

# **SPECIAL ASSESSMENTS: PROCEDURES AND FINANCING**

## **Introduction**

Special assessments are increasingly used by towns to pay for public infrastructure improvements. Briefly, special assessments allow towns to impose charges on those properties that benefit from the specific improvement paid for by the charges. This guide is intended to provide town officers with an understanding of the special assessment process as set forth in Minnesota Statutes, Chapter 429. These statutes do change over time, however, and they should always be reviewed before starting any project for which the town is considering assessments.

## **I. ASSESSABLE PROJECTS**

The types of improvements that can be paid for with special assessments include the following<sup>1</sup>:

- ◆ Streets and sidewalks.
- ◆ Storm and sanitary sewer systems.
- ◆ Street lights and lighting systems.
- ◆ Waterworks systems.
- ◆ Park, playground, and recreational facilities.
- ◆ Street tree planting, maintenance, and trimming.
- ◆ Nuisance abatement and draining of swamps, marshes, and ponds.
- ◆ Retaining walls and area walls.

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<sup>1</sup> Urban towns have additional powers to assess for other projects. An urban town considering the use of assessments for an improvement not listed here should consult with its attorney.

## **II. PROCEDURE**

The law is very particular as to the procedure a town must follow when adopting special assessments, and the following checklist is merely an overview. **While samples of some of the appropriate materials are included with this memorandum, a town considering the use of special assessments should consult with its attorney for advice on preparing the forms and documents.**

- A. ***Commencement of proceedings.*** The proceedings may be commenced by the town board or by affected property owners. Minn. Stat. § 429.031.
- B. ***Feasibility report.*** The town engineer or other qualified person must prepare a report on the necessity, cost effectiveness, and feasibility of the proposed improvement and whether it should be undertaken as proposed or in conjunction with another improvement. Minn. Stat. § 429.031, subd. 1 (b).
- C. ***Improvement public hearing.*** Before holding the required hearing on the proposed improvement, the town must publish notice of the hearing. The notice must be published twice, with the notices appearing at least one week apart and the second one appearing at least three days before the date of the hearing. The town must also mail notice to each property owner in the proposed assessment area at least 10 days before the hearing, with the notice stating that a reasonable estimate of the impact of the assessment will be available at the hearing.<sup>2</sup>

At the hearing, the board should allow all interested persons a chance to comment, regardless of whether they will be assessed. A reasonable estimate of the total amount to be assessed and a description of the methodology used to calculate individual assessments for affected parcels must be available at the hearing.

No hearing is required when the improvement has been requested by 100 percent of the affected property owners.<sup>3</sup> The board must adopt a resolution approving the validity of the petition, however, and the property owners may still appeal the amount and validity of the assessment against their property.

As a general rule, both tax-exempt and publicly owned property may be assessed for public improvements in the same amount as any other property. There are certain differences in the procedures that apply to these types of property, so the town's attorney should be consulted if either of these kinds of property are located within the area to be assessed.

- D. ***Ordering the improvement and plan preparation.*** If the proceedings began with a petition signed by the owners of at least 35 percent of the property abutting the

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<sup>2</sup> Sample form is attached.

<sup>3</sup> Sample form is attached.

improvement, the board can order the improvement by majority vote. If the board initiated the proceedings, a four-fifths majority vote is needed to do so. In either case, the resolution must be adopted within 6 months of the improvement hearing. After the resolution ordering the improvement is passed, the town engineer may prepare plans and specifications for the improvement.<sup>4</sup>

- E. *Bidding requirements.*** The municipal contracting law applies to local improvement contracts. If a contract is expected to be over \$100,000 the town must follow the sealed bid process. The assessment statute also has additional requirements if the contract is expected to be greater than \$200,000 that townships should be aware of.

After opening the sealed bids, the board must award the contract to the lowest responsible bidder. The successful bidder must enter into a written contract for the construction of the project and supply the proper performance and payment bonds. The contract must be executed within 1 year of the board's adoption of the resolution approving the improvement, unless that resolution specifically stated a different time limit.

If a contract has been awarded on a unit price basis, the town may, after work has started, approve additional units of work at the same unit price as long as the cost of the additional work does not exceed 25 percent of the original contract price.

- F. *Proposed assessment roll.*** The town clerk and the engineer must calculate the proper amount to be specially assessed against each property that will benefit from the improvement. The proposed assessment roll must be available for public inspection.

