or recover costs, including restitution and abatement of a nuisance or hazardous condition, as may be incurred by the District and other parties in conducting these proceedings and in undertaking cleanup or remedial measures. Further, the Board may order the performance of remedial measures and may order the accused person to cease and desist from conduct in violation.

1-4.41. License revocation or suspension. In addition to imposing a civil penalty, the Board may suspend or revoke a District-issued license, permit, or other approval associated with the violation. The Board will suspend or revoke a license when, in its judgment, such action will serve to cease, abate, clean up, or remediate a violation.

Part VI.

Judicial Review

1-4.43. Judicial review. An aggrieved party may obtain judicial review of the decision of the hearing officer or the Board of Directors by proceeding under a writ of certiorari or other means authorized by law. At any time prior to the hearing herein, an aggrieved party may require the issuance of a criminal citation or complaint in lieu of an administrative citation.

Part VII.

Recovery of Civil Penalties

1-4.45. Failure to pay penalty. If a civil penalty is not paid within the time specified, it will constitute a personal obligation of the violator.

1-4.47. Property lien. Nothing in this provision precludes the District from seeking and obtaining a lien on the property of the violator to recover the civil penalty or costs incurred by the District or other parties, including restitution and abatement of a nuisance or hazardous condition, in undertaking cleanup or remedial measures.

1-4.49. Personal obligation. A personal obligation may be collected by appropriate legal means.

1-4.51. Late fee. A late payment fee of 10 percent of the civil penalty shall be assessed for each 30-day period, or part thereof, that the civil penalty remains unpaid after the due date.

1-4.53. Revocation of license. Failure to pay a civil penalty is grounds for suspension or revocation of a license related to the violation.

Part VIII.

Criminal Prosecution

1-4.55. Failure to pay penalty. Failure to pay a civil penalty within 30 days after it was imposed, or such other time as may be established by the hearing officer or the Board of Directors, may be

deemed by the hearing officer or the Board to constitute withdrawal from these administrative proceedings and the District may prosecute the offense as a criminal matter.

1-4.57. Limit to prosecution. After final adjudication under the administrative penalty procedure herein, the District may not prosecute a criminal violation in district court based on the same set of facts. This does not preclude the District from pursuing a criminal conviction for a violation of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

Part IX.

Adoption of State Laws and Rules

1-4.59. Enforcement. The Conservation District hereby adopts by reference, except where in conflict with District ordinance or resolution, the following state laws and rules which shall be enforceable under this ordinance:

- (a) Minnesota Statutes, Section 84.0895, regarding protection of threatened and endangered species;
- (b) Minnesota Statutes, Section 84.091, regarding destruction of aquatic vegetation in public waters;
- (c) Minnesota Statutes, Chapter 84D, and Minnesota Rules, Part 6216, regarding harmful exotic species management;
- (d) Minnesota Statutes, Chapter 86B, regarding water use policy including buoys and water safety;
- (e) Minnesota Statutes, Chapter 97A, regarding game and fish;
- (f) Minnesota Statutes, Chapter 97C, regarding discharge of pollutants into waters; permits required for structures in public waters; fishing contests and fishing houses;
- (g) Minnesota Statutes, Chapter 103D, regarding watershed law;
- (h) Minnesota Statutes, Chapter 103E, regarding drainage authority;
- (i) Minnesota Statutes, Chapter 103F, regarding soil loss and wetland preservation;
- (j) Minnesota Statutes, Chapter 103G, regarding alteration of public waters, filling and dredging in public waters, drainage of public waters, drainage of wetlands, work in public waters, surface water appropriations, deicing water bodies, harvesting or destruction of aquatic plants, and control of aquatic vegetation and organisms;
- (k) Minnesota Statutes, Chapter 115, regarding pollution of waters; and
- (l) Minnesota Rules, Part 6115, regarding fill, excavation, structures, water level controls, bridges, culverts, intakes and outfalls, permit reviews and coordination with other agencies, enforcement, drainage, and the conservation and use of water.

Enforcement of state law and rule under this ordinance is intended to supplement, not supplant, enforcement by state agencies and other local agencies.

Part X.

Severability

1-4.61. Severability. The provisions of this ordinance are severable. Should any part, section, subsection, clause or other provision of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 3 – Ordinance Summary.

The following is approved as a summary of this ordinance to be used for publication:

Administrative Citations and Civil Penalties Ordinance

The LMCD approved an ordinance creating a citation process for violations of LMCD code. The ordinance provides for the imposition of fines and an appeal process. The new citation procedures supplement existing violation remedies, such as criminal penalties. The full ordinance is available from LMCD.

Section 4 - Effective Date.

This ordinance becomes effective from and after its passage and publication.

Adopted this 9th day of August 2023 by the Board of Directors of the Lake Minnetonka Conservation District.

