

Inver Grove Heights City Council
In Person Meeting and via Zoom (Hybrid Meeting)

Monday, September 28, 2020 at 7:00 p.m.

A G E N D A

NOTICE TO RESIDENTS: If you are interested in participating on **Item 5. Public Comment**, please contact Rebecca Kiernan prior to this meeting via telephone (651) 450-2513 or email (rkiernan@invergroveheights.org) to inform her - your name, address and to what you wish to speak on. Individuals may submit written public comments in advance of the meeting by emailing comments to Rebecca Kiernan (rkiernan@invergroveheights.org). Comments received prior to 4:00 p.m. on Monday, September 28, 2020, will be provided to the Council at or before the September 28, 2020 meeting. **Phone Number to Reach Meeting: 651-450-2471**

1. Call to Order

2. Roll Call

3. Presentations

4. Consent Agenda

All items on the consent agenda are considered routine and have been made available to the City Council at least two days prior to the meeting; the items will be enacted in one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from this agenda and considered in normal sequence.

- A.** Minutes from the August 24, 2020 City Council Meeting.
- B.** Disbursements for Period Ending September 22, 2020.
- C.** Consider Approval of Rental Licenses.
- D.** Consider Approval of Personnel Actions.
- E.** Consider Approval of Payment for Rich Valley Crack Sealcoat Program.
- F.** Consider Approval of City Facility Preventative Maintenance Contractors.
- G.** Consider approval of GPS Bi-Polar Ionization Air Cleaning Devices.
- H.** Approve a Resolution relating to the Development Agreement, Storm Water Maintenance Agreement, and related agreements for the CUP amendment to the Prairie Estates housing project located at 6121-6199 Carmen Avenue (Prairie Estates, LLLP).
- I.** Approve a Resolution relating to a Variance for fence heights on a corner lot to construct a fence 48 inches high whereas 42 inches is the maximum allowed. Property located at 7605 Boyd Avenue (Erick & Jill Morse).
- J.** Resolution Approving Purchase Agreement with James Peltier for Purchase of 6.41 Acres of Vacant Land and 0.38 Acre Remnant Strip of Land within Tax Parcel Identification No. 20-00700-06-012.
- K.** Consider Pay Voucher No. 2 for City Project No. 2016-09G - 60th Street, 62nd Street, and Bacon Avenue Improvements.
- L.** Consider Change Order No. 1 for City Project No. 2016-09G - 60th Street, 62nds Street and Bacon Avenue Improvements, Modifications to the Substantial and Final Completion Dates.

- M.** Consider Change Order No. 1 and Pay Voucher No. 1 for City Project No. 2019-05 – Sleepy Hollow Park Storm Sewer Repair.
- N.** Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 3, Engineer’s Final Report, and Resolution Accepting Work for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail).
- O.** Consider Pay Voucher No. 3 for City Project No. 2019-09D – 64th Street Area Improvements.
- P.** Approve Custom Grading Agreement for 4045 60th St. (Lot 13, Block 1, Dawn Way Ridge).
- Q.** Consider a Resolution Ordering Feasibility Study, Accepting Engineering Services Proposal IPO 39 from Kimley-Horn & Associates, Inc., Accepting Proposal from Metzen Appraisal Services for Assessment Benefit Analysis, and Authorizing Geotechnical Services for City Project No. 2020-09D – Delaney Circle and Delaney Court Improvements.
- R.** Consider Resolution Accepting Proposal for Stormwater Review Services from Barr Engineering for the CDA Development (6300 Concord Blvd.).
- S.** Consider Resolution Accepting Proposals and Authorizing Consultant Professional Engineering Services for the Canvas at Inver Grove Heights Development.
- T.** Consider Resolution Establishing Parking Restrictions on Carbon Court and Accepting Barr Engineering Construction Services Proposal for Pine Bend Estates Development.
- U.** Resolution Authorizing Appropriate City Officials to Execute an Agreement to Enter into a Professional Service Agreement with HKGI for Professional Planning Services to Develop a Small Area Plan for a portion of the Northwest Area Overlay District at a Fee not to exceed \$50,000.

5. Public Comment

Public comment provides an opportunity for the public to address the Council on items that are not on the agenda. Comments will be limited to three (3) minutes per person.

6. Public Hearing

7. Regular

Administration

- A.** Grant of Cable Television Franchise to Comcast of St Paul, Inc.
 - 1. Consider Approval of Ordinance No. 1390 Granting a Cable Television Franchise to Comcast of St. Paul, Inc.
 - 2. Consider Approval of Resolution Authorizing Summary Publication of Ordinance No.1390.
 - 3. Consider Motion Authorizing the commission to Execute Side Letter with Comcast.

Community Development

- B.** Consider a Resolution relating to a Variance to allow and accessory dwelling unit 1,300 square feet in size whereas 1,000 square feet is the maximum allowed. Property located at 7346 Bancroft Way (James Polak).

Legal

- C.** Meeting pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to council authority.
 - 1. Consider Acceptance of Investigative Report.
 - 2. Consider discipline against employee.

8. Executive Session

9. Mayor and Council Comments

10. Adjourn

This document is available upon a three (3) business day request in alternate formats such as braille, large print, audio recording, etc. Please contact Rebecca Kiernan, City Clerk, at 651.450.2513 or rkiernan@invergroveheights.org.

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, AUGUST 24, 2020 - 7:00 P.M. - 8150 BARBARA AVENUE**

In Person Meeting and via Zoom

1. CALL TO ORDER:

The City Council of Inver Grove Heights met in regular session on Monday, August 24, 2020, both in person and via Zoom Video Conferencing. Mayor Tourville called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

2. ROLL CALL:

Present in Person: Mayor Tourville, Council Members: Piekarski Krech, Bartholomew, Perry, and Dietrich; City Administrator Lynch, City Attorney McCauley Nason, Parks and Recreation Director Carlson and City Clerk Kiernan.

Present Via Zoom Video Conferencing: Technology Manager Gade, Community Development Director Rand, Associate City Planner Botten, and Finance Director Hove.

3. PRESENTATIONS:

Proclamation Recognizing Chris Nichols for Painting the Arbor Point Tunnel.

Parks and Recreation Director Eric Carlson recognized Mr. Chris Nichols for his volunteerism and artistry in painting the tunnel underneath College Trail, connected to the Arbor Pointe Trails. Pictures of the paintings were shown. All time was volunteered. He stated there was a story done about this on the local Cable TV channel along with pictures posted on Social Media. He thanked Mr. Nichols for all of the work he did to improve the tunnel. He commented that he has been told there have been a lot of people stopping by the tunnel to see the work.

Mayor Tourville welcomed Mr. Nichols and read the following Proclamation:

On behalf of the City, the City of Inver Grove Heights has 31 miles of paved City trails and three concrete tunnels that help make safe connections for residents in the Community. Whereas Mr. Chris Nichols, an Inver Grove Heights resident and local artist, volunteered to beautify the Arbor Pointe Tunnel under College Trail. Whereas Mr. Nichols provided a positive message of Community, inclusiveness, connectiveness, and the equity by including many faces which represent our Community. Whereas Mr. Nichols incorporated much of the wildlife found within the borders of the Community and displayed them in a creative and fun way.

He stated by the authority invested in him, do hereby recognize the tremendous efforts of Mr. Nichols to make Inver Grove Heights a more beautiful place to live, work, learn, and play.

Mayor Tourville presented the Proclamation to Mr. Nichols.

Mr. Nichols stated he was present with his daughter, her mom, and his friend. He thanked the Council.

4. CONSENT AGENDA:

- A. i.** Minutes from the July 27, 2020 Special City Council Meeting.

- ii. Minutes from the August 3, 2020 City Council Work Session.
- iii. Minutes from the August 14, 2020 State Primary Canvass Meeting.
- iv. Minutes from the March 4, 2019 City Council Work Session.
- v. Minutes from the March 11, 2019 City Council Meeting.
- vi. Minutes from the August 5, 2019 Special City Council Meeting and Work Session.

B. Disbursements for Period Ending August 18, 2020. **Resolution 2020-170.**

C. Consider Approval of Rental Licenses.

D. Consider Approval of Personnel Actions.

E. Consider Approval of City Logo.

F. Approve **Resolution 2020-171** and State of Minnesota 2020 Cares Act Grant between Dakota County and the City of Inver Grove Heights for Elections purposes.

G. Consider **Resolution 2020-158** Approving Release of Resolution No. 6195 approving a variance to permit a lot width of 50 feet whereas 100 ft is required in the General Industry (I-2) Zoning District Recorded on January 13, 1995 as Dakota County Document No. 1260174.

H. Approve Delay of Tax Certification of Delinquent Utility Accounts.

I. Approve a **Resolution 2020-159** approving the Development Agreement, Storm Water Maintenance Agreement, and related Agreements for the plat of Robert Curve Third Addition (KimleyHorn & Associates).

J. Approve **Resolutions 2020-160 and 2020-161** allowing a 15-foot side yard setback and to allow two accessory structures for property located at 2785 104th Court (Mike Janssen – Case No. 20-22V).

K. Consider Pay Voucher No. 7 for City Project No. 2015-03 – 65th Street Construction (between T.H. 3 and Argenta Trail) and City Project No. 2018-03 – NWA Trunk Watermain Improvements 65th Street Loop (Phase IV of 2015-12) from Agate Trail to Alverno Lane.

L. Consider Pay Voucher No. 1 for City Project No. 2016-09G – 60th Street, 62nd Street, and Bacon Avenue Improvements.

M. Consider Pay Voucher No. 2 for City Project No. 2019-09D – 64th Street Area Improvements.

N. Consider Pay Voucher No. 1 for City Project No. 2019-09F – Carter Path and Carter Court Mill and Overlay.

O. Final Compensating Change Order No. 1, Final Pay Voucher No. 1, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2020-09B – Sealcoat. **Resolution 2020-162.**

P. Custom Grading Agreement for 8237 Cleary Ct. (Lot 4, Block 2, Whistletree Woods).

Q. Consider **Resolution 2020-163** Receiving Drainage Study, Accepting IPO No. 28A from Kimley-Horn and Associates, Authorizing Preparation of Feasibility Report and Preliminary Design Services, and Authorizing Land Acquisition Services for City Project No. 2016-13 – Cahill Trunk Drainage Improvements.

R. Approve Proposal for 65th Street Tree Survey from WSB for City Project No. 2016-19 – 65th Street Construction (between T.H. 3 and Babcock Trail). **Resolution 2020-164.**

S. Approve Proposal for Professional Engineering Services for City Project No. 2021-01 – NWA Trunk Utility Improvements for Future County Projects of Argenta Trail (CPN 2016-05) and 70th Street (CPN 2015-08). **Resolution 2020-165.**

T. Consider **Resolution 2020-166** Accepting Proposal for Engineering Services from Bolton & Menk for Preparation of a Feasibility Report for City Project No. 2022-09D – Dawn Way South Neighborhood Street Improvements and City Project No. 2023-09D – Dawn Way North Neighborhood Street Improvements.

U. Consider **Resolution 2020-167** Accepting Proposal for Preparation of the Old Village Drainage Area Trunk Storm Sewer Study from Barr Engineering for City Project No. 2022-09D – Dawn Way South Neighborhood Street Improvements and City Project No. 2023-09D – Dawn Way North Neighborhood Street Improvements.

Mayor Tourville requested pulling Agenda Item 4aiii.

Motion by Bartholomew second by Perry to approve the Consent Agenda with the exception of Agenda Item 4aiii.

Ayes: 5

Nays: 0 Motion carried.

Agenda Item 4 iii. Minutes from the August 14, 2020 State Primary Canvass Meeting.

Mayor Tourville stated he was unable to attend the meeting.

Motion by Piekarski Krech second by Perry to approve Agenda Item 4 iii. Minutes from the August 14, 2020 State Primary Canvass Meeting.

Ayes: 3

Nays: 0 Motion carried.

Abstain: 2 (Tourville, Dietrich).

5. PUBLIC COMMENT:

City Administrator Joe Lynch stated the Council should have an email from Karen Taylor who wanted her email received as a part of the record. The email contains information for consideration by the City Council about allowing trapping in the City of Inver Grove Heights. He stated the City follows DNR rules that trapping is allowed. Ms. Taylor and her neighbors would like the City Council to consider the potential for changes.

Motion by Piekarski Krech second by Perry to receive the email correspondence from Ms. Karen Taylor.

Mayor Tourville stated Ms. Taylor is not against trapping but would like the City to update the type of traps used. This issue was supposed to be discussed previously but was postponed due to Covid. He asked if the information could be discussed in a month. City Administrator Lynch responded the September Work Session is full, this could be an October discussion.

Ayes: 5

Nays: 0 Motion carried.

6. PUBLIC HEARING:

7. REGULAR AGENDA:***Administration:*****A. Consider the Third Reading of an Ordinance Amendment regarding Psychological/Medical Examinations. Ordinance 1385.**

City Administrator Lynch stated this is the Third and Final Reading of the Ordinance dealing with Medical and Psychological examinations. There have been no changes to the language since the Second Reading. A copy has been sent to all City employees along with posting in the typical posting places. Staff recommends approval of the Third Reading.

Motion by Bartholomew second by Perry to approve the Third Reading of an Ordinance Amendment regarding Psychological/Medical Examinations. Ordinance 1385.

Ayes: 5

Nays: 0 Motion carried.

Community Development:**B. Authorize Issuance of City Request for Proposals (RFP) for Planning Services for Creation of a Small Area Plan (SAP) for Portion of Northwest Area Overlay District - South of 70th Street, North of Highway 55, West of Argenta Trail and East of City of Eagan Border. Resolution 2020-168.**

Community Development Director Heather Rand stated this is a Request for Proposal (RFP) for planning services that are above and beyond what Staff normally prepares. This is a result of Council direction to Staff when a developer came forward with a potential workforce housing project. The immediate area has some issues pertaining to access points via car, stormwater basin management, and utility placement. She stated it is an area that needs more specific planning and would be right for the City to hire a Consultant and make sure to engage with stakeholders, including the residences in the area, and adjoining property owners. The RFP is for those planning services.

She stated they intend to issue the RFP to approximately nine architect/engineering/planning consultant firms. They request submitting written responses by September 16th. She stated Staff, including Engineering, will evaluate the proposals and come back before the City Council. The criteria laid out would include their planning expertise, ability to deliver a solid project, and engage the public adequately. The intent is to bring recommendations before the City Council at the September 28th City Council Meeting and complete the project by the end of the year due to some interest in the area in the spring.

Councilmember Dietrich asked about parkland in the area. Community Development Director Rand responded the immediate area did not have park designated land. There would be connectors to other parks in the area. This plan is not about park development but on stormwater and transportation management.

Parks and Recreation Director Eric Carlson displayed a map of the location and responded the parcel listed as #7 with Mr. Peltier is one location that has a verbal agreement to purchase the property. A written agreement may be brought forward at the next City Council meeting. He stated once the Agreement is signed there are a few contingencies the City needs to complete before the sale becomes final.

Councilmember Bartholomew asked for the size of Parcels #6 and #7. Parks and Recreation Director Carlson responded Parcel #7 was approximately 5.4 acres. Parcel #6 is less than an acre, County owned, and would be given to the City. Both total roughly six acres once transactions are completed. Mayor Tourville stated out of the four quadrants this would be the first that would have a signed Agreement.

Motion by Piekarski Krech second by Perry to approve Authorize Issuance of City Request for Proposals (RFP) for Planning Services for Creation of a Small Area Plan (SAP) for Portion of Northwest Area Overlay District - South of 70th Street, North of Highway 55, West of Argenta Trail and East of City of Eagan Border. Resolution 2020-168.

Ayes: 5

Nays: 0 Motion carried.

C. Consider a Resolution adopting the Northwest Expansion Area Alternative Urban Area-Wide Review (AUAR) Update for the Northwest Area. Resolution 2020-169.

Associate City Planner Heather Botten stated the original Northwest Expansion Area Alternative Urban Area-Wide Review (AUAR) was completed in 2005 with updates occurring in 2007 and 2014. Because the Cities northwest area is not completely developed and has been over five years since the last update, the City is required to provide another update. The City hired Consultant Kimley-Horn for the process. AUAR is an inventory of the northwest area environmental and cultural resources. The update incorporates information from the 2040 Comprehensive Plan and updates that have occurred over the last five years. Kimley-Horn gathered all updates together. She stated Staff did the update internally in 2014 (by an addendum). With this update, all have been put together into one document.

She stated the AUAR was sent out to 16 different Governmental Agencies. Six of those Agencies responded and no objections were filed. Staff recommends approval of the AUAR update as proposed and submitted.

Mayor Tourville asked if the updated AUAR would go on the City website once approved. Associate City Planner Botten responded yes.

Motion by Bartholomew second by Perry to approve a Resolution 2020-169 adopting the Northwest Expansion Area Alternative Urban Area-Wide Review (AUAR) Update for the Northwest Area.

Ayes: 5

Nays: 0 Motion carried.

Finance:**D. 2021 Budget Update.**

Finance Director Amy Hove stated at the July 24th meeting the Council was updated with the 2021 General Fund Budget and Levy. Feedback from the Council was to:

- Increase the Pavement Management Budget by the full \$500,000 shown in the City Capital Improvement Financing Plan.
- Continue to look for ways to save within the 2021 requests.

Since that meeting, herself, and the City Administrator, met with all General Fund Departments. They collaborated on reductions in next year's requests.

A presentation was given with the following information that had changes since the July 27th Draft:

- Revenue adjustments - \$68,000
 - Lowered assumption for Building Permit revenues to 2020 budgeted estimate (\$875,000 versus \$975,000).
 - Other small increases.
 - Still a 5% increase over 2020 budgeted revenues.
- Expenditure adjustments - \$283,000
 - Refined payroll figures.
 - Departmental reductions.
 - Next phase of City View Software funded with CARES Dollars. This will help with working online, connect with residents and the builders online. This will be brought to the Council at the September 8th Work Session.
- Pavement Management - \$500,000 increase over 2020 budget rather than \$250,000 increase contained in earlier draft.
- Debt Service levy Adjustment - \$39,655
 - Scheduled reduction to 2010B Bond Levy.
 - Increase to City share of Assessments for 2019-09D.

Finance Director Hove discussed the General Fund Budget Summary for Expenditures by Department stating based on past years activity, what the amended budget looks like, and the proposed budget. She stated one item to note was the transfers out. Pavement Management was segregated into its own separate levy and not in the transfers out category anymore. The categories were listed for the 2020 original Budget and where the 2021 Budget is coming in. Most categories were coming in fairly flat such as Professional Services and Purchased Services, Equipment, and Supplies. She stated the largest area of increase in the Budget was in Personnel. The following was discussed:

Pending Expenditure Decisions:

- COLA - Union Contracts are not yet settled for 2021-2022.
 - Current model assumes COLA plus step increases as employees received positive performance evaluations.
- Health Insurance at 7%.
- Internal Service Fund Allocations at 6%.
 - League of MN Cities Insurance Renewal - September/October

- Review of 2020 Election costs and 2021 carryover needs. They are trying to flatten the year to year ask. Trying in the off years, to budget enough for carryover to help minimize budget requests.

For the General Fund – Budget Summary Revenues: They are fairly stable, not anticipating big increases or decreases.

Councilmember Bartholomew asked about the tax related revenue which is down for the year 2021. Finance Director Hove responded that was Pavement Management.

Councilmember Dietrich asked for information about the Miscellaneous revenues. Finance Director Hove responded those are revenues that don't fall under other categories such as rent, reimbursements, and investment earnings.

Finance Director Hove continued with Pending Revenue Decisions:

- Continued review of Building Permit Revenues.
- Fee Schedule review.

Proposed Tax Levy – Payable 2021:

- General Fund - Expenditures: \$25,500,700
- General Fund – Revenues: (\$4,261,600)
- General Fund Levy: \$21,239,100
- Pavement Management Levy: \$2,250,000
- Debt Levy: \$2,867,158
- Total Levy Requested: 26,356,258

Proposed Tax Levy July 27th Draft vs. the Current Draft:

- 2021 Levy per July 27th Draft with \$250,000 increase to the PMP
 - Tax Levy: \$26,360,867
 - Levy Increase: 8.1%
 - Tax Rate (estimate): 51.708
 - % Change in Tax Rate: 1.4%
 - \$ Change in City Taxes (estimate): \$91.02
- 2021 Levy per Current Draft with \$500,000 increases to the PMP
 - Tax Levy: \$26,356,258
 - Levy Increase: 8.1%
 - Tax Rate (estimate): \$51.698
 - % Change in Tax Rate: 1.34%
 - \$ Change in City Taxes (estimate): \$90.78

Proposed Tax Levy – PMP Impact Current Draft:

- 2021 Levy – Without the \$500,000 PMP increase
 - Tax Levy: \$25,856,258
 - Levy Increase: 5.8%
 - Tax Rate (estimate): 50.604
 - % Change in Tax Rate: -.81%
 - \$ Change in City Taxes (estimate) for median property: \$64.31
- 2021 Levy – With \$500,000 PMP Increase:
 - Tax Levy: \$26,356,258

- Levy Increase: 8.1%
- Tax Rate (estimate): 51.698
- % Change in Tax Rate: 1.34%
- \$ Change in City Taxes (estimate) for median property: \$90.78

Proposed Tax Levy – Current Draft vs. CIP:

- 2021 Levy per Current Draft:
 - Tax Levy: \$26,356,258
 - Levy Increase: 8.1%
 - Tax Rate (estimate): 51.698
 - % Change in Tax Rate: 1.34%
 - \$ Change in City Taxes (estimate) for median property: \$90.78
- 2021 Levy per CIP Model (June 2020):
 - Tax Levy: \$26,140,678
 - Levy Increase: 7.2%
 - Tax Rate (estimate): 53.128
 - % Change in Tax Rate: 4.5%
 - \$ Change in City Taxes (estimate) for median property: \$80.11

Next Steps:

- Council Feedback
- September 8th Work Session (Budget Books coming soon)
- September 14th Council Meeting to set preliminary levy
- In the meantime, proceed with budget preparations for the remaining City funds

Councilmember Bartholomew asked if an analysis could be done to keep the \$500,000 for Pavement Management, but look at a different source. He suggested the Host Community Fund, Closed Bond Fund, or the General Fund. He commented they could have a mix of the three to see if it could be reduced out of the General Levy. Finance Director Hove responded she could run those figures.

Mayor Tourville stated he has an estimate of 5% to 7%. He stated he knows they are looking at starting a 2021 program with the tipping fees and suggests running the numbers to look at starting it sooner. He commented it may not be the full \$500,000. He asked that this comes back before the Council in September. He asked the Finance Director to show the figures on a 5% to 7% target, still keeping an emphasis on Pavement Management, but using the Host Community Fund. He requested this for September. Finance Director Hove stated she could provide that information.

Councilmember Dietrich thanked Finance Director Hove for her thoroughness and creativity in looking at how to manage these funds and the levy.

Finance Director Hove stated if Council is interested in looking at some of the existing resources, the Host Community Fund, General Fund, or the old Closed Bond Fund, she is willing to run those and would bring back options.

Councilmember Piekarski Krech stated it is a good idea. They need to be as conservative as possible. She commented the roads need to be fixed.

9. MAYOR AND COUNCIL COMMENTS:

Mayor Tourville stated a longtime member of the City of Inver Grove Heights and Council Member, Bill Klein, has passed away. There will be a visitation from 4:00 to 8:00 on Friday night at St. Patrick's Church. There will be a viewing at 10:00 a.m. with the funeral beginning at 11:00 a.m.

He stated that Mr. Klein was on the City Council, involved in a lot, and did a lot of work with Christmas on Main Street. He stated that Mr. Klein will be missed and thanked him immensely for his service to the City of Inver Grove Heights. Thoughts are with his Wife, Children, and Grandchildren.

City Administrator Lynch stated the next City Council meeting will take place on Tuesday; September 8th due to the Holiday.

Mayor Tourville stated he had received emails and messages that stated people thought tonight's Agenda would include the Data Breach item. He stated that item was asked to be postponed, and is tentatively scheduled for the first meeting in September.

8. EXECUTIVE SESSION:

A. Closed Session Pursuant to Minn. State. Sec. 13D.05, subd. 3(b), attorney-client privilege, regarding compliance status of form employee with Separation Agreement between the City of Inver Grove Heights and former employee.

City Attorney Bridget McCauley Nason stated the Council is being asked to consider moving into a closed session pursuant to Minn. State. Sec. 13D.05, subd. 3(b), pursuant to the Attorney-Client privilege to discuss the following matter: Compliance status of former employee with separation agreement between the City of Inver Grove Heights and former employee. The balancing of the purposes of the Attorney-Client privilege against the purposes of the Open Meeting Law demonstrates the need for absolute confidentiality in the communication and legal advice to provided to the Council by the City Attorney with respect to this matter including providing legal advice related to the potential breach to the separation agreement by the former employee and the cities legal options and strategies.

She stated the closed meeting will be held in the Council Chambers and will commence immediately. Should the Council vote to move into closed session, once the closed meeting is completed, the City Council will reconvene the open meeting portion of tonight's City Council meeting. Being there are no further items on the Agenda, once back in open session, the Council will adjourn the meeting. She stated in order to move into closed session, a Councilmember must make a motion, it must be seconded, and approved by a majority vote of the City Council to move into that closed session pursuant to Minn. State Sec. 13D.05, subd. 3(b), pursuant to the Attorney-Client privilege to discuss the matter outlined above. Namely compliance status of former employee with separation agreement between the City of Inver Grove Heights and the former employee.

Motion by Piekarski Krech second by Perry to move to Closed Session Pursuant to Minn. State. Sec. 13D.05, subd. 3(b), attorney-client privilege, regarding compliance status of form employee with Separation Agreement between the City of Inver Grove Heights and former employee.

Ayes: 5

Nays: 0 Motion carried.

10. ADJOURN:

The regular City Council meeting adjourned at 7:50 p.m.

Motion by Perry second by Piekarski Krech to adjourn the Executive Session at 8:14 p.m.

Ayes: 5

Nays: 0 Motion carried.

Minutes prepared by Recording Clerk Sheri Yourczek

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Amy Hove 651-450-2521
 Prepared by: Bill Schroepfer, Accountant
 Reviewed by: N/A

Fiscal/FTE Impact:

☐	None
☒	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other

PURPOSE/ACTION REQUESTED

Approve the attached resolution approving disbursements for the period of September 10, 2020 to September 22, 2020.

SUMMARY

Shown below is a listing of the disbursements for the various funds for the period ending September 22, 2020. The detail of these disbursements is attached to this memo.

General & Special Revenue	\$522,800.11
Debt Service & Capital Projects	114,027.87
Enterprise & Internal Service	699,059.92
Escrows	4,521.20
Grand Total for All Funds	<u><u>\$1,340,409.10</u></u>

If you have any questions about any of the disbursements on the list, please call Amy Hove, Finance Director 651-450-2521.

Attached to this summary for your action is a resolution approving the disbursements for the period September 10, 2020 to September 22, 2020 and the listing of disbursements requested for approval.

DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. 2020-195

**RESOLUTION APPROVING DISBURSEMENTS FOR THE
PERIOD ENDING September 22, 2020**

WHEREAS, a list of disbursements for the period ending September 22, 2020 was presented to the City Council for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS: that payment of the list of disbursements of the following funds is approved:

General & Special Revenue	\$522,800.11
Debt Service & Capital Projects	114,027.87
Enterprise & Internal Service	699,059.92
Escrows	4,521.20
Grand Total for All Funds	<u><u>\$1,340,409.10</u></u>

Adopted by the City Council of Inver Grove Heights this 28th day of September, 2020.