- G. *Public hearing on the proposed assessment.*** The town must publish notice of the hearing in its official newspaper.<sup>5</sup> At least one notice must be published and it must include:

- ◆ Date, time, and place of the hearing.
- ◆ General nature of the improvement.
- ◆ Area proposed for assessment.
- ◆ Total amount of the improvement.
- ◆ A note that the proposed assessment roll is on file with the town clerk.
- ◆ Description of the procedure to object to the assessment.

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<sup>4</sup> Sample form is attached.

<sup>5</sup> Sample form is attached.

- ◆ Any deferment options available under state law and under the town's ordinances for senior citizens, retired or disabled individuals, or others.
- ◆ Written or oral objections will be taken and no appeal can take place without a written objection being filed with the clerk prior to the hearing.

This notice must also be mailed to each property owner who is being considered for assessment.<sup>6</sup> The mailed notice should include, in addition to the information in the published notice:

- ◆ Amount of the proposed assessment for that person's property.
- ◆ Notice that the board may adopt the assessment at the hearing.
- ◆ Pre-payment information.
- ◆ Interest rate on the assessments if not prepaid.

At the hearing, the town board should consider all relevant evidence and should again allow all interested persons to speak, regardless of whether they will personally be assessed.

- H. *Final assessment rolls.*** If the board approves the assessment after the hearing, it must direct the town clerk to certify the final assessment roll to the county auditor. If the adopted assessment differs from the proposed assessment, the clerk must provide mailed notice to property owners affected by the change.
- I. *Certification of assessments.*** The clerk may certify the assessments to the county auditor either once or on an annual basis.
- J. *Additional assessments.*** In the case of water, sanitary sewer, and storm sewer projects, towns have an additional option for levying assessments. If this type of system is extended to serve property that did not abut the original system, the town may assess these newly served properties after complying with the same notice and hearing provisions that were required for the initial assessment. In addition, the town may add a proportionate share of the cost of the original project to these subsequent assessments as long as proper notice is provided.

### **III. SPECIAL ASSESSMENTS AND MARKET VALUE**

Special assessments are presumed to be valid if the following tests can be met:

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<sup>6</sup> Sample form is attached.

- ◆ The property being assessed obtains a special benefit (i.e. an increase in fair market value) from the improvement.
- ◆ The assessment is uniformly applied to the same class of property.
- ◆ The assessment on a property does not exceed the amount by which the property's market value is increased by the assessment.
- ◆ Owned by member of the National Guard or other military reserve who is ordered to active service.

In order to challenge a special assessment, a property owner needs to file a signed, written objection with the town clerk before the assessment hearing or with the presiding officer at the hearing. If the board believes the challenge may be valid, it should consider adjourning the hearing for the purpose of obtaining further information as to the correctness of the assessment. Affected property owners must be given notice of the time and place of the adjourned hearing. In order to preserve the right to appeal, a property owner wishing to challenge the assessment must serve notice upon the board chair or town clerk within 30 days of the board's adoption of the assessment.

#### **IV. INTEREST LIMITS ON SPECIAL ASSESSMENTS**

In theory, there is no limit on the interest rates that towns can charge on unpaid assessments, assuming usury limits do not apply. Like all governmental decisions, however, interest rate setting must not be arbitrary and capricious, and most towns select an interest rate near the rate of either the bonds that have been sold to finance the project or the rate the town earns on its investments. The town's bond counsel or financial advisor can help determine an appropriate rate.

#### **V. SUBDIVISION**

If a parcel of property that has been specially assessed is later subdivided, the remaining unpaid installments can, at the board's discretion or upon application from the property owner, be apportioned among the various lots and parcels in the tract if the town board finds that doing so will not materially impair collection of the unpaid balance. Notice of such apportionment and of the right to appeal must be mailed to or personally served upon all owners of any part of the tract. In some cases, a surety bond may or must be required from the property owners.

#### **VI. DEFERRED AND DELAYED ASSESSMENTS**

- A. *Senior citizen and disability deferrals.*** A town may defer assessment payments on homestead property if the owner is either:
- ◆ Sixty-five years of age or older.

- ◆ Retired by virtue of a permanent and total disability.

While the assessment is still imposed, it does not become payable until the owner dies, the property is sold or loses its homestead status, or the town decides that immediate payment would no longer create a hardship.

A town that wants to permit these kinds of deferrals should adopt an appropriate ordinance or resolution that sets the standards for when a hardship exists. Hardship criteria can include the income and assets of a property owner, the amount of the assessment, and similar matters.

The county auditor should supply deferral forms, although the town may wish to adopt its own form for the internal hardship determination.