Ann Hoelscher, Chair

ATTEST:

Mike Kirkwood, Secretary

MALKERSON GUNN MARTIN LLP

5353 GAMBLE DRIVE, SUITE 225
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Patrick B. Steinhoff
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August 7, 2023

Board of Directors
Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364

Re: Proposed Administrative Fines Ordinance
Our Client: Lake Minnetonka Association

Dear Members of the Board of Directors:

We represent the Lake Minnetonka Association and write this letter on its behalf in opposition to the proposed administrative fines ordinance (“Proposed Ordinance”) that the Board of Directors of the Minnetonka Conservation District (“LMCD”) will consider at its meeting on August 9, 2023. For the reasons set forth below, the LMCD simply does not have the power to adopt such an ordinance. On behalf of the Lake Minnetonka Association, we therefore respectfully ask that you not adopt the Proposed Ordinance.

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Board of Directors
Lake Minnetonka Conservation District
August 7, 2023
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Very truly yours,

/s/: *Bruce D. Malkerson*

Bruce D. Malkerson

/s/: *Patrick B. Steinhoff*

Patrick B. Steinhoff

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ITEM 12B

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: August 9, 2023 (Prepared August 2, 2023)
TO: LMCD Board of Directors
FROM: *James L. Brimeyer*
Jim Brimeyer, Interim Executive Director
SUBJECT: Adoption of the 2023-2024 LMCD Strategic Plan

ACTION

Board adoption of the LMCD 2023/2024 Strategic Plan. The following motions are offered depending on whether the Board wishes to approve or deny the request:

Approval

I make a motion to adopt the 2023/2024 LMCD Strategic Plan.

Denial

I make a motion to deny the adoption of the 2023/2024 LMCD Strategic Plan based on the following reasons...

BACKGROUND

Strategic plans are useful tools to communicate the organization's goals and the actions needed to achieve the desired results. They provide direction and guidance to the leadership and staff.

During the May 24th Workshop Session, The Board reviewed and edited all of the strategic priorities and desired outcomes so that they aligned with the LMCD's mission, vision, and core values. A draft of the 2023/2024 Strategic Plan was brought forward to the Board for final review and discussion at the July 12th, 2023 Board Meeting Work Session. The attached draft has been updated to reflect the Board's feedback. Therefore, Staff recommend that the Board adopt the attached draft Strategic Plan.

CONSIDERATIONS

- Does the board think the priorities adequately reflect the mission, vision, and core values of the organization?
- Are there areas that should be addressed and are not reflected by the revised Strategic Priorities?
- Is the format effective in presenting the strategic plan or are there other suggestions?

BUDGET

N/A

STRATEGIC PRIORITIES

Adoption of 2023-2024 LMCD Strategic Plan
LMCD Board Meeting
August 9, 2023

Operational Effectiveness Clear & Timely Communications Effective Governance Lake Protection Other

ATTACHMENT _____

- LMCD 2023/2024 Strategic Plan



Lake Minnetonka Conservation District

Mission, Vision, Values, Strategic Plan

2023-2024

Mission Statement

The mission of the Lake Minnetonka Conservation District is to preserve and enhance the “Lake Minnetonka experience.” This is accomplished by providing leadership in protecting, improving, and managing lake use through the regulation of surface water uses and provide consistent and effective public safety programs.

Vision Statement

Lake Minnetonka is a highly valued year-round asset with vibrant aesthetic, recreational, commercial, and natural qualities. These qualities and values will be protected and preserved for present and future generations.

Core Values

- Accountability
- Collaboration
- Integrity
- Leadership
- Quality Results
- Stewardship of the Lake

STRATEGIC PRIORITY	DESIRED OUTCOME
Docks, Applications, Licenses, Surface Water Management	Execution of strategic plan priorities with emphasis on surface water uses and safety.
Lake Use, Safety	Ensure public safety on Lake Minnetonka and support water patrol activities.
Lake Protection	Annual funding strategies for STL funding.
	Encourage ongoing and new AIS treatment and prevention.
Operational Effectiveness	Effective workshop and board discussions in a respectful manner.
	Continual review of LMCD Fee structure. Maintain a 35% fund balance.
	Utilize Officers Work Group to provide effective leadership.
	Provide training for Board regarding standards, process, and procedures. Establish a process for onboarding.
	Continue with annual Board self-evaluation.
	LMCD recognizes the value in positive and continuous relationship with all LMCD partners.
	Develop communications plan as part of the annual budget process.
Develop a succession plan for LMCD Executive leadership.	

Adopted 8/9/2023



Lake Minnetonka Conservation District

Mission, Vision, Values, Strategic Plan

2023-2024

Mission Statement

The mission of the Lake Minnetonka Conservation District is to preserve and enhance the “Lake Minnetonka experience.” This is accomplished by providing leadership in protecting, improving, and managing lake use through the regulation of surface water uses and provide consistent and effective public safety programs.

Vision Statement

Lake Minnetonka is a highly valued year-round asset with vibrant aesthetic, recreational, commercial, and natural qualities. These qualities and values will be protected and preserved for present and future generations.