George Tourville, Mayor

ATTEST:

Rebecca Kiernan, Deputy Clerk



City of Inver Grove Heights

Expense Approval Report

By Fund

Payment Dates 9/10/2020 - 9/22/2020

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
AFSCME COUNCIL 5	INV0104774	09/11/2020	UNION DUES (AFSCME FULL SHARE)	101.203.2031000	876.18
AFSCME COUNCIL 5	INV0104775	09/11/2020	UNION DUES (AFSCME FULL SHARE-F	101.203.2031000	57.99
BARNA, GUZY, & STEFFEN LTD	221639	09/15/2020	Genereal legal - Account# 50003-005	101.41.1100.413.30430	793.00
BARNA, GUZY, & STEFFEN LTD	221640	09/15/2020	Data investigation - Account# 50003-014	101.41.1100.413.30430	3,719.50
BURKLAND, PAUL	09/18/2020	09/22/2020	Fence repair hit by mower	101.44.6000.451.60065	49.42
BUSINESS DEVELOPMENT SALES, INC.	V402773	09/22/2020	Parts	101.42.4200.423.40042	77.72
CENTURY LINK	08/19/2020B	09/15/2020	Account 651-455-9072	101.42.4200.423.50020	44.90
COMCAST	09/05/2020	09/15/2020	Account 8772-10-591-0359526	101.42.4200.423.30700	10.53
CULLIGAN	08/31/2020	09/15/2020	Water	101.42.4200.423.60065	90.96
DAJ ENTERPRISES LLC (ECO WORKS)	6122	09/22/2020	Tazo B liquid & Terra soft	101.44.6000.451.60030	4,808.00
DAKOTA COMMUNICATIONS CENTER	IG2020-10	09/15/2020	October charges	101.42.4000.421.70502	57,135.00
DAKOTA COMMUNICATIONS CENTER	IG2020-10	09/15/2020	October charges	101.42.4200.423.70502	7,575.00
DAKOTA ELECTRIC ASSN	109394-7 09/20	09/18/2020	Electric	101.43.5400.445.40020	1,267.34
DLT SOLUTIONS INC	4876532A	09/22/2020	Annual subscription	101.47.1400.413.40035	4,692.64
EFTPS	INV0104801	09/11/2020	FEDERAL WITHHOLDING	101.203.2030200	58,880.52
EFTPS	INV0104803	09/11/2020	MEDICARE WITHHOLDING	101.203.2030500	16,632.84
EFTPS	INV0104804	09/11/2020	SOCIAL SECURITY WITHHOLDING	101.203.2030400	46,256.52
EFTPS	INV0104812	09/11/2020	FEDERAL WITHHOLDING	101.203.2030200	4.50
EFTPS	INV0104814	09/11/2020	MEDICARE WITHHOLDING	101.203.2030500	187.96
EFTPS	INV0104815	09/11/2020	SOCIAL SECURITY WITHHOLDING	101.203.2030400	803.68
EFTPS	INV0104807	09/14/2020	FEDERAL WITHHOLDING	101.203.2030200	16.37
EFTPS	INV0104809	09/14/2020	MEDICARE WITHHOLDING	101.203.2030500	19.28
EFTPS	INV0104810	09/14/2020	SOCIAL SECURITY WITHHOLDING	101.203.2030400	82.40
EHLERS AND ASSOCIATES, INC.	84567	09/22/2020	Attend meeting	101.45.3000.419.30700	250.00
EHLERS AND ASSOCIATES, INC.	84568	09/22/2020	Crossings of Inverwood 8/2020	101.45.0000.3414200	1,416.25
EMERGENCY RESPONSE SOLUTIONS	15899	09/15/2020	Brass standpipe bak kit	101.42.4200.423.60065	2,353.54
EMERGENCY RESPONSE SOLUTIONS	15981	09/22/2020	Fire hose maintenance/repair	101.42.4200.423.60040	5,838.94
FIRST IMPRESSION GROUP, THE	109888-P	09/22/2020	Postage for voting postcards	101.41.1200.414.50030	2,637.21
GENESIS EMPLOYEE BENEFITS ACH ONLY	INV0104782	09/11/2020	HSA ELECTION-FAMILY	101.203.2032500	3,273.63
GENESIS EMPLOYEE BENEFITS ACH ONLY	INV0104783	09/11/2020	HSA ELECTION-SINGLE	101.203.2032500	4,866.35
GERTENS	16092/12	09/22/2020	Plants	101.44.6000.451.60035	1,677.99
HOOTSUITE INC.	INV-2010178166	09/22/2020	Bussiness plan package	101.47.1400.413.40035	1,680.00
ICMA RETIREMENT TRUST - 457	INV0104772	09/11/2020	457 - ROTH AGE 50+	101.203.2031400	175.00
ICMA RETIREMENT TRUST - 457	INV0104773	09/11/2020	457 - ROTH AGE 50+	101.203.2031400	175.00
ICMA RETIREMENT TRUST - 457	INV0104784	09/11/2020	ICMA-AGE <49	101.203.2031400	3,390.00
ICMA RETIREMENT TRUST - 457	INV0104785	09/11/2020	ICMA-AGE <49 %	101.203.2031400	9,042.96
ICMA RETIREMENT TRUST - 457	INV0104786	09/11/2020	ICMA-AGE 50+	101.203.2031400	7,226.15
ICMA RETIREMENT TRUST - 457	INV0104787	09/11/2020	ICMA-AGE 50+ %	101.203.2031400	826.72
ICMA RETIREMENT TRUST - 457	INV0104788	09/11/2020	ICMA (EMPLOYER SHARE ADMIN)	101.203.2031400	91.25
ICMA RETIREMENT TRUST - 457	INV0104797	09/11/2020	ROTH IRA (AGE 49 & UNDER)	101.203.2032400	2,761.52
ICMA RETIREMENT TRUST - 457	INV0104798	09/11/2020	ROTH IRA (AGE 50 & OVER)	101.203.2032400	944.00
ICMA RETIREMENT TRUST - 457	INV0104799	09/11/2020	ROTH-AGE <49 %	101.203.2032400	47.05
ICMA RETIREMENT TRUST - 457	INV0104811	09/11/2020	ICMA-AGE 50+	101.203.2031400	5,978.58
ING DIRECT	INV0104816	09/11/2020	MSRS-HCSP	101.203.2032200	20,448.51
INSIGHT PUBLIC SECTOR	1100758086	09/22/2020	ESD maintenance and support	101.47.1400.413.40035	21,582.24
IUOE	INV0104789	09/11/2020	UNION DUES IUOE	101.203.2031000	1,143.42
LELS	INV0104790	09/11/2020	UNION DUES (LELS)	101.203.2031000	2,130.00
LELS SERGEANTS	INV0104800	09/11/2020	UNION DUES (LELS SGT)	101.203.2031000	372.00
M & J SERVICES, LLC	2253	09/22/2020	Salem hills park	101.44.6000.451.30700	700.00
M & J SERVICES, LLC	2261	09/15/2020	August way & 46th St	101.43.5200.443.40046	800.00
M & J SERVICES, LLC	2262	09/22/2020	Rich valley park work	101.44.6000.451.40047	1,470.00
M & J SERVICES, LLC	2263	09/22/2020	Trail crossing at 75th and Hwy 52 bridge	101.44.6000.451.40047	2,140.00
MCKESSON MEDICAL-SURGICAL INC.	17032124	09/22/2020	Supplies	101.42.4200.423.60065	55.35
Michael A. Madigan	1315	09/22/2020	Cemetery lawn care services	101.44.6000.451.30700	900.00
Michael A. Madigan	1316	09/22/2020	The ditch lawn care services	101.44.6000.451.30700	780.00
MINNEAPOLIS OXYGEN CO.	00064290	09/15/2020	Medical oxygen	101.42.4200.423.30700	99.82
MINNEAPOLIS OXYGEN CO.	00064291	09/15/2020	Elements (O & N)	101.42.4200.423.30700	71.30
MINNESOTA DEPARTMENT OF HUMAN SERVICES	INV0104777	09/11/2020	CASE #001490481201	101.203.2032100	306.89
MINNESOTA DEPARTMENT OF HUMAN SERVICES	INV0104778	09/11/2020	CASE #001563363401	101.203.2032100	369.63
MINNESOTA DEPARTMENT OF HUMAN SERVICES	INV0104779	09/11/2020	CASE #001567848502	101.203.2032100	60.45
MINNESOTA DEPARTMENT OF HUMAN SERVICES	INV0104780	09/11/2020	CASE #001521862201	101.203.2032100	186.89
MINNESOTA SODDING COMPANY, LLC	10005	09/22/2020	IGH field layout	101.44.6000.451.30700	1,182.69
MN DEPT OF REVENUE	INV0104802	09/11/2020	STATE WITHHOLDING	101.203.2030300	25,540.28
MN DEPT OF REVENUE	INV0104813	09/11/2020	STATE WITHHOLDING	101.203.2030300	2.41
MN DEPT OF REVENUE	INV0104808	09/14/2020	STATE WITHHOLDING	101.203.2030300	8.76
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	101.207.2070300	12.04
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	101.207.2070300	0.58
MN DEPT OF TRANSPORTATION	P00011932	09/15/2020	55th@Blaine inspection	101.43.5200.443.30700	91.96
MN FIRE SERVICE CERT BOARD	7691	09/15/2020	Fire officer I Exams	101.42.4200.423.50080	240.00

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
MN FIRE SERVICE CERT BOARD	8010	09/15/2020	Firefighter II Certification exams	101.42.4200.423.50080	960.00
OCCUPATIONAL HEALTH CENTERS OF MINNESOTA	103228778	09/15/2020	Services	101.41.1100.413.30500	335.00
OCCUPATIONAL HEALTH CENTERS OF MINNESOTA	103235480	09/15/2020	Services performed at CMC - MNS	101.41.1100.413.30500	282.00
OCCUPATIONAL HEALTH CENTERS OF MINNESOTA	103239711	09/22/2020	services	101.41.1100.413.30500	121.50
OFFICE OF MN. IT SERVICES	DV20080443	09/22/2020	Services	101.47.1400.413.40035	291.40
PERA	INV0104791	09/11/2020	PERA COORDINATED PLAN	101.203.2030600	43,813.87
PERA	INV0104792	09/11/2020	EMPLOYER SHARE (EXTRA PERA)	101.203.2030600	3,365.13
PERA	INV0104793	09/11/2020	PERA DEFINED PLAN	101.203.2030600	53.46
PERA	INV0104794	09/11/2020	EMPLOYER SHARE (PERA DEFINED PLAN)	101.203.2030600	53.46
PERA	INV0104795	09/11/2020	PERA POLICE & FIRE PLAN	101.203.2030600	23,536.97
PERA	INV0104796	09/11/2020	EMPLOYER SHARE (POLICE & FIRE PLAN)	101.203.2030600	35,305.43
PERA	INV0104805	09/14/2020	PERA COORDINATED PLAN	101.203.2030600	86.40
PERA	INV0104806	09/14/2020	EMPLOYER SHARE (EXTRA PERA)	101.203.2030600	6.65
PETTY CASH	06/15/2020	09/22/2020	Squal board mounting	101.42.4000.421.60065	5.59
PETTY CASH - WF PURCHASE CARD FEES	09/16/2020	09/22/2020	WF Fees - August 2020	101.41.2000.415.70440	159.92
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	101.41.1100.413.50025	89.01
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	101.41.1100.413.50025	99.33
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	101.41.1100.413.50025	30.96
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	101.41.1100.413.50025	28.38
RCM SPECIALTIES, INC.	7672	09/15/2020	Emulsion - Ticket# 347	101.43.5200.443.60016	1,010.32
RCM SPECIALTIES, INC.	7690	09/15/2020	Emulsion - Ticket# 4852	101.43.5200.443.60016	548.96
RCM SPECIALTIES, INC.	7694	09/15/2020	Cavanaugh Ct & Chapman Ct work	101.43.5200.443.40046	5,092.50
RENEE DUBS ELLENA	20-4963	09/22/2020	Recreate ad layouts	101.41.1300.413.30700	275.00
RENEE DUBS ELLENA	20-4962	09/22/2020	Recreate letterhead	101.41.1300.413.30700	85.00
RENEE DUBS ELLENA	20-4969	09/15/2020	Poster layout	101.41.1300.413.30700	110.00
SAFETY SIGNS	20002879	09/15/2020	Signs	101.43.5200.443.40050	122.00
ST PAUL, CITY OF	IN42633	09/15/2020	Asphalt	101.43.5200.443.60016	9,637.92
STREAMLINE DESIGN INC	40232	09/15/2020	Clothing	101.42.4200.423.60045	768.08
TASC GENESIS EMPLOYEE BENEFITS, INC	IN1842810	09/15/2020	Cobra fee	101.42.4000.421.30550	40.00
TASC GENESIS EMPLOYEE BENEFITS, INC	IN1843662	09/22/2020	Retiree - Administration fees	101.42.4000.421.30550	44.70
TEXAS STATE DISBURSEMENT UNIT	INV0104776	09/11/2020	CASE #0012022247	101.203.2032100	401.13
TREE TRUST	200698	09/22/2020	Playground mulching	101.44.6000.451.70501	2,333.33
TREE TRUST	200699	09/22/2020	Various sites	101.44.6000.451.70501	2,333.33
TYLER TECHNOLOGIES, INC	025-299943	09/22/2020	Locking till for media Plush Cash drawer	101.41.2000.415.40044	58.56
TYLER TECHNOLOGIES, INC	025-300624	09/22/2020	Utility billings & website monthly fees - Ju	101.47.1400.413.40035	438.00
TYLER TECHNOLOGIES, INC	025-307489	09/15/2020	Sept maintenance agreement	101.47.1400.413.40035	438.00
UNIFIRST CORPORATION	0900575705	09/15/2020	Clothing	101.43.5200.443.60045	56.37
UNIFIRST CORPORATION	0900575705	09/15/2020	Clothing	101.44.6000.451.60045	26.52
UNIFIRST CORPORATION	0900577057	09/15/2020	Clothing	101.43.5200.443.60045	56.37
UNIFIRST CORPORATION	0900577057	09/15/2020	Clothing	101.44.6000.451.60045	26.52
VERIZON WIRELESS	9861418180	09/22/2020	Charges	101.47.1400.413.50020	4,022.80
WI SCTF (WI SUPPORT COLLECTIONS TRUST FUN	INV0104781	09/11/2020	PARTICIPANT ID#0004986316	101.203.2032100	433.06
Fund: 101 - GENERAL FUND					476,412.54
ECM PUBLISHERS, INC	08/31/2020	09/22/2020	Services	201.44.1600.465.50025	1,030.00
Fund: 201 - C.V.B. FUND					1,030.00
HJELMGREN, KIM	09/11/2020	09/15/2020	Overcharge	204.44.0000.3471000	10.00
HOLMES DESIGN, INC.	5259	09/22/2020	Grpahics/Photo alterations	204.44.6100.452.30700	1,284.00
MATTSON, MARY B.	08/04/2020	09/15/2020	Archery instructor - Summer 2020	204.44.6100.452.30700	300.00
MAYER ARTS INC	3287	09/22/2020	Theater classes	204.44.6100.452.30700	2,805.00
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	204.207.2070300	357.88
NORDLUND, THEODORA	09/11/2020	09/15/2020	Cancelled/Soccer shots	204.44.0000.3470000	94.00
REVOLUTIONARY SPORTS, LLC	1982B	09/15/2020	Classes/Camps	204.44.6100.452.30700	343.95
REVOLUTIONARY SPORTS, LLC	1997B	09/15/2020	Classes/Camps	204.44.6100.452.30700	2,407.20
Fund: 204 - RECREATION FUND					7,602.03
AEP ONSITE PARTNERS, LLC	419-21264879	09/22/2020	Fees - Ice Arena	205.44.6200.453.40020	6,270.81
AEP ONSITE PARTNERS, LLC	419-21264879	09/22/2020	Fees	205.44.6200.453.40020	6,233.19
AEP ONSITE PARTNERS, LLC	419-21269687	09/22/2020	Fees - Aquatic Center	205.44.6200.453.40020	5,516.06
AEP ONSITE PARTNERS, LLC	419-21269687	09/22/2020	Fees - Ice Arena	205.44.6200.453.40020	5,583.75
AQUA LOGIC, INC.	50386	09/22/2020	Labor & Parts	205.44.6200.453.40040	1,395.65
GARTNER REFRIGERATION & MFG, INC	W12096	09/22/2020	Cleaning services	205.44.6200.453.40040	996.00
HOLMES DESIGN, INC.	5259	09/22/2020	Grpahics/Photo alterations	205.44.6200.453.30700	2,566.00
HUEBSCH SERVICES	20026646	09/22/2020	Mats	205.44.6200.453.40040	272.09
HUEBSCH SERVICES	20026646	09/22/2020	Mats	205.44.6200.453.40040	68.03
KENNEDY & GRAVEN	NV125-00001	09/15/2020	legal services	205.44.6200.453.30420	975.00
MCGRATH, DEBRA	09/03/2020	09/22/2020	Cancelled class	205.44.0000.3493501	69.00
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	205.207.2070300	3,091.97
TOTAL CONSTRUCTION & EQUIP.	18377	09/22/2020	Arena transformer inspection	205.44.6200.453.40040	225.92
TOTAL CONSTRUCTION & EQUIP.	19241	09/22/2020	ADD receipt main office vmcc	205.44.6200.453.40040	578.68
TWIN CITY HARDWARE	PSI0114713	09/22/2020	Lock, CYL, store, lev	205.44.6200.453.80200	1,103.40
WAGENKNECHT, STACY	08/03/2020B	09/15/2020	Covid	205.44.0000.3490100	809.99
Fund: 205 - COMMUNITY CENTER					35,755.54
EHLERS AND ASSOCIATES, INC.	84566	09/15/2020	CARES Administration 08/2020	250.41.1100.413.30700	2,000.00
Fund: 250 - CARES FEDERAL GRANT (CFDA 20.019)					2,000.00

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
DAHN CONSTRUCTION	Pay Request #4	09/15/2020	Project 2017-07 PV 4	437.44.5900.737.80300	102,903.95
WSB & ASSOCIATES, INC.	R-013050-000-22	09/22/2020	HVP Phase 2 development - July	437.44.5900.737.30700	303.00
Fund: 437 - 2017 IMPROVEMENT FUND					103,206.95
PRAIRIE MOON NURSEY INC.	2024601900	09/15/2020	Plants	441.74.5900.741.40066	168.00
Fund: 441 - STORM WATER MANAGEMENT					168.00
HEINFRIED KOLKMANN	20-029	09/22/2020	Salem hills inspections	444.74.5900.744.30700	6,500.00
Fund: 444 - PARK CAPITAL REPLACEMENT					6,500.00
WEST ST. PAUL, CITY OF	2020-00000173	09/15/2020	2nd QTR 2020 volunteer coord	451.75.5900.751.30700	2,997.97
Fund: 451 - HOST COMMUNITY FUND					2,997.97
EHLERS AND ASSOCIATES, INC.	84569	09/15/2020	Suite Living-Conduit Bond Discussion	453.57.9000.570.30150	187.50
EHLERS AND ASSOCIATES, INC.	84570	09/15/2020	TIF County/Newspaper Preparations	453.57.9000.570.30150	250.00
KENNEDY & GRAVEN	NV125-00046	09/22/2020	TIF discussions 6.2020	453.57.9000.570.30420	603.50
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	453.57.9000.570.50025	113.95
Fund: 453 - SE QUADRANT TIF DIST 4-1					1,154.95
BLACKTOP PROS, LLC	20-0359	09/15/2020	Blain ave & 64th street patch	501.50.7100.512.40046	2,500.00
BLACKTOP PROS, LLC	20-0363	09/15/2020	Blacktop patch	501.50.7100.512.40046	2,000.00
BLACKTOP PROS, LLC	20-0364	09/22/2020	80th Street patch	501.50.7100.512.40046	3,200.00
CITY OF BLOOMINGTON	2000219	09/15/2020	Lab testing	501.50.7100.512.30700	446.00
CITY OF BLOOMINGTON	2000184	09/15/2020	lab testing	501.50.7100.512.30700	420.00
ELLINGSON DRAINAGE, INC.	09/16/2020	09/22/2020	Refund hydrant permit #2014	501.207.2070300	(13.86)
ELLINGSON DRAINAGE, INC.	09/16/2020	09/22/2020	Refund hydrant permit #2014	501.50.0000.3813000	(194.60)
FASTENAL COMPANY	MNTC1249314	09/15/2020	Parts	501.50.7100.512.60016	9.17
FASTENAL COMPANY	MNTC1249357	09/15/2020	Parts	501.50.7100.512.60016	18.90
GOSSMAN, JERAMIE	1266	09/22/2020	Lawn care services	501.50.7100.512.30700	1,700.00
HAWKINS, INC.	4790150	09/15/2020	Chlorine	501.50.7100.512.60019	744.23
LONE OAK COMPANIES	85729	09/22/2020	Statements and postage credits	501.50.7100.512.30700	279.50
LONE OAK COMPANIES	85729	09/22/2020	Statements and postage credits	501.50.7100.512.50035	(11.25)
LONE OAK COMPANIES	85892	09/22/2020	Process notices	501.50.7100.512.30700	81.12
LONE OAK COMPANIES	09/15/2020	09/22/2020	Postage credit	501.50.7100.512.50035	497.50
MID CITY SERVICES, INC.	136477	09/15/2020	Dust mats	501.50.7100.512.40040	55.20
MN DEPT OF HEALTH	9/9/2020	09/22/2020	Certifiacion fee	501.50.7100.512.50080	23.00
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	501.207.2070200	7,011.54
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	501.207.2070300	15.25
OPTION ONE MECHANICAL LLC	1506	09/15/2020	Cooling unit install	501.50.7100.512.40040	6,600.00
OPTION ONE MECHANICAL LLC	1507	09/15/2020	A/C install	501.50.7100.512.60016	6,600.00
STANTEC CONSULTING SERVICES INC.	1695679	09/15/2020	AWIA planning	501.50.7100.512.30300	4,187.00
TOTAL CONSTRUCTION & EQUIP.	18851	09/22/2020	Portable generator repair	501.50.7100.512.60016	378.27
TOTAL CONSTRUCTION & EQUIP.	19246	09/22/2020	Well #4 work	501.50.7100.512.40040	3,704.01
TOTAL CONSTRUCTION & EQUIP.	19576	09/22/2020	SPD install at 75th St bosster station	501.50.7100.512.60016	5,646.85
TOTAL CONSTRUCTION & EQUIP.	19619	09/22/2020	Install new VFDS	501.50.7100.512.40040	23,179.60
UPS	000027914A350	09/15/2020	Delivery fees	501.50.7100.512.60016	13.08
Fund: 501 - WATER UTILITY FUND					69,090.51
FERGUSON WATERWORKS	0457674	09/22/2020	Parts	502.51.7200.514.40043	1,842.04
FLEXIBLE PIPE TOOL COMPANY	25345	09/15/2020	Parts	502.51.7200.514.40042	754.55
LONE OAK COMPANIES	85729	09/22/2020	Statements and postage credits	502.51.7200.514.30700	279.50
LONE OAK COMPANIES	85729	09/22/2020	Statements and postage credits	502.51.7200.514.50035	(11.25)
LONE OAK COMPANIES	85892	09/22/2020	Process notices	502.51.7200.514.30700	81.13
LONE OAK COMPANIES	09/15/2020	09/22/2020	Postage credit	502.51.7200.514.50035	497.50
METROPOLITAN COUNCIL	0001113914	09/15/2020	Waste water services	502.51.7200.514.40015	169,432.94
TOTAL CONSTRUCTION & EQUIP.	19620	09/22/2020	Pump #3 VFD replacement	502.51.7200.514.40043	21,743.90
W. W. GOETSCH ASSOCIATES, INC.	104650	09/15/2020	Tech service - Pump 1 & 2 Repair	502.51.7200.514.40043	20,000.00
W. W. GOETSCH ASSOCIATES, INC.	104650	09/15/2020	Tech service - Pump 1 & 2 Repair	502.51.7200.514.60016	7,308.00
Fund: 502 - SEWER UTILITY FUND					221,928.31
BLUEGRASS BUSINESS SERVICES INC.	09/10/2020	09/10/2020	Mailing list rental for 50,000 names	503.52.8500.526.50035	5,500.00
BLUEGRASS BUSINESS SERVICES INC.	09/10/2020B	09/10/2020	Printing for 100,000 pieces	503.52.8500.526.50035	5,000.00
BLUEGRASS BUSINESS SERVICES INC.	09/10/2020C	09/10/2020	Postage and handling drop 1	503.52.8500.526.50035	19,500.00
BLUEGRASS BUSINESS SERVICES INC.	09/10/2020D	09/10/2020	Postage and handlig for drop 2	503.52.8500.526.50035	19,500.00
BREAKTHRU BEVERAGE MINNESOTA	1081174416	09/15/2020	Vodka	503.52.8300.524.76150	155.05
BREAKTHRU BEVERAGE MINNESOTA	1091165919	09/15/2020	Beer	503.52.8300.524.76150	212.00
COCA COLA BOTTLING COMPANY	3607208559	09/15/2020	Beverages	503.52.8300.524.76100	748.04
COCA COLA BOTTLING COMPANY	3607208629	09/15/2020	Beverages	503.52.8300.524.76100	549.90
COLLEGE CITY BEVERAGE	634395	09/15/2020	Beer	503.52.8300.524.76150	301.80
COLLEGE CITY BEVERAGE	636125	09/15/2020	Beer	503.52.8300.524.76150	445.60
COVERALL OF THE TWIN CITIES INC	1590000994	09/15/2020	Cleaning services	503.52.8500.526.40040	1,124.81
DAKOTA ELECTRIC ASSN	1003663-5 09/20	09/18/2020	Electric	503.52.8600.527.40020	3,064.29
DAKOTA ELECTRIC ASSN	1004861-8 09/20	09/18/2020	Electric	503.52.8600.527.40020	98.65
DAKOTA ELECTRIC ASSN	201360-5 09/20	09/18/2020	Electric	503.52.8600.527.40020	244.85
DAKOTA ELECTRIC ASSN	250165-8 09/20	09/18/2020	Electric	503.52.8600.527.40020	739.83
DAKOTA ELECTRIC ASSN	393563-2 09/20	09/18/2020	Electric	503.52.8600.527.40020	542.76
DAKOTA ELECTRIC ASSN	426713-4 09/20	09/18/2020	Electric	503.52.8600.527.40020	55.46
DAKOTA ELECTRIC ASSN	443054-2 09/20	09/18/2020	Electric	503.52.8600.527.40020	17.82
HEGGIES PIZZA	1010609015	09/15/2020	Pizza	503.52.8300.524.76050	163.75

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
JJ TAYLOR DIST. COMPANY OF MN	3126060	09/15/2020	Liquor	503.52.8300.524.76150	163.00
M. AMUNDSON LLP	307521	09/15/2020	Candy	503.52.8300.524.76050	189.61
MANSFIELD OIL COMPANY	21933721	09/15/2020	Fuel	503.52.8400.525.60021	1,015.41
MN DEPT OF REVENUE	Aug-20	09/18/2020	Taxes	503.207.2070300	51,744.74
MULLIGAN MARKETING CONCEPTS	09/10/2020	09/15/2020	10% Marketing fee	503.52.8000.521.30700	69,078.00
NATURE CALLS, INC.	26745	09/22/2020	Portable restrooms	503.52.8600.527.40050	248.53
NATURE CALLS, INC.	26827	09/22/2020	Portable rest room rental	503.52.8600.527.40050	248.53
PHILLIPS WINE & SPIRITS	6067073	08/18/2020	Liquor	503.52.8300.524.76150	90.50
PHILLIPS WINE & SPIRITS	607395D	08/25/2020	Alcohol	503.52.8300.524.76150	169.10
PHILLIPS WINE & SPIRITS	610660	08/11/2020	Wrong quantity	503.52.8300.524.76150	(399.84)
PHILLIPS WINE & SPIRITS	6077417	08/26/2020	Beer	503.52.8300.524.76150	50.30
PHILLIPS WINE & SPIRITS	6060651	09/15/2020	Liquor	503.52.8300.524.76150	272.30
PHILLIPS WINE & SPIRITS	6064234	09/15/2020	liquor	503.52.8300.524.76150	102.10
SUPERIOR TURF SERVICES INC	17506	09/15/2020	Lawn care services	503.52.8600.527.60030	563.86
US FOODSERVICE	3328518	09/15/2020	Food	503.52.8300.524.76050	741.84
US FOODSERVICE	3459677	09/15/2020	Food	503.52.8300.524.60065	106.76
US FOODSERVICE	3459677	09/15/2020	Food	503.52.8300.524.76050	519.39
US FOODSERVICE	3459677	09/15/2020	Food	503.52.8300.524.76100	126.69
US FOODSERVICE	3482574	09/15/2020	Food	503.52.8300.524.76050	110.15
US FOODSERVICE	3579797	09/15/2020	Food	503.52.8300.524.60065	44.53
US FOODSERVICE	3579797	09/15/2020	Food	503.52.8300.524.76050	207.40
US FOODSERVICE	3579798	09/15/2020	Food	503.52.8300.524.76050	34.57
Fund: 503 - INVER WOOD GOLF COURSE					183,392.08
LEAGUE OF MN CITIES INS TRUST	08/21/2020	09/15/2020	Accident & Workers comp	602.00.2100.415.50009	150,729.00
Fund: 602 - RISK MANAGEMENT					150,729.00
ABM EQUIPMENT & SUPPLY	0162469-IN	09/15/2020	Parts & Freight	603.00.5300.444.40041	369.20
DIAMOND MOWERS INC	0183911-IN	09/15/2020	Switch	603.00.5300.444.40041	304.74
EHLERS AND ASSOCIATES, INC.	84565	09/15/2020	CIP quality control review	603.00.5300.444.70600	312.50
FERRELLGAS	1112772538	09/15/2020	Gas 8-Gal	603.00.5300.444.40041	27.00
FERRELLGAS	1112773195	09/15/2020	Gas 4.7-Gal	603.00.5300.444.40041	16.80
FERRELLGAS	1112825899	09/15/2020	Dock_20lb_CYL (4.7Gal)	603.00.5300.444.40041	16.80
INVER GROVE FORD	09/03/2020	09/15/2020	Services	603.00.5300.444.40041	314.23
JIM DONSKEY CORPORATION	1900994	09/15/2020	Battery	603.00.5300.444.40040	358.74
MIDWAY FORD	127057	09/15/2020	Vehicle	603.00.5300.444.80700	27,560.70
MTI DISTRIBUTING CO	1274528-00B	09/15/2020	Missed freight chrage	603.00.5300.444.40041	12.46
MTI DISTRIBUTING CO	1272485-00	09/15/2020	Parts	603.00.5300.444.40041	200.30
NORTH AMERICAN TRAILER SALES	030004164064	09/15/2020	Air governer	603.00.5300.444.40041	69.06
NORTH AMERICAN TRAILER SALES	030004164107	09/15/2020	Parts	603.00.5300.444.40041	16.26
NUSS TRUCK AND EQUIPMENT	4642112P	09/15/2020	Parts	603.00.5300.444.40041	469.56
NUSS TRUCK AND EQUIPMENT	4642703P	09/15/2020	Filter	603.140.1450050	352.08
O' REILLY AUTO PARTS	1767-497939	09/15/2020	Air filter	603.00.5300.444.40041	84.26
O' REILLY AUTO PARTS	1767-497963	09/15/2020	IGN coil	603.00.5300.444.40041	35.14
O' REILLY AUTO PARTS	1767-497993	09/15/2020	Utility Blades	603.00.5300.444.60012	2.79
O' REILLY AUTO PARTS	1767-498032	09/15/2020	Filters	603.140.1450050	71.58
O' REILLY AUTO PARTS	1767-498450	09/15/2020	Barrel pump	603.00.5300.444.60012	39.99
O' REILLY AUTO PARTS	1767-499550	09/15/2020	MegaCrimp	603.00.5300.444.40041	25.76
O' REILLY AUTO PARTS	1767-499750	09/15/2020	Filters	603.140.1450050	302.15
PERFECTION PLUS, INC	113181	09/22/2020	Cleaning services	603.00.5300.444.40040	722.36
POMP'S TIRE SERVICE, INC.	980072318	09/15/2020	PArts & Labor	603.00.5300.444.60014	2,596.00
UNIFIRST CORPORATION	0900575705	09/15/2020	Clothing	603.00.5300.444.40065	130.97
UNIFIRST CORPORATION	0900575705	09/15/2020	Clothing	603.00.5300.444.60045	35.55
UNIFIRST CORPORATION	0900577057	09/15/2020	Clothing	603.00.5300.444.40065	130.97
UNIFIRST CORPORATION	0900577057	09/15/2020	Clothing	603.00.5300.444.60045	35.55
ZIEGLER INC	WE87709	09/15/2020	Parts & Labor	603.00.5300.444.40041	570.03
Fund: 603 - CENTRAL EQUIPMENT					35,183.53
NEOPOST USA INC	09/14/2020	09/22/2020	Postage	604.00.2200.416.50030	6,019.50
NEOPOST USA INC	09/17/2020	09/22/2020	Postage	604.00.2200.416.50030	6,019.50
Fund: 604 - CENTRAL STORES					12,039.00
AEP ONSITE PARTNERS, LLC	419-21264879	09/22/2020	Fees - City hall	605.00.7500.460.40020	3,336.94
AEP ONSITE PARTNERS, LLC	419-21269687	09/22/2020	Fees - City Hall	605.00.7500.460.40020	2,969.37
CATHERINE M. PERME	1239	09/22/2020	Team training	605.00.7500.460.30700	4,791.00
HUEBSCH SERVICES	20026645	09/22/2020	Mat(s)	605.00.7500.460.40065	135.79
HUEBSCH SERVICES	20029097	09/22/2020	Mat(s)	605.00.7500.460.40065	135.79
MCKINSTRY ESSENTION LLC	20042645	09/22/2020	Progress Billing	605.00.7500.460.30700	4,037.50
PERFECTION PLUS, INC	113181	09/22/2020	Cleaning services	605.00.7500.460.40040	2,836.80
STRUCTURED NETWORK SOLUTIONS, INC.	23012	09/22/2020	Install 24 category 6 drops in office area	605.00.7500.460.40040	4,737.49
TOTAL CONSTRUCTION & EQUIP.	19571	09/22/2020	Disconnect office furniture at city hall	605.00.7500.460.40040	226.45
TOTAL CONSTRUCTION & EQUIP.	19574	09/22/2020	PD remove light to acces VAV	605.00.7500.460.40040	395.36
Fund: 605 - CITY FACILITIES					23,602.49
GS DIRECT, INC.	358135	09/22/2020	Parts	606.00.1400.413.80610	3,095.00
Fund: 606 - TECHNOLOGY FUND					3,095.00

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
ELLINGSON DRAINAGE, INC.	09/16/2020	09/22/2020	Refund hydrant permit #2014	702.229.2294300	1,500.00
MCDONALD CONSTRUCTION	08/24/2020	09/15/2020	Escrow release	702.229.2288003	1,500.00
PETTY CASH	05/01/2020	09/22/2020	Robin Reitberger Forfeiture #19000655	702.229.2291000	27.00
PETTY CASH	05/01/2020B	09/22/2020	Robin Reitberger Forfeiture #19000811	702.229.2291000	27.00
PETTY CASH	05/01/2020C	09/22/2020	Robin Reitberger Forfeiture #18003845	702.229.2291000	27.00
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	702.229.2282303	36.12
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	702.229.2285603	32.68
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	702.229.2285603	38.70
PIONEER PRESS	820572521	08/31/2020	Advertising/Publishing	702.229.2291103	43.86
SHORT ELLIOTT HENDRICKSON, INC.	392617	09/14/2020	TMO 2020 Anchor @ 50th street WT	702.229.2291203	1,288.84
Fund: 702 - ESCROW FUND					4,521.20
Grand Total					1,340,409.10

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

REQUEST FOR APPROVAL OF RENTAL HOUSING LICENSE

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Nicole Cook: 651-450-2491
 Prepared by: Nicole Cook, Rental and Code
 Compliance Coordinator
 Reviewed by: Heather Rand, Community
 Development Director

Fiscal/FTE Impact:

☒	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other (Revenue)

PURPOSE/ACTION REQUESTED

The City Council is to consider approval of one (1) rental license.