When special assessments are deferred for hardship reasons, the town should also adopt an ordinance or resolution setting the interest rate, if any, on the deferred amounts.

- B. *Undeveloped property.*** Towns may also defer special assessments on unimproved property, although they are not required to do so. These deferrals may last until a specific year, until the property is platted, or until improvements are built on the property.

The town should adopt a resolution establishing the terms and conditions of the deferral, which can include the amount of interest, if any, that accrues on the deferred amount, whether interest is payable immediately or is deferred, and similar matters.

In any case, the last assessment installment must be paid no more than 30 years after the assessment was originally imposed.

Keep in mind that partial assessments are not permissible. If a deferral is to be made, it must be of the entire assessment. As with hardship deferrals, the county will require the town to provide an appropriate certificate.

- C. *Green acres.*** Perhaps most significant for towns, certain agricultural property is entitled to assessment deferrals. The Minnesota agricultural property tax law (often referred to as the "Green Acres" law) is another way some property owners can defer paying special assessment against their property. In this situation, however, the property owner applies for deferment through the county rather than the town.

As a general matter, once a county finds that property meets the statutory criteria, assessment payments are deferred until the property is developed, at which time the assessments, and interest on them are due. The county decides if the property

qualifies for a deferment based upon the use of the property. Generally, property will qualify for deferment of assessments if it is being used for farming, or for nursery or greenhouse purposes.

If special assessments against property have been deferred under this exception, the town must file a certificate with the county recorder that contains the following information:

- ◆ The legal description of the property.
- ◆ The amount that has been deferred.

The deferment continues as long as the property continues to meet the statutory criteria. When the property ceases to meet this criteria, such as when it is developed, the deferred special assessment installments become payable with interest. If the local improvement project was financed with bonds and the bonds are still outstanding, the assessments and interest are payable in equal annual installments spread over the remaining term of the outstanding bonds. If there are no bonds outstanding, the entire amount of the assessments and interest must be paid within 90 days.

- D. *Agricultural preserve.*** Property located in an “exclusive agricultural use zone” created under Minnesota Statutes, Chapter 40A or “agricultural preserves” created in the metropolitan area under Minnesota Statutes, Chapter 473H may not be assessed for most public improvement projects.

## **VII. COMPUTATION OF TIME**

When calculating public notice periods, the first day the notice is given is included and the last day is excluded.

## **VIII. SUBORDINATE SERVICE DISTRICTS**

Under Minnesota Statutes, Section 365A, subordinate service districts may be created upon a petition of fifty percent or more of the affected property owners. After a public hearing, a resolution may be adopted levying a tax on the affected property to pay governmental service not otherwise generally available in the town. The town’s attorney should be consulted as to the necessary steps.

## **IX. SEWER, WATER, STORM WATER, AND SIDEWALKS**

Minnesota Statutes, Chapter 444 provides towns with another stationary alternative for the specific purposes of constructing and maintaining sanitary and storm sewers, waterworks systems, and sidewalks. These are discussed briefly, but any town considering these options should consult with its attorney for full details.

- A. ***Waterworks and sewer systems.*** Generally speaking, a town may use a combination of assessments, connection charges, and system revenues to pay for water and sanitary and storm sewer facilities. This has the advantage of treating these facilities as self-sustaining operations and allowing them to be managed so as to generate adequate revenues to keep them operating into the future.
  
- B. ***Storm sewer improvement districts.*** The board of a town that was not in an orderly annexation process as of October 3, 1985 may, by a two-thirds vote, adopt an ordinance that creates a storm sewer improvement district within the limits of the town. A public hearing must first be held after two week's published notice. The ordinance must be filed with the county auditor and county recorder.  
  
 Within this district, a town board may acquire, construct, reconstruct, extend, maintain, and otherwise improve storm sewer systems and related facilities within the district. Storm water holding areas and ponds limits may also be so acquired, maintained, and improved either within or outside town limits. The significant difference to a town that establishes one is that a direct tax may be imposed on property within it to pay for improvements.
  
- C. ***Sidewalk improvement districts.*** While of only passing interest to most towns, towns do have the right to adopt an ordinance establishing a sidewalk improvement district. These districts provide a mechanism for financing sidewalk construction and repair within the town.