Core Values

- Accountability
- Collaboration
- Integrity
- Leadership
- Quality Results
- Stewardship of the Lake

STRATEGIC PRIORITY	DESIRED OUTCOME
Docks, Applications, Licenses, Surface Water Management	Execution of strategic plan priorities with emphasis on surface water uses and safety.
Lake Use, Safety	Ensure public safety on Lake Minnetonka and fully support water patrol activities.
Lake Protection	Annual funding strategies for STL funding.
	Fund ongoing and new AIS treatment and prevention.
Operational Effectiveness	Effective workshop and board discussions in a respectful manner.
	Continual review of LMCD Fee structure. Maintain a 35% fund balance.
	Utilize Officers Work Group to provide effective leadership.
	Provide training for Board regarding standards, process, and procedures. Establish a process for onboarding.
	Continue with annual Board self-evaluation.
	LMCD recognizes the value in positive and continuous relationship with all LMCD partners.
	Develop communications plan as part of the annual budget process.
Develop a succession plan for LMCD Executive leadership.	

Adopted 8/9/2023



ITEM 13A

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: August 9, 2023 (Prepared August 2, 2023)

TO: Board of Directors

James J. Brimeyer

FROM: Jim Brimeyer, Interim General Manager

SUBJECT: Watercraft for Hire

BACKGROUND

At a previous meeting, the Board approved an ordinance declaring a three-month moratorium on the issuance of any additional licenses for Watercraft for Hire Charter Boats.

The staff and the water patrol staff have had several meetings and numerous electronic communications on this matter.

CONSIDERATIONS

Amend **Definitions. 1-3.01. Subd. 119. Watercraft for Hire.**

“Watercraft for hire” means a watercraft carrying more than six passengers for hire on the lake.

Add a Section **7-1.12 Exceptions for Charter Boat Licenses.**

- a. If carrying more than six passengers for hire, regardless of boat length, a Minnesota Boat Master License is required, and the boat must be inspected by the Hennepin County Sheriff Water Patrol
- b. Consumption and Display Permits. Consumption and display permits shall be issued only to a business establishment that operates a registered watercraft for hire that does not hold an on-sale license. A consumption and display permit allows the business establishment to permit the consumption and display of alcoholic beverages on the watercraft for hire but does not authorize the sale of alcoholic beverages.

All requirements for watercraft for hire boats are subject to any state regulations, as amended from time to time.

Licensed pilots be required for charter boats, but not for rental watercraft, however, marinas and rental businesses may provide a licensed captain for six or fewer passengers.

The exchange of currency, the serving of alcohol for sale and food may require additional approval from the state Alcohol and Gaming Board and/or the county health department.

Watercraft for Hire
LMCD Board Meeting
August 9, 2023

Other items to consider:

- All watercraft for hire should be required to provide a bathroom with clean water to wash hands.
- They should all declare where they pick up passengers with a letter of permission from the designated city.
- Limit the amount of commercial boats on the lake. All cities do this with businesses and LMCD already restricts any food or merchandise sale from a watercraft.
- Proof of commercial insurance.
- All requirements for watercraft for hire boats are subject to any state regulations, as amended from time to time.
- Licensed pilots required for charter boats, but not for rental watercraft, however, marinas and rental businesses may provide a licensed captain for six or fewer passengers.
- The exchange of currency, the serving of alcohol for sale and food may require additional approval from the state Alcohol and Gaming Board and/or the county health department.

It is recommended that a Working Group be established by the Board. Membership would include some board members, LMCD staff, water patrol representatives and perhaps some current licensed charters.

STRATEGIC PRIORITIES

<input type="checkbox"/>	Operational Effectiveness	<input type="checkbox"/>	Clear & Timely Communications	<input type="checkbox"/>	Effective Governance	<input type="checkbox"/>	Lake Protection	<input checked="" type="checkbox"/>	Other
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ATTACHMENTS