BACKGROUND

The City Council adopted a rental licensing ordinance that requires all rental property owners to obtain a rental license every two years. The purpose of the ordinance is to assure proper maintenance of structures to preserve neighborhood stability, protect the quality of existing rental housing stock, and maintain property values. The ordinance provides for basic safety and living standards for rentals.

ANALYSIS

The following rental license application has been submitted:

JAMES PENG: 6533 CRAIG AVE

The above application has been found to be complete. The application includes the necessary fee payment and the BCA background check. The Inver Grove Heights Police Chief/Designee has also reviewed the license application.

RECOMMENDATIONS

Community Development staff recommends approval of the license listed above.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

PERSONNEL ACTIONS

Meeting Date: September 28, 2020
 Item Type: Consent Agenda
 Contact &
 Reviewed by: Janet Shefchik, HR Manager
 Prepared by: Cora Bauer, HR Coordinator

Fiscal/FTE Impact:

☒	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other

PURPOSE/ACTION REQUESTED

Staff requests that Council confirm and approve the personnel actions listed below.

Temp/Seasonal Employment:

August Krahn, Recreation Instructor
 Eric Reller, Park Maintenance Helper
 Henry Martin, Golf Course Outside Services
 Katie Mrozek, Fitness Worker
 Samuel Fischer, Golf Course Outside Services
 Sugako Kessler, Fitness Instructor

Voluntary Resignations and or/Terminations:

Lauren Ireland, Police Officer
 Phillip Hagen, Fitness Instructor

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Approval of Payment for Rich Valley Crack Sealcoat Project

Meeting Date: September 28, 2020
 Item Type: Consent Agenda
 Contact: Eric Carlson 651-450-2587
 Prepared by: Brian Swoboda
 Reviewed by: Eric Carlson
 Scott Thureen

Fiscal/FTE Impact:

☐	None
☒	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other

PURPOSE/ACTION REQUESTED

Consider approving payment to Fahrner Asphalt Sealers LLC in the amount of \$22,188.90 to be funded by the Pavement Management Fund (Fund 440)

SUMMARY

The Council approved a contract with Fahrner Asphalt to route and blow out cracks and fill with rubberized asphalt crack sealant and then all interior trails were seal coated with GSB-88 a black slag/sand slurry designed for trails.

The contractor has completed their work to our satisfaction. Funding for the project is the Pavement Management Fund (Fund 440).

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Accepting Quotes and Awarding Contract to Crack fill and Sealcoat Trails at Rich Valley Athletic Complex.

Meeting Date: April 13, 2020
 Item Type: Consent Agenda
 Contact: Eric Carlson 651-450-2587
 Prepared by: Brian Swoboda
 Reviewed by: Eric Carlson

Fiscal/FTE Impact:

- | | |
|-------------------------------------|------------------------------------|
| ☐ | None |
| ☒ | Amount included in current budget |
| ☐ | Budget amendment requested |
| ☐ | FTE included in current complement |
| ☐ | New FTE requested – N/A |
| ☐ | Other |

PURPOSE/ACTION REQUESTED

Consider approving low quote to crack fill and sealcoat interior trails around the softball/baseball fields. The contract will not exceed \$23,000.

SUMMARY

The trails and parking lots at Rich Valley Athletic Complex were installed in 1997. The pavement has been maintained routinely to extend its useful life. In 2018 and 2019 all parking lots and exterior trails were crack filled and seal coated. To continue with best maintenance practices, staff recommends approval for the parks internal trails. The work will consist of routing and blowing out cracks and filling with rubberized asphalt crack sealant. Once complete, all interior trails will be seal coated with GSB-88 a black slag/sand slurry designed for trails.

Two contractors were solicited to quote this project. The quotes are as listed:

Contractor	Price
Fahrner Asphalt	\$22,188.90
Astech	\$28,656.88

Staff recommends City Council to approve Fahrner Asphalt to complete the described work for \$22,188.90. The project would be funded out of Fund 440 (Pavement Management Fund)

Progress Billing Invoice

From: Fahrner Asphalt Sealers LLC
 2800 Mecca Drive
 Plover, WI 54467
 Ph. 715-341-2868

To: City of Inver Grove Heights
 8150 Barbara Ave
 Inver Grove Heights, MN 55077

Invoice #: 8300007258
Date: 08/30/20
Application #: 6
Customer Number: 190902

Contract: 1502059402 Inver Grove Heights City, Rich Valley - CF, IR, GSB

Cont Item	Description	Contract			To Date		This Invoice		% Compl	
		Contract	U/M	Unit	Contract	Quantity	Amount	Quantity		Amount
		Quantity		Price	Amount	JTD	To-Date	This Period		This Period
1	Crackfill	1.000	LS.	4,500.000	4,500.00	1.000	4,500.00	1.000	4,500.00	100.00%
2	Infrared Patching	1.000	LS.	9,800.000	9,800.00	1.000	9,800.00	0.153	1,500.00	100.00%
	10 heats @ \$150 per heat = \$1500									
3	GSB-88	1.000	LS.	16,188.900	16,188.90	1.000	16,188.90	1.000	16,188.90	100.00%

Total Contract:			
Total Billed:	100.00%		22,188.90
Less Retainage:		0.00	0.00
Net Invoices:			22,188.90
Less Previous Applications:			-
Total Due This Invoice:		22,188.90	22,188.90

Terms: DUE UPON COMPLETION
 Payment in full is due upon completion unless modified by written contract. A delinquency charge of 1 1/2% per month (18% per annum) will be assessed on any unpaid balance from the previous statement.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Approval of City Facility Preventative Maintenance Contractors

Meeting Date: September 28, 2020
 Item Type: Consent Agenda
 Contact: Eric Carlson – 651.450.2587
 Prepared by: Eric Carlson
 Reviewed by:

☐	Fiscal/FTE Impact:
☐	None
☒	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other

PURPOSE/ACTION REQUESTED

Approve the following preventative maintenance contractors for city facilities to include (City Hall, Fire Stations 1, 2, 3, Inver Wood, Public Works, Rich Valley Maintenance, VMCC/Grove, Water Treatment Plant):

HVAC	NASSEFF Mechanical Contractors
Fire & Life Safety	LVC Companies
Elevator	MEI Total Elevator Solutions
Refrigeration	Gartner Refrigeration Inc.

SUMMARY

To consolidate the number of contractors the City works with related to the maintenance of existing city facilities we released a Request for Proposal (RFP) for the following professional services:

- HVAC (annual, semi-annual, and quarterly inspections/cleaning etc.)
- Fire & Life Safety (alarm, sprinkler, eye wash, emergency lights, AED, fire extinguishers, monitoring)
- Elevator (quarterly testing/inspection)
- Refrigeration (annual and quarterly inspection/maintenance)

Results of the RFP process were as follows:

HVAC	
NASSEFF	\$27,985
Cool Air	\$38,825
NAC	\$47,851
Centraire	\$114,160

Elevator	
MEI	\$5,210
Schindler	\$8,700

Fire & Life Safety	
Summit	\$11,585
LVC	\$12,124
Olson	\$13,283
ESCI	\$13,343

Refrigeration	
Cool Air	\$8,453
Gartner	\$8,500

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Approval of GPS Bi-Polar Ionization Air Cleaning Devices

Meeting Date: September 28, 2020
 Item Type: Consent Agenda
 Contact: Eric Carlson – 651.450.2587
 Prepared by: Eric Carlson
 Reviewed by: Amy Hove

☐	Fiscal/FTE Impact:
☐	None
☒	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other

PURPOSE/ACTION REQUESTED

Approve the installation of GPS Bi-Polar Ionization air cleaning devices in the amount not to exceed \$135,000 using NAC Inc. The units would be installed at City Hall, VMCC/Grove, Public Works, Water Treatment Plant, Fire Stations (1, 2, 3) and Inver Wood. The project is funded using a portion of the City's CARES Act allocation.

SUMMARY

The installation of GPS Bi-Polar ionization air cleaning devices are 99.4% effective in killing COVID-19. The system captures large particles such as dust, dander, and pollen by attaching ions around it, increasing the mass and size, therefore, making the capture rate more effective within our HVAC system. The system will remove odors, pathogens, and ultra-fine particles from the air stream and kill viruses, mold spores and bacteria by eliminating the hydrogen from the pathogens. The units will significantly reduce the amount of outdoor air intake required resulting in energy savings.

We received two quotes for the work as follows:

	NAC	NASSEFF
VMCC	\$49,887	\$57,087
City Hall	\$43,016	\$50,350
Fire Station 1	\$4,388	\$5,889
Fire Station 2	\$10,128	\$6,491
Fire Station 3	\$4,107	\$3,533
Inver Wood Clubhouse	\$2,140	\$1,755
Public Works	\$8,717	\$9,425
Water Treatment Plant	\$6,975	\$7,431
Total	\$129,358	\$141,961

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

PRAIRIE ESTATES, LLLP - Case No. 19-48C

Meeting Date: September 28, 2020
 Item Type: Consent Agenda
 Contact: Heather Botten 651.450.2569
 Prepared by: Heather Botten, Associated Planner
 Reviewed by:

Fiscal/FTE Impact:

☒	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	Other

PURPOSE/ACTION REQUESTED

Consider a Resolution approving the improvement agreement, storm water facilities maintenance agreement and related agreements for Prairie Estates, LLLP, located at 6121-6199 Carmen Avenue

- Requires 3/5th's vote

SUMMARY

On November 25, 2019, the City Council approved the conditional use permit amendment to add 26 garage stalls along with other property improvements to the multi-family development known as Prairie Estates. The conditions of approval require the applicant to enter into the attached agreements prior to any work commencing on site. The agreements were not finalized when the request was approved and the applicant did not have all the financing lined up. The applicant is now ready to move forward with the request.

The agreements lay out the general obligations of the developer to maintain the proposed improvements on the property. The developer shall meet the conditions outlined in the City Engineers review memo and any subsequent correspondence.

RECOMMENDATION: Planning and Engineering Staff find the agreements acceptable as presented. The applicant shall continue to work with the City to secure final approval of the construction drawings.

Attachments: Resolution approving agreements
 Improvement Agreement
 Storm Water Facilities Maintenance Agreement
 Pedestrian Trail Easement
 Fire Hydrant Maintenance Agreement

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 2020-196

**A RESOLUTION APPROVING THE IMPROVEMENT AGREEMENT, STORM WATER
FACILITIES MAINTENANCE AGREEMENT AND RELATED DOCUMENTS FOR
PRAIRIE ESTATES**

**CASE NO. 19-48C
Prairie Estates**

WHEREAS, the request is for the property located at 6121-6199 Carmen Avenue and legally described as:

Lots 3 & 4, Block 1, Southeast Metro Ind Park, according to the recorded plat, Dakota County, Minnesota

WHEREAS, the aforescribed property is zoned R-3C, multi-family residential;

WHEREAS, a conditional use permit amendment to modify the original site plan by adding garage spaces was approved by City Council on November 25, 2019;

WHEREAS, conditions of approval require the applicant to enter into the attached agreements prior to any work commencing on site;

WHEREAS, the agreements were not completed prior to Council approving the requests on November 25, 2019 and therefore must be approved by Council on separate action;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS that, the Improvement Agreement, Storm Water Facilities Maintenance Agreement, Pedestrian Trail Easement, and Fire Hydrant Agreement are hereby approved and the Deputy Clerk is hereby authorized and directed to record a certified copy of this Resolution at the Dakota County Recorder's Office.

Passed this 28th day of September, 2020.

AYES:
NAYS:

George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

**IMPROVEMENT AGREEMENT
RELATING TO
LOTS 3 AND 4, BLOCK 1,
SOUTHEAST METRO INDUSTRIAL
PARK, DAKOTA COUNTY,
MINNESOTA**

**CITY OF INVER GROVE HEIGHTS
IMPROVEMENT AGREEMENT RELATING TO LOTS 3 AND 4, BLOCK 1,
SOUTHEAST METRO INDUSTRIAL PARK, DAKOTA COUNTY, MINNESOTA**

THIS IMPROVEMENT AGREEMENT RELATING TO LOTS 3 AND 4, BLOCK 1, SOUTHEAST METRO INDUSTRIAL PARK, DAKOTA COUNTY, MINNESOTA (Agreement) is made and entered into on the ____ day of _____, 2020, by and between the City of Inver Grove Heights, a municipality of the State of Minnesota, (hereinafter called the City), and Developer identified herein.

RECITALS:

WHEREAS, the Developer has applied to the City for approval of the Development Plans.

WHEREAS, in conjunction with the granting of these approvals, the City requires grading, drainage, erosion and sediment control, the installation of storm water facilities, utility improvements and vegetation establishment.

WHEREAS, under authority granted to it, including Minnesota Statutes Chapters 412, 429, and 462, the Council has agreed to approve the Development Plans on the following conditions:

1. That the Developer enter into this Improvement Agreement, which contract defines the work which the Developer undertakes to complete; and
2. The Developer shall provide an irrevocable letter of credit, or cash deposit, in the amount and with conditions satisfactory to the City, providing for the actual construction and installation of such improvements within the period specified by the City.

WHEREAS, the Developer has filed four (4) complete sets of the Development Plans with the City.

WHEREAS, the Development Plans have been prepared by a registered professional engineer and have been submitted to and approved by the Director of PWD.

NOW, THEREFORE, subject to the terms and conditions of this Improvement Agreement and in reliance upon the representations, warranties and covenants of the parties herein contained, the City and Developer agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Terms. The following terms, unless elsewhere defined specifically in the Improvement Agreement, shall have the following meanings as set forth below.

1.2 City. "City" means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Developer. "Developer" means Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota, and its successors and assigns.

1.4 Owner. "Owner" means Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota, and its successors and assigns.

1.5 Subject Property. "Subject Property" means that certain real property located in the City of Inver Grove Heights, Dakota County, Minnesota and legally described on the attached **Exhibit A**.

1.6 Development Plans. "Development Plans" means all the plans, drawings, specifications and surveys identified on the attached **Exhibit B**, and hereby incorporated by reference and made a part of this Improvement Agreement.

1.7 Improvement Agreement. "Improvement Agreement" means this instant contract by and between the City and Developer.

1.8 Council. "Council" means the Council of the City of Inver Grove Heights.

1.9 PWD. "PWD" means the Public Works Department of the City of Inver Grove Heights.

1.10 Director of PWD. "Director of PWD" means the Director of the Public Works Department of the City of Inver Grove Heights and his delegates.

1.11 County. "County" means Dakota County, Minnesota.

1.12 Other Regulatory Agencies. "Other Regulatory Agencies" means and includes, individually and collectively, the following:

- a.) Minnesota Department of Transportation
- b.) Dakota County
- c.) Dakota County Highway Department
- d.) Watershed District
- e.) Water Management Organization
- f.) Metropolitan Council

- g.) any other regulatory or governmental agency or entity affected by, or having jurisdiction over the Developer Improvements.

1.13 Utility Companies. "Utility Companies" means and includes, jointly and severally, the following:

- a.) utility companies, including electric, gas and cable;
- b.) pipeline companies.

1.14 Prior Easement Holders. "Prior Easement Holders" means and includes, jointly and severally, all holders of any easements or other property interests in the Subject Property.

1.15 Developer Improvements. "Developer Improvements" means and includes, individually and collectively, all the improvements identified in Article 3 and on the attached **Exhibit C**.

1.16 Developer Public Improvements. "Developer Public Improvements" means and includes, individually and collectively, all the improvements identified and checked on the attached **Exhibit C** that are further labeled "public". Developer Public Improvements are improvements to be constructed by the Developer within public right-of-way or public easements and which are to be approved and later accepted by the City. Developer Public Improvements are part of Developer Improvements.

1.17 Developer Default. "Developer Default" means and includes, individually and collectively, any of the following or any combination thereof, subject to Force Majeure:

- a.) failure by the Developer to timely pay the City any money required to be paid under the Improvement Agreement;
- b.) failure by the Developer to timely construct the Developer Improvements according to the Development Plans and the City standards and specifications;
- c.) failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Improvement Agreement;
- d.) breach of the Developer Warranties.

1.18 Force Majeure. "Force Majeure" means (i) an earthquake, hurricane, tsunami, tornado, flood, or other weather conditions of unusual severity or duration or other similar natural catastrophe, (ii) a building moratorium or other governmental prohibition or restriction on construction that prohibits or restricts construction, (iii) a riot, insurrection, terrorist act, or war, (iv) circumstances adversely affecting the availability or delivery of materials or the performance of work including, without limitation, excessive rain or other weather events that

may not constitute flood or catastrophic events yet, nevertheless, result in stoppages of work or delays in the performance of construction, (v) strikes, lockouts or other labor disputes, (vi) actions or inaction (when action is required) of governmental authorities, (vii) fires or other casualties, or (viii) other causes or occurrences which are outside the control of the party whose obligation is delayed and could not be avoided by the exercise of due care on the part of such party.

1.19 Developer Warranties. "Developer Warranties" means that the Developer hereby warrants and represents the following:

- A. **Authority.** Developer has the right, power, legal capacity and authority to enter into and perform its obligations under this Improvement Agreement, and no approvals or consents of any persons are necessary in connection with the authority of Developer to enter into and perform its obligations under this Improvement Agreement.
- B. **No Default.** Developer is not in default under any lease, contract or agreement to which it is a party or by which it is bound which would affect performance under this Improvement Agreement. Developer is not a party to or bound by any mortgage, lien, lease, agreement, instrument, order, judgment or decree which would prohibit the execution or performance of this Improvement Agreement by Developer or prohibit any of the transactions provided for in this Improvement Agreement.
- C. **Present Compliance With Laws.** Developer has complied with and to the best of its knowledge is not in violation of applicable federal, state or local statutes, laws, and regulations including, without limitation, permits and licenses and any applicable zoning, environmental or other law, ordinance or regulation affecting the Subject Property and the Development Plans and the Developer Improvements; and Developer is not aware of any pending or threatened claim of any such violation.
- D. **Continuing Compliance With Laws.** Developer will comply with all applicable federal, state and local statutes, laws and regulations including, without limitation, permits and licenses and any applicable zoning, environmental or other law, ordinance or regulation affecting the Development Plans and the Developer Improvements.
- E. **No Litigation.** There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, or to the best knowledge of Developer threatened against or affecting Developer or the Subject Property or the Development Plans or the Developer Improvements. Developer is not in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.

F. **Full Disclosure.** None of the representations and warranties made by Developer or made in any exhibit hereto or memorandum or writing furnished or to be furnished by Developer or on its behalf contains or will contain any untrue statement of material fact or omit any material fact the omission of which would be misleading.

G. **Warranty on Proper Work and Materials.** The Developer warrants all work required to be performed by it under this Improvement Agreement against defective material and faulty workmanship for a period of two (2) years after its completion and acceptance by the City. With respect to matters covered by the warranty, the Developer shall be solely responsible for all costs of performing repair work arising within said two (2) year period required by the City within thirty (30) days of notification. All trees, grass, and sod shall be warranted to be alive, of good quality, and disease free for one (1) year after planting. Any replacements shall be similarly warranted for one (1) year from the time of planting.

The warranty period for drainage and erosion control improvements made by Developer shall be for two (2) years after completion and acceptance by the City; the warranty for the drainage and erosion control improvements shall also include the obligation of the Developer to repair and correct any damage to or deficiency with respect to such improvements.

H. **Obtaining Permits.** The Developer shall obtain in a timely manner and pay for all required permits, licenses and approvals, and shall meet, in a timely manner, all requirements of all applicable, local, state and federal laws and regulations which must be obtained or met before the Developer Improvements may be lawfully constructed.

I. **Fee Title/Ownership Interest.** Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota, owns fee title to the Subject Property.

1.20 City Warranties. “City Warranties” means that the City hereby warrants and represents as follows:

A. **Organization.** City is a municipal corporation duly incorporated and validly existing in good standing under the laws of the State of Minnesota.

B. **Authority.** City has the right, power, legal capacity and authority to enter into and perform its obligations under this Improvement Agreement.

1.21 Formal Notice. Formal Notice means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to City: City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

**If to Developer
or Owner:** Prairie Estates, LLLP
c/o Twin Cities Housing Development Corporation
400 Selby Avenue, Suite C
St. Paul, MN 55102

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

ARTICLE 2

APPROVAL OF DEVELOPMENT PLANS

2.1. Approval of Development Plans. The Development Plans are hereby approved by the City.

ARTICLE 3

DEVELOPER IMPROVEMENTS

3.1 Developer Improvements. The Developer shall install, at its own cost, the Developer Improvements in accordance with the Development Plans. The Developer Improvements shall be completed by the dates shown on **Exhibit C**, except as completion dates are extended by subsequent written action of the Director of PWD. Failure of the City to promptly take action to enforce this Improvement Agreement after expiration of time by which the Developer Improvements are to be completed shall not waive or release any rights of the City; the City may take action at any time thereafter, and the terms of this Improvement Agreement shall be deemed to be automatically extended until such time as the Developer Improvements are completed to the City's reasonable satisfaction.

3.2 Ground Material. The Developer shall insure that adequate and suitable ground material shall exist in the areas of public utility improvements to be made by Developer and shall guarantee the removal, replacement or repair of substandard or unstable material. The cost of said removal, replacement or repair is the responsibility of the Developer.

3.3 Grading/Drainage Plan. The Developer shall construct drainage facilities adequate to serve the Subject Property in accordance with the Development Plans. The grading and drainage plan shall include drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform with the overall City storm sewer plan. The grading of the site shall be completed in conformance with the Development Plans. In

the event that the Developer fails to complete the grading of the site in conformance with the Development Plans by the stipulated date, the City may declare the Developer in default pursuant to Article 11.

3.4 Area Restoration. The Developer shall restore all areas disturbed by the development grading operation in accordance with the approved erosion control plan. Upon request of the PWD, the Developer shall remove the silt fences after grading and construction have occurred.

3.5 Erosion Control. The Developer shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated in the Minnesota Pollution Control Agency handbook titled Water Quality in Urban Areas. Such plan shall be detailed on the Development Plans and shall be subject to approval of the Director of PWD. The Developer shall install and maintain such erosion control structures as appear necessary under the Development Plans or become necessary subsequent thereto. The Developer shall be responsible for all damage caused as the result of grading and excavation within the Subject Property including, but not limited to, restoration of existing control structures and clean-up of public right-of-way, until all improvements are completed. As a portion of the erosion control plan, the Developer shall re-seed or sod any disturbed areas in accordance with the Development Plans. The City reserves the right to perform any necessary erosion control or restoration as required, if these requirements are not complied with after Formal Notice by the City as stated in Article 11. The Developer shall be financially responsible for payment for this extra work.

ARTICLE 4 **OTHER PERMITS**

4.1 Permits. The Developer shall obtain all necessary approvals, permits and licenses from the City, the Other Regulatory Agencies, the Utility Companies, and the Prior Easement Holders. Major design requirements of any such entities shall be determined prior to completion and incorporated into the Development Plans. All costs incurred to obtain said approvals, permits and licenses, and also all fines or penalties levied by any agency due to the failure of the Developer to obtain or comply with conditions of such approvals, permits and licenses, shall be paid by the Developer. The Developer shall defend and hold the City harmless from any action initiated by the Other Regulatory Agencies, the Utility Companies and the Prior Easement Holders resulting from such failures of the Developer.

ARTICLE 5 **OTHER DEVELOPMENT REQUIREMENTS**

5.1 Miscellaneous Requirements. Any additional requirements for approval of the Development Plans as specified by the Council are incorporated herein, as set forth in **Exhibit D**.

ARTICLE 6 **DEVELOPER PUBLIC IMPROVEMENTS**

6.1 Approval of Contractors and Engineer. Any contractor or engineer preparing plans and specifications selected by the Developer to design, construct or install any Developer Public Improvements must be approved in writing by the Director of PWD.

6.2 Construction. The construction, installation, materials and equipment related to Developer Public Improvements shall be in accord with the Development Plans. The Developer shall cause the contractors to furnish the PWD a written schedule of proposed operations, subcontractors and material suppliers, at least five (5) days prior to commencement of construction work. The Developer shall notify the City in writing, coordinate and hold a pre-construction conference with all affected parties at least three (3) days prior to starting construction of any Developer Public Improvements.

6.3 Inspection. The PWD or its designated representative shall periodically inspect the work installed by the Developer, its contractors, subcontractors or agents. The Developer shall notify the PWD two (2) working days prior to the commencement of the laying of utility lines, subgrade preparation or any other improvement work which shall be subsequently buried or covered to allow the City an opportunity to inspect such improvement work. Upon receipt of said notice, the City shall have a reasonable time, not to be less than three (3) working days, to inspect the improvements. Failure to notify the City to allow it to inspect said work shall result in the City's right pursuant to Article 11 to withhold the release of any portion of the escrow amount resulting from work being performed without the opportunity for adequate City inspection.

6.4 Faithful Performance of Construction Contracts. The Developer shall fully and faithfully comply with all terms of any and all contracts entered into by the Developer for the installation and construction of all of the Developer Public Improvements; and the Developer shall obtain lien waivers. Within thirty (30) days after Formal Notice, the Developer agrees to repair or replace, as directed by the City and at the Developer's sole cost and expense, any work or materials relating to Developer Public Improvements that within the warranty periods of Section 1.19(G) become defective or are not in compliance with the warranty provisions contained therein in the opinion of the City.

6.5 City Acceptance. The Developer shall give Formal Notice to the City within thirty (30) days once Developer Public Improvements have been completed in accord with this Development Contract and the ordinances, City standards and specifications and the Development Plans. The City shall then inspect the Developer Public Improvements and notify the Developer of any Developer Public Improvements that do not so conform. Upon compliance with this Development Contract and City ordinances, standards and specifications, the City shall so notify the Developer in writing and the Development Plans, the Developer Public Improvements shall become the property of the City upon Formal Notice of acceptance by the City.

After acceptance, the Developer Public Improvements become the property of the City, and the Developer shall have no responsibility with respect to maintenance of the Developer Public Improvements except as provided in Section 1.19(G) and except as provided in the following documents between the City and Developer and Owner:

- Storm Water Facilities Maintenance Agreement
- Fire Hydrant License Agreement

If the Developer Public Improvements do not conform, Formal Notice shall be given to the Developer of the need for repair or replacement in reasonable detail or, in its discretion, the City may proceed under Article 11.

6.6 Engineering Submittals Required. The record plan "as built" drawings of the Developer Public Improvements shall be provided by the Developer in accordance with City standards no later than 90 days after completion and acceptance of the Developer Public Improvements by the City, unless otherwise approved in writing by the PWD. If the record plans are not provided to the City within the 90 days, the City may have this work done and pay for it with the Developer's sureties. The following information is required to be shown on the record plans:

1. Two ties to all curb boxes and gate valves.
2. All hydrant gate valves tied back to the hydrant.
3. All ties shall be 100 feet or less.
4. Top nut elevation of all hydrants.
5. Rim and Invert elevations on all manholes and catch basins.
6. Apron invert elevations on all Flared End Structures and storm sewer stubs.
7. Invert elevations on all sanitary and water service stubs.
8. Two ties to all sewer and water service locations.
9. Main line stationing for all sanitary sewer wyes and water main corporations.
10. Copy of final plat shall be submitted in an electronic format (see item 12).
11. As built grading plan containing spot elevations taken throughout the development to verify the development is graded in accordance with the approved grading plan with extra shots to verify swale elevations and locations. In pond areas, enough shots must be taken on the pond bottom , side slopes and grade breaks to verify the volume of each pond. The as-built must also verify emergency overflow elevations and locations. This as-built plan shall be Certified as to general conformance with the City Approved grading plan by a Registered Engineer or Registered Land Surveyor and submitted in an electronic format (see item 12).
12. Final as-built information shall be submitted in an electronic format compatible

with the CITY'S Geographic Information System (GIS). All information must be on the Dakota County coordinates system. Compatible formats are AUTOCAD .DWG or .DXF. As-built drawings shall also be scanned and stored as images in .TIFF or .PDF. All as-built drawings must be the approved plans modified to reflect as-built conditions Note: All corrected lines, grades and elevations shall have a line drawn through the original text and the new information placed nearby; the original information or text shall not be erased.

ARTICLE 7

RESPONSIBILITY FOR COSTS

7.1 Developer Improvement Costs. The Developer shall pay for the Developer Improvements; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the City shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the City shall have approved the contract or subcontract.

7.2 City Miscellaneous Expenses. The Developer shall reimburse the City for all reasonable engineering, administrative, legal and other expenses incurred or to be incurred by the City in connection with this Improvement Agreement and Development Plan approval and acceptance and authorization of improvements. Bills not paid within thirty (30) days shall accrue interest at the rate of eight percent per year.

7.3 Enforcement Costs. The Developer shall pay the City for costs incurred in the enforcement of this Improvement Agreement, including engineering and reasonable attorneys' fees.

7.4 Time of Payment. The Developer shall pay all bills from the City within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of 8% per year.

ARTICLE 8

DEVELOPER WARRANTIES

8.1 Statement of Developer Warranties. The Developer hereby makes and states the Developer Warranties.

ARTICLE 9

CITY WARRANTIES

9.1 Statement of City Warranties. The City hereby makes and states the City Warranties.

ARTICLE 10

INDEMNIFICATION OF CITY

10.1 Indemnification of City. Provided the City is not in Default under the Improvement Agreement with respect to the particular matter causing the claim, loss or damage, Developer shall indemnify, defend and hold the City, its Council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) breach by the Developer of the Developer Warranties;
- b.) failure of the Developer to timely construct the Developer Improvements according to the Development Plans and the City ordinances, standards and specifications, subject to Force Majeure;
- c.) failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Improvement Agreement, subject to Force Majeure;
- d.) failure by the Developer to pay contractors, subcontractors, laborers, or materialmen;
- e.) failure by the Developer to pay for materials;
- f.) failure to obtain the necessary permits and authorizations to construct the Developer Improvements and;
- g.) construction of the Developer Improvements; and
- h.) delays in construction of the Developer Improvements, subject to Force Majeure.