## **X. FINANCING ASSESSMENTS**

- A. ***Types of Bonds.*** In general, there are three types of bonds employed to raise capital for public facilities in Minnesota. These are general obligation (“GO”) bonds, revenue bonds, and general obligation revenue bonds (“GO Revenue”). It is important to keep in mind that certificates of indebtedness, equipment certificates, and similar financing mechanisms are nothing more than bonds under a different name and are subject to most of the requirements set forth below.
  - 1. **General Obligation Bond.** A general obligation bond is an obligation that promises the full faith and credit of the issuing governmental unit to payment of principal and interest. The bond owner correctly understands this to mean that all assets and resources of the town, including the unlimited power to tax, will be used to fulfill the town’s contract to pay back the amount of the bond with the agreed upon amount of interest. The security for a GO bond is the pledge of those resources and taxing powers.
  
  - 2. **Revenue Bond.** A revenue bond pledges to pay the bond owner principal and interest only from certain defined revenues, often those generated by the facility financed by the bond proceeds. No general obligation pledge is involved. Normally, "net" revenues (that is "gross" revenues less

operating and maintenance expenses) are pledged, but a gross revenue pledge is permitted in some cases.

A Revenue bond is typically used for self-supporting utilities, such as health care facilities, electric utilities, recreational facilities, and municipal liquor stores, although there may be cases in which, for example, special assessment revenues, or water or sewer revenues, are pledged without a concurrent general obligation pledge.

The issuing town gives the owner additional assurances in the bond documents that it will operate the facility efficiently and impose the necessary charges for the use of the facility to ensure prompt and full payment of the bond and gives the holder rights to enforce those assurances, or “covenants,” as they are known.

Revenue bonds typically carry higher interest rates than general obligations because of the higher risk of nonpayment.

3. **General Obligation Revenue Bonds.** In some instances, general obligation revenue bonds are issued, permitting a town to pledge both the revenues of the facility and, as a backup if these are insufficient to make the bond payments, the town's full faith and credit. This often results in more favorable interest rates than for a pure revenue bond because the bond investor looks primarily to the general obligation pledge in analyzing the underlying credit. These types of bonds are widely used for sewer, water, and storm sewer utilities.

- B. ***Voter Approval.*** The default rule in Minnesota is that the issuance of bonds by a municipality must be approved by a majority of the town’s voters voting on the question. There are a number of exceptions, however, the most common of which include:

- ◆ refunding bonds;
- ◆ improvement bonds where special assessments pay at least 20% of the cost of the project financed;
- ◆ revenue bonds; and
- ◆ bonds issued under a specific statute that permits the issuance without an election.

- C. ***Tax-Exemption.*** As a general rule, a two-part test is used under federal law to determine whether debt can be issued on a tax-exempt basis to finance a project:

- ◆ Will the project be dedicated to a private use?
- ◆ Is the debt backed by private security pledge?

If the answer to either of these questions is no then tax-exempt bonds can generally be used as a financing tool.<sup>7</sup>

These questions can nevertheless be deceptively simple. For instance, a public road designed to serve a new residential subdivision is usually considered a public use, while a road that serves only one industrial facility may not be. Similarly, a pledge of special assessments is not typically the use of private security, although an agreement by a developer to pay deficiencies in the assessments often is. Beyond that, considerations include arbitrage calculations (limiting a town's earnings on the proceeds of tax-exempt debt), bank qualification (restricting the amount of debt a town can issue in one year if it intends to allow banks to collect interest on a tax-exempt basis), and a host of other factors.

- D. *Disclosure Requirements.*** A town must also keep in mind the impact of federal disclosure requirements on its issuance of debt. Large issues, which are often sold to the general public or one or more financial institutions, may be accompanied by an "official statement" that sets out in great deal both the terms of the bonds in question and disclosing pertinent information about the town. On the other hand, bonds privately placed with a bank or other financial institution (often, though not always, issues of no more than several hundred thousand dollars) should be sold in conjunction with an investment letter in which the purchaser represents that it understands the risks, has undertaken appropriate investigation of the facts, and is otherwise a sophisticated investor.
- E. *Reimbursement Rules.*** A frequent problem that towns face when selling bonds for capital projects is the "reimbursement" dilemma. This situation occurs when the town pays for a project from funds on hand, and later reimburses that expenditure from proceeds of tax-exempt bonds. Federal law permits such a strategy, but only *if* the Town has complied with certain federal regulations. Essentially, these regulations require the issuing town to make a written "declaration" of "official intent" to reimburse an original expenditure with bond proceeds. The declaration may be made up to 60 days after the expenditure is made. Expenditures for a project made before this 60-day "look back" period may not be reimbursed with proceeds of tax exempt bonds, unless the expenditures were either:
- ◆ A "de minimis amount," which is *the lesser of* \$100,000 or 5 percent of the proceeds of the issue; and
  - ◆ "Preliminary expenditures" in an amount up to 20 percent of the issue price of the bonds. Preliminary expenditures include architectural, engineering, survey, soil testing, costs of bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction or

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<sup>7</sup> Industrial revenue and 501(c)(3) bonds, and some other types of debt, are issued under different Internal Revenue Code provisions with little applicability in most 429 proceedings.

rehabilitation of a project. Land acquisition, site preparation and similar costs are *not* preliminary expenditures, and therefore must be included in the declaration.