None

Lake Minnetonka Conservation District
Balance Sheet
As of June 30, 2023

	<u>Jun 30, 23</u>
ASSETS	
Current Assets	
Checking/Savings	
Alerus Checking	48,966.85
1010M10 · Petty Cash	188.60
1090M10 · Alerus Bank - Savings	
1090M50 · Alerus Savings - Equip. Repl	125,652.32
1090M10 · Alerus Bank - Savings - Other	570,661.19
Total 1090M10 · Alerus Bank - Savings	<u>696,313.51</u>
Total Checking/Savings	745,468.96
Accounts Receivable	
1150M10 · Accounts Rec. - Gen	62,535.25
Total Accounts Receivable	<u>62,535.25</u>
Total Current Assets	808,004.21
Fixed Assets	
1640M90 · Fixed Assets	155,233.00
1645M90 · Accumulated Depreciation	-95,427.00
Total Fixed Assets	<u>59,806.00</u>
Other Assets	
1650M90 · Leased Asset	172,361.00
1655M90 · Accumulated Amortization-Lease	-22,969.00
Total Other Assets	<u>149,392.00</u>
TOTAL ASSETS	<u><u>1,017,202.21</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2090 · Accounts Payable	8,476.74
Total Accounts Payable	8,476.74
Other Current Liabilities	
2020-LT · Payroll Liabilities - UNUM	-44.65
2020 · Payroll Liabilities -	8.55
2050M10 · Accrued Payroll - Gen	5,068.00
2150M90 · Accrued compensated absences	14,439.00
2151M90 · Current portion of comp absens	3,337.93
2916M90 · Lease Liability - Short Term	25,290.00
Total Other Current Liabilities	<u>48,098.83</u>
Total Current Liabilities	56,575.57
Long Term Liabilities	
2915M90 · Lease Liability - Long Term	126,242.00
Total Long Term Liabilities	<u>126,242.00</u>
Total Liabilities	182,817.57

Lake Minnetonka Conservation District

Balance Sheet

As of June 30, 2023

	<u>Jun 30, 23</u>
Equity	
Retained Earnings	946,364.89
2910M10 · Fund Balance - Admin.	48,727.51
2910M20 · Fund Balance - S/L	226,468.17
2910M30 · Fund Balance - EWM	40,088.85
2910M50 · Fund Balance - Equip Repl	79,004.07
2910M90 · Fixed Assets - Conversion Fund	-585,738.00
Net Income	79,469.15
Total Equity	<u>834,384.64</u>
TOTAL LIABILITIES & EQUITY	<u><u>1,017,202.21</u></u>

Lake Minnetonka Conservation District
Balance Sheet
As of July 31, 2023

	Jul 31, 23
ASSETS	
Current Assets	
Checking/Savings	
Alerus Checking	37,062.59
Bridgewater Checking	75,000.00
Bridgewater Savings	500,000.00
1010M10 · Petty Cash	188.60
1090M10 · Alerus Bank - Savings	
1090M50 · Alerus Savings - Equip. Repl	125,652.32
1090M10 · Alerus Bank - Savings - Other	-4,338.81
Total 1090M10 · Alerus Bank - Savings	121,313.51
Total Checking/Savings	733,564.70
Accounts Receivable	
1150M10 · Accounts Rec. - Gen	36,343.75
Total Accounts Receivable	36,343.75
Total Current Assets	769,908.45
Fixed Assets	
1640M90 · Fixed Assets	155,233.00
1645M90 · Accumulated Depreciation	-95,427.00
Total Fixed Assets	59,806.00
Other Assets	
1650M90 · Leased Asset	172,361.00
1655M90 · Accumulated Amortization-Lease	-22,969.00
Total Other Assets	149,392.00
TOTAL ASSETS	979,106.45
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2020-LT · Payroll Liabilities - UNUM	-21.08
2020 · Payroll Liabilities -	8.55
2050M10 · Accrued Payroll - Gen	5,068.00
2150M90 · Accrued compensated absences	14,439.00
2151M90 · Current portion of comp absens	3,337.93
2916M90 · Lease Liability - Short Term	25,290.00
Total Other Current Liabilities	48,122.40
Total Current Liabilities	48,122.40
Long Term Liabilities	
2915M90 · Lease Liability - Long Term	126,242.00
Total Long Term Liabilities	126,242.00
Total Liabilities	174,364.40

Lake Minnetonka Conservation District

Balance Sheet

As of July 31, 2023

	<u>Jul 31, 23</u>
Equity	
Retained Earnings	946,364.89
2910M10 · Fund Balance - Admin.	48,727.51
2910M20 · Fund Balance - S/L	226,468.17
2910M30 · Fund Balance - EWM	40,088.85
2910M50 · Fund Balance - Equip Repl	79,004.07
2910M90 · Fixed Assets - Conversion Fund	-585,738.00
Net Income	49,826.56
Total Equity	<u>804,742.05</u>
TOTAL LIABILITIES & EQUITY	<u><u>979,106.45</u></u>

Lake Minnetonka Conservation District
General Income & Expense 2023 Budget Comparison
 January through July 2023