ARTICLE 11 **CITY REMEDIES UPON DEVELOPER DEFAULT**

11.1 City Remedies. If a Developer Default occurs, the City shall give the Developer Formal Notice of the Developer Default and the Developer shall have thirty (30) days to cure the Developer Default unless thirty (30) days is not practicable for the Developer to cure the Developer Default, in which case the Developer shall be given a reasonable time, as determined by the City, to cure the default provided the Developer has commenced a suitable cure within the initial thirty (30) days. If the Developer, after Formal Notice to it by the City, does not cure the Developer Default within the time provided, then the City may avail itself of any remedy afforded by law and any of the following remedies:

- a.) the City may specifically enforce this Improvement Agreement;

- b.) the City may suspend any work, improvement or obligation to be performed by the City until the Developer Default is cured;
- c.) the City may collect on the irrevocable letter of credit or cash deposit pursuant to Article 12 hereof to the extent necessary to cure the Developer Default;
- d.) the City may suspend or deny building permits for buildings within the Subject Property until the Developer Default is cured;
- e.) the City may, at its sole option, perform the work or improvements to be performed by the Developer, in which case the Developer shall within thirty (30) days after written billing by the City reimburse the City for any costs and expenses incurred by the City. In the alternative, the City may in whole or in part, specially assess any of the costs and expenses incurred by the City; and the Developer hereby waives any and all procedural and substantive objections to the installation and construction of the work and improvements and the special assessment resulting therefrom, including, but not limited to, notice and hearing requirement and any claim that the special assessments exceed benefit to the Subject Property. The Developer hereby waives any appeal rights otherwise available pursuant to Minn. Stat. § 429.081. Nothing in this paragraph shall be deemed to impair Developer's right to dispute the amount assessed as exceeding the usual and customary amounts charged by the City given the task, work, construction or improvement performed by the City to ensure compliance with this Agreement.

11.2 No Additional Waiver Implied By One Waiver. In the event any agreement contained in this Improvement Agreement is breached by the Developer and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the City must be in writing.

11.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Improvement Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the Formal Notice.

11.4 Emergency. Notwithstanding the requirement contained in Section 11.1 hereof relating to Formal Notice to the Developer in case of a Developer Default and notwithstanding the requirement contained in Section 11.1 hereof relating to giving the Developer a thirty (30) day period to cure the Developer Default, in the event of an emergency as determined by the Director of PWD, resulting from the Developer Default, the City may perform the work or improvement to be performed by the Developer without giving any notice or Formal Notice to the Developer and without giving the Developer the thirty (30) day period to cure the Developer Default. In such case, the Developer shall within thirty (30) days after written billing by the City reimburse the City for any and all costs incurred by the City. In the alternative, the City may, in whole or in part, specially assess the costs and expenses incurred by the City; and the Developer hereby waives any and all procedural and substantive objections to the installation and construction of the work and improvements and the special assessments resulting therefrom, including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed benefit to the Subject Property. The Developer hereby waives any appeal rights otherwise available pursuant to Minn. Stat. § 429.081.

ARTICLE 12 **ESCROW DEPOSIT**

12.1 Escrow Requirement. Prior to the Developer beginning construction of the Developer Improvements the Developer shall deposit with the City an irrevocable letter of credit or cash deposit for the amount stated in **Exhibit E**.

All cost estimates shall be acceptable to the Director of PWD. The total escrow amount was calculated as shown on the attached **Exhibit E**. The bank and form of the irrevocable letter of credit or cash deposit shall be subject to approval by the City Finance Director and City Attorney and shall continue to be in full force and effect until released by the City. The irrevocable letter of credit shall be for a term ending December 31, 2022. In the alternative, the letter of credit may be for a one year term provided it is automatically renewable for successive one year periods from the present or any future expiration dates with a final expiration date of December 31, 2022, and further provided that the irrevocable letter of credit states that at least sixty (60) days prior to the expiration date the bank will notify the City if the bank elects not to renew for an additional period. The irrevocable letter of credit shall secure compliance by the Developer with the terms of this Improvement Agreement. The City may draw down on the irrevocable letter of credit or cash deposit, without any further notice than that provided in Section 11.1 relating to a Developer Default, for any of the following reasons:

- a.) a Developer Default; or
- b.) upon the City receiving notice that the irrevocable letter of credit will be allowed to lapse without renewal or replacement before December 31, 2022.

The City shall use the letter of credit proceeds or cash deposit proceeds to reimburse the City for its costs and to cause the Developer Improvements listed on Exhibit D to be constructed to the extent practicable; if the Director of PWD determines that such Developer Improvements

listed on **Exhibit E** have been constructed and after retaining 10% of the proceeds for later distribution pursuant to Section 12.2, the remaining proceeds shall be distributed to the Developer.

With City approval, the irrevocable letter of credit or cash deposit may be reduced pursuant to Section 12.2 from time to time as financial obligations are paid.

12.2 Escrow Release and Escrow Increase; Developer Improvements.

Periodically, upon the Developer's written request and upon completion by the Developer and acceptance by the City of any specific Developer Improvements, ninety percent (90%) of that portion of the irrevocable letter of credit, or cash deposit covering those specific completed improvements only shall be released. The final ten percent (10%) of that portion of the irrevocable letter of credit, or cash deposit, for those specific completed improvements shall be held until acceptance by the City and expiration of the warranty period under Section 1.19(G) hereof; in the alternative, the Developer may post a bond satisfactory to the City with respect to the final ten percent (10%).

If it is determined by the City that the Development Plans were not strictly adhered to, or that work was done without City inspection, the City may require, as a condition of acceptance, that the Developer post a irrevocable letter of credit, or cash deposit equal to 125% of the estimated amount necessary to correct the deficiency or to protect against deficiencies arising therefrom. The additional irrevocable letter of credit, or cash deposit, shall remain in force for such time as the City deems necessary, not to exceed five (5) years. In the event that work, which is concealed, was done without permitting City inspection, then the City may, in the alternative, require the concealed condition to be exposed for inspection purposes.

ARTICLE 13 **MISCELLANEOUS**

13.1 City's Duties. The terms of this Improvement Agreement shall not be considered an affirmative duty upon the City to complete any Developer Improvements.

13.2 No Third Party Recourse. Third parties shall have no recourse against the City under this Improvement Agreement.

13.3 Recording. The Improvement Agreement shall be recorded with the County Recorder and the Developer shall provide and execute any and all documents necessary to implement the recording.

13.4 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Improvement Agreement shall run with the Subject Property, and shall be binding upon the successors and assigns of the Owner. This Improvement Agreement shall also run with and be binding upon any after acquired interest of the Owner in the Subject Property.

13.5 Contract Assignment. The Developer and Owner may not assign this Improvement Agreement without the written permission of the Council, which approval will not be unreasonably withheld so long as no Developer Default then exists. The Developer's and Owner's obligations hereunder shall continue in full force and effect, even if the Owner sells the Subject Property.

13.6 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Improvement Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Improvement Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Improvement Agreement, waive compliance by another with any of the covenants contained in this Improvement Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Improvement Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Improvement Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

13.7 Governing Law. This Improvement Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

13.8 Counterparts. This Improvement Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13.9 Headings. The subject headings of the paragraphs and subparagraphs of this Improvement Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

13.10 Inconsistency. If the Development Plans are inconsistent with the words of this Improvement Agreement or if the obligation imposed hereunder upon the Developer are inconsistent, then that provision or term which imposes a greater and more demanding obligation on the Developer shall prevail.

13.11 Access. The Owner hereby grants to the City, its agents, employees, officers, and contractors a license to enter the Subject Property to perform all work and inspections deemed appropriate by the City during the installation of Developer Improvements.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Improvement Agreement.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared George Tourville and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**OWNER AND DEVELOPER:
PRAIRIE ESTATES, LLLP**

By: _____

Its: _____

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Prairie Estates, LLLP, a Minnesota limited liability limited partnership, and that the foregoing instrument was executed on behalf of Prairie Estates, LLLP by authority of the partner of Prairie Estates, LLLP.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF SUBJECT PROPERTY

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, described as follows:

Lots Three (3) and Four (4), Block One (1), Southeast Metro Industrial Park, according to the plat thereof on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota.

Abstract Property

EXHIBIT B
LIST OF DEVELOPMENT PLANS

<u>PLAN</u>	<u>DATE OF PLAN PREPARATION</u>	<u>PREPARED BY</u>
Site Plan (C-101)		Elan Design Lab
Grading and Drainage Plan (C-201)		Elan Design Lab
Utility Plan (C-301)		Elan Design Lab
Landscape Plan (L100-L105)		Elan Design Lab

The above-listed Development Plans were approved by the City Engineer on _____, 2020.

The Development Plans also include compliance by the Developer with those conditions set forth in the following correspondences (collectively the “City Engineer Memos”):

1. Memo from City Engineering Department to City Planning Department dated November 19, 2019.

The City Engineer Memos are on file with the City.

The Development Plans also include modifications of the above referenced Development Plans as approved from time to time by the City Engineer.

EXHIBIT C
DEVELOPER IMPROVEMENTS

The items checked with an "X" below are the Developer Improvements.

The items checked with "Public" below are those Developer Improvements that are Developer-Public Improvements.

<u>CHECKED</u>	<u>COMPLETION DATE</u>	<u>IMPROVEMENT</u>
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	general site grading, drainage erosion and sediment control
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	stormwater facilities (including infiltration basins, water quality structures and catch basins)
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	utility improvements (storm sewer, hydrant and private lateral watermain)
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	parking lot and curb pavement
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	concrete sidewalk and driveway aprons
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	vegetation establishment
X	12-31-20, or prior to issuance of certificate of occupancy for garages, whichever occurs first	sidewalk connection to 63 rd Court E.

X

12-31-20, or prior to
issuance of certificate
of occupancy for garages,
whichever occurs first

certified as-builts

EXHIBIT D

MISCELLANEOUS REQUIREMENTS AND CONDITIONS IMPOSED BY THE CITY

1.) **CONDITIONS TO BE SATISFIED BEFORE DEVELOPER BEGINS CONSTRUCTION OF DEVELOPER IMPROVEMENTS ON THE SUBJECT PROPERTY.** Before Developer begins construction of Developer Improvements on the Subject Property, all the following conditions must be satisfied:

- a.) Developer and Owner must execute this Improvement Agreement.
- b.) Developer must provide the letter of credit or cash deposit for the amount stated on Exhibit E of this Improvement Agreement.
- c.) Developer must provide to the City of Inver Grove Heights the cash deposit for the engineering inspection escrow and vegetation escrow amounts stated on Exhibit E of this Improvement Agreement.
- d.) Developer must fully pay the City of Inver Grove Heights for all planning, engineering review and legal fees that have been incurred up to the date of this Improvement Agreement; and Developer must further escrow with the City an amount determined by the City of Inver Grove Heights for future planning and engineering review fees and for legal fees, except for such fees as may already otherwise be taken into account in the calculations or engineering inspection escrow made a part of Exhibit E.
- e.) Final site plans and the Operations and Maintenance Plan for the stormwater facilities shall be submitted to the City and approved by the City Engineer.
- f.) Developer and/or Owner must execute the following documents for the Subject Property:
 - Improvement Agreement
 - Storm Water Facilities Maintenance Agreement
 - Fire Hydrant License Agreement
 - Pedestrian Trail Easement

The form of the documents are subject to the approval of the City Attorney and the Director of PWD.

2.) **CONDITIONS TO BE SATISFIED BY DECEMBER 31, 2020 OR BEFORE CITY ISSUES A CERTIFICATE OF OCCUPANCY FOR GARAGES CONSTRUCTED ON THE SUBJECT PROPERTY.** By December 31, 2020, or before the City issues a

certificate of occupancy for the garages constructed on the Subject Property, whichever occurs first, all the following conditions must be satisfied:

- a.) All the conditions in paragraph 1 of this Exhibit D have been met.
 - b.) Grading, drainage, erosion, and sediment control have been completed.
 - c.) All storm water facilities must be completed and approved by the City Engineer.
 - d.) The utility improvements have been completed.
 - e.) The parking lot and curb pavement is installed.
 - f.) Vegetation establishment associated with the grading, drainage, erosion and sediment control must be completed.
 - g.) The sidewalk connection to 63rd Court E. has been installed.
 - h.) The concrete sidewalks and driveway aprons have been installed.
 - i.) Certified as-builts shall be submitted to the City.
- 4.) **CLEAN UP OF CONSTRUCTION DEBRIS ON STREETS AND ADJOINING PROPERTY.** During the construction within the Subject Property the Developer is responsible for removing any construction debris (including construction material and other waste products resulting from construction) that may be blown from the construction site into adjoining private properties or into City streets or that may fall from delivery trucks onto adjoining private properties or City streets. Further, during construction, the Developer must clear the City streets of any dirt or other earthen material that may fall onto the City streets from the delivery trucks that are being used in the excavation and grading of the site.
- 5.) **TREE REMOVAL AND REPLACEMENT.** DEVELOPER is removing 39 trees from the Subject Property in connection with installation of the Developer Improvements. 19 of the 39 trees being removed from the Subject Property are ash trees. The CITY is requiring DEVELOPER to install 20 new trees on the Subject Property.

EXHIBIT E
ESCROW CALCULATION

DEVELOPER IMPROVEMENTS

1.)	Grading, Drainage, Erosion & Sediment Control	\$
2.)	Utility Improvements	\$
3.)	Storm Water Facilities	\$
4.)	Parking Lot & Curb Pavement	\$
5.)	Sidewalk connection to 63 rd Court E.	\$
6.)	Concrete sidewalks and driveway aprons	\$
7.)	Vegetation Establishment	\$
8.)	Certified As-Builts	\$
SUBTOTAL:		\$
<u>MULTIPLIED BY:</u>		x 1.25
EQUALS		\$
<u>ESCROW AMOUNT:</u>		\$

EXHIBIT E
ESCROW CALCULATION
(Continued)

Engineering Escrow Amount

In addition to the Escrow Amount for Developer Improvements set forth above, the Developer shall also deposit \$7,500 in cash with the City (hereafter "Engineering Escrow Amount") contemporaneously with execution of this Improvement Agreement.

The Engineering Escrow Amount shall be used to pay the City for engineering inspection, attorney's expenses, staff review time, assurance for sediment/erosion control compliance and maintenance requirements at the City's standard rates charged for such tasks.

Subject to the following paragraph, upon satisfactory completion of the Developer Improvements, the City shall return to the Developer any remaining portion of the Engineering Escrow Amount not otherwise previously charged the Developer.

Twenty five percent (25%) of this Engineering Escrow Amount shall be retained by the City (hereafter referred to as Escrow Retainage) and this Escrow Retainage shall be available to the City to pay for deficiencies and problems related to grading, drainage, erosion and sediment control on the Subject Property in the event such problems and deficiencies arise after the City has accepted the Developer Improvements. The City may use the Escrow Retainage to correct any such deficiencies or problems or to protect against further deficiencies or problems if all the following circumstances exist:

- a.) Deficiencies or problems have arisen with respect to grading, drainage, erosion or sediment control; and
- b.) The City has previously accepted the Developer Improvements; and
- c.) The Letter of Credit or cash deposit for the Developer Improvements has expired or the Letter of Credit or cash deposit for the Developer Improvements has been reduced to ten percent (10%) or less of its original amount.

The City shall return to the Developer any remaining Escrow Retainage when all the following events have occurred:

- a.) all of the vegetation has been established, to the sole satisfaction of the City.

To the extent the engineering inspection charges or the amount needed to correct the deficiencies and problems relating to grading, drainage, erosion and sediment control exceed the initially deposited \$7,500 Engineering Escrow Amount, the Developer is responsible for payment of such excess within thirty (30) days after billing by the City.

EXHIBIT E
ESCROW CALCULATION
(Continued)

Vegetation Escrow Amount

The \$7,500 Engineering Escrow Amount includes \$2,500 in cash with the City (hereafter “Vegetation Escrow Amount”) to ensure the vegetation installed within and around the storm water facilities is maintained and established for a 3-year period from the date of satisfactory installation. The Vegetation Escrow Amount shall be available to the City to pay for deficiencies and problems related to the vegetation installed within and around the storm water facilities on the Subject Property in the event such problems and deficiencies arise after the City has approved the Developer Improvements.

After the 3-year period has expired and upon the determination by the City Engineer that no additional problems or deficiencies have arisen, the City shall return to the Developer any of the remaining Vegetation Escrow Amount.

To the extent the amount needed to correct the deficiencies and problems relating to the vegetation within and around the storm water facilities exceeds the initially deposited \$2,500 Vegetation Escrow Amount, the Developer is responsible for payment of such excess within thirty (30) days after billing by the City.

**STORM WATER FACILITIES MAINTENANCE AGREEMENT RELATING TO
STORMWATER FACILITIES LOCATED ON LOTS 3 AND 4, BLOCK 1, SOUTHEAST
METRO INDUSTRIAL PARK, DAKOTA COUNTY, MINNESOTA**

THIS STORM WATER FACILITIES MAINTENANCE AGREEMENT RELATING TO STORMWATER FACILITIES LOCATED ON LOTS 3 AND 4, BLOCK 1, SOUTHEAST METRO INDUSTRIAL PARK (Agreement) is made, entered into and effective this _____ day of _____, 2020, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as City) and Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (hereafter referred to as Landowner and Responsible Owner). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. City means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Landowner. Landowner means Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota, and its successors and assigns.

1.4 Storm Water Facilities. Storm Water Facilities means each and all of the following, individually and collectively, to the extent located within the Landowner Property:

The storm water infiltration basins, water quality structures, street inlets, drintile, pipes, drainage areas, conduits, culverts, ditches and catch basins lying within the Landowner Property.

1.5 Storm Water Facility Plan. “Storm Water Facility Plan” means the Grading & Drainage Plan (C-201) and Utility Plan (C-301) and Landscape Plan (L100-L105), all prepared by Elan Design Lab dated _____, 2020 and approved by the City Engineer on _____, 2020. The Storm Water Facility Plan is on file with the City.

The Storm Water Facility Plan also includes modifications to the above referenced Stormwater Facility Plan as approved from time to time by the City Engineer.

1.6 Responsible Owner. Responsible Owner means, jointly and severally, each and all of the following:

The fee title owner of the Landowner Property and the successors and assigns of such fee title owner.

The current Responsible Owner is the Landowner.

1.7 Landowner Property. Landowner Property means the real property located in the City of Inver Grove Heights, Dakota County, Minnesota described on the attached **Exhibit A**.

1.8 NWA Stormwater Manual. “NWA Stormwater Manual” means the Inver Grove Heights Northwest Area Storm Water Manual prepared by Emmons & Olivier Resources dated July 2006, and as adopted by the City of Inver Grove Heights and codified in Section 10-13J-5 (H) of the Inver Grove Heights City Code, as amended from time to time by amendment of general applicability.

1.9 Improvement Agreement. “Improvement Agreement” means that certain agreement dated _____, 2020, between the City and Landowner relating to improvements being made by the Landowner to the Landowner Property.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner owns the Landowner Property.

Recital No. 2. Landowner has requested that the City approve the Development Plans identified in the Improvement Agreement for the Landowner Property.

Recital No. 3. The City is willing to approve the Development Plans for the Landowner Property if Landowner executes this Storm Water Facilities Maintenance Agreement.

Recital No. 4. By this Agreement the parties seek to:

- a.) impose upon the Responsible Owner the responsibility of maintaining the Storm Water Facilities, notwithstanding the fact that the Storm Water Facilities may exist within easements dedicated or granted to the City and the public; and
- b.) provide a mechanism where the City may charge-back to the Responsible Owner any maintenance work that the City performs with respect to the Storm Water Facilities in the event the Responsible Owner fails to perform its obligations to maintain the Storm Water Facilities.

- c.) provide the City with right of access over the Landowner Property to access the Stormwater Facilities, when needed.

ARTICLE 3

RESPONSIBILITY FOR MAINTENANCE

3.1 Construction of Storm Water Facilities. Responsible Owner agrees that prior to December 31, 2020, or before the City issues a certificate of occupancy for the garages to be constructed on the Landowner Property, whichever occurs first (or by a date approved by the City Engineer or Director of Public Works), the Storm Water Facilities shall be constructed and installed in accordance with the Storm Water Facility Plan and in accordance with the Improvement Agreement at the sole expense of Responsible Owner.

3.2 Maintenance of Storm Water Facilities. The Responsible Owner is obligated at its expense to perpetually maintain the Storm Water Facilities in accordance with the Standard of Maintenance set forth in Section 3.3 hereof. The Responsible Owner shall not modify, alter, remove, eliminate or obstruct the Storm Water Facilities without the prior written consent of the City. The Responsible Owner shall also insure that the Storm Water Facilities always remain in compliance with the Storm Water Facility Plan. All entities that fall within the definition of Responsible Owner have the joint and several obligations of the defined Responsible Owner. The responsibility of the Responsible Owner for maintaining the Storm Water Facilities on the Landowner Property exists even though the event or omission which caused the need for maintenance of the Storm Water Facilities may arise on property outside of the Landowner Property.

Notwithstanding the maintenance obligations and responsibilities of the Responsible Owner contained herein, nothing obligates the Responsible Owner to modify the capacity of the Storm Water Facilities as long as such a modification to capacity is not caused by storm water runoff from the Landowner Property. If trees or other vegetation located in the areas of the Storm Water Facilities become diseased or die and if in the judgment of the City's Director of Public Works the dead or diseased trees or vegetation adversely affect the storm water storage capacity or the flow of the storm water, then the Responsible Owner, upon the written request of the City, shall remove the diseased or dead trees and vegetation within 30 days after the City's written request.

3.3 Standard of Maintenance. The Responsible Owner must meet the Standard of Maintenance set forth in this Section 3.3.

The Standard of Maintenance shall comply with all of the following:

- a. The Standard of Maintenance shall comply with the standards contained in Title 9, Chapter 5 of the Inver Grove Heights City Code (as amended from time to time, by amendment of general applicability).
- b. The Standard of Maintenance shall comply with the stormwater maintenance standards and requirements as set forth in the **NWA Stormwater Manual** (as amended from time to time, by amendment of general applicability). The NWA Stormwater Manual is on file with the City's Director of Public Works. The NWA

Stormwater Manual shall apply to the Storm Water Facilities notwithstanding the fact that the Landowner's Property is located outside of the Northwest Area Overlay District.

- c. The Standard of Maintenance shall be reasonable and conform to the same standards that the City's Director of Public Works utilizes for storm water systems that the City maintains, as those standards are from time to time amended.
- d. The Standard of Maintenance shall comply with the City approved Operations & Maintenance Plan hereafter referenced.
- e. The Standard of Maintenance shall include but not be limited to each of the following:
 - i.) The Responsible Owner shall monitor the Storm Water Facilities and shall as soon as possible correct any malfunction or deficiency in the operation of such structure so as to ensure that the structure operates in conformance with the design parameters.
 - ii.) The Responsible Owner must maintain and repair the Storm Water Facilities structures and must correct as soon as possible any of the following deficiencies in the event such deficiencies occur:
 - Any unusual evidence of backfill material entering into the pipe structures through pipe joints or other locations; or
 - Any siltation on the outlet ends of the structures or clogging of the outlets as a result of accumulated trash, grit, sediments, and other debris.
 - iii.) Responsible Owner must comply with Section IV of the NWA Stormwater Manual which outlines the requirements for the operations and maintenance of Long Term Best Management Practices (BMP's) for Storm Water Facilities. The City has prepared an Operations & Maintenance Plan to show how the Responsible Owner should operate and maintain Long Term Best Management Practices for the Storm Water Facilities being constructed on the Landowner Property. The Operations & Maintenance Plan is attached hereto as **Exhibit B**. The Responsible Owner and the successors and assigns thereof shall be responsible for following the Operations & Maintenance Plan. The Operations & Maintenance Plan shall be on file with the City's Director of Public Works.
 - iv.) The Responsible Owner shall be required to reduce total suspended solids by 85% from pre-improvement rates and to reduce phosphorus levels by 55% from pre-improvement levels. When requested by the City, the Responsible Owner shall be required to monitor and test the stormwater discharges at the Responsible Owner's expense, to ensure compliance with these requirements. The Responsible Owner is required to install and maintain stormwater facilities that are designed to treat the one (1) inch of impervious surface volume from the Landowner Property; due to the fact that a redevelopment project is occurring, the Director of Public Works is allowing the treatment of one (1) inch impervious

surface volume rather than a reduction of the one (1) inch impervious surface volume. The Responsible Owner shall provide the City with test results of the discharge on an annual basis when testing is requested.

v.) The final Operations & Maintenance Plan shall contain the following information:

- Detailed inspection requirements;
- Inspection and maintenance schedules;
- Contact information for the Responsible Owner;
- As built plans of the Storm Water Facilities;
- A letter of compliance from the designer after construction of the Storm Water Facilities is completed;
- The requirement for an annual report to the City to demonstrate that post construction maintenance is being accomplished per the Operations & Maintenance Plan;
- The GPS coordinates for the Storm Water Facilities shall be provided to the City after construction is completed. Storm Water Facilities smaller than 200 square feet can be located with one GPS coordinate. Stormwater Facilities larger than 200 square feet shall have outlet coordinates and the corners of the Storm Water Facilities located by GPS. The GPS readings shall be provided to the City before the Storm Water Facilities are covered.
- The design storage capacity of each Storm Water Facilities shall be documented in the Operations & Maintenance Plan.
- A form and level of pretreatment approved by the City are required in the treatment train before any infiltration system; and
- The Operations & Maintenance Plan shall incorporate responses to Chapter 8 of the NWA Stormwater Manual which provides additional requirements and checklists for the Responsible Owner to comply with in the operations and maintenance phase of construction.

If the Stormwater Facility Plan is inconsistent with the Standard of Maintenance or if components within the Standard of Maintenance are inconsistent with other components within the Standard of Maintenance, then that provision, term or component which imposes a greater and more demanding obligation shall prevail.

In December of each year, the Responsible Owner shall submit to the City an annual report that identifies all of the tests, inspections, corrective measures and other activities conducted by the Responsible Owner under the Operations & Maintenance Plan for the preceding year. The annual

report shall also identify any conditions of non-compliance with the Standard of Maintenance during the preceding year and the annual report shall address how the conditions of non-compliance were cured. The annual report shall also include the information shown on the form attached hereto as **Exhibit C**.

3.4 Notice of Non-Compliance with Section 3.2; Cure Period. If the City's Director of Public Works ("DPW") determines, at his or her reasonable discretion, that the Responsible Owner has not complied with the Standard of Maintenance, the DPW shall provide written notice to the Responsible Owner of such failure to comply with the Standard of Maintenance. This notice shall specify that the Responsible Owner will have thirty (30) days to comply with the Standard of Maintenance, unless thirty (30) days is not practicable for the Responsible Owner to cure the default, in which case the Responsible Owner shall be given a reasonable time, as determined by the DPW, to cure the default provided the Responsible Owner has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Responsible Owner to comply with the Standard of Maintenance, in the event of an emergency as determined by the DWP, the City may perform the work to be performed by the Responsible Owner without giving any notice to the Responsible Owner and without giving the Responsible Owner thirty (30) days to comply with the Standard of Maintenance. If the City performs emergency service work, the Responsible Owner shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow those procedures set forth in Sections 3.5 and 3.6 with respect to the billing, collection and/or tax certification of such costs.

3.5 Payment of Costs Incurred by City. If the Responsible Owner fails to comply with the Standard of Maintenance within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the DPW, the City may perform those tasks necessary for compliance and the City shall have the right of access to the areas where the Storm Water Facilities are located to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Responsible Owner.

The amount of costs charged by the City to the Responsible Owner shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the Standard of Maintenance. The Responsible Owner shall make payment directly to the City within thirty (30) days after invoicing ("Due Date") by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

3.6 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made under Section 3.5 by the Responsible Owner with respect to the Landowner Property, the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Landowner Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Responsible Owner waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Landowner Property.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Owner, the City, without notice and without hearing, may specially assess the

Landowner Property for the costs and expenses incurred by the City. The Responsible Owner hereby waives any and all procedural and substantive objections to special assessments for the maintenance costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Landowner Property. The Responsible Owner waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Responsible Owner acknowledges that the benefit from the performance of maintenance tasks by the City to ensure compliance with the Standard of Maintenance equals or exceeds the amount of the charges and assessments for the maintenance costs that are being imposed hereunder upon the Landowner Property. Nothing in this paragraph shall be deemed to impair Responsible Owner's right to dispute the amount assessed as exceeding the usual and customary amounts charged by the City given the task, work, construction or improvement performed by the City to ensure compliance with Section 3.2.

3.7 Obligation For Maintenance Notwithstanding Public Easement. The Responsible Owner agrees that its obligations relating to maintenance of the Storm Water Facilities exist notwithstanding the fact that the Storm Water Facilities may be located in whole or in part within public easements.

3.8 Indemnification of City. Responsible Owner shall indemnify, defend and hold the City, its council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) failure by the Responsible Owner to observe or perform any covenant, conditions, obligation or agreement on their part to be observed or performed under this Agreement;
- b.) failure by the Responsible Owner to pay contractors, subcontractors, laborers, or materialmen;
- c.) failure by the Responsible Owner to pay for any materials that may be used by the Responsible Owner to maintain the Storm Water Facilities; and
- d.) construction of the Storm Water Facilities.

3.9 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notice, if any, required by this Agreement.

ARTICLE 4
CITY'S COVENANTS

4.1 Approval of Development Plans. The City agrees that if Responsible Owner executes this Storm Water Facilities Maintenance Agreement and if the other conditions set forth in the Improvement Agreement for the Landowner Property are met, the Council will approve the Development Plans for the Landowner Property.

ARTICLE 5
ACCESS BY CITY TO STORM WATER FACILITIES

5.1 Access. The City hereby grants to the Responsible Owner a temporary right and license to enter public easements and public road rights-of-way for the purpose of performing the maintenance obligations relating to the Storm Water Facilities for the duration of the performance of the maintenance. The Landowner hereby grants to the City a right and license to access and enter the Landowner Property for the purpose of performing maintenance of the Storm Water Facilities for the duration of the performance of the maintenance.

ARTICLE 6
MISCELLANEOUS

6.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Landowner Property and shall be binding upon the parties and the successors and assigns of the parties. This Agreement shall also be binding on and apply to any title, right and interest of the Landowner in the Landowner Property acquired by Landowner after the execution date of this Agreement or after the recording date of this Agreement.

6.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

6.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.5 Consent. Landowner consents to the recording of this Agreement.

6.6 Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to City: City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Landowner: Prairie Estates, LLLP
c/o Twin Cities Housing Development Corporation
400 Selby Avenue, Suite C
St. Paul, MN 55102

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared George Tourville and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER:
PRAIRIE ESTATES, LLLP**

By: _____

Its: _____

STATE OF MINNESOTA)
)
COUNTY OF) SS.