The declaration may be made in any reasonable form by the town board or any person authorized by the board to make a declaration on behalf of the town.<sup>8</sup> It must contain these two items:

- ◆ A description of the project for which the original expenditure will be made; and
- ◆ The maximum principal amount of bonds expected to be issued for the project.

The project description is sufficient if it describes the nature of the expenditure or the nature of the fund from which the expenditure will be made. Examples are: *road capital improvement program; parks and recreation fund; and recreational facility improvement program*. Deviations between the declaration and the actual expenditure are allowed as long as the actual project is reasonably related in function to the described project. For example, *hospital equipment* is a reasonable deviation from *hospital building*, but *town hall renovation* is not a reasonable deviation from *road improvements*.

The issuer must have a reasonable expectation that it will actually incur the described expenditures and later reimburse them with bond proceeds. It is not reasonable to make blanket declarations (say, for all public improvements the town may construct), or in amounts that substantially exceed the amount expected to be necessary for the project. Also, a pattern of failing to reimburse actual expenditures covered by declarations will be evidence of unreasonableness. No declaration is needed, and in fact none should be made, if the town knows that all project costs will be paid after proceeds of the bonds are in hand.

#### **F. *The Bonding Process.***

- 1. Reimbursement Resolution.** A town must initially arrive at a rough estimate of the scope and cost of a project, whether bonds will be sold to help finance the project; and whether project costs will be paid with bond proceeds. This does not have to be a precise calculation, but does need to be sufficient to determine whether a reimbursement resolution is necessary.
- 2. Contact Bond Counsel And/Or a Financial Advisor.** Both bond lawyers and financial advisors are accustomed to evaluating proposed projects and making recommendations as to preferred means of financing. Some projects can be done without a general obligation pledge under

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<sup>8</sup> Sample form is attached.

reasonable financing terms. Others will require the town's general obligation in order to bring interest costs down to a manageable level. In this same regard, it is often worth discussing whether it makes sense to combine one project with another or whether to split one project into two or more components.

Finally, bond counsel and financial advisors can help determine the appropriate size of the issue, determine any tax levy needed to make the bond payments, find potential buyers for the bonds and negotiate a fair interest rate, maturity date, prepayment option, and other terms of the debt. Most bond lawyers also consider it part of their role to assist the town attorney with the underlying special assessment proceedings, if requested.

As a practical matter, most bond attorneys will request copies of the following information for their files when preparing the bond transcript:

- ◆ Resolution directing engineer to prepare feasibility study.
- ◆ Copy of feasibility study.
- ◆ Minutes showing receipt of feasibility study and resolution scheduling improvement public hearing and providing for notice.
- ◆ Affidavit of publication of notice of improvement public hearing.
- ◆ Affidavit of mailing notice of improvement public hearing.
- ◆ Minutes of improvement public hearing.
- ◆ Resolution ordering improvements and directing preparation of plans and specifications.

If bids have been taken for the project, the following additional information will also be requested:

- ◆ Resolution approving plans and specifications and directing notice to bidders.
- ◆ Affidavit of publication of notice for bids.
- ◆ Affidavit of publication of notice for bids in Construction Bulletin.
- ◆ Minutes showing receipt of bids and awarding contracts or ordering the work to be done by day labor.

3. **Other Considerations.** In evaluating a potential bond issue, other factors play an important role. To some extent, the relevance of these factors depends on the nature of the underlying project, but a number hold true in any situation.

First, under what terms is it politically feasible to issue bonds? Some towns dislike the idea of going into debt, while others are willing to consider it only in limited situations.

Second, why will the bonds be issued? If the project benefits all or a substantial number of the town's residents, a general obligation pledge might be appropriate. If the project primarily benefits one person or a small group, it may be worth more thoroughly considering the risk to the town and whether private forms of security, such as a letter of credit, can replace or supplement the town's general obligation (although this may affect whether the bonds can be sold on a tax-exempt basis).