	Jan - Jul 23	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
*Uncategorized Income	55.00			
Grants & Other Income				
3080M10 · Interest - Gen	3,246.96	2,600.00	646.96	124.9%
3260M10 · Court Fines - Admin.	65,832.00	60,000.00	5,832.00	109.7%
3300M10 · Other Income - Admin.	4,910.94	6,190.00	-1,279.06	79.3%
Total Grants & Other Income	73,989.90	68,790.00	5,199.90	107.6%
Licenses/Permits				
3110M10 · Multiple/Perm. Dock Lic -Admin.	81,172.01	85,200.00	-4,027.99	95.3%
3120M10 · DMA license - Admin.	3,450.00	3,000.00	450.00	115.0%
3130M10 · Deicing License - Admin.	419.00	6,000.00	-5,581.00	7.0%
3170M10 · Variances - Admin.	1,500.00	10,600.00	-9,100.00	14.2%
3200M10 · Special Density - Admin.	360.00			
3240M10 · Charter Boats - Admin.	2,400.00	3,200.00	-800.00	75.0%
3280M10 · Liquor/Beer/Wine License-Admin.	17,850.00	19,000.00	-1,150.00	93.9%
Total Licenses/Permits	107,151.01	127,000.00	-19,848.99	84.4%
3020M10 · Municipal Dues - Admin.	191,251.50	255,000.00	-63,748.50	75.0%
3400M10 · Transfers In - Admin.	0.00	125,000.00	-125,000.00	0.0%
Total Income	372,447.41	575,790.00	-203,342.59	64.7%
Gross Profit	372,447.41	575,790.00	-203,342.59	64.7%
Expense				
AIS Administration				
4181M30 · Prof. Services	5,000.00	68,000.00	-63,000.00	7.4%
4221M30 · Office Supplies -AIS Prevention	0.00	2,000.00	-2,000.00	0.0%
Total AIS Administration	5,000.00	70,000.00	-65,000.00	7.1%
General & Admin Expenses				
4060 · Telephone/Internet	1,723.67	3,500.00	-1,776.33	49.2%
4070M10 · Webpage & Digital	3,800.00	590.00	3,210.00	644.1%
4090M30 · DMV	0.00	50.00	-50.00	0.0%
4340M10 · Insurance - Admin.	6,142.00	4,500.00	1,642.00	136.5%
4340M30 · Insurance W/C	0.00	1,400.00	-1,400.00	0.0%
4350M30 · Ins./Equip.	0.00	400.00	-400.00	0.0%
4360M10 · Subs/Memberships - Admin.	200.00	2,400.00	-2,200.00	8.3%
Total General & Admin Expenses	11,865.67	12,840.00	-974.33	92.4%

Lake Minnetonka Conservation District General Income & Expense 2023 Budget Comparison January through July 2023

	Jan - Jul 23	Budget	\$ Over Budget	% of Budget
Legal				
4110M10 · Public Info Legal Fees- Admin.	568.37	1,750.00	-1,181.63	32.5%
4620M10 · Civil Legal Fees - Admin.	21,095.64	31,325.00	-10,229.36	67.3%
4640M10 · Prosecution Legal Fees - Admin.	22,929.14	30,000.00	-7,070.86	76.4%
Total Legal	44,593.15	63,075.00	-18,481.85	70.7%
Office, Supplies, Equip				
4080 · Postage	1,009.09	3,000.00	-1,990.91	33.6%
4100M10 · Printing - Admin.	5,302.43	1,260.00	4,042.43	420.8%
4140M10 · Office Equipment R&M - Admin.	3,294.57	6,000.00	-2,705.43	54.9%
4220M10 · Office Supplies -Admin.	1,869.55	1,700.00	169.55	110.0%
4230M10 · Meeting Exp. - Admin.	2,703.45	12,000.00	-9,296.55	22.5%
4320M10 · Office Rent - Admin.	13,867.84	22,000.00	-8,132.16	63.0%
4400M10 · Mileage/Exp's - Admin.	0.00	400.00	-400.00	0.0%
4410M10 · Training/Prof. Devel.	0.00	500.00	-500.00	0.0%
4520M10 · Furniture & Equip - Admin.	0.00	750.00	-750.00	0.0%
4530M10 · Comp. Sftwr & Hdwr - Admin.	2,182.17	3,515.00	-1,332.83	62.1%
4531M30 · Software & Hardware/Training	410.08	500.00	-89.92	82.0%
Total Office, Supplies, Equip	30,639.18	51,625.00	-20,985.82	59.3%
Personnel Expenses				
4020M10 · Salaries-002 - Admin	130,067.12	246,050.00	-115,982.88	52.9%
4021M10 · ER Share of Admin FICA/Medicare	9,921.79	17,700.00	-7,778.21	56.1%
4022M10 · ER PERA - Admin	8,811.31	17,500.00	-8,688.69	50.4%
4024 · Contract Labor	29,540.00			
4380M10 · Employee Benefits - Admin.	17,022.15	33,750.00	-16,727.85	50.4%
Total Personnel Expenses	195,362.37	315,000.00	-119,637.63	62.0%
Professional Services- ADM				
4040M10 · Auditing - Admin.	14,156.00	11,500.00	2,656.00	123.1%
4180M10 · Professional Services - Admin.	10,210.66	6,000.00	4,210.66	170.2%
4181M10 · Professional Comp. Serv.-Admin.	5,289.99	2,500.00	2,789.99	211.6%
4182M10 · Media (Cable/Internet) - Admin.	3,600.00	3,500.00	100.00	102.9%
4183M10 · Prof/ Serv. - Communications	19,203.65	30,000.00	-10,796.35	64.0%
Total Professional Services- ADM	52,460.30	53,500.00	-1,039.70	98.1%