On this ____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Prairie Estates, LLLP, a Minnesota limited liability limited partnership, and that the foregoing instrument was executed on behalf of Prairie Estates, LLLP by authority of the partner of Prairie Estates, LLLP.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF LANDOWNER PROPERTY

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, described as follows:

Lots Three (3) and Four (4), Block One (1), Southeast Metro Industrial Park, according to the plat thereof on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota.

Abstract Property

EXHIBIT B
OPERATIONS & MAINTENANCE PLAN

Maintenance of the Storm Water Facilities shall be performed as outlined in Table 1.1 below to ensure a healthy and functioning Storm Water Facilities conforming to the intent of the original design parameters. Maintenance shall be completed annually by September 10th. An annual inspection report shall be submitted to the City Engineering Division by December 31 of each year to demonstrate that post-construction maintenance is being accomplished per this Operations and Maintenance Plan.

TABLE 1.1 – MAINTENANCE ACTIVITIES

Maintenance Activity	Frequency	Procedure
1. Sediment, trash and debris removal from inlet, outlets, pipes and structures.	Annually in spring and fall as needed.	Remove trash and/or debris. Pruning and weeding, mow filter strip.
2. Sediment, trash and debris removal from bio-filtration basin and swale.	Annually in spring and fall as needed.	Remove sediment and restore bio-filtration basin and swale to capacity.
3. Erosion repair and vegetation replacement.	Annually in spring and fall as needed.	Repair eroded areas and re-seed, re-sod, re-plant and mulch as necessary and remove dry, dead or severely diseased vegetation.
4. Mulch replacement.	Every 2 to 3 years or as needed to maintain 3” to 4” depth.	If applicable, add shredded hardwood mulch.
5. Watering.	As needed.	Provide 1 inch of water when plants show signs of stress.
6. Vegetation replacement and weeding.	Annually in spring and fall.	Replace dead vegetation and remove evasive or unwanted plants.
7. Clean/fix structural components.	As needed per inspection.	Dependent on the type of damage; repair components per manufacturer’s recommendations.
8. Replacement of the bio-retention device.	Bio-retention device failure.	The owner shall notify the City and make repairs within 60 days, unless otherwise approved by the City Engineer.

EXHIBIT C

ANNUAL INSPECTION FORM

CITY OF INVER GROVE HEIGHTS NPDES INSPECTION PROGRAM					
INLET / OUTLET					
STRUCTURE ID		INSPECTION DATE		INSPECTOR(S)	
LOCATION					
EASEMENT					
ACCESSIBLE	Y	N			
STRUCTURES IN ESMT.	Y	N	DESCRIPTION		
TREES IN ESMT.	Y	N	LARGEST DIAMETER (INCHES)		
STRUCTURE	FES	PIPE	CB	OTHER	
ATTRIBUTES	TRASH GUARD	WEIR	SURGE BASIN	OTHER	NONE
CONDITION*	OK	MINOR MAINTENANCE	MAJOR MAINTENANCE	INACCESSIBLE	
END SECTION EROSION	Y	N			
FLOW CONDITION	FLOW PRESENT	NO FLOW	SUBMERGED		
COMMENTS					
VEGETATION/DEBRIS	WEEDS, ETC.	BRUSH, TREES, ETC.	GARBAGE/DEBRIS	NONE	
RESTRICTING FLOW	Y	N			
COMMENTS					
SEDIMENT					
CONDITION**	NONE	MINOR MAINTENANCE	MAJOR MAINTENANCE		
COMMENTS					
RIP RAP					
PRESENT	Y	N			
CONDITION***	OK	MINOR MAINTENANCE	MAJOR MAINTENANCE		
COMMENTS					
ILLCIT DISCHARGE	Y	N			
COMMENTS					
MAINTENANCE PERFORMED:					
SIGNED:			DATE:		

* Minor Maintenance: i.e. regROUT joint, repair trash guard; Major Maintenance: structure separating(ed) from pipe

** Minor Maintenance: repair can be done by City crews, Major Maintenance: heavy equip. is needed

*** Minor Maintenance: repair can be done by City crews, Major Maintenance: heavy equip. is needed

PEDESTRIAN TRAIL EASEMENT
FOR LOTS 3 AND 4, BLOCK 1, SOUTHEAST METRO INDUSTRIAL PARK,
DAKOTA COUNTY, MINNESOTA

THIS PEDESTRIAN TRAIL EASEMENT (Easement) is made, granted and conveyed this ____ day of June, 2020, between Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota, hereinafter referred to as “Landowner” and the City of Inver Grove Heights, a Minnesota municipal corporation, hereinafter referred to as “City”.

Landowner owns the real property situated within Dakota County, Minnesota as described on the attached **Exhibit A** (hereinafter “Landowner’s Property”).

Landowner, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey unto the City, its successors and assigns, forever a **permanent easement and right-of-way for a trail (including, without limitation, the construction, maintenance, repair and use of a trail)** over, under, across, through and upon the following described premises (the “Easement Area”) situated within Dakota County, Minnesota, to-wit:

See the attached **Exhibit B** legal description and depiction, incorporated herein by reference.

The Easement Area shall be for use as a pedestrian and non-motorized recreational trail and shall include such activities as walking, running, biking, skiing, in-line skating, roller skating, skateboarding, the walking of household pets and other forms of similar non-motorized pedestrian use. In addition, public emergency motorized vehicles, electric personal assistive devices, vehicles that may be required by the Americans with Disabilities Act and motorized vehicles used by the City for maintenance, law enforcement or other public uses may be used in the Easement Area. The Easement Area will not be used by other motorized vehicles, or by all- terrain vehicles, or by snowmobiles, and the Easement Area will not be used for horseback riding. No structures, obstructions or fences shall be allowed in the Easement Area unless written approval is granted by the City.

The easement rights herein granted to the City include the rights of the City, its contractors, agents, and servants to enter upon the Easement Area at all reasonable times to construct, reconstruct, inspect, repair and maintain the trail and related improvements, over, under, across, through and upon the Easement Area together with the right to remove from the Easement Area trees, brush, herbage, undergrowth and other obstructions, as well as the right to deposit earthen material in and upon the permanent Easement Area.

EXEMPT FROM STATE DEED TAX

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorney's fees, and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Landowner, its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statute, Chapter 466.

Landowner, for itself and its successors and assigns, does warrant to and covenant with the City, its successors and assigns, that it is well seized in fee of the lands and premises aforesaid and has good right to grant and convey the easement herein to the City.

The existing Trail Easement Agreement recorded against the Landowner's Property on December 31, 1979 as Dakota County Document No. 553021 shall remain in full force and effect and is not released by the recording of this Easement and is not merged into this Easement.

[the remainder of this page has been intentionally left blank]

IN TESTIMONY WHEREOF, the Landowner and City have caused this Easement to be executed as of the day and year set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared George Tourville and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER:
PRAIRIE ESTATES, LLLP**

By: _____

Its: _____

[illegible]

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Prairie Estates, LLLP, a Minnesota limited liability limited partnership, and that the foregoing instrument was executed on behalf of Prairie Estates, LLLP by authority of the partner of Prairie Estates, LLLP.

Notary Public

This instrument was drafted by:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651)451-1831

After recording, please return to:
Timothy J. Kuntz
LeVander, Gillen & Miller
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651)451-1831

EXHIBIT A
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lots Three (3) and Four (4), Block One (1), Southeast Metro Industrial Park,
according to the plat thereof on file and of record in the office of the Register of
Deeds in and for Dakota County, Minnesota.

Abstract Property

EXHIBIT B
LEGAL DESCRIPTION OF EASEMENT AREA

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, described as follows:

EXHIBIT B (CONTINUED)
DEPICTION OF EASEMENT AREA

FIRE HYDRANT LICENSE AGREEMENT

THIS FIRE HYDRANT LICENSE AGREEMENT (Agreement) is made, entered into and effective this ____ day of _____, 2020, by and between the City of Inver Grove Heights, a municipality of the State of Minnesota, (hereinafter referred to as City) and Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (hereinafter referred to as Landowner). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. City means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Landowner. Landowner means Prairie Estates, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota, and its successors and assigns.

1.4 Fire Hydrants. Fire Hydrants mean individually and collectively any existing or future fire hydrant located within or on the Subject Property.

1.5 Maintenance, Maintain, or Maintained. Maintenance, Maintain, or Maintained shall mean the obligation of the Responsible Owner to maintain and, if required by the City standards, to repair or replace the Fire Hydrants as provided in Section 3.3 on the Subject Property.

1.6 Standard of Maintenance. Standard of Maintenance shall mean the standards that the City's Director of Public Works utilizes for fire hydrants that the City maintains, as those standards are from time to time amended.

The current Standard of Maintenance is the Waterous 5-1/4" Pacer Fire Hydrant Operation, Inspection and Maintenance Manual (consisting of three pages) attached hereto as **Exhibit A**.

1.7 Responsible Owner. Responsible Owner means the fee title owner of the Subject Property.

1.8 Subject Property. Subject Property means the real property legally described on the attached Exhibit B.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner owns the Subject Property and will be improving the Subject Property pursuant to the Development Plans defined and identified in the Improvement Agreement between the City and Landowner dated _____, 2020.

Recital No. 2. The City is willing to approve the above-described Development Plans for the Subject Property if, among other things, Landowner executes this Agreement.

Recital No. 3. By this Agreement the parties seek to:

- a.) impose upon the Responsible Owner the responsibility to Maintain the Fire Hydrants, notwithstanding the fact that the Fire Hydrants may exist within easements dedicated or granted to the City and the public; and
- b.) provide a mechanism where the City may charge-back to the Subject Property any Maintenance work that the City performs with respect to the Fire Hydrants in the event the Responsible Owner fails to Maintain the Fire Hydrants.

Recital No. 4. Landowner currently owns the Subject Property and Landowner is currently the only Responsible Owner.

ARTICLE 3 **RESPONSIBILITY FOR MAINTENANCE**

3.1 Construction of Fire Hydrants. Landowner agrees that the Fire Hydrants shall be installed at the sole expense of Landowner by _____, or by a date reasonably determined by the City Engineer.

3.2 Maintenance of Fire Hydrants. The parties acknowledge that the City may perform, but is not required to perform, some Maintenance with regard to the Fire Hydrants including, but not limited to, flushing, lubricating and painting the Fire Hydrants. The City has no obligation to perform said Maintenance but may do so in its sole discretion.

Notwithstanding the foregoing provision, the Responsible Owner is obligated at its expense to perpetually Maintain the Fire Hydrants.

3.3 Standard of Maintenance. Landowner shall exercise the Standard of Maintenance with regard to the Fire Hydrants.

3.4 Notice of Non-Compliance; Cure Period. If the City's Director of Public Works ("DPW") determines, at his reasonable discretion, that the Responsible Owner has not properly Maintained the Fire Hydrants in accordance with the Standard of Maintenance, the DPW shall provide written notice to the Responsible Owner of such failure to comply with the Standard of Maintenance. This notice shall specify that the Responsible Owner will have thirty (30) days to comply with the Standard of Maintenance, unless thirty (30) days is not practicable for the Responsible Owner to cure the default, in which case the Responsible Owner shall be given a reasonable time, as determined by the DPW, to cure the default provided the Responsible Owner has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Responsible Owner to comply with the Standard of Maintenance, in the event of an emergency as determined by the DPW, the City may perform the work to be performed by the Responsible Owner without giving any notice to the Responsible Owner and without giving the Responsible Owner thirty (30) days to comply with the Standard of Maintenance. If the City performs emergency service work, the Responsible Owner shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow those procedures set forth in Sections 3.5 and 3.6 with respect to the billing, collection and/or tax certification of such costs.

3.5 Payment of Costs Incurred by City. If the Responsible Owner fails to comply with the Standard of Maintenance within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the DPW, the City may perform those tasks necessary for compliance with the Standard of Maintenance and the City shall have the right of access to the Subject Property to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance with the Standard of Maintenance to the Responsible Owner.

The amount of costs charged by the City to the Responsible Owner shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the Standard of Maintenance. The Responsible Owner shall make payment directly to the City within twenty (20) days after invoicing ("Due Date") by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

3.6 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made by the Responsible Owner in accordance with Section 3.5, then the City may certify to Dakota County the amounts due as payable similar to special assessments and real estate taxes for the Subject Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The

Responsible Owner waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Subject Property.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Owner, the City, without notice and without hearing, may specially assess the Subject Property owned by the Responsible Owner for the costs and expenses incurred by the City. The Responsible Owner hereby waives any and all procedural and substantive objections to special assessments for the Maintenance costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Subject Property. The Responsible Owner waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Responsible Owner acknowledges that the benefit from the performance of Maintenance tasks by the City to ensure compliance with the Standard of Maintenance equals or exceeds the amount of the charges and assessments for the Maintenance costs that are being imposed hereunder upon the Subject Property.

3.7 Obligation For Maintenance Notwithstanding Public Easement. The Responsible Owner agrees that its obligation to Maintain the Fire Hydrants exist notwithstanding the fact that some or all of the Fire Hydrants are or may be located in public easements. The City hereby grants to the Responsible Owner a temporary right and license to enter public easements and public road rights-of-way for the purpose of performing the Maintenance obligations relating to the Fire Hydrants for the duration of the performance of the Maintenance. The Responsible Owner hereby grants the City a temporary right and license to access and enter the Subject Property for the purpose of performing Maintenance of the Fire Hydrants for the duration of the performance of the Maintenance.

ARTICLE 4 **CITY'S COVENANTS**

4.1 Approval of Development Plans. The City agrees that if Landowner executes this Agreement and if the other conditions required by the City in the Improvement Agreement dated _____, 2020 are met, the City will approve the Development Plans.

ARTICLE 5 **MISCELLANEOUS**

5.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Property and shall be binding upon the parties and the successors and assigns of the parties.

This Agreement also applies to all after-acquired title of the parties.

5.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants

contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this ____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared George Tourville and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

LANDOWNER:
PRAIRIE ESTATES, LLLP

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Prairie Estates, LLLP, a Minnesota limited liability limited partnership, and that the foregoing instrument was executed on behalf of Prairie Estates, LLLP by authority of the partner of Prairie Estates, LLLP.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A

STANDARD OF MAINTENANCE



5-1/4" PACER OPERATION, INSPECTION, AND MAINTENANCE

Operation

AMERICAN Flow Control recommends you follow the general Inspection and Installation guidelines outlined in AWWA Manual M17 for Installation, Field testing, and Maintenance of Fire Hydrants and/or as recommended below. The thrust bearing hydrant requires a minimum of torque to operate. **WARNING: Special care should be taken in the installation, inspection and repair of pressure containing devices such as valves and hydrants. FAILURE TO FOLLOW PROPER PRACTICE AND GUIDELINES CAN RESULT IN SERIOUS INJURY OR DEATH.** High pressure and water hammer, due to rapid opening or closing of a hydrant or valve, can also cause major damage to the hydrant, valve, water main, fire hose, or other attached equipment. It is possible to damage the hydrant by forcing it beyond its limits of travel with excess torque; therefore:

1. Check direction of opening as marked on the nozzle section.
2. To open, turn the operating nut until the main valve is fully open and the travel stop nut limits further opening. **Do not force the hydrant in the opening direction beyond fully-open as indicated by sudden resistance to turning.** If water does not flow when the hydrant is open, it is probably due to a closed valve upstream from the hydrant. Always open the hydrant completely, never only partially. A hydrant that is partially open will allow pressurized flow through the drain valve, which may wash away the soil from the area surrounding the base, or the partially open main valve may trap small stones or other debris between the valve seal and seat.
3. To close, turn the operating nut until the valve stops the flow. **It is not necessary to close this style of hydrant with great force.** Once the flow has stopped, turn the operating nut in the opening direction about 1/4 turn to take the strain off the operating parts of the hydrant. If the hydrant does not shut off completely, do not attempt to force the hydrant to close. Debris and small stones may be trapped in the valve seat and may be preventing the hydrant from closing. Partially open and close the hydrant several times to help dislodge the debris. If this does not work, safely remove the hydrant operating rod assembly, remove the debris and repair as detailed in subsequent sections of this manual.
4. **WARNING: FAILURE TO RELIEVE PRESSURE CAN RESULT IN THE CAP BLOWING OFF, CAUSING INJURY OR DEATH.** Make sure the auxiliary gate valve in the lateral between the main and the hydrant is closed and that the hydrant is not charged with pressure when removing caps.



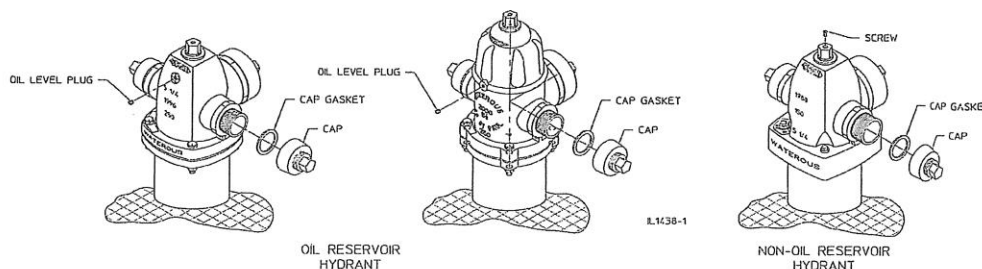
Inspection

1. It is recommended that hydrants be inspected twice per year to ensure their satisfactory operation. After each use (especially in cold weather) hydrants should be specifically inspected for drainage.
2. Routine inspection should cover the points outlined in AWWA Manual M17 and include (but not be limited to) the following points:
 - a. External inspection of paint, caps, chains, etc.
 - b. Checking traffic type hydrants for damage to the breakaway feature.
 - c. Using a listening device to check the main valve for leakage.
 - d. Statically testing the hydrant to look for leakage at gaskets, caps, O-rings and drains.
 - e. Verifying the hydrant drains properly.
 - f. Cycling the hydrant from full open to full close.
 - g. Check for routine lubrication needs which includes but may not be limited to loss of lubricant, nozzle caps and operating mechanism.
3. At time of inspection, flush the hydrant to remove any foreign material from the hydrant and the lateral. If necessary, flush the drains by filling the hydrant and then cycling open the main valve two times to force water out of the drains under pressure. If the hydrant is non-draining type, pump water out after flushing.

MAINTENANCE

AMERICAN Flow Control strongly recommends that you follow routine maintenance on fire hydrants as outlined in AWWA Manual M17 for *Installation, Field Testing, and Maintenance of Fire Hydrants*. The ease of operation and the frequency of repair depends on the condition of the water system and the maintenance given. Dirt, gravel and other foreign material in the hydrant may prevent it from closing or draining properly, which may result in damage to the hydrant main valve. Under most operating conditions, AMERICAN Flow Control recommends semi-annual lubrication and inspection of fire hydrants. Where grease is specified, use an AMERICAN Flow Control recommended food grade grease.

1. Twice per year, open the hydrant completely and flush for several minutes. Open and close valve to make sure it works properly, and check for leaks.
2. Remove a cap and verify that the hydrant is draining properly. After the main valve is closed, the water in the hydrant should drain rapidly. If it does not, the drain ports may be clogged. To clear drain ports, install nozzle cap, and tighten until water tight, then open hydrant two or three turns for several minutes. This will leave drain port partially open and permit water pressure to wash out the obstruction. If this method is unsuccessful, remove the operating rod assembly and clean the drain mechanism. If neither of above methods permits water to drain, it indicates that the drainage area around the hydrant base should be rebuilt.
3. **Oil Reservoir Hydrants:**
Remove oil level plug and check oil level. The oil level should be to the level of the plug. If it is necessary to add oil, remove the oil level plug on the back of the nozzle section and add oil.
4. **Non-Oil Reservoir Hydrants:**
Remove screw from operating nut, and add approximately one tablespoon of oil through opening. Replace screw.
5. Remove all nozzle caps, clean rust or corrosion from threads of nozzles and caps, and replace cap gaskets if necessary. Apply a light coat of grease to nozzle threads before replacing cap.



Note: Where oil or grease is specified, use an AMERICAN Flow Control recommended food grade lubricant.

AMERICAN Flow Control

Waterous 5-1/4" Pacer Fire Hydrant

PACER - TROUBLESHOOTING GUIDE



WARNING: Special care should be taken in the installation, inspection and repair of pressure containing devices such as valves and hydrants. **FAILURE TO FOLLOW PROPER PRACTICE AND GUIDELINES CAN RESULT IN SERIOUS INJURY OR DEATH.** High pressure and water hammer, due to rapid opening or closing of a hydrant or valve, can also cause major damage to the hydrant, valve, water main, fire hose, or other attached equipment.

Problem

1. Operating nut turns freely but hydrant does not open.
2. Hydrant will not shut off or ground around hydrant is highly saturated.
3. External leakage is noticed around the operating nut.
4. Operating nut is extremely hard to turn.
5. Water is dripping around nozzles.
6. Hydrant will not drain properly.

Solution

1. Inspect rod coupling for breakage and ensure rod pin is properly installed.
2. Close hydrant and remove nozzle cap. Check with listening device to determine if water is passing by main valve. If it is determined that the main valve is leaking, try the following:
 - a. Flush hydrant in fully open position (watch to see if rocks or other foreign objects flush out of the barrel).
 - b. After flushing for several minutes, shut off the hydrant. Watch for several minutes to see if flow stops. Place hand over open hose nozzle; suction should be felt, indicating hydrant is no longer leaking and drains are working properly.
 - c. If flushing does not solve the problem, it would indicate that something is trapped or has cut the main valve rubber. Follow the seat removing instructions to replace the valve. Check threads on bronze seat to be sure that is not damaged. If threads appear worn or bent, replace the bronze seat.
 - d. If replacing the valve does not stop the leakage, bolting at the hydrant shoe may be loose or the base gasket is damaged. The hydrant must be excavated to make the repair.
3. This indicates that O-rings are cut or missing. Replace o-rings as referenced in the disassembly and repair instructions.
4. Try to turn the operating nut. If the nut turns, carefully turn the nut back from a tight closed position until it turns freely. If it is necessary to add lubricant, for hydrants with an oil reservoir, remove the oil level plug on the back of the nozzle section and add oil. Fill oil to the level of the plug, if necessary. For hydrants with no oil reservoir, remove the flat head screw on the operating nut and add mineral oil or similar lubricant. **ALWAYS FULLY OPEN AND CLOSE THE HYDRANT AFTER LUBRICATING.** Replace the oil level plug or the flat head screw taking care to replace the thread sealant. The hydrant should cycle freely. If this does not solve the problem, remove the operating nut. Inspect the threads of the operating nut and upper rod. Inspect the thrust washer to ensure it is lubricated and is undamaged. Replace and/or lubricate the thrust washer if necessary. If this does not solve the problem, remove the hydrant seat and flush thoroughly. **Note: Where grease is specified, use an AMERICAN Flow Control recommended food grade grease**
5. Close hydrant and remove nozzle cap. Replace cap gasket. Check the nozzle to be sure it is properly installed. Earlier model hydrants used caulked nozzles. Nozzle may require re-caulking or replacement of barrel. If nozzle has an O-ring behind the nozzle, it may need replacing.
6. Check to be sure the water table has not risen too high to allow for drainage. Flush hydrant to be sure drains are clear. Open hydrant slowly several turns while leaving caps firmly in place to ensure hydrant drains are clear. Close hydrant and repeat this procedure. Do this slowly several times. If this does not solve the problem, remove the hydrant seat assembly and check the rubber drain facings. If no problems are found, excavate the hydrant to see if concrete or other materials have blocked the drain outlets.

AMERICAN Flow Control

Waterous 5-1/4" Pacer Fire Hydrant

EXHIBIT B
LEGAL DESCRIPTION OF SUBJECT PROPERTY

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lots Three (3) and Four (4), Block One (1), Southeast Metro Industrial Park, according to the plat thereof on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota.

Abstract Property

AGENDA ITEM _____**CITY OF INVER GROVE HEIGHTS****REQUEST FOR COUNCIL ACTION****ERIC AND JILL MORSE - CASE NO. 20-25V**

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Heather Botten 651.450.2569
 Prepared by: Heather Botten, Associate Planner
 Reviewed by:

Fiscal/FTE Impact:

☒	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	Other

PURPOSE/ACTION REQUESTED

Consider a Resolution relating to a Variance to allow a 48-inch high, chain link fence within the corner front yard for property located at 7605 Boyd Avenue

- Requires a 3/5th's vote.
- 60-day deadline: October 16, 2020 (first 60-days)

SUMMARY

The applicant is requesting a variance to allow a chain link fence 48 inches in height within the corner front yard setback whereas 42 inches is the maximum height allowed. The ordinance requires all fences within a front yard area to be no taller than 42 inches and at least 75% open visibility. The applicant is proposing a chain link fence, which complies with the visibility requirement, but is requesting it to be 48 inches high instead of the 42-inch maximum. Because it is on a corner lot the applicants must conform to the rules for two front yards.

The proposed fence would be located along the side and rear property lines, and 15 feet from the corner front property line, about 30 feet from the curb. The applicant's property is in a developed residential neighborhood and the abutting property to the rear, most affected by the fence, sits higher in elevation and has tall bushes that would help screen the fence. The neighbor's driveway is also on the opposite side of the property and therefore there would not be any issues with access or visibility.

Staff believes the proposed 48-inch fence would not be out of character of the neighborhood, is consistent with the comprehensive plan, is a reasonable use of the property, and does not appear to have an adverse impact on the neighboring properties. A practical difficulty can be found in the fact that the lot is a corner lot with two front yard setback requirements for fences, and the fence would be located about 30 feet from the road and not affecting the visibility along the right-of way or neighboring driveway.

Planning Staff: Based on the information provided staff recommends approval of the variance request with the condition listed in the attached resolution.

Planning Commission: At the September 15, 2020 public hearing, the Planning Commission recommended **approval** of the request with the one condition listed in the attached resolution (9-0).

Attachments: Approval resolution
 PC recommendation
 Planning staff report

CITY OF INVER GROVE HEIGHTS

DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. 2020-197

**RESOLUTION APPROVING A VARIANCE TO ALLOW A 48-INCH CHAIN LINK FENCE
WITHIN THE FRONT YARD SETBACK WHEREAS 42-INCHES
IS THE MAXIMUM HEIGHT ALLOWED**

CASE NO. 20-25V

Eric and Jill Morse

Property located at 7605 Boyd Avenue and legally described as follows:

**Lot 1, Block 3, Rolling Hills 3rd Addition, according to the recorded plat, Dakota County,
Minnesota**

WHEREAS, an application has been received for a variance to allow a 48-inch chain link fence to be located within the corner front yard setback;

WHEREAS, the afore described property is zoned R-1C, Single-family Residential;

WHEREAS, a Variance may be granted by the City Council from the strict application of the provisions of the City Code Title 10, Chapter 3-4 and conditions and safeguards imposed in the variance so granted where practical difficulties or particular hardships result from carrying out the strict letter of the regulations of the Zoning Code, as per City Code 10-3-4 D;

WHEREAS, the City of Inver Grove Heights Planning Commission reviewed the request on September 15, 2020 in accordance with City Code Section City Code 10-3-3 C;

WHEREAS, a practical difficulty or uniqueness was found to exist based on the following findings:

- a. The request is in harmony with the general purpose and intent of the City Ordinance and is consistent with the Comprehensive Plan.
- b. The height of the chain link fence does not appear to have any adverse impacts on the neighboring properties, the property to the rear sits higher in elevation with the driveway on the opposite side of the lot.
- c. The property is unique in that the lot is a corner lot with two front yard setback requirements for fences, the fence is located 30 feet from the road and does not affect visibility from right-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, that the variance to allow a 48-inch chain link fence within the corner front setback is hereby approved subject to the following condition:

1. The site shall be developed in substantial conformance with the site plan on file with the Planning Department.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to record a certified copy of this Resolution at the Dakota County Recorder's Office.

Adopted by the City Council of Inver Grove Heights this 28th day of September, 2020.

George Tourville, Mayor

Ayes:

Nays:

ATTEST:

Rebecca Kiernan, City Clerk

**RECOMMENDATION TO
CITY OF INVER GROVE HEIGHTS**

TO: Mayor and City Council of Inver Grove Heights

FROM: Planning Commission

DATE: September 15, 2020

SUBJECT: **ERIC AND JILL MORSE – CASE NO. 20-25V**

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance from the front yard setback on a corner lot to construct a fence 48 inches in height whereas 42 inches is the maximum height allowed, for the property located at 7605 Boyd Avenue. 5 notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the applicant is requesting a variance to allow a chain link fence 48 inches in height within the corner front yard setback whereas 42 inches is the maximum height allowed. The proposed fence would be located along the side and rear property lines, 15 feet from the corner front property line, and about 30 feet from the curb. The ordinance requires all fences within a front yard area be no taller than 42 inches. The reasons for the rule appear to be mainly for visibility for traffic and emergency vehicles along the street and driveways, and also for aesthetics. The applicant's property is in a developed residential neighborhood and the abutting property to the rear, most affected by the fence, sits higher in elevation and has tall bushes that would help screen the fence. The neighbor's driveway is also on the opposite side of the property and therefore there would not be any issues with access or visibility. Staff believes the proposed fence would not be out of character of the neighborhood, is consistent with the comprehensive plan, is a reasonable use of the property, and does not appear to have an adverse impact on the neighboring properties. A practical difficulty can be found in the fact that the lot is a corner lot with two front yard setback requirements for fences, and the fence would be located about 30 feet from the road and not affecting the visibility along the right-of way or neighboring driveway. Staff recommends approval of the request with the condition listed in the report. Staff did not hear from any of the surrounding property owners.

Opening of Public Hearing

Jill and Eric Morse, 7605 Boyd Avenue, advised they were available to answer any questions.

Chair Maggi asked the applicants if they read and understood the staff report.

The Morse's replied in the affirmative.

Chair Maggi closed the public hearing.

Planning Commission Recommendation

Motion by Commissioner Niemioja, second by Commissioner Weber, to approve the request for a variance to allow a 48-inch chain link fence in the corner front yard whereas 42 inches is the maximum height allowed, with the practical difficulty and one condition as listed in the report, for the property located at 7605 Boyd Avenue.

Motion carried (9/0). This item goes to City Council on September 28, 2020.

P L A N N I N G R E P O R T
C I T Y O F I N V E R G R O V E H E I G H T S

HEARING DATE: September 15, 2020

CASE NO: 20-25V

APPLICANT & PROPERTY OWNER: Eric and Jill Morse

REQUEST: Variance to allow a 48-inch chain link fence whereas 42-inches in the maximum height allowed within the corner front setback

LOCATION: 7605 Boyd Avenue

COMPREHENSIVE PLAN: Low Density Residential

ZONING: R-1C, Single-family Residential

REVIEWING DIVISIONS: Planning

PREPARED BY: Heather Botten
Associate Planner

BACKGROUND

The applicant is requesting a variance to allow a chain link fence 48 inches in height within the corner front yard setback. The proposed fence would be installed along the side and rear property lines and 15 feet from the corner front property line. The ordinance requires all fences within a front yard area to be no taller than 42 inches and shall be at least 75% open visibility. The reasons for the rule appear to be mainly visibility for traffic and emergency vehicles along the street and driveways. A second reason would be aesthetics, both in uniformity along front views and visual appeal. The applicant is proposing a chain link fence, complying with the 75% clear visibility requirement but is requesting it to be 48 inches high instead of the 42-inch maximum height in the front yard. The fence would be located about 30 feet from the road.