Third, are special assessments the best way to finance the project? In some cases, it may make more sense to finance sewer and water utility bonds by imposing necessary rates and charges on users pursuant to Minnesota Statutes, Chapter 444. In other situations, a town may want to encourage local development by granting property tax abatements as a means of reducing a property owner's development costs. In still others, the state or federal government may offer grants or low-interest loans that will reduce the town's costs.

Fourth, is the town prepared to take on the responsibilities that go along with being a bond issuer? While they sound more onerous than they usually are, these responsibilities include operating a debt service fund within the town's general accounts, making payments to the bond purchasers (or a trustee if one is used), and ensuring that special assessments are collected in a timely fashion.

**FORM 1**

**Mailed and Published Notice of Hearing on Improvement**

TO WHOM IT MAY CONCERN: **(If mailed)**

Notice is hereby given that the town board of the town of \_\_\_\_\_ will meet at the town hall at \_\_\_\_\_ (a.m.)(p.m.) on (date), to consider a (generally describe type of improvement) on \_\_\_\_\_ Street between \_\_\_\_\_ Street and \_\_\_\_\_ Street pursuant to Minnesota Statutes, Chapter 429. The area proposed to be assessed for such improvement is \_\_\_\_\_. The estimated cost of the improvement is \$\_\_\_\_\_. A reasonable estimate of the impact of the assessment will be available at the hearing. Those persons who desire to be heard with reference to the proposed improvement will be heard at this meeting.

\_\_\_\_\_  
Town Clerk

Published in (name of newspaper) on (date). **(If published)**

**FORM 2**

**PETITION AND WAIVER AGREEMENT**

This Agreement made this \_\_\_ day of \_\_\_\_\_, \_\_\_\_, by and between the Town of \_\_\_\_\_, a Minnesota municipal corporation ("Town"), and \_\_\_\_\_ ("A") and \_\_\_\_\_ ("B") (A and B are referred to collectively herein as "Owners").

WITNESSETH:

WHEREAS, A is the fee owner of certain real property (the "A Property") located in the Town the legal description of which is set forth on Exhibit A, attached hereto and hereby made a part hereof; and

WHEREAS, B is the fee owner of certain real property (the "B Property") located in the Town the legal description of which is set forth on Exhibit A, attached hereto and hereby made a part hereof (the A Property and the B Property are referred to collectively herein as the "Subject Property"); and

WHEREAS, the Owners desire to have certain public improvements constructed to serve the Subject Property as described in Exhibit B, attached hereto and hereby made a part hereof (hereinafter referred to as the "Improvement Project"); and

WHEREAS, the Owners wish the Town to construct the Improvement Project without notice of hearing or hearing on the Improvement Project, and without notice of hearing or hearing on the special assessments levied to finance the Improvement Project, and to levy 100 percent of the cost of the Improvement Project against the Subject Property; and

WHEREAS, the Town is willing to construct the Improvement Project in accordance with the request of the Owners and without such notices or hearings, provided the assurances and covenants hereinafter stated are made by the Owners to ensure that the Town will have valid and collectable special assessments as they relate to the Subject Property to finance all of the costs of the Improvement Project; and

WHEREAS, were it not for the assurances and covenants hereinafter provided, the Town would not construct the Improvement Project without such notices and hearings and is doing so solely at the behest, and for the benefit of, the Owners.

NOW, THEREFORE, ON THE BASIS OF THE MUTUAL COVENANTS AND AGREEMENT HEREINAFTER PROVIDED, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Owners hereby petition the Town for construction of the Improvement Project.
2. A and B represent and warrant that they are the owners of 100 percent of the A Property and the B Property, respectively, that they have full legal power and authority to encumber

the Subject Property as herein provided, and that as of the date hereof, they have fee simple absolute title in the Subject Property, which is not subject to any liens, interests or encumbrances, except as listed on the attached Exhibit C.

3. The Owners requests that 100 percent of the cost of the Improvement Project be assessed as follows:

\_\_\_\_\_ % against the A Property and \_\_\_\_\_ % against the B Property.

4. The Owners understand and agree that the current estimated cost of the Improvement Project is \$\_\_\_\_\_, but that the cost of the improvement Project will be determined in accordance with Minnesota Statutes, Chapter 429 and standard Town practices and that such cost may be as much as \$\_\_\_\_\_. The Owners further understand and agree that the Town does not waive any rights to levy special assessments against the Subject Property in an amount in excess of \$\_\_\_\_\_ in the event actual project costs which may lawfully be assessed pursuant to Minnesota Statutes, Chapter 429, exceed said amount.