10:56 AM
 08/01/23
 Accrual Basis

Lake Minnetonka Conservation District
General Income & Expense 2023 Budget Comparison
 January through July 2023

	Jan - Jul 23	Budget	\$ Over Budget	% of Budget
Public Education & Safety				
4111M10 · Public Service Education-Admin	2,027.39	2,500.00	-472.61	81.1%
4160M10 · Watercraft/Vehicle Maint	0.00	750.00	-750.00	0.0%
4160M20 · Public Health/Safety- SL	59.90	0.00	59.90	100.0%
4535M10 · Public Safety - SolarLights	2,469.00	5,000.00	-2,531.00	49.4%
Total Public Education & Safety	4,556.29	8,250.00	-3,693.71	55.2%
Total Expense	344,476.96	574,290.00	-229,813.04	60.0%
Net Ordinary Income	27,970.45	1,500.00	26,470.45	1,864.7%
Net Income	27,970.45	1,500.00	26,470.45	1,864.7%

Lake Minnetonka Conservation District STL Income & Expense 2023 Budget Comparison January through July 2023

	Jan - Jul 23	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
Contributions				
3001M20 · Donations (General) - S/L	24,811.92	43,050.00	-18,238.08	57.6%
3002M20 · Donations (Photograph) - S/L	50.00			
3004M20 · Donations (Solar Light) - S/L	410.57			
3012M20 · Donations Carp Removal West Arm	50.00			
Total Contributions	25,322.49	43,050.00	-17,727.51	58.8%
Grants & Other Income				
3300M20 · Other Income - S/L	0.00	750.00	-750.00	0.0%
Total Grants & Other Income	0.00	750.00	-750.00	0.0%
3400M20 · Transfers In - S/L	0.00	42,000.00	-42,000.00	0.0%
Total Income	25,322.49	85,800.00	-60,477.51	29.5%
Gross Profit	25,322.49	85,800.00	-60,477.51	29.5%
Expense				
Office, Supplies, Equip				
4220M10 · Office Supplies -Admin.	10.67			
Total Office, Supplies, Equip	10.67			
Office, Supplies, Equip STL				
4080M20 · Postage - S/L	0.00	800.00	-800.00	0.0%
4100M20 · Printing - S/L	0.00	1,000.00	-1,000.00	0.0%
Total Office, Supplies, Equip STL	0.00	1,800.00	-1,800.00	0.0%
Projects & Activities- STL				
4110M20 · Environmental- S/L	1,034.77			
Total Projects & Activities- STL	1,034.77			
Public Education & Safety				
4160M20 · Public Health/Safety- SL	2,204.70	84,000.00	-81,795.30	2.6%
Total Public Education & Safety	2,204.70	84,000.00	-81,795.30	2.6%
4980M20 · Contingency - S/L	37.00			
Total Expense	3,287.14	85,800.00	-82,512.86	3.8%
Net Ordinary Income	22,035.35	0.00	22,035.35	100.0%
Net Income	22,035.35	0.00	22,035.35	100.0%



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • PH: (952) 745-0789

DATE: August 9, 2023 (Prepared: August 2, 2023)

TO: Board of Directors

James L. Brimeyer

FROM: Jim Brimeyer, Interim General Manager

SUBJECT: Organizational Duties and Compensation

ACTION

NONE

BACKGROUND

This item is on the agenda as information for the Board. Final action is recommended to take place at the August 23, 2023, meeting.

It has been reviewed by the Officers Working Group and received approval.

With Tammy’s retirement (last day was July 31st) I needed to set a framework for revised assignments and responsibilities.

Also, as suggested several months ago, we convert from an hourly rate of pay to an annual salary.

The effective date of this change is September 1, 2023.

This policy has been provided to employees, discussed, and received favorable responses.

STRATEGIC PRIORITIES

- Operational Effectiveness
- Clear & Timely Communications
- Effective Governance
- Lake Protection
- Other

ATTACHMENT

- LMCD Organization Chart & Salaries

LMCD ORGANIZATION CHART

BOARD

LEGAL COUNSEL

PROSECUTING ATTORNEY

INTERIM GENERAL MANAGER

- Work directly with the Board and legal counsel
- Work with member cities
- Monitor and direct staff work load
- Work with water patrol
- Work with consultants and manage contracts

OFFICE AND FINANCE MANAGER (\$57,000.00)*

- Office procedures, special projects, file management, agenda/work session prep
- Provide direct assistance to General Manager and staff
- Record STL activity, court fines, levies, receivable collections
- Reconcile bank accounts, monthly financials, assist with budget, audit process, insurance policies, accounts payables, audit vouchers,
- Human resources, payroll, taxes, benefits
- Process contracts/agreements, events
- Maintain databases, operations calendar, logs, filing systems