The applicant's property is in a developed residential neighborhood. The abutting property to the rear, most affected by the fence, sits higher in elevation and has tall bushes that would help screen the fence. Also, the neighbor's driveway is on the opposite side of the property therefore there would not be any issues with access or visibility.

The specific request consists of the following:

- a) A Variance to allow a 48-inch chain link fence in the corner front yard whereas 42 inches is the maximum height allowed.

EVALUATION OF THE REQUEST

SURROUNDING USES: The subject site is surrounded by the following uses:
Residential; zoned R-1C, single-family; guided LDR, Low Density Residential

Engineering. Engineering has reviewed the request and takes no exception to the proposed fence height.

VARIANCE REVIEW

City Code Title 11, Chapter 3. **Variances**, states that the City Council may grant variances when they are in harmony with the general purposes and intent of the zoning ordinance and consistent with the comprehensive plan and establishes that there are practical difficulties in complying with the official control. In order to grant the requested variances, City Code identifies criteria which are to be considered practical difficulties. The applicant's request is reviewed below against those criteria.

1. *The variance request is in harmony with the general purpose and intent of the city code and consistent with the comprehensive plan.*

The applicant's neighborhood is developed with single-family homes. The intent of the rule appears to be mainly visibility for traffic and emergency vehicles along the street and driveways. The fence would be located about 30-feet from the road, not affecting traffic visibility from the road, intersections, or neighboring driveways. The request is in harmony with the intent of the comprehensive plan as the lot is being utilized as a residential lot which would contain improvements such as fences.

2. *The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.*

City code allows 42-inch high, chain link fences within the front yard. Fences along the side and rear property lines can be up to seven feet in height. The property is a corner lot and therefore must conform to the rules for two "front" yards. Staff believes installing a 48-inch fence to be a reasonable use of the property when 42 inches is the maximum allowed in the corner front yard. The fence would be chain link, complying with the 75% open visibility requirement. The applicants would not be installing the fence up to the corner front property line, the fence would be about 15 feet from the property line, about 30 feet from the road.

3. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

A practical difficulty can be found in the fact the lot is a corner lot with two front yard setback requirements for fences and while the fence is proposed at 48 inches it would be located about 30 feet from the road not affecting the visibility along the right-of-way or neighboring driveway. The property is unique in the fact there should be relatively no impact to the abutting property to the west (rear) as that property sits at a higher elevation than the applicants, their driveway is over 50 feet from the fence, and they have shrubs closer to the road than the proposed 48 inch fence.

4. *The variance will not alter the essential character of the locality.*

Staff does not believe the proposed fence would alter the essential character of the neighborhood. One of the functions of setback requirements is to maintain consistency of

structure placement and aesthetic qualities from street and neighboring views. Aesthetically, a 48-inch chain link fence is a common fence height that would not look out of place as the fence would be located about 30 feet from the road. There would be no impact to site lines or traffic visibility concerns.

5. *Economic considerations alone do not constitute an undue hardship.*
Economic considerations do not appear to be a basis for this request.

ALTERNATIVES

The Planning Commission has the following alternatives for the requested action:

Approval: If the Planning Commission finds the variance to be acceptable, the Commission has the following options:

A. Approval of the Variance to allow a 48-inch chain link fence whereas 42 inches is the maximum height allowed in the front yard subject to the following condition:

1. The fence shall be in substantial conformance with the site plan on file with the Planning Department.

Denial: If the Planning Commission does not favor the proposed Variance, the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

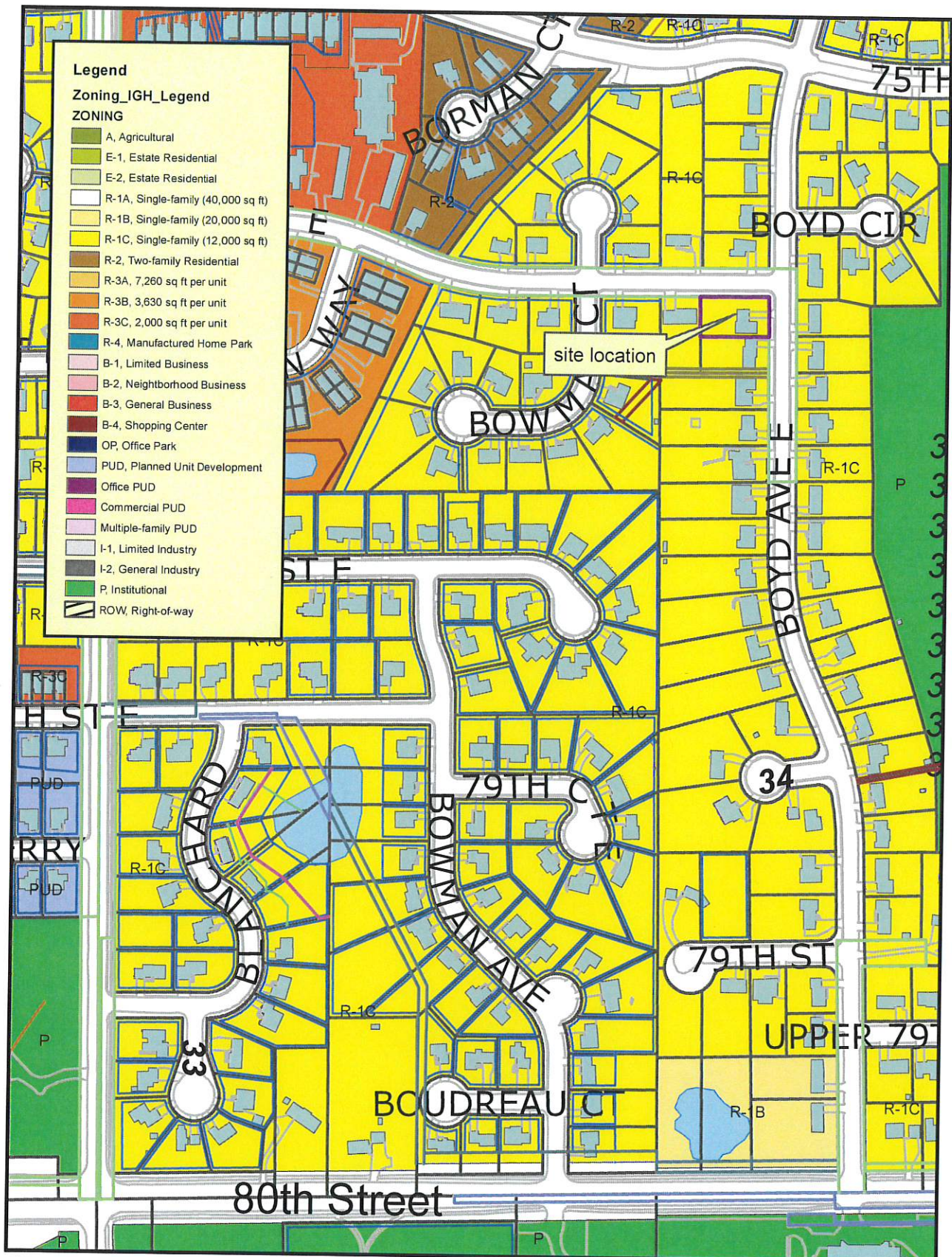
Staff believes the proposed fence would not be out of character of the neighborhood and is consistent with the comprehensive plan. The request to install a 48-inch, chain link fence in the corner front property is a reasonable use of the property and does not appear to have an adverse impact on the neighboring properties. A practical difficulty can be found in the fact the lot is a corner lot with two front yard setback requirements for fences and while the fence is proposed at 48 inches it would be located about 30 feet from the road not affecting the visibility along the right-of-way or neighboring driveway.

Based on the information in the preceding report and the condition listed in Alternative A, staff is recommending approval of the fence height variance.

Attachments: Zoning & Location Map
 Estimate Fence Location
 Applicant Narrative
 Site Plan



7605 Boyd Avenue Case No. 20-25V



THIS DRAWING IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS ONE. THIS DRAWING IS A COMPILATION OF RECORDS, INFORMATION AND DATA LOCATED IN VARIOUS CITY, COUNTY AND STATE OFFICES AND OTHER SOURCES AND IS TO BE USED FOR REFERENCE PURPOSES ONLY. THE CITY OF INVER GROVE HEIGHTS IS NOT RESPONSIBLE FOR ANY INACCURACIES HEREIN CONTAINED.

Map produced by the City of Inver Grove Heights GIS Dept.
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Exhibit A
Zoning and Location Map

Map not to scale



7605 Boyd Avenue
Case No. 20-25V



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Map produced by the City of Inver Grove Heights GIS Dept.
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Exhibit B
estimate fence location

Map not to scale

To Whom it May Concern:

We are asking for a variance for a 4 ft fence in our back yard including part of our side yard that butts up to the neighbor behind us front yard. However, there are tall bushes in their yard separating our back yard from their front yard. These bushes are taller than our fence will be. The fence will not be near the corner of our front yard. We are asking for a variance because we are installing a fence for our dogs and we have great danes which could very easily jump a 42inch fence.

Please consider this variance as we are looking out for the safety of our animals and to put neighbors walking by at ease that our big dogs will not jump the fence to greet them at the street.

Our fence will not be near the property line on the street side. I have already put in for the permit as I thought this was already submitted. The fence is being installed by Dan's fence company.

This company was not aware that the fence could only be 42 inches on that side but I want to make sure all is right with the city and get your approval for this variance.

Thank you for your time and consideration.

Eric and Jill Morse

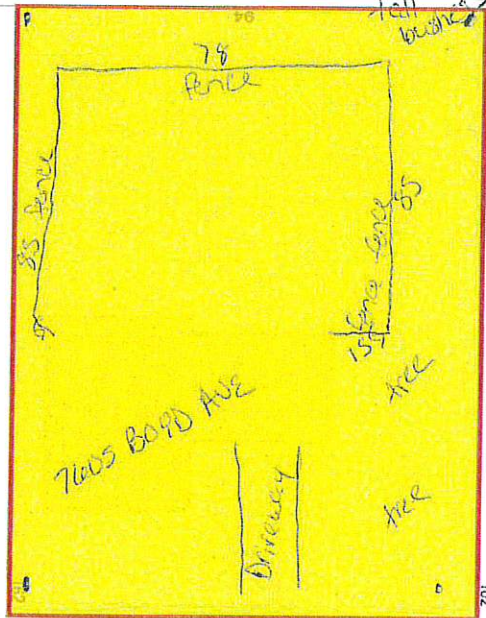
7605 Boyd Avenue

Inver Grove Heights, MN 55076

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electrical
box. 158



FRONT

BOYD AVE

**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
PETER G. MIKHAIL
SCOTT M. LUCAS
TONA T. DOVE
AARON S. PRICE
DAVID L. SIENKO
CASSANDRA C. WOLFGRAM
CASSANDRA J. BAUSTISTA
AMANDA J. JOHNSON

MEMO

TO: Inver Grove Heights Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: September 23, 2020
RE: Resolution Approving Purchase Agreement between the City of Inver Grove Heights and James E. Peltier – September 28, 2020 Council Meeting

Section 1. Background. The City of Inver Grove Heights (City) desires to purchase a portion of Dakota County Tax No. 20-00700-06-012 owned by James E. Peltier for City park purposes. The portions the City intends to purchase include approximately 6.41 acres of vacant land within Tax Parcel Identification No. 20-00700-06-012 lying west of new Argenta Trail and an approximately 0.38 acre strip of vacant land within Tax Parcel Identification No. 20-00700-06-012 lying west of new Argenta Trail. The Real Property is shown on a map attached to the Purchase Agreement as Exhibit A.

Section 2. Purchase Agreement. The City (as Buyer) and James E. Peltier (as Seller) have reached a mutually agreeable Purchase Agreement with the salient terms as outlined below:

1. The Seller is James E. Peltier, a single person.
2. The Buyer is City of Inver Grove Heights.
3. The purchase price is \$500,000. Earnest money in the amount of \$5,000 will be paid by the City to Seller upon execution of the Purchase Agreement.
4. The City will need to obtain a legal description of the metes and bounds portion of Dakota County Tax No. 20-00700-06-012 the City will be purchasing from James E. Peltier (defined as the “Real Property” on Exhibit A of the Purchase Agreement).
5. The City will need to obtain a legal description for the remainder of Dakota County Tax No. 20-00700-06-012 being retained by James E. Peltier (defined as the “Peltier Retained Parcel” on Exhibit B of the Purchase Agreement).
6. If the City does not terminate the Purchase Agreement prior to December 1, 2020, then the earnest money shall be non-refundable to the City.
7. If the Purchase Agreement is cancelled before December 1, 2020, the earnest money will be returned to the City.

8. The Closing Date is on or before December 18, 2020 at DCA Title in Mendota Heights.
9. Seller will pay the state deed tax due on the Warranty Deed.
10. The City will obtain a title commitment for the Real Property from DCA Title. The City will pay for the title commitment. The City will pay the title insurance premium at Closing.
11. The closing fee and any escrow fee charged by DCA Title will be paid by the City.
12. The City will pay for the cost of recording the Warranty Deed.
13. The City will pay 100% of the cost of the ALTA Survey.
14. The City will pay 100% of the cost of any Phase I Environmental Assessment. The City will pay 100% of the cost of any Phase II Environmental Assessment and 100% of the cost of any Environmental Special Investigation.
15. Seller shall pay all real estate taxes payable prior to the year of closing, plus any penalty and interest. Seller does not make any representation concerning the amount of real estate taxes which will be assessed against the Real Property subsequent to the date of purchase.
16. The Real Property is part of a larger tax parcel that has Green Acres Law status under Minn. Stat. § 273.111, as amended. Seller is responsible to pay all green acre taxes and recapture amounts due to Dakota County as a result of the transaction contemplated by the Agreement. The City acknowledges that following Closing the Seller desires to re-enroll the Peltier Retained Parcel in the Green Acres program, and agrees that the City will actively assist Seller with the re-enrollment process.
17. Real estate taxes payable in the year 2020 will be paid by Seller.
18. A Condition Precedent to Closing is that the City approves the split of Dakota County Tax Parcel No. 20-00700-06-012 into the Real Property (described on Exhibit A of the Purchase Agreement) and into the Peltier Retained Parcel (described on Exhibit C of the Purchase Agreement).
19. A Condition Precedent to Closing is that pursuant to Minnesota Statutes § 462.356, Subd. 2, the Planning Commission issues a report concerning whether the acquisition of the Real Property is consistent with the Comprehensive Plan of the City.
20. The City intends to use the Real Property as a public park and to establish park related improvements on the Real Property including a monument sign. When the City places the monument sign, the City agrees that it will incorporate into the monument sign a separate plaque that generally contains the language “former property of James E. Peltier”.
21. A Condition Precedent to Closing is that the Seller has marketable title and that the easements or encumbrances on the Real Property are acceptable to the City.

Section 3. Council Action. At the September 28, 2020 Council meeting the Council will be asked to consider the attached *Resolution Approving A Purchase Agreement Between The City Of Inver Grove Heights And James E. Peltier Relating To The Purchase Of Approximately 6.41 Acres Of Vacant Land And Approximately 0.38 Acres Of Vacant Land Within Tax Parcel Identification Number 20-00700-06-012.*

Attachments

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 2020-198

**RESOLUTION APPROVING A PURCHASE AGREEMENT BETWEEN THE CITY OF
INVER GROVE HEIGHTS AND JAMES E. PELTIER RELATING TO THE
PURCHASE OF APPROXIMATELY 6.41 ACRES OF VACANT LAND
AND APPROXIMATELY 0.38 ACRES OF VACANT LAND
WITHIN TAX PARCEL IDENTIFICATION NUMBER 20-00700-06-012**

WHEREAS, James E. Peltier (Seller) owns real property located in Inver Grove Heights, Minnesota, identified as Dakota County Tax Identification No. 20-00700-06-012 described and depicted in the Purchase Agreement attached hereto as Exhibit A (Real Property); and

WHEREAS, the City of Inver Grove Heights desires to purchase the Real Property for park purposes; and

WHEREAS, the City and Seller have negotiated the attached Purchase Agreement for the sale of the Real Property by Seller to the City for the purchase price of \$500,000; and

WHEREAS, the City has the power and authority to purchase the Real Property for park purposes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Inver Grove Heights:

1. The City Council hereby approves the attached Purchase Agreement with James E. Peltier for the Real Property at a purchase price of \$500,000.
2. The Mayor and City Clerk are authorized to execute the attached Purchase Agreement and to execute all closing documents related thereto.

Passed this 28th day of September, 2020.

George Tourville, Mayor

Attest:

Rebecca Kiernan, City Clerk

EXHIBIT A
PURCHASE AGREEMENT

**PURCHASE AGREEMENT
BY AND BETWEEN**

**JAMES E. PELTIER
(SELLER)**

AND

**CITY OF INVER GROVE HEIGHTS
(BUYER)**

**FOR CONVEYANCE OF APPROXIMATELY 6.41 ACRES OF VACANT LAND
AND APPROXIMATELY 0.38 ACRES OF VACANT LAND
WITHIN TAX PARCEL IDENTIFICATION NUMBER 20-00700-06-012
IN THE CITY OF INVER GROVE HEIGHTS, MINNESOTA, DAKOTA COUNTY**

SELLER:

James E. Peltier
7250 Argenta Trail
Inver Grove Heights, MN 55077

BUYER:

City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “Agreement”) is made this 28th day of September, 2020, by and between Seller and Buyer as hereafter defined. Subject to the performance by the Buyer of the provisions and conditions hereinafter set forth, Seller in consideration of the Purchase Consideration to be paid as hereinafter provided agrees to sell and convey to Buyer and Buyer agrees to purchase the Real Property. Subject to the covenants, warranties, representations and mutual consideration herein contained, the parties hereby agree as follows:

SECTION 1. DEFINITIONS.

1.1 Terms. The following terms, unless elsewhere defined specifically in this Agreement, shall have the following meanings as set forth below.

1.2 Buyer. Buyer shall mean City of Inver Grove Heights, a municipal corporation organized and existing under the laws of the State of Minnesota.

1.3 Seller. Seller shall mean James E. Peltier, a single person, or his successors and assigns.

1.4 Real Property. Real Property shall mean those portions of the following tax parcel located in the City of Inver Grove Heights, County of Dakota, State of Minnesota, identified as Dakota County Tax No. 20-00700-06-012, legally described and depicted on the attached **Exhibit A**, which exhibit is incorporated by reference. The portions include approximately 6.41 acres of vacant land within Tax Parcel Identification No. 20-00700-06-012 lying west of new Argenta Trail and approximately 0.38 acres of vacant land within Tax Parcel Identification No. 20-00700-06-012 lying west of new Argenta Trail. The Real Property shall also include all of the right, title and interest of the owner of the property in and to any easements, rights of way, privileges, appurtenances, and right to the same belonging to or inuring to the benefit of the Real Property described on Exhibit A.

1.5 Intentionally omitted.

1.6 Title Company. Title Company means DCA Title located at 750 Main Street, Suite 208, Mendota Heights, MN 55120.

1.7 Permitted Encumbrances. Permitted Encumbrances shall mean and comprise the following:

- a.) building and zoning laws, ordinances, state and federal regulations;
- b.) minerals and mineral rights reserved by the State of Minnesota;
- c.) easements, restrictions and reservations of record identified on the attached **Exhibit B** (subject to Buyer’s right pursuant to Section 13 to cancel this Agreement if such easements, restrictions and reservations are not satisfactory and acceptable to Buyer).

1.8 Closing Date. Closing Date shall mean on or before December 18, 2020; or such other date that shall be mutually agreeable to Seller and Buyer.

1.9 Possession Date. Possession Date shall mean Closing Date.

1.10 Due Diligence Date. Due Diligence Date shall mean on or before December 1, 2020.

1.11 Title Approval Date. Title Approval Date shall mean the date specified in Section 10 as the Title Approval Date.

1.12 Governmental / Zoning Approval Date. Governmental /Zoning Approval Date shall mean on or before Due Diligence Date.

1.13 Closing Documents. Closing Documents shall mean and comprise the following:

- a.) Limited Warranty Deed for the Real Property, subject to Permitted Encumbrances.
- b.) Satisfaction of any liens and mortgages on the Real Property.
- c.) All other documents affecting title to and possession of the Real Property and necessary to transfer or assign the same to Buyer by the Limited Warranty Deed.
- d.) An Affidavit by Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens, or unrecorded interests (known to the Seller) against or involving Seller or the Real Property; that there has been no labor or materials furnished to the Real Property for which payment has not been made or for which mechanics' liens could be filed (except as may have been incurred by Buyer); together with whatever standard owner's affidavit as may be required by the Title Company to issue the Title Policy with the so called "standard exceptions" deleted, except with respect to any survey exception requiring a survey, except in the event Buyer obtains a survey at its sole cost and expense.
- e.) A "bring down certificate" by Seller certifying that the warranties and representations of Seller contained in this Agreement shall be true in all respects at and as of the Closing Date as though such representations, warranties, covenants and agreements were made at and of the Closing Date.
- f.) Any certificate required by Minnesota Statutes with respect to any above-ground storage tanks located on the Real Property, if such tanks exist.
- g.) A Well Disclosure Certificate, if a water well exists and a Sewage Treatment System Disclosure, if applicable.
- h.) FIRPTA Affidavit. An affidavit of Seller certifying that Seller is not a "foreign person", "foreign partnership", foreign trust", "foreign estate" or "disregarded

entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

- i.) Settlement Statement. A settlement statement with respect to this transaction.
- j.) Title Policy. An ALTA Owner’s Policy of Title Insurance, the premium for which shall be paid by Buyer.
- k.) General Deliveries. All other documents reasonably determined by Title Company to be necessary to transfer the Real Property to Buyer and to evidence that Seller (a) has satisfied all indebtedness with respect thereto, (b) has obtained such termination statements or releases from such secured creditors as may be necessary to ensure that the Real Property is subject to no liens or encumbrances, (c) has obtained all consents from third parties necessary to effect the terms of this Agreement, including, without limitation, the consents of all parties holding an interest in the Real Property, (d) has provided such other documents as are reasonably determined by Title Company to be necessary to issue policies of title insurance to Buyer with respect to the Real Property with the so-called “standard exceptions” deleted, except with respect to any survey exception requiring a survey, except in the event Buyer obtains a survey at its sole cost and expense, and (e) has duly authorized the transactions contemplated hereby.

1.14 Closing Location. Closing Location shall mean the business offices of the Title Company referenced in Section 10.

1.15 Conditions Precedent To Closing By Seller. Conditions Precedent To Closing By Seller shall mean the following:

- a.) Accuracy of Representations. The representations, warranties, covenants and agreements of Buyer contained in this Agreement or in any written statement memorandum or exhibit that shall be delivered pursuant to this Agreement shall be true in all respects at and as of the Closing Date as though such representations, warranties, covenants and agreements were made at and of the Closing Date.
- b.) Performance. The Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.
- c.) Absence of Litigation. No action or proceeding by or before any court or other governmental body shall have been instituted or threatened pertaining to any transaction contemplated by this Agreement or its consummation or the transfer or sale of the Real Property.
- d.) Approval of Documents. Other than documents the forms of which are specified in Exhibits hereto, the form and substance of all certificates, instruments, opinions and other documents delivered by one party to another under this Agreement shall be

satisfactory in all reasonable respect to the party to receive the document and its counsel.

1.16 Conditions Precedent To Closing By Buyer. Conditions Precedent To Closing By Buyer shall mean the following:

- a.) Accuracy of Representations. The representations, warranties, covenants and agreements of Seller contained in this Agreement or in any written statement memorandum or exhibit that shall be delivered pursuant to this Agreement shall be true, to the best of Seller's knowledge, at and as of the Closing Date as though such representations, warranties, covenants and agreements were made at and of the Closing Date.
- b.) Performance. Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.
- c.) Absence of Litigation. As of the Closing Date, no action or proceeding by or before any court or other governmental body shall have been instituted or threatened pertaining to any transaction contemplated by this Agreement or its consummation or the transfer or sale of the Real Property.
- d.) Approval of Documents. Other than documents the forms of which are specified in Exhibits hereto, the form and substance of all certificates, instruments, opinions and other documents delivered by one party to another under this Agreement shall be satisfactory in all reasonable respect to the party to receive the document and its counsel.
- e.) Acceptance of Marketable Title. On or before the Title Approval Date, the Buyer has approved the status of the marketability of title with respect to the Real Property and the Buyer has waived any objections to the status of the marketability of title or the Seller has removed or cured any objections made by Buyer as to the status of the marketability of title.
- f.) Easement Approval Contingency. On or before the Title Approval Date, the Buyer has accepted the easements shown on the Title Commitment and listed within the Permitted Encumbrances or has waived any objections to the easements listed within the Permitted Encumbrances or on the Title Commitment.
- g.) Encroachment Approval Contingency. On or before the Title Approval Date, the Buyer has accepted and approved the encroachments shown by any survey of the Real Property or otherwise visually identifiable on the Real Property or the Buyer has waived any objection to the encroachment.
- h.) Environmental / Physical Condition Approval Contingency. On or before the Due Diligence Date, Buyer has inspected the Real Property and has determined in the sole

judgment of the Buyer that the environmental condition of the Real Property is acceptable to Buyer and suitable for Buyer's intended use.

- i.) Governmental / Zoning Approval Contingency. On or before the Governmental / Zoning Approval Date, the Buyer, at its own expense, has satisfied itself that the zoning of the Real Property is adequate for Buyer's intended use.
- j.) Suitability Approval Contingency. On before the Due Diligence Date, the Buyer, in its sole discretion, shall determine whether the Real Property is suitable for the intended use to be made by the Buyer.
- k.) Property Split. A Condition Precedent to Closing is that the City approves the split of Dakota County Tax Parcel No. 20-00700-06-012 into the Real Property (described on Exhibit A) and into the Peltier Retained Parcel (described in Section 1.34).
- l.) Consistency with Comprehensive Plan. A Condition Precedent to Closing is that pursuant to Minnesota Statutes § 462.356, Subd. 2 the Planning Commission of the City of Inver Grove Heights issues a report concerning whether the acquisition of the Real Property is consistent with the Comprehensive Plan of the City.

1.17 Purchase Price. The Purchase Price for the Real Property shall be Five Hundred Thousand and No/Dollars (\$500,000.00), subject to (i) full and timely performance by Seller and (ii) the satisfaction of all contingencies herein contained, and payable to Seller as follows:

- a.) Earnest Money. Five Thousand and No/100 Dollars (\$5,000.00) earnest money shall be paid upon execution of this Agreement (the "Earnest Money Deposit") to the Title Company to be held by the Title Company in a non-interest bearing account pursuant to this Agreement. The Earnest Money Deposit shall hereinafter be referred to as the "Earnest Money". The Earnest Money shall be applied to the Purchase Price for the Real Property at the Closing or as otherwise required in this Agreement; and
- b.) Balance. The balance of the Purchase Price, plus or minus any prorations and other adjustments required hereunder, shall be paid in cash or wire transfer on the Closing Date.

1.18 Seller's Warranties. Seller's Warranties shall mean and comprise the following:

Seller represents and warrants to Buyer that:

- a.) Authority. Seller is a single person. Seller has all requisite power and authority to own, use and sell the Real Property.

Seller has the right, power, legal capacity and authority to enter into and perform the Seller's obligations under this Agreement, and no approvals or consents of any persons or entities are necessary. The execution and delivery of this Agreement does

not and the consummation of the transactions contemplated hereby will not violate any indenture, mortgage, lease, deed of trust, agreement, arrangement, license, order, judgment or decree.

- b.) No Default. Seller is not a party to or bound by any mortgage, lien, lease, agreement, instrument, order, judgment or decree which would prohibit the execution or performance of this Agreement by Seller or prohibit any of the transactions provided for in this Agreement.
- c.) Title. At Closing Date, Seller will have good and marketable title pursuant to the laws of the State of Minnesota to the Real Property to be conveyed hereunder. At Closing Date, the Real Property will not be subject to a contract or other agreement of sale or subject to security interests, mortgages, encumbrances, liens (including income, personal property and other tax liens) or off-sets, claims, reductions or charges of any kind or character.
- d.) Litigation. There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or, to the best knowledge of Seller, threatened, against or affecting Seller with respect to the Real Property.
- e.) Full Disclosure. None of the representations and warranties made by Seller or made in any exhibit hereto, certificate or memorandum furnished or to be furnished by them, or on their behalf, contains any statements of material fact known to be untrue by the Seller.
- f.) No Condemnation Notice. Seller has not received any notice of condemnation proceedings against the whole or any part of the Real Property.
- g.) No Waste. To Seller's best knowledge there is not any Waste, Release of Waste or Release of Petroleum on the Real Property.
- h.) No Violation of Environmental Laws. To Seller's best knowledge, the Real Property is not in violation of any Environmental Laws.
- i.) No Boundary Disputes. To Seller's best knowledge, there are no boundary disputes relating to the Real Property.
- j.) No Unrecorded Agreements. To the Seller's best knowledge, there are no unrecorded agreements, covenants, easements, leases, rights of first refusal or options to purchase concerning the Real Property.

1.19 Buyer's Warranties. Buyer's Warranties shall mean the following:

Buyer represents and warrants to Seller that:

- a.) Authority. Buyer has the right, power, legal capacity and authority to enter into and

perform its obligations under this Agreement.

- b.) No Other Approvals Necessary. No approvals or consents of any persons other than Buyer are necessary in connection with it. Buyer has taken all necessary action to authorize the execution of this Agreement and the consummation of the transactions contemplated hereby.

1.20 Hazardous Substance. Hazardous Substance means any of the following:

- a.) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under United States Code, title 33, Section 1321(b)(2)(A);
- b.) Any hazardous air pollutant listed pursuant to the Clean Air Act, under United States Code, title 42, section 7412;
- c.) Any hazardous substance, pollutant or contaminant regulated under the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. 9601 et. seq. (CERCLA); and hazardous substance, pollutant or contaminant regulated under similar Minnesota environmental laws;
- d.) Any hazardous waste under Minnesota laws;
- e.) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136 et. seq. (FIFRA);
- f.) Asbestos, polychlorinated biphenyls (PCBs), toxic substances, and other substances regulated under the Toxic Substances Control Act, as amended, 15 U.S.C. section 2601 et. seq. (TSCA);
- g.) Source material, special nuclear material, by product materials, any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act, as amended, 42 U.S.C. section 2011 et. seq. or the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. section 10101 et. seq.;
- h.) Industrial process and pollution control wastes, which are hazardous within the meaning of the Resource Conservation And Recovery Act, as amended 42 U.S.C. Section 6901 et. seq. (RCRA);
- i.) Any hazardous material under the Hazardous Materials Transportation Act, 49 USCS Appx. Section 1801 et. seq.;
- j.) Any hazardous material listed in Code of Federal Regulation Title 49, Section 172.101;
- k.) Any pollutant or contaminant as defined by 42 U.S.C. Section 9601.

1.21 Release. Release means any spilling, leakage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Waste, Hazardous Substance, Petroleum or pollutant or contaminant as defined by 42 U.S.C. Section 9601.