5. The Owners waive notice of hearing and hearing pursuant to Minnesota Statutes, Section 429.031, on the Improvement Project and notice of hearing and hearing on the special assessments levied to finance the Improvement Project pursuant to Minnesota Statutes, Section 429.061, and any other statutorily required hearings, and specifically requests that the Improvement Project be constructed and special assessments levied against the Subject Property therefor without hearings.

6. The Owners waive the right to appeal the levy of the special assessments in accordance with this Agreement pursuant to Minnesota Statutes, Section 429.081, or reapportionment thereof upon land division pursuant to Minnesota Statutes, Section 429.071, Subdivision 3, or otherwise, and further specifically agrees with respect to such special assessments against the Subject Property or reapportionment that:

- a. Any requirements of Minnesota Statutes, Chapter 429 with which the Town does not comply are hereby waived by the Owners;
- b. The increase in fair market value of the Subject Property resulting from construction of the Improvement Project will be at least equal to \$\_\_\_\_\_, and that such increase in fair market value is a special benefit to the Subject Property;
- c. Assessment of 100 percent of the cost of the improvement Project against the Subject Property is reasonable, fair and equitable and there are no other properties against which such cost should be assessed; and
- d. The Owners further specifically waive notice and right to appeal reapportionment of such special assessments upon land division pursuant to Minnesota Statutes, Section 429.071, Subdivision 3.

7. The Owners understand and agree that the Town may provide for the payment of such special assessments in installments bearing such interest as may be determined by the Town board. However, the decision regarding the period of time over which the special assessments may be paid and the interest rate to be applied is in the absolute and sole discretion of the Town board, subject only to limitations imposed by law.

8. Owners represent and warrant that the Subject Property is not so classified for tax purposes as to result in deferral of the obligation to pay special assessments; and Owners agree that they will take no action to secure such tax status for the Subject Property during the term of this Agreement.

9. The covenants, waivers and agreements contained in this Agreement shall bind the successors and assigns of the Owners and shall run with the Subject Property and bind all successors in interest thereof. It is the intent of the parties hereto that this Agreement be in a form which is recordable among the land records of \_\_\_\_\_ County, Minnesota; and they agree to make any changes in this Agreement which may be necessary to effect the recording and filing of this Agreement against the title of the Subject Property.

10. This Agreement shall terminate upon the final payment of all special assessments levied against the Subject Property regarding the Improvement Project, and the Town shall thereupon execute and deliver such documents, in recordable form, as are necessary to extinguish its rights hereunder.

IN WITNESS WHEREOF, the parties have set their hands the day and year first written above.

TOWN OF \_\_\_\_\_

A

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

B

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_, the Chair and Clerk of the Town of \_\_\_\_\_, Minnesota, a municipal corporation under the laws of the State of Minnesota, on behalf of the Town.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by A, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by B, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**Form 3**

**Resolution Ordering Improvement and Preparation of Plans**

WHEREAS, by resolution of the town board of the Town of \_\_\_\_\_, adopted (date), a date was set for a hearing on the proposed improvement consisting of a (generally describe type of improvement) on \_\_\_\_\_ Street between \_\_\_\_\_ Street and \_\_\_\_\_ Street; and

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was conducted on (date), and all persons wishing to do so were given an opportunity to be heard.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE TOWN OF \_\_\_\_\_, MINNESOTA:

1. The improvement as detailed in the feasibility report is necessary, cost-effective, and feasible.
2. The improvement is hereby ordered.
3. \_\_\_\_\_ is hereby designated engineer for this improvement and is directed to appropriate prepare plans and specifications.

Adopted by the board this (date).

**FORM 4**

**Published Notice of Hearing on Proposed Assessment**

Notice is hereby given that the town board of the town of \_\_\_\_\_ will meet at the town hall at \_\_\_\_\_ (a.m.)(p.m.) on (date), to consider the adoption of a proposed assessment for a (generally describe type of improvement) on \_\_\_\_\_ Street between \_\_\_\_\_ Street and \_\_\_\_\_ Street pursuant to Minnesota Statutes, Chapter 429. The board may adopt the assessment at this meeting.

The following is the area proposed to be assessed:

(Describe area proposed for assessment)

The total amount of the proposed assessment is \$ \_\_\_\_\_. The proposed assessment roll is on file for public inspection at the town clerk's office.

Written or oral objections will be considered at the meeting. **No appeal may be taken as to the amount of an assessment unless a written objection signed by the affected property owner is filed with the town clerk prior to the assessment hearing or presented to the presiding officer at the hearing.** The board may consider such an objection at an adjourned meeting upon such further notice to the affected property owners as it deems advisable.