MANAGER OF CODE ENFORCEMENT (\$77,000.00)*

- Variances, dock enforcement, surface water management, code compliance
- Respond, investigate alleged dock, boat violations,
- Recommend code updates in order to better understood LMCD rules,
- Direct activities of Executive Assistant for Environmental Services

EXECUTIVE ASSISTANT FOR CODE ENFORCEMENT and OPERATIONS (\$54,000.00)*

- Assist with code enforcement and environmental services,
- Manage special projects, public contact, office work flow, assist with agenda/work session prep
- Maintain the current website, manage new/renewal licenses, respond to complaints and inquiries(maintain "user guide"),
- Phone coverage, voicemail,
- Signage, winter/summer rules, STL records and correspondence

*All are subject to a three month perf evaluation, no later than 12.31.23



ITEM 15D

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: August 9, 2023 (Prepared August 2, 2023)

TO: Board of Directors

FROM: *James J. Brimeyer*
Jim Brimeyer, Interim General Manager

SUBJECT: Flex Time Policy

BACKGROUND

This policy has been reviewed and approved by the Officers Working Group.

I may have mentioned on several occasions the concept of using a flex time policy vs a vacation and sick leave program.

This policy replaces the LMCD Vacation and Sick Leave policy with a Flex Time policy.

I managed to get a “template” from other sources and drafted a policy for the LMCD.

CONSIDERATIONS

Some relevant factors:

- Current vacation is transferred to Flex Time.
- Current sick time is transferred to a Sick Leave account.
- Effective 9/1/23 – all employees are given a 24-hour advance to their Flex Time account.
- Effective 9/1/23 – employees earn flex time at a rate of 7.33 hours per pay period to the maximum per the schedule in the policy.
- Flex time can be used for vacation, sick leave, personal issues, etc.
- Employees are also allowed to accumulate Personal Time @ 1.5 – not to exceed thirty (30) hours.

This policy has been provided to employees, discussed and received favorable responses.

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input type="checkbox"/> Lake Protection	<input checked="" type="checkbox"/> Other
--	--	---	--	---

ATTACHMENTS

1. Current vs Proposed Policy
2. Flex Time Policy

LMCD Vacation & Sick Leave Policy

CURRENT SITUATION

Vacation

After first year – two calendar weeks

Beginning the sixth year thru tenth – three calendar weeks;

Beginning the eleventh year thru twentieth year – one day per year up to maximum of twenty;

Maximum accrual twenty days (160 hours);

May carry over to a maximum of 100 hours, with approval of ED or the board.

Upon leaving paid for all unused vacation or the employee’s estate.

Sick Leave

One day per month (8 hours);

Maximum accumulation is 90 days (720 hours);

If leave after three years of employment, paid 25% of sick leave accumulated or to employee’s estate.

PROPOSED

Flex Time, based on following schedule:

Years of Service	Days Off	Hours	Max Permitted
0-4	22	176	352
5-10	23	184	368
11-15	26	208	416
15+	28	24	448

If leave and return to employment, given credit for prior yeas of service.

Flex leave above the cap amount is forfeited. Or can request payment for 40 hours if over the cap.

Can carry over sick leave up to 960 hours to be used only if flex leave is fully used.

At separation paid up to one third of unused sick leave.

LMCD Flex Time

Flex leave replaces individual sick leave and vacation leave and combines them into a single benefit program. Flex leave does not replace LMCD observed holidays, jury duty, military leave, or court leave. Employees accrue flex leave based on length of service with the LMCD. Flex leave can be used for any reason, subject to approval of the Director. As with all paid time off programs, the LMCD needs to ensure that service to the public and work requirements are not adversely impacted.

Flex Leave - Amounts and Accruals

All regular full-time employees are eligible to receive flex leave. Flex leave is accrued on a per pay period basis and may be used as earned. The official flex leave accrual schedule including balances will be maintained in payroll. Regular full-time employees shall accrue leave as listed below in the flex leave accrual schedule. Regular part-time employees who are also Benefit Earning Employees (work an average of 32 hours/week) shall receive flex time on a pro-rated basis using on their average weekly hours worked, with an average of 40 hours per week being equal to 100%. Flex leave is also pro-rated on the same basis for regular part-time employees who are also Benefit Earning Employees when determining flex leave cap, cash out, severance and other forms of leave.

Flex Leave Accrual – Regular Full-time Employees

Years of Service	Days	Hours	Maximum
0-4	22	176	352
5-10	23	184	368
11	24	192	384
12	25	200	400
13	26	208	416
14	27	216	432
15+	28	224	448

Employees who leave LMC employment and who return may be given credit for their prior years of service with the LMCD in determining their Years of Service category.