1.22 Petroleum. Petroleum means any of the following:

- a.) gasoline
- b.) fuel oil
- c.) kerosene
- d.) any petroleum distillate
- e.) any petroleum residual
- f.) diesel fuel
- g.) oil
- h.) ethanol.

1.23 Construction Debris. Construction Debris means construction debris as defined by Minn. Stat. § 115A.03.

1.24 Demolition Debris. Demolition Debris means solid waste resulting from the demolition of buildings, roads, and other man-made structures including concrete, brick, bituminous concrete, untreated wood, masonry, glass, trees, rock, and plastic building parts.

1.25 Industrial Solid Waste. Industrial Solid Waste means industrial waste as defined by Minn. Stat. § 115A.03.

1.26 Mixed Municipal Solid Waste. Mixed Municipal Solid Waste means mixed municipal solid waste as defined by Minn. Stat. § 115A.03.

1.27 Solid Waste. Solid Waste means solid waste as defined by Minn. Stat. § 115A.03.

1.28 Hazardous Waste. Hazardous Waste means hazardous waste as defined by Minn. Stat. § 115B.02.

1.29 Pollutants. Pollutants means pollutants as defined by Minn. Stat. § 115B.02.

1.30 Contaminants. Contaminants means contaminants as defined by Minn. Stat. § 115B.02.

1.31 Sewage Sludge. Sewage Sludge means sewage sludge as defined by Minn. Stat. §

115A.03.

1.32 Waste. Waste means, jointly and severally, the following:

- a.) Hazardous Substances
- b.) Hazardous Waste
- c.) Pollutants
- d.) Contaminants
- e.) Construction Debris
- f.) Demolition Debris
- g.) Industrial Solid Waste
- h.) Mixed Municipal Solid Waste
- i.) Solid Waste.
- j.) Sewage Sludge.

1.33 Environmental Laws. "Environmental Laws" shall mean all federal laws and regulations that protect or regulate the environment, including, but not limited to, the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Clean Water Act 33 U.S.C. § 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 et seq., the Marine Protection Research, and Sanctuaries Act, 33 U.S.C. § 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Noise Control Act, 42 U.S.C. § 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. § 3001 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq. as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-To-Know Act, and Radon Gas and Indoor Air Quality research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; the Atomic Energy Act, 42 U.S.C. § 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 2011 et seq., all as may be amended, with implementing regulations and guidelines.

Environmental Laws shall also include The Minnesota Environmental Response and Liability Act ("MERLA") and state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Waste or Petroleum.

1.34 Peltier Retained Parcel. Peltier Retained Parcel shall mean that portion of Tax

Parcel Identification No. 20-00700-06-012 east of Argenta Trail that is owned by Seller, and not being conveyed to Buyer and being retained by Seller as legally described on **Exhibit C** attached hereto.

SECTION 2. PURCHASE PRICE AND MANNER AND TIME OF DELIVERY.

Buyer, in consideration of the mutual promises and covenants herein contained, agrees to deliver to the Seller for the Real Property the Purchase Price in the manner and at the times set forth in Section 1.17 of this Agreement.

At Closing Date, Seller shall deliver to Buyer a Limited Warranty Deed for the Real Property.

Such conveyances will be free of all liens, mortgages, pledges and charges.

If the Conditions Precedent referenced in Section 13 are neither met nor waived, then this Agreement shall be cancelled pursuant to Section 13 and the Earnest Money shall be returned by Seller to Buyer.

SECTION 3. OBLIGATION TO PROVIDE LIMITED WARRANTY DEED. Subject to performance by the Buyer of the Agreement herein, the Seller agrees to execute and deliver a Limited Warranty Deed for the Real Property. The Real Property shall be free of any lien, mortgage, charge, or lease save and except the Permitted Encumbrances.

SECTION 4. REAL ESTATE TAXES. Seller shall pay all real estate taxes payable prior to the year of closing, plus any penalty and interest. Seller does not make any representation concerning the amount of real estate taxes which will be assessed against the Real Property subsequent to the date of purchase.

The Real Property is part of a larger tax parcel that has Green Acres Law status under Minn. Stat. § 273.111, as amended. Seller is responsible to pay all green acre taxes and recapture amounts due to Dakota County as a result of the transaction contemplated by this Agreement. Buyer acknowledges that following Closing Seller desires to reenroll Peltier Retained Parcel in the Green Acres program, and agrees that Buyer will actively assist Seller with reenrollment process. The obligations of the Buyer contained in this section of the Agreement shall survive Closing.

With respect to real estate taxes payable in the year 2020, such real estate taxes shall be paid by Seller.

SECTION 5. SPECIAL ASSESSMENTS. Seller shall pay at time of Closing all levied special assessments, including the installment of special assessments and payable in the year of Closing and including already levied special assessments payable in installments. Buyer shall be responsible for and shall pay for any unlevied special assessments pending as of Closing Date.

SECTION 6. ENVIRONMENTAL CONDITION OF REAL PROPERTY. It is agreed and understood that the Buyer will be inspecting the Real Property and that the Buyer will be purchasing the Real Property in its "AS IS" condition with no warranties or representations by the

Sellers as to the condition of the premises or any structures or improvements thereon, except as stated in the Seller's Warranties.

Buyer will have the opportunity to conduct environmental assessments and any other environmental tests that it desires, and will have the opportunity to make itself aware of any Waste or Hazardous Substances on the Real Property and will have the opportunity to make itself aware of any petroleum, natural gas, natural gas liquids, liquefied natural gas, and/or synthetic gas usable for fuel or mixtures thereof on the Real Property.

During the period beginning on the execution of this Agreement and ending on the Due Diligence Date, Buyer, at Buyer's sole cost and expense, may enter upon the Real Property and conduct tests, inspections, surveys and studies (including, without limitation, soil, environmental, physical, mechanical and structural) which Buyer may deem appropriate to determine the suitability of the Real Property for Buyer's intended use. In connection with any entry by Buyer, or its agents, employees or contractors onto the Real Property, Buyer shall give Seller reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith so as to reasonably minimize, to the greatest extent reasonably possible, interference with Seller's current business and otherwise in a manner reasonably acceptable to Seller. Without limiting the foregoing, at least 48 hours prior to any entry to perform any on-site testing, Buyer shall give Seller written notice thereof, including the identity of the company or persons who will perform such testing and the proposed scope of the testing. Buyer shall indemnify, defend and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, reasonable attorneys' fees) to the extent arising out of or relating to any entry on the Real Property by Buyer, its agents, employees or contractors in the course of performing the inspections, testing or inquiries provided for in this Agreement. The foregoing indemnity shall survive the termination of this Agreement. Buyer also agrees to return the Real Property to its original condition immediately following any tests, inspections, surveys, or studies.

BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IF BUYER DOES NOT TERMINATE THIS AGREEMENT PRIOR TO 4:00 P.M. CENTRAL TIME ON THE DUE DILIGENCE DATE, THEN EXCEPT AS PROVIDED IN SECTIONS 1.18 AND 12, BUYER WILL BE PURCHASING THE REAL PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS INCLUDING, BUT NOT LIMITED TO THE FOLLOWING MATTERS AND THAT BUYER EXCEPT AS STATED IN SECTIONS 1.18 AND 12 IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS, OR BROKERS WITH RESPECT TO THE FOLLOWING MATTERS CONCERNING THE REAL PROPERTY:

- (i) The quality, nature, adequacy and physical condition of the Real Property, including, but not limited to access, landscaping, parking facilities, sewage, and utility systems;
- (ii) The quality, nature, adequacy, and physical condition of soils, geology and any groundwater;
- (iii) The existence, quality, nature, adequacy and physical condition of utilities serving the Real Property;
- (iv) The development potential of the Real Property and the Real Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Real

- Property for any particular purpose;
- (v) The zoning or other legal status of the Real Property or any other public or private restrictions on use of the Real Property;
- (vi) The compliance of the Real Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity;
- (vii) The economics of the operation of the Real Property;
- (viii) The environmental condition of the Real Property; and
- (viii) Compliance of the Real Property with the Environmental Laws.
- (x) Whether Waste, Hazardous Substances or Petroleum have been Released on the Real Property.

BUYER ALSO ACKNOWLEDGES AND AGREES THAT IF BUYER DOES NOT TERMINATE THIS AGREEMENT PRIOR TO 4:00 P.M. CENTRAL TIME ON THE DUE DILIGENCE DATE, THEN THE EARNEST MONEY SHALL BE NON-REFUNDABLE TO THE BUYER.

SECTION 7. GOVERNMENTAL / ZONING APPROVALS. To the extent the Buyer desires to seek governmental approvals for its intended use of the Real Property, the Buyer may apply for such governmental approvals as soon as possible after the date of this Agreement.

SECTION 8. SURVEY AND PHASE I ENVIRONMENTAL ASSESSMENT. Buyer may obtain an ALTA Survey of the Real Property. Buyer shall pay 100% of the cost of the survey.

Buyer may obtain a Phase I Environmental Assessment (Phase I) of the Real Property upon written notice to the Seller. Buyer shall pay 100% of the cost of the Phase I Environmental Assessment. If the Phase I Environmental Assessment indicates that there are Recognized Environmental Conditions (REC) regarding the Real Property then Buyer may obtain a Phase II Environmental Assessment or a Special Investigation Report only after obtaining the written consent of the Seller; Seller shall not unreasonably withhold consent. Buyer shall pay 100% of the cost of the Phase II Environmental Assessment or the Special Investigation Report, and shall provide Seller with copies of any Phase I Environmental Assessment, Phase II Environmental Assessment, or Special Investigation Report within three (3) business days after Buyer receives copies of the above-mentioned reports.

SECTION 9. DUE DILIGENCE. Within ten (10) business days of full execution and delivery of this Agreement, Seller shall deliver to Buyer reasonably accurate and reasonably complete copies of the following information and documents that are in Seller's possession (Due Diligence Materials):

- a.) A copy of any written contracts (including service contracts), agreements and warranties that will affect the Real Property after the Closing Date.
- b.) Any existing title policy and/or title commitments, abstracts of title or registered property abstracts pertaining to the Real Property.
- c.) Current tax bill, including current or pending assessments for the Real Property.

- d.) A copy of all permits that affect the Real Property, if any.
- e.) A copy of any Phase I and/or Phase II Environmental Reports as well as copies of any environmental permits, reports, logs or data concerning the Real Property in the possession or reasonable control of Seller, if any.
- f.) Any land surveys of the Real Property in possession of the Seller, if any.
- g.) Any notices, letters or other correspondence from the City or Dakota County related to zoning changes, development covenants, permitted uses or future plans for the Real Property, if any.
- h.) Any property condition reports, maintenance records, repair and cost records in possession of Seller, if any.
- i.) Any geotechnical reports in possession of Seller, if any.
- j.) Any notices, letters or other correspondence from the State of Minnesota or any of its agencies relating to the environmental condition of the Real Property, if any.
- k.) Any unrecorded leases, licenses or easements affecting the Real Property, if any.

SECTION 10. TITLE DOCUMENTS TO BE FURNISHED BY BUYER. Buyer shall furnish, at the Buyer's expense, the following:

- a.) By October 16, 2020, a title insurance commitment covering the Real Property and appurtenant easements, if any, in either case to include property searches covering bankruptcies, state and federal judgments and tax liens, evidencing the Seller's title to the Real Property. The title insurance commitment shall be obtained from the Title Company.
- b.) Within twenty (20) days following the Buyer's receipt of the documents referred to above, the Buyer shall give the Sellers written notice of any objections to the title of the Real Property.
- c.) If any objections are so made, the Seller shall be allowed ninety (90) days after receipt of such written objections to make such title marketable. The Seller further agrees to use reasonable efforts and to expend such sums as may be reasonably necessary to make said title marketable in the event a defect is disclosed. Pending correction of title, Closing Date shall be postponed up to 90 days after receipt of such written objections. But, upon correction of title within the 90 day period, the Buyer and the Seller shall perform this Agreement and close the transaction within ten (10) days after written notice to the Buyer by the Seller
- d.) If said title is not marketable and is not made so within ninety (90) days from the date

of delivery of the written objections thereto as above provided, then Buyer shall have the right (a) to terminate this Agreement upon notice given to Seller and Seller shall return the Earnest Money to Buyer or (b) to waive such objections and proceed with such purchase. If title to the Real Property is marketable or is made marketable within said time, and Buyer shall default in any of the agreements herein contained, then and in such case, the Seller may terminate this Agreement and retain all Earnest Money, time being of the essence hereof.

For purposes of Sections 1.11 and 13, the Title Approval Date means twenty (20) days following Buyers receipt of the documents referenced in this Section 10(a) except that with respect to any objections to title that have been made, the Title Approval Date means the date ninety (90) days after the receipt by Seller of such written objections from Buyer.

SECTION 11. CLOSING DATE AND POSSESSION DATE. Subject to performance by the Buyer of this Agreement, the Closing shall occur on the Closing Date. The Seller agrees to deliver possession of the Real Property no later than the Possession Date provided that all conditions of this Agreement have been met. The delivery of all papers, monies and matters relating to the closing shall take place at the Closing Location.

Up to an additional 30 days, Buyer, upon written consent of the Seller, may, in writing, extend and elongate the Title Approval Date, the Due Diligence Date, Governmental / Zoning Approval Date and the Closing Date.

SECTION 12. WARRANTIES. Seller represents and warrants to Buyer all of the Seller's Warranties as defined in this Agreement. The Seller's Warranties shall survive the Closing and shall not merge with the Closing Documents.

Buyer represents and warrants to Seller the Buyer's Warranties as defined in this Agreement. The Buyer's Warranties shall survive the Closing and shall not merge with the Closing Documents.

SECTION 13. CONDITIONS PRECEDENT. The obligations of Buyer to purchase the Real Property are subject to the satisfaction, at or before the Closing Date, of all the Conditions Precedent to Closing by Buyer. Buyer may waive any or all of the conditions which are included herein for its benefit in whole or in part without prior notice, provided, however, that no such waiver of a condition shall constitute a waiver by Buyer of any of its other rights or remedies, at law or in equity, if Seller shall be in default of any of its representations, covenants, indemnifications, warranties or agreements under this Agreement. If the Conditions Precedent To Closing By Buyer are not satisfied, and if Buyer does not waive such Conditions Precedent To Closing By Buyer, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer.

The obligations of Seller to sell Real Property are subject to the satisfaction, at or before the closing, of all the Conditions Precedent To Closing By Seller. Seller may waive any or all of the conditions which are included herein for their benefit in whole or in part without prior notice,

provided, however, that no such waiver of a condition shall constitute a waiver by Seller of any of its other rights or remedies, at law or in equity, if Buyer shall be in default of any of its representations, warranties or agreements under this Agreement. If the Conditions Precedent To Closing By Seller are not satisfied, and if Seller does not waive such Conditions Precedent To Closing By Seller, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer.

The obligations of Buyer to purchase the Real Property are subject to the satisfaction, at or before the Due Diligence Date, of the Environmental / Physical Condition Approval Contingency stated in Sections 1.16(h) and 6. If the Environmental / Physical Condition Approval Contingency is not satisfied, and if Buyer does not waive such Environmental / Physical Condition Approval Contingency, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer. On or before the Due Diligence Date, Buyer must give written notice to Seller as to whether the Environmental / Physical Condition Approval Contingency has satisfied, or whether the Environmental / Physical Condition Approval Contingency has been waived by Buyer.

The obligations of Buyer to purchase the Real Property are subject to the satisfaction, at or before the Governmental / Zoning Approval Date, of the Governmental / Zoning Approval Contingency stated in Sections 1.16(i) and 7. If the Governmental / Zoning Approval Contingency is not satisfied, and if Buyer does not waive such Governmental / Zoning Approval Contingency, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer. On or before the Governmental / Zoning Approval Date, Buyer must give written notice to Seller as to whether the Governmental / Zoning Approval Contingency has satisfied, or whether the Governmental / Zoning Approval Contingency has been waived by Buyer.

The obligations of Buyer to purchase the Real Property are subject to the satisfaction, at or before the Title Approval Date, of the Easement Approval Contingency stated in Section 1.16(f). If the Easement Approval Contingency is not satisfied, and if Buyer does not waive such Easement Approval Contingency, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer. On or before the Title Approval Date, Buyer must give written notice to Seller as to whether the Easement Approval Contingency has been satisfied, or whether the Easement Approval Contingency has been waived by Buyer.

The obligations of Buyer to purchase the Real Property are subject to the satisfaction, at or before the Title Approval Date, of the Encroachment Approval Contingency stated in Section 1.16(g). If the Encroachment Approval Contingency is not satisfied, and if Buyer does not waive such Encroachment Approval Contingency, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of

purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer. On or before the Title Approval Date, Buyer must give written notice to Seller as to whether the Encroachment Approval Contingency has been satisfied, or whether the Encroachment Approval Contingency has been waived by Buyer.

The obligations of Buyer to purchase the Real Property are subject to the satisfaction, at or before the Title Approval Date, of the Suitability Approval Contingency stated in Section 1.16(j). If the Suitability Approval Contingency is not satisfied, and if Buyer does not waive such Suitability Approval Contingency, then either Buyer or Seller by written notice to the other may cancel this Agreement; if the Agreement is so cancelled, the parties shall execute a cancellation of purchase agreement and the Buyer shall execute and deliver to Seller a quit claim deed for the Real Property and Seller shall return the Earnest Money to the Buyer. On or before the Title Approval Date, Buyer must give written notice to Seller as to whether the Suitability Approval Contingency has been satisfied, or whether the Suitability Approval Contingency has been waived by Buyer.

SECTION 14. CLOSING DOCUMENTS. Subject to performance by the Buyer, the Seller agrees to execute as necessary and deliver at the Closing Date the Closing Documents to be provided by Seller.

SECTION 15. ASSIGNABILITY OF INTEREST. This Purchase Agreement may not be assigned by the Buyer without Seller's written consent.

SECTION 16. COSTS.

16.1 State Deed Tax. Upon delivery of the Warranty Deed, Seller shall pay the state deed tax due on the Warranty Deed.

16.2 Title Insurance. Buyer intends to obtain a title insurance policy with respect to the Real Property. Buyer shall be obligated to pay for any title insurance premiums. Buyer shall pay for the title commitment.

16.3 Closing Fee And Escrow Fees. Any closing fee or escrow fee charged by the title company shall be paid by Buyer. Buyer shall pay for the cost of recording the Limited Warranty Deed.

16.4 Survey Costs. Buyer shall pay 100% of the cost of the ALTA Survey.

16.5 Phase I Environmental Assessment Costs. Buyer shall pay 100% of the cost of the Phase I Environmental Assessment. Buyer shall pay 100% of the cost of any approved Phase II Environmental Assessment and 100% of the cost of any Environmental Special Investigation.

SECTION 17. AMENDMENT AND WAIVER. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the

covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

SECTION 18. BROKER'S COMMISSION. Buyer and Seller hereby acknowledge that no broker represents the Buyer and no broker represents the Seller. No brokers, finders or the like have been involved with this transaction.

Seller and Buyer hereby agree to indemnify each other and to hold each other harmless against all claims, damages, costs or expenses of or for any such fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorneys' fees.

This Section 18 shall survive the Closing and shall not merge with the Closing Documents.

SECTION 19. TAX FREE PROPERTY EXCHANGE. At the option of Seller, Seller may choose to be given the Purchase Consideration through a tax-free land exchange or reverse tax-free exchange pursuant to Section 1031 of the Internal Revenue Code of 1986 as amended. In the event the Seller elects the method of payment as a tax-free land exchange, Seller shall pay all expenses relating to arranging the exchange and relating to documentation of the Section 1031 transaction. Buyer makes no warranty and assumes no liability in the event the Internal Revenue Service determines that said exchange is not a tax-free exchange pursuant to Internal Revenue Code Regulations.

SECTION 20. TERMINATION; REMEDIES.

20.1 Termination. Notwithstanding any other term or condition in this Agreement to the contrary, this Agreement may be terminated and the transactions contemplated herein may be abandoned prior to Closing as follows:

- a.) by the mutual written consent of Seller and Buyer at any time prior to Closing, in which case the Earnest Money shall be returned to Buyer; or
- b.) by Seller by sending written notice to Buyer in the event of a breach by Buyer of any representation, warranty, or covenant of Buyer made under this Agreement, unless such breach is (i) cured and remedied by Buyer within ten (10) days after receipt of Seller's notice thereof; or (ii) waived by Seller. In the event of termination by Seller under this Section 20.1(b), the Earnest Money shall be paid by Title Company to Seller as liquidated damages.; or
- c.) by Buyer by sending written notice to Seller in the event of a breach by Seller of any agreement, representation, warranty, or covenant of Seller made under this

Agreement, unless such breach is (i) cured and remedied by Seller within ten (10) days after receipt of Buyer's notice thereof; or (ii) waived by Buyer; in the event of termination by Buyer under this Section 20.1(c), the Earnest Money shall be returned to Buyer; or

- d.) by Buyer pursuant to Sections 10 and 13; or
- e.) by Seller pursuant to Sections 10 and 13.

20.2 Effect of Termination; Remedies. Solely except as otherwise provided in this Agreement, the rights and remedies of each Buyer and Seller in the event of termination of this Agreement shall be limited as follows notwithstanding any other legal or equitable provisions or principles applicable thereto but for this Section 20.2:

- a.) If Seller is entitled to terminate this Agreement, Seller may terminate this Agreement by a written notice to Buyer and except as otherwise provided in Sections 10 and 13, retain all Earnest Money, which shall constitute the sole and exclusive remedy of Seller. Except as otherwise provided in the preceding sentence, Seller shall not be entitled to any other right or remedy.
- b.) If Buyer is entitled to terminate this Agreement, Buyer may terminate this Agreement by a written notice to Seller and Buyer shall be entitled to a return of the Earnest Money, which shall constitute the sole and exclusive remedy of Buyer. Except as otherwise provided in the preceding sentence, Buyer shall not be entitled to any other right or remedy.

SECTION 21. MISCELLANEOUS.

21.1 Condemnation. The risk of loss from condemnation or a threat thereof shall remain on Seller until Closing. If prior to Closing any portion of the Real Property is condemned under the power of eminent domain, is the subject of threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of the threat, condemnation or conveyance within five (5) days of its occurrence. Buyer shall, within ten (10) days of the notice, have the option of (a) proceeding with Closing and receiving the award of condemnation payment (or an assignment thereof, if the same is not received at Closing); or (b) terminating this Agreement.

21.2 Entire Agreement; Modification; Effect to Prior Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto.

21.3 Successors and Assigns. Neither this Agreement nor any of its rights, interests or obligations hereunder shall be assigned or delegated by any party hereto (whether by operation of law or otherwise) without the prior written consent of other non-assigning (or non-delegating) party or parties, and any attempt to make any such assignment or delegation without such consent

shall be null and void; provided, however, that Seller's written consent is not required for Buyer to assign this Agreement to any entity which controls or is controlled by Buyer.

21.4 Notices. All notices, requests, demands and other communications hereunder shall be in writing and deemed to be duly given, (a) when delivered by hand, with a record of receipt, (b) the fourth day after mailing, if mailed by certified or registered mail, return receipt requested with postage prepaid, (c) the day delivered by a nationally recognized overnight courier, with a record of receipt, or (d) the day of transmission, with confirmation of receipt, if delivered by facsimile or electronic transmission during regular business hours (which regular business hours shall be 9:00 am – 5:00 pm, Monday through Friday excluding office holidays, at the office where received), or the day after transmission, with confirmation of receipt, if delivered by facsimile or electronically after regular business hours, to the parties at the following addresses or to such other address as a party may have specified by the notice given to the other party pursuant to this provision):

If to Seller: James E. Peltier
7250 Argenta Trail
Inver Grove Heights, MN 55077

With a copy to: Larkin Hoffman Daly & Lindgren, Ltd.
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437
Attn: Peter J. Coyle and Victoria M. Dutcher
E: pcoyle@larkinhoffman.com
E: vdutcher@larkinhoffman.com

If to Buyer: City of Inver Grove Heights
Attn: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

With a copy to: Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
E: tkuntz@levander.com

21.5 Damage Prior to Closing. In the event of any destruction or damage to the Real Property by fire, wind, flood, storms, or other acts of God, either Seller or Buyer, at its sole option, may terminate this Agreement without further cost or expenses to either Party.

21.6 Extension; Waiver. At any time prior to the Closing Date, the parties hereto may by mutual agreement set forth in a written instrument signed on behalf of the parties, to the extent legally allowed, (i) extend the time described in this Agreement for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (iii) waive

compliance with any of the agreements or conditions contained herein.

21.7 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or other electronic means or transmission (i.e., a “pdf” or “tiff”) shall be as effective as delivery of a manually executed counterpart of this Agreement.

21.8 Survival. Notwithstanding Closing or termination of this Agreement for any cause or reason, all terms, conditions, covenants, agreements, representations and warranties made by Seller and/or Buyer in this Agreement that by their terms are to be performed or are applicable to time periods after the date of such Closing, and the respective rights, remedies, duties, and obligations of each Seller and Buyer thereunder shall survive such Closing and shall continue in full force and effect thereafter.

The Seller’s Warranties shall survive the Closing and shall not merge with the Closing Documents.

The Buyer’s Warranties shall survive the Closing and shall not merge with the Closing Documents.

21.9 Headings. The headings in this Agreement are for convenience only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof. It is understood and agreed that this Agreement has been made following negotiation by the parties and it is, therefore, not to be construed against any party because of draftsmanship.

21.10 Plaque. The Buyer intends to use the Real Property as a public park and to establish park related improvements on the Real Property including a monument sign. When the Buyer places the monument sign, the Buyer agrees that it will incorporate into the monument sign a separate plaque that generally contains the language “former property of James E. Peltier”.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

BUYER:
CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

SELLER:

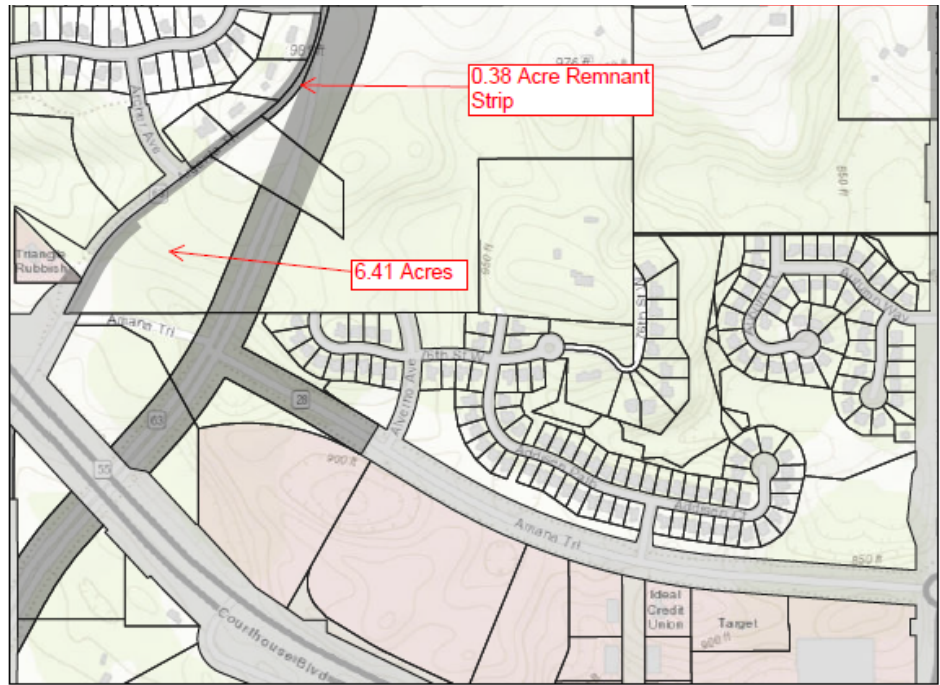
James E. Peltier

EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY

Real property in the City of Inver Grove Heights, County of Dakota, State of Minnesota, legally described as follows:

[Legal description to be inserted]

EXHIBIT A (CONTINUED) **DEPICTION OF REAL PROPERTY**



8/26/2020, 12:30:41 PM

Tax Parcels	Right of Way Easement
Parcels	Tax Parcel
Dedicated Right of Way	

1:9,028

0	0.06	0.1	0.2 mi
0	0.07	0.15	0.3 km

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

EXHIBIT B
PERMITTED ENCUMBRANCES

1. Reservation of minerals or mineral rights by the State of Minnesota, if any;
2. Recorded utility and drainage easements; and
3. Applicable laws, ordinances, and regulations.

EXHIBIT C
PELTIER RETAINED PARCEL

Real property in the City of Inver Grove Heights, County of Dakota, State of Minnesota, legally described as follows:

[legal description to be inserted]

4847-4939-4121, v. 6

AGENDA ITEM _____

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Pay Voucher No. 2 for City Project No. 2016-09G – 60th Street, 62nd Street, and Bacon Avenue Improvements

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Thomas J. Kaldunski, 651.450.2572
 Prepared by: Steve W. Dodge, Asst. City Engineer
 Reviewed by: Thomas J. Kaldunski, City Engineer

Fiscal/FTE Impact:

☐	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☒	Other: Pavement Management Fund, Special Assessments, Utility Funds, Franchise Fee Funds, and Dakota County Soil and Water Grant Funds

PURPOSE/ACTION REQUESTED

Consider Pay Voucher No. 2 for City Project No. 2016-09G – 60th Street, 62nd Street, and Bacon Avenue Improvements.

SUMMARY

The improvements were ordered as part of the 2020 Pavement Management Program. The contract was awarded in the amount of \$1,847,750.60 to McNamara Contracting, Inc., on June 8, 2020 for City Project No. 2016-09G – 60th Street, 62nd Street, and Bacon Avenue Improvements.

I recommend approval of Pay Voucher No. 2, in the amount of \$808,905.33 for work on City Project No. 2016-09G – 60th Street, 62nd Street, and Bacon Avenue Improvements.

SWD/nh

Attachments: Pay Voucher No. 2

**CITY OF INVER GROVE HEIGHTS
CONSTRUCTION PAY VOUCHER**

ESTIMATE NO: 2 (Two)
DATE: September 28, 2020
PERIOD ENDING: August 31, 2020
CONTRACT: 2020 Pavement Management Program
PROJECT NO: 2016-09G – 60th Street, 62nd Street, and Bacon Avenue Improvements

TO: McNamara Contracting, Inc.
16700 Chippendale Ave.
Rosemount, MN 55068

Original Contract Amount.....\$1,847,750.60
Total Addition..... \$0.00
Total Deduction..... \$0.00
Total Contract Amount.....\$1,847,750.60
Total Value of Work to Date.....\$1,074,207.95
Less Retained (5%)\$53,710.40
Less Previous Payment\$211,592.22
Total Approved for Payment this Voucher.....\$808,905.33
Total Payments including this Voucher\$1,020,497.55

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above stated amount for work performed through August 31, 2020.

Signed by:	<u>Thomas J. Kaldunski, City Engineer</u>	<u>September 28, 2020</u>
Signed by:	<u>McNamara Contracting, Inc.</u>	<u>Date</u>
Signed by:	<u>George Tourville, Mayor</u>	<u>September 28, 2020</u>

PAYMENT DETAIL LIST

Contract: CP 2016-09G
Owner: City of Inver Grove Heights
Project: 60th Street , 62nd Street, and Bacon Avenue Improvements
SAP:

Schedule: A
Description: CP 2016-09G Street Improvements

Item No.	Mn/DOT No.	Item Description	Unit	Estimated Quantity	Quantity To-Date	Contract Unit Price	Total Estimated Cost	Total Contract Cost To-Date
1	2021.501	MOBILIZATION	LUMP SUM	1.00	1.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
2	2031.502	FIELD OFFICE	EACH	1.00	1.00	\$ 13,000.00	\$ 13,000.00	\$ 13,000.00
3	2101.505	CLEARING	ACRE	0.10	0.10	\$ 12,600.00	\$ 1,260.00	\$ 1,260.00
4	2101.505	GRUBBING	ACRE	0.10	0.00	\$ 8,400.00	\$ 840.00	\$ -
5	2101.524	CLEARING	TREE	31.00	42.00	\$ 290.00	\$ 8,990.00	\$ 12,180.00
6	2101.524	GRUBBING	TREE	31.00	15.00	\$ 100.00	\$ 3,100.00	\$ 1,500.00
7	2104.502	SALVAGE SIGN TYPE C	EACH	8.00	0.00	\$ 53.00	\$ 424.00	\$ -
8	2104.503	REMOVE PIPE CULVERTS	LIN FT	300.00	203.00	\$ 9.00	\$ 2,700.00	\$ 1,827.00
9	2104.503	REMOVE CURB & GUTTER	LIN FT	50.00	42.00	\$ 8.40	\$ 420.00	\$ 352.80
10	2104.503	REMOVE FENCE	LIN FT	50.00	50.00	\$ 12.00	\$ 600.00	\$ 600.00
11	2104.504	REMOVE CONCRETE DRIVEWAY PAVEMENT	SQ YD	250.00	282.00	\$ 16.00	\$ 4,000.00	\$ 4,512.00
12	2104.504	REMOVE BITUMINOUS DRIVEWAY PAVEMENT	SQ YD	2200.00	2317.00	\$ 6.70	\$ 14,740.00	\$ 15,523.90
13	2104.504	REMOVE BITUMINOUS PAVEMENT	SQ YD	9557.00	9557.00	\$ 1.40	\$ 13,379.80	\$ 13,379.80
14	2104.518	REMOVE BITUMINOUS WALK	SQ FT	8500.00	8451.00	\$ 0.50	\$ 4,250.00	\$ 4,225.50
15	2104.518	REMOVE CONCRETE WALK	SQ FT	120.00	144.00	\$ 2.30	\$ 276.00	\$ 331.20
16	2104.602	REMOVE BOULDER	EACH	1.00	0.00	\$ 250.00	\$ 250.00	\$ -
17	2105.504	GEOTEXTILE FABRIC TYPE 5	SQ YD	13000.00	9174.00	\$ 1.00	\$ 13,000.00	\$ 9,174.00
18	2105.507	COMMON EXCAVATION	CU YD	12555.00	10589.00	\$ 32.00	\$ 401,760.00	\$ 338,848.00
19	2105.507	SUBGRADE EXCAVATION (EV)	CU YD	1100.00	0.00	\$ 20.00	\$ 22,000.00	\$ -
20	2105.507	SELECT GRANULAR BORROW (CV)	CU YD	8383.00	6116.00	\$ 15.00	\$ 125,745.00	\$ 91,740.00
21	2105.509	STABILIZING AGGREGATE	TON	100.00	16.27	\$ 25.00	\$ 2,500.00	\$ 406.75
22	2105.604	SOIL STABILIZATION GEOGRID	SQ YD	750.00	0.00	\$ 2.80	\$ 2,100.00	\$ -
23	2123.610	STREET SWEEPER (WITH PICKUP BROOM)	hour	80.00	0.00	\$ 150.00	\$ 12,000.00	\$ -
24	2130.523	WATER	M GALLON	75.00	0.00	\$ 70.00	\$ 5,250.00	\$ -
25	2211.509	AGGREGATE BASE CLASS 5	TON	7300.00	2366.61	\$ 5.00	\$ 36,500.00	\$ 11,833.05
26	2331.603	JOINT ADHESIVE (MASTIC)	LIN FT	6500.00	0.00	\$ 0.49	\$ 3,185.00	\$ -
27	2360.509	TYPE SP 9.5 WEARING COURSE MIX (2:C) (DRIVEWAY MIX)	TON	400.00	0.00	\$ 110.00	\$ 44,000.00	\$ -
28	2360.509	TYPE SP 9.5 WEARING COURSE MIX (3:C)	TON	1800.00	0.00	\$ 52.00	\$ 93,600.00	\$ -
29	2360.509	TYPE SP 12.5 NON WEAR COURSE MIX (3:C)	TON	1800.00	0.00	\$ 52.00	\$ 93,600.00	\$ -
30	2502.503	4" PERF PVC PIPE DRAIN	LIN FT	6200.00	4308.00	\$ 7.00	\$ 43,400.00	\$ 30,156.00
31	2521.518	6" CONCRETE WALK	SQ FT	380.00	0.00	\$ 12.55	\$ 4,769.00	\$ -
32	2531.503	CONCRETE CURB & GUTTER DESIGN B618	LIN FT	310.00	0.00	\$ 20.45	\$ 6,339.50	\$ -
33	2531.504	6" CONCRETE DRIVEWAY PAVEMENT	SQ YD	350.00	0.00	\$ 52.65	\$ 18,427.50	\$ -
34	2531.603	CONCRETE SURMOUNTABLE CURB & GUTTER (HAND POUR)	LIN FT	100.00	0.00	\$ 26.00	\$ 2,600.00	\$ -
35	2531.603	CONCRETE RIBBON CURB	LIN FT	100.00	0.00	\$ 37.35	\$ 3,735.00	\$ -
36	2531.603	CONCRETE SURMOUNTABLE CURB & GUTTER	LIN FT	6500.00	0.00	\$ 13.40	\$ 87,100.00	\$ -
37	2531.618	TRUNCATED DOMES	SQ FT	40.00	0.00	\$ 50.00	\$ 2,000.00	\$ -
38	2533.503	PORTABLE PRECAST CONC BARRIER DES 8337	LIN FT	350.00	350.00	\$ 15.25	\$ 5,337.50	\$ 5,337.50
39	2540.601	MAILBOX MAINTENANCE	LUMP SUM	1.00	0.50	\$ 4,720.00	\$ 4,720.00	\$ 2,360.00
40	2563.601	TRAFFIC CONTROL	LUMP SUM	1.00	0.95	\$ 6,250.00	\$ 6,250.00	\$ 5,937.50
41	2563.618	CONSTRUCTION SIGN-SPECIAL	SQ FT	100.00	18.35	\$ 21.00	\$ 2,100.00	\$ 385.35
42	2564.518	SIGN PANELS TYPE C	SQ FT	70.00	0.00	\$ 61.00	\$ 4,270.00	\$ -
43	2564.618	SIGN PANELS TYPE SPECIAL	SQ FT	27.00	0.00	\$ 47.00	\$ 1,269.00	\$ -
44	2572.510	PRUNE TREES	hour	10.00	0.00	\$ 265.00	\$ 2,650.00	\$ -
45	2573.501	STABILIZED CONSTRUCTION EXIT	LUMP SUM	1.00	0.00	\$ 750.00	\$ 750.00	\$ -
46	2573.501	EROSION CONTROL SUPERVISOR	LUMP SUM	1.00	0.50	\$ 1,500.00	\$ 1,500.00	\$ 750.00
47	2573.502	STORM DRAIN INLET PROTECTION	EACH	35.00	34.00	\$ 150.00	\$ 5,250.00	\$ 5,100.00
48	2573.502	CULVERT END CONTROLS	EACH	9.00	0.00	\$ 125.00	\$ 1,125.00	\$ -
49	2573.503	SILT FENCE; TYPE MS	LIN FT	7200.00	2799.00	\$ 2.90	\$ 20,880.00	\$ 8,117.10
50	2573.503	FLOTATION SILT CURTAIN TYPE STILL WATER	LIN FT	300.00	250.00	\$ 11.00	\$ 3,300.00	\$ 2,750.00
51	2573.503	SEDIMENT CONTROL LOG TYPE COMPOST	LIN FT	1400.00	1925.00	\$ 3.50	\$ 4,900.00	\$ 6,737.50

52	2573.601	STORMWATER MANAGEMENT ALLOWANCE	LUMP SUM	1.00	0.00	\$ 10,000.00	\$ 10,000.00	\$ -
53	2574.507	BOULEVARD TOPSOIL BORROW (LV)	CU YD	2300.00	0.00	\$ 48.00	\$ 110,400.00	\$ -
54	2574.508	FERTILIZER TYPE 3	POUND	800.00	0.00	\$ 0.47	\$ 376.00	\$ -
55	2574.508	FERTILIZER TYPE 4	POUND	110.00	0.00	\$ 0.63	\$ 69.30	\$ -
56	2575.505	RAPID STABILIZATION METHOD 2	ACRE	0.60	0.60	\$ 1,750.00	\$ 1,050.00	\$ 1,050.00
57	2575.509	MULCH MATERIAL TYPE 1	TON	3.00	0.00	\$ 225.00	\$ 675.00	\$ -
58	2575.601	RESTORATION OF STAGING AREA	LUMP SUM	1.00	0.00	\$ 1,500.00	\$ 1,500.00	\$ -
59	2575.601	BOULEVARD LANDSCAPING ALLOWANCE	LUMP SUM	1.00	0.00	\$ 10,000.00	\$ 10,000.00	\$ -
60	2575.604	EROSION STABILIZATION MAT- ENKAMAT	SQ YD	600.00	0.00	\$ 8.90	\$ 5,340.00	\$ -
61	2575.605	SEED MIXTURE 25-151	ACRE	2.50	0.00	\$ 1,750.00	\$ 4,375.00	\$ -
62	2575.605	SEED MIXTURE 33-261	ACRE	0.30	0.00	\$ 2,500.00	\$ 750.00	\$ -
63	2575.608	HYDRAULIC SOIL STABILIZER, TYPE SPECIAL	POUND	9000.00	0.00	\$ 1.40	\$ 12,600.00	\$ -

Schedule A Subtotal: \$ 1,363,277.60 \$ 639,374.95

Schedule: **B**
Description: **CP 2016-09G Storm Sewer Improvements**

Item No.	Mn/DOT No.	Item Description	Unit	Estimated Quantity	Quantity To-Date	Contract Unit Price	Total Estimated Cost	Total Contract Cost To-Date
1	2104.502	REMOVE MANHOLE OR CATCH BASIN	EACH	5.00	5.00	\$ 500.00	\$ 2,500.00	\$ 2,500.00
2	2104.503	REMOVE SEWER PIPE (STORM)	LIN FT	190.00	293.00	\$ 16.00	\$ 3,040.00	\$ 4,688.00
3	2501.602	15" RC PIPE APRON AND TRASH GUARD	EACH	2.00	2.00	\$ 1,700.00	\$ 3,400.00	\$ 3,400.00
4	2501.602	18" RC PIPE APRON AND TRASH GUARD	EACH	1.00	1.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00
5	2501.602	24" RC PIPE APRON AND TRASH GUARD	EACH	2.00	2.00	\$ 2,300.00	\$ 4,600.00	\$ 4,600.00
6	2503.503	4" PVC PIPE SEWER SDR 35	LIN FT	15.00	12.00	\$ 35.00	\$ 525.00	\$ 420.00
7	2503.503	12" RC PIPE SEWER DES 3006 CL V	LIN FT	9.00	9.00	\$ 65.00	\$ 585.00	\$ 585.00
8	2503.503	15" RC PIPE SEWER DES 3006 CL V	LIN FT	1377.00	1350.00	\$ 55.00	\$ 75,735.00	\$ 74,250.00
9	2503.503	18" RC PIPE SEWER DES 3006 CL V	LIN FT	138.00	146.00	\$ 66.00	\$ 9,108.00	\$ 9,636.00
10	2503.503	24" RC PIPE SEWER DES 3006 CL III	LIN FT	72.00	52.00	\$ 85.00	\$ 6,120.00	\$ 4,420.00
11	2503.602	CONNECT TO EXISTING STORM SEWER	EACH	5.00	5.00	\$ 1,100.00	\$ 5,500.00	\$ 5,500.00
12	2506.502	CONST DRAINAGE STRUCTURE DES 2' X 3' CB	EACH	7.00	7.00	\$ 2,300.00	\$ 16,100.00	\$ 16,100.00
13	2506.502	CONST DRAINAGE STRUCTURE DESIGN G	EACH	3.00	3.00	\$ 1,750.00	\$ 5,250.00	\$ 5,250.00
14	2506.502	CONST DRAINAGE STRUCTURE DES 48-4020	EACH	23.00	23.00	\$ 4,000.00	\$ 92,000.00	\$ 92,000.00
15	2506.502	CONST DRAINAGE STRUCTURE DES 60-4020	EACH	1.00	1.00	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00
16	2506.602	CONSTRUCT DRAINAGE STRUCTURE SUMP BASKET	EACH	1.00	1.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
17	2506.602	TREATMENT MANHOLE #1	EACH	2.00	2.00	\$ 17,000.00	\$ 34,000.00	\$ 34,000.00
18	2511.504	GEOTEXTILE FILTER TYPE 4	SQ YD	72.50	72.50	\$ 3.00	\$ 217.50	\$ 217.50
19	2511.507	RANDOM RIPRAP CLASS IV	CU YD	23.90	24.50	\$ 125.00	\$ 2,987.50	\$ 3,062.50
20	2506.602	TREATMENT MANHOLE #2	EACH	1.00	1.00	\$ 17,000.00	\$ 17,000.00	\$ 17,000.00

Schedule B Subtotal: \$ 286,868.00 \$ 285,829.00

Schedule: C
Description: CP 2016-09G Water Main Improvements

Item No.	Mn/DOT No.	Item Description	Unit	Estimated Quantity	Quantity To-Date	Contract Unit Price	Total Estimated Cost	Total Contract Cost To-Date
1	2104.502	SALVAGE HYDRANT & VALVE	EACH	9.00	9.00	\$ 400.00	\$ 3,600.00	\$ 3,600.00
2	2104.503	REMOVE WATER MAIN	LIN FT	135.00	0.00	\$ 8.00	\$ 1,080.00	\$ -
3	2104.602	REMOVE WATER SERVICE	EACH	7.00	3.00	\$ 700.00	\$ 4,900.00	\$ 2,100.00
4	2211.609	CRUSHED ROCK PIPE BEDDING	TON	50.00	0.00	\$ 25.00	\$ 1,250.00	\$ -
5	2504.602	WATERMAIN OFFSET	EACH	2.00	0.00	\$ 1,500.00	\$ 3,000.00	\$ -
6	2504.602	CONNECT TO EXISTING WATER SERVICE	EACH	7.00	1.00	\$ 500.00	\$ 3,500.00	\$ 500.00
7	2504.602	0.75" CORPORATION STOP	EACH	6.00	1.00	\$ 150.00	\$ 900.00	\$ 150.00
8	2504.602	ADJUST CURB STOP	EACH	5.00	0.00	\$ 95.00	\$ 475.00	\$ -
9	2504.602	0.75" CURB STOP & BOX	EACH	6.00	1.00	\$ 500.00	\$ 3,000.00	\$ 500.00
10	2504.602	HYDRANT & GATE VALVE	EACH	9.00	9.00	\$ 7,000.00	\$ 63,000.00	\$ 63,000.00
11	2504.603	3/4" TYPE K COPPER PIPE	LIN FT	420.00	67.00	\$ 30.00	\$ 12,600.00	\$ 2,010.00
12	2504.603	REMOVE AND REPLACE GATE VALVE BOX	EACH	6.00	6.00	\$ 1,100.00	\$ 6,600.00	\$ 6,600.00
13	2504.603	REMOVE AND REPLACE GATE VALVE BOLTS	EACH	6.00	6.00	\$ 1,500.00	\$ 9,000.00	\$ 9,000.00
14	2504.604	4" POLYSTYRENE INSULATION	SQ YD	250.00	59.00	\$ 32.00	\$ 8,000.00	\$ 1,888.00

Schedule C Subtotal: \$ 120,905.00 \$ 89,348.00

Schedule: D
Description: CP 2016-09G Sanitary Sewer Improvements

Item No.	Mn/DOT No.	Item Description	Unit	Estimated Quantity	Quantity To-Date	Contract Unit Price	Total Estimated Cost	Total Contract Cost To-Date
1	2104.502	REMOVE MANHOLE OR CATCH BASIN	EACH	2.00	2.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00
2	2104.502	SALVAGE CASTING	EACH	10.00	10.00	\$ 80.00	\$ 800.00	\$ 800.00
3	2104.503	REMOVE SEWER PIPE (SANITARY)	LIN FT	350.00	347.00	\$ 3.00	\$ 1,050.00	\$ 1,041.00
4	2104.602	REMOVE SEWER SERVICE	EACH	9.00	6.00	\$ 300.00	\$ 2,700.00	\$ 1,800.00
5	2503.503	12" PVC PIPE SEWER SDR 35	LIN FT	350.00	347.00	\$ 50.00	\$ 17,500.00	\$ 17,350.00
6	2503.602	CONNECT TO EXISTING SANITARY SEWER	EACH	2.00	2.00	\$ 900.00	\$ 1,800.00	\$ 1,800.00
7	2503.602	LOCATE SANITARY SEWER SERVICE	EACH	4.00	0.00	\$ 400.00	\$ 1,600.00	\$ -
8	2503.602	SANITARY SEWER SERVICE REPLACEMENT	EACH	9.00	6.00	\$ 2,200.00	\$ 19,800.00	\$ 13,200.00
9	2503.602	SANITARY SEWER UMBRELLAS	EACH	12.00	9.00	\$ 125.00	\$ 1,500.00	\$ 1,125.00
10	2503.602	FURNISH AND INSTALL EXTERNAL MANHOLE CHIMNEY SEAL	EACH	12.00	0.00	\$ 225.00	\$ 2,700.00	\$ -
11	2503.603	RECONSTRUCT SANITARY MANHOLE	EACH	6.00	5.00	\$ 1,950.00	\$ 11,700.00	\$ 9,750.00
12	2506.502	ADJUST FRAME & RING CASTING	EACH	4.00	0.00	\$ 690.00	\$ 2,760.00	\$ -
13	2506.602	SANITARY SEWER MANHOLE	EACH	3.00	3.00	\$ 3,930.00	\$ 11,790.00	\$ 11,790.00

Schedule D Subtotal: \$ 76,700.00 \$ 59,656.00

COST SUMMARY

Contract: CP 2016-09G
Owner: City of Inver Grove Heights
Project: 60th Street , 62nd Street, and Bacon Avenue Improvements

Schedule	Description	Total Estimated Cost	Total Contract Cost To-Date
A	CP 2016-09G Street Improvements	\$ 1,363,277.60	\$ 639,374.95
B	CP 2016-09G Storm Sewer Improvements	\$ 286,868.00	\$ 285,829.00
C	CP 2016-09G Water Main Improvements	\$ 120,905.00	\$ 89,348.00
D	CP 2016-09G Sanitary Sewer Improvements	\$ 76,700.00	\$ 59,656.00
Total Base Cost		\$ 1,847,750.60	\$ 1,074,207.95
Change Order:			\$ -
Total Contract Amount		\$ 1,847,750.60	
Contract Work Completed To Date			\$ 1,074,207.95
Retainage 5.00%			\$ 53,710.40
Previous Payments			\$ 211,592.22
Amount Due This Partial Payment #2			\$ 808,905.33

Current Construction Cost Breakdown to Date (Internal Use Only, Not for City Council Memo)							
Date of Council Action: 09/28/2020							
City Project No.	Original Contract Amount	Total Change Orders	Contract Work Completed to Date	Retainage	Current Payment	Paid to Date	Current Contract Amount
2016-09G	\$1,847,750.60	\$0.00	\$1,074,207.95	\$53,710.40	\$808,905.33	\$1,020,497.55	\$1,847,750.60
Totals:	\$1,847,750.60	\$0.00	\$1,074,207.95	\$53,710.40	\$808,905.33	\$1,020,497.55	\$1,847,750.60

Note: Update and submit this breakdown to the Finance Department for each pay voucher.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Change Order No. 1 for City Project No. 2016-09G 60th Street, 62nd Street and Bacon Avenue Improvements, Modifications to the Substantial and Final Completion Dates

Meeting Date: September 28.2020

Item Type: Consent

Contact: Thomas J. Kaldunski, 651.450.2572

Prepared by: Steve W. Dodge, Asst. City Engineer *SWD*

Reviewed by: Scott D. Thureen, Public Works Director

Fiscal/FTE Impact:

☒	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☐	Other: Pavement Management Fund, Franchise Fee Funds, Special Assessments, Water Fund, Sewer Fund, DCSWCD Grant

PURPOSE/ACTION REQUESTED

Consider Change Order No. 1 for City Project No. 2016-09G – 60th Street, 62nd Street and Bacon Avenue Improvements, modifications to the substantial and final completion dates.

SUMMARY

The Contract for CP 2016-09G includes a substantial completion date of September 12th, 2020, and a final completion date of October 16th, 2020. The project award date was originally planned for March 23, 2020 and construction was anticipated to begin in May 2020. Due to the COVID-19 impacts on City procedures in March of this year, award of the project was delayed to June 8, 2020. Construction of the project was unable to begin until July 2020. The Contractor has requested the substantial completion date be extended to October 16th, 2020, and the final completion date be extended to October 31, 2020 due to the delays in the construction start date.

I recommend approval of Change Order No. 1 for modifications to the substantial and final completion dates which has no modifications to the contract price.

Attachments: Change Order No. 1

CHANGE ORDER NO. 1**CITY PROJECT NO. 2016-09G – 60TH STREET, 62ND STREET AND BACON AVENUE
IMPROVEMENTS**

Owner: City of Inver Grove Heights 8150 Barbara Avenue Inver Grove Heights, MN 55077	Date of Issuance: September 28, 2020
Contractor: McNamara Contracting, Inc. 16700 Chippendale Avenue Rosemount, MN 55068	Engineer: Kimley-Horn and Associates
<u>PURPOSE OF CHANGE ORDER:</u> To modify the project substantial and final completion date.	
CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Proposed Contract Price: \$1,847,750.60	Original Contract Time: Substantial Completion Date: Sept. 12 th , 2020 Final Completion Date: Oct. 16 th , 2020
Previous Change Orders \$0.00	Net Change from Previous Change Orders
Contract Price Prior to this Change Order \$1,847,750.60	Contract Time Prior to this Change Order: Substantial Completion Date: Sept. 12 th , 2020 Final Completion Date: Oct. 16 th , 2020
Net Increase (Decrease) of this Change Order \$0.00	Net Increase (Decrease) of Change Order Substantial Completion – 34 calendar day extension Final Completion – 15 calendar day extension
Contract Price with all Approved Change Orders \$1,847,750.60	Contract Time with Approved Change Substantial Completion Date: Oct. 16 th , 2020 Final Completion Date: Oct. 31 st , 2020
Recommended By: Nick Hahn, Engineering Technician	Approved By: McNamara Contracting, Inc.

Approved By:

Thomas J. Kaldunski, City Engineer

Approved By:

George Tourville, Mayor

Date of Council Action:

September 28, 2020

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Change Order No. 1 and Pay Voucher No. 1 for City Project No. 2019-05 – Sleepy Hollow Park Storm Sewer Repair

Meeting Date: September 28, 2020
Item Type: Consent
Contact: Thomas J. Kaldunski, 651.450.2572
Prepared by: Jacob Moser, Civil Engineer
Reviewed by: Scott D. Thureen, Public Works Director

Fiscal/FTE Impact:

- | | |
|-------------------------------------|------------------------------------|
| ☐ | None |
| ☐ | Amount included in current budget |
| ☐ | Budget amendment requested |
| ☐ | FTE included in current complement |
| ☐ | New FTE requested – N/A |
| ☒ | Other: Stormwater CIP Fund (441) |

PURPOSE/ACTION REQUESTED

Consider Change Order No. 1 and Pay Voucher No. 1 for City Project No. 2019-05 – Sleepy Hollow Park Storm Sewer Repair.

SUMMARY

The improvements were ordered to replace a corroded metal storm sewer pipe that caused a sinkhole adjacent to the trail in Sleepy Hollow Park. The contract was awarded in the amount of \$42,790.00 to Valley Rich Co., Inc. on June 8, 2020 for City Project No. 2019-05 – Sleepy Hollow Park Storm Sewer Repair.

Change Order No. 1 accounts for miscellaneous increases in contract quantities for removal and replacement of bituminous trail. The project is substantially complete. A 5% retainage will be held until final quantities and costs are agreed to with the contractor.

I recommend approval of Change Order No. 1 for an addition of \$2,630.00, which results in a final contract amount of \$45,420.00, and Pay Voucher No. 1 in the amount of \$43,149.00, for City Project No. 2019-05 – Sleepy Hollow Park Storm Sewer Repair.

JM/jm

Attachments: Change Order No. 1
Pay Voucher No. 1

CHANGE ORDER NO. 1 (ONE)CITY PROJECT NO. 2019-05
SLEEPY HOLLOW PARK STORM SEWER REPAIR

Owner: City of Inver Grove Heights 8150 Barbara Avenue Inver Grove Heights, MN 55077	Date of Issuance: September 28, 2020
Contractor: Valley Rich Co., Inc. 147 Johnathan Blvd. N. – Suite 4 Chaska, MN 55138	Engineer: Tom Kaldunski, City Engineer
<u>Purpose of Change Order</u> Compensating amount to balance value of work completed and total payments made to the contractor. Accounts for miscellaneous increases in contract quantities for removal and replacement of bituminous trail.	
CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Contract Price: \$42,790.00	Original Contract Time: No Change
Previous Change Orders \$0.00	Net Change from Previous Change Orders No Change
Contract Price Prior to this Change Order: \$42,790.00	Contract Time Prior to this Change Order No Change
Net Increase of this Change Order \$2,630.00	Net Increase (Decrease) of Change Order No Change
Contract Price with all Approved Change Orders \$45,420.00	Contract Time with Approved Change Orders No Change
Recommended By: <u>Jacob Moser</u> Jacob Moser, Civil Engineer	Approved By: <u>Mark Kaldunski</u> Valley Rich Co., Inc.

Approved By:

Thomas J. Kaldunski
 Thomas J. Kaldunski,
 City Engineer

Approved By:

George Tourville, Mayor
 George Tourville, Mayor

Date of Council Action:

September 28, 2020
 September 28, 2020

CONSTRUCTION PAYMENT VOUCHER

ESTIMATE NO: One (1)
DATE: September 28, 2020
PERIOD ENDING: August 28, 2020
CONTRACT: 2019 Stormwater Utility Fund
PROJECT NO: 2019-05 – Sleepy Hollow Park Storm Sewer Repair

TO: Valley Rich Co., Inc.
147 Johnathan Blvd. N. – Suite 4
Chaska, MN 55138

Original Contract Amount.....\$42,790.00
Total Addition..... \$2,630.00
Total Deduction..... \$0.00
Total Contract Amount.....\$45,420.00
Total Value of Work to Date.....\$45,420.00
Less Retained (5%) \$2,271.00
Less Previous Payment \$0.00
Total Approved for Payment this Voucher.....\$43,149.00
Total Payments including this Voucher\$43,149.00

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above-stated amount for work performed through August 28, 2020.

Signed by: Thomas J. Kaldunski September 28, 2020
Thomas J. Kaldunski, City Engineer

Signed by: Matt Nadeau 9/18/20
Valley Rich Co., Inc. Date

Signed by: _____ September 28, 2020
George Tourville, Mayor

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 3, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail)

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Thomas J. Kaldunski, 651.450.2572
 Prepared by: Jacob Moser, Civil Engineer
 Reviewed by: Scott D. Thureen, Public Works Director

Fiscal/FTE Impact:

☐	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☒	Other: Pavement Management Fund, Franchise Fee Funds, Sewer Fund, Water Fund, Special Assessments

PURPOSE/ACTION REQUESTED

Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 3, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail).

SUMMARY

The improvements were ordered as part of the 2020 Pavement Management Program. The contract was awarded in the amount of \$632,310.20 to Valley Paving, Inc., on April 27, 2020 for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail).

Final Compensating Change Order No. 1, in the amount of \$(118,157.91), is to balance the contract amount with the work satisfactorily completed for final payment. The project has been completed under budget overall, however the cost of watermain improvements was greater than the contract watermain cost, so approval of an additional \$14,924 from the water fund is requested.

I recommend approval of an additional \$14,924 from the water fund, Final Compensating Change Order No. 1 in the amount of \$(118,157.91), for a total contract amount of \$514,152.29, and Final Pay Voucher No. 3 in the amount of \$27,308.13 for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail).

JDM/jm

Attachments: Final Compensating Change Order No. 1
 Final Pay Voucher No. 3
 Engineer's Final Report
 Resolution Accepting Work

CONSTRUCTION PAYMENT VOUCHER

ESTIMATE NO: Three (3) - FINAL
DATE: September 28, 2020
PERIOD ENDING: August 28, 2020
CONTRACT: 2019-09C Base Bid Schedules 1-4 with Alternates A & C
PROJECT NO: 2019-09C – Cahill Avenue Mill and Overlay

TO: Valley Paving, Inc.
8800 13th Avenue E.
Shakopee, MN 55379

Original Contract Amount.....\$632,310.20
Total Addition..... \$0.00
Total Deduction (Final Compensating Change Order No. 1) (\$118,157.91)
Total Contract Amount.....\$514,152.29
Total Value of Work to Date\$514,152.29
Less Retained (0%) \$0.00
Less Previous Payment\$486,844.16
Total Approved for Payment this Voucher.....\$27,308.13
Total Payments including this Voucher\$514,152.29

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above-stated amount for work performed through August 28, 2020.

Signed by: Thomas J. Kaldunski
Thomas J. Kaldunski, City Engineer

September 28, 2020

Signed by: Brent A. Carron
Valley Paving, Inc.
Brent A. Carron, Vice President

9/15/2020
Date

Signed by: _____
George Tourville, Mayor

September 28, 2020

FINAL COMPENSATING CHANGE ORDER NO. 1

2020 Pavement Management Program

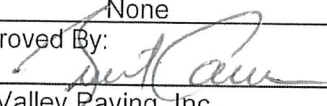
City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail)

Owner:	City of Inver Grove Heights 8150 Barbara Avenue Inver Grove Heights, MN 55077	Date of Issuance:	September 28, 2020
Contractor:	Valley Paving, Inc. 8800 13th Avenue E. Shakopee, MN 55379	Engineer:	City of Inver Grove Heights

PURPOSE OF CHANGE ORDER

To balance the value of the work satisfactorily completed and total payments made to the Contractor.

Total Value of Work Completed to Date	\$514,152.29
Contract Amount to Date	\$632,310.20
Final Compensating Change Order Amount	\$(118,157.91)

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Contract Price:	Original Contract Time:
\$632,310.20	Substantial Completion: August 28, 2020
Previous Change Orders	Net Change from Previous Change Orders
\$0.00	None
Contract Price Prior to this Change Order	Contract Time Prior to this Change Order
\$632,310.20	None
Net Increase (Decrease) of this Change Order	Net Increase (