An owner may appeal an assessment to district court pursuant to Minnesota Statutes, Section 429.081 by serving notice of the appeal upon the board chair or town clerk within 30 days after the adoption of the assessment and filing appropriate notice with the district court within ten days after service upon the chair or clerk.

Those persons who desire to comment on the proposed improvement will be heard at this meeting.

\_\_\_\_\_  
Town Clerk

Published in (name of newspaper) on (date).

**FORM 5**

**Mailed Notice of Hearing on Proposed Assessment**

TO WHOM IT MAY CONCERN:

Notice is hereby given that the town board of the town of \_\_\_\_\_ will meet at the town hall at \_\_\_\_\_ (a.m.)(p.m.) on (date), to consider the adoption of a proposed assessment for a (generally describe type of improvement) on \_\_\_\_\_ Street between \_\_\_\_\_ Street and \_\_\_\_\_ Street pursuant to Minnesota Statutes, Chapter 429. The board may adopt the assessment at this meeting.

The following is the area proposed to be assessed:

(Describe area proposed for assessment)

The amount to be specially assessed against your particular parcel of land is \$\_\_\_\_\_. The assessment is proposed to be payable in equal annual installments extending over a period of \_\_\_\_\_ years. The first installment is to be payable on or before (date), and will bear interest at the rate of \_\_\_\_\_% per year, commencing on (date).

At any time prior to certification of the assessment to the county auditor, you may pay the entire assessment on your property, with interest accrued to the date of payment. No interest shall be charged if the entire assessment is paid within 30 days from the adoption of this assessment. You may at any time thereafter, pay the entire remaining unpaid amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year. The right to partially prepay the assessment according to Ordinance No. \_\_\_\_\_ (is/is not) available.

The total amount of the proposed assessment is \$\_\_\_\_\_. The proposed assessment roll is on file for public inspection at the town clerk's office.

Written or oral objections will be considered at the meeting. No appeal may be taken as to the amount of an assessment unless a written objection signed by the affected property owner is filed with the town clerk prior to the assessment hearing or presented to the presiding officer at the hearing. The board may consider such an objection at an adjourned meeting upon such further notice to the affected property owners as it deems advisable.

An owner may appeal an assessment to district court pursuant to Minnesota Statutes, Section 429.081 by serving notice of the appeal upon the board chair or town clerk within 30 days after the adoption of the assessment and filing appropriate notice with the district court within ten days after service upon the chair or clerk.

**FORM 6**

**RESOLUTION NO. \_\_\_\_\_**

**DECLARING THE OFFICIAL INTENT OF THE  
TOWN OF \_\_\_\_\_, MINNESOTA  
TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS OF BONDS  
TO BE ISSUED BY THE TOWN**

WHEREAS, the Internal Revenue Service has promulgated Treasury Regulations, Section 1.150-2, providing that proceeds of tax-exempt bonds used to reimburse prior expenditures will not be deemed spent unless certain requirements are met; and

WHEREAS, the Town of \_\_\_\_\_ (the "Town") expects to incur certain expenditures which may be financed temporarily from sources other than bonds, and reimbursed from the proceeds of issuance of tax-exempt bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF \_\_\_\_\_, AS FOLLOWS:

1. The Town reasonably intends to make expenditures for the project described in Exhibit A (the "Project"), and reasonably intends to reimburse itself for such expenditures from the proceeds of debt to be issued by the Town in the maximum principal amount described in Exhibit A.

2. The Town Board Chair is authorized to designate appropriate additions to Exhibit A in circumstances where time is of the essence, and any such designation shall be reported to the Town Board at the earliest practicable date and shall be filed with the official books and records of the Town as provided in Section 3.

3. This resolution is intended to constitute a declaration of official intent for purposes of Treasury Regulations, Section 1.150-2 and any successor law, regulation, or ruling.

Approved by the Town Board of the Town of \_\_\_\_\_, Minnesota this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Attest:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Clerk

**EXHIBIT A**

**TO OFFICIAL INTENT RESOLUTION**  
**ADOPTED \_\_\_\_\_, 20\_\_\_\_\_**

<u>Date of Declaration</u>	<u>Description of Project</u>	Maximum Principal Amount of Debt for <u>Project</u>
_____, 20_____	INSERT SHORT DESCRIPTION OF PROJECT (e.g. "Public improvements designed to serve property adjacent to Main Street in the Town of _____, Minnesota")	\$_____