Flex Leave Cap

Employees may carry over two times their annual flex leave accrual as of the first pay day in January of each year, provided, however, that at no time may employees hold accrued flex leave more than the Cap on Maximum Permitted Accrual. For example, an employee with six years of service would be able to use during the year 184 hours of current flex leave and hold or use the amount of accrued flex leave carried over from previous years up to the Cap of 368 hours; however, if that employee at the end of the year had accrued flex leave carried over from prior

years of 368 (the cap amount) and had not used all of his or her flex leave hours earned during the current year, the employee would not be able to carry over any additional hours of flex leave into the next year because the Cap had been reached. Flex leave above the Cap will be forfeited. The foregoing notwithstanding, if on December 31 of any calendar year employee has flex leave hours that are subject to forfeit because the Cap has been reached, employee will be permitted to request payment at employee's current hourly rate of pay for up to 40 hours of flex leave in excess of the Cap. No payment shall be made for hours that would reduce the employee's accrued flex leave to less than the Cap for such employee for that year.

Flex Leave – Termination of Employment

Upon termination of employment, the employee will receive 100% of his or her flex leave balance, not to exceed the flex leave cap. The flex leave balance consists of the current year's accrued but unused flex leave plus the accrued flex leave carried over from prior years, the total of which cannot exceed the flex leave cap. *In no instance shall any employee be paid for hours in excess of the flex leave cap.* Payment of flex leave upon termination will be at the employee's then current hourly rate of pay.

Flex Leave – Sick Leave Carry-Over

Non-exempt employees, who were employed with the LMCD on September 1, 2023, are allowed to convert their accumulated unused sick leave as of August 31, 2023, up to a maximum of 960 hours (120 days), to a "Sick Leave Carry-Over." Employee's Sick Leave Carry-Over can be used during the term of employee's employment only after employee's flex leave has been fully used, and use is governed by the same terms and conditions as flex leave. The foregoing notwithstanding, Sick Leave Carry-Over is not included in or subject to the flex leave cap.

At the time of separation of employment, employer will pay employee an amount equal to one third (1/3) of employee's unused Sick Leave Carry-Over at employee's hourly wage rate at the time of separation.

Flex Leave – New/Probationary Employees

New probationary full-time employees will begin with a flex leave accumulation of three 8-hour days (24 hours) and earn flex leave according to the above schedule titled flex leave accrual for use as needed (pro-rated for benefit earning part-time). These three days are part of the total

accrual for their first year of employment. Probationary employees are allowed to use flex leave as it is accrued. Employees who do not successfully complete the probationary period are not eligible to receive earned, but unused flex leave upon separation.

Flex Leave Request - Planned Absences

Employees may request to take earned flex leave by submitting a request to the Director as soon as practical. Flex leave may be used in amounts no smaller than two (2) hour increments. Approval of the request will be based on work demands within the employee's work unit. Planned and unplanned leaves of absence require Director approval.

Flex Leave Request - Unplanned Absences

In situations when anticipating an absence from work is impossible, the employee must contact the Director as soon as possible, preferably prior to the start of the workday. Provided there is a balance in the employee's flex leave account, flex leave may be used subject to approval by the Director. Flex leave for unplanned absences can be used in amounts no smaller than two (2) hour increments. Additional documentation or medical certification may be required for approval of the absence.

Non-Exempt (overtime eligible) Employees

All non-exempt employees will be compensated at the rate of time and one-half for all hours worked over 40 hours in one work week. Flex leave, compensatory time off and paid holidays do not count toward "hours worked". Compensation will take the form of either time and one-half pay or compensatory time. Compensatory time is paid time off at the rate of 1.5 hours off for each hour of overtime worked.

The Director must approve overtime hours. Advance approval of overtime work is required except in the case of an emergency situation where the Director is not available to provide advance approval. However, in an emergency situation, the employee must notify the Director of the overtime work as soon as possible. The Director has the option of requiring an employee to reduce the number of hours worked on other days of the week in order to reduce the employee's total working hours for the week to 40 hours. An employee who works overtime without the approval of the Director may be subject to disciplinary action.

Overtime earned will be paid at the rate of time and one-half on the next regularly scheduled payroll date, unless the employee indicates on his/her timesheet that the overtime earned is to be recorded as compensatory time in lieu of payment. The use of compensatory time rather than overtime pay must be approved by the Director.

The maximum compensatory time accumulation for any employee is 30 hours per year (20 hours of overtime worked at time and one-half). Once an employee has earned 30 hours of compensatory time in a calendar year, no further compensatory time may accrue in that calendar year. All further overtime will be paid. Employees may request and use compensatory time off in the same manner as other leave requests; provided, however, that compensatory time off shall not be given in increments of less than two hours and must be requested and approved in

advance.

All compensatory time will be marked as such on official timesheets, both when it is earned and when it is used. The LMCD staff will maintain compensatory time records. Employees may request cash payment of accrued and unused compensatory time once each calendar year by written request to the Director on or before November 1st of any year. If the request is received on or before November 1st, the employee's accrued and unused compensatory time will be paid using the employee's current hourly pay rate and will be included in the employee's first paycheck for November of that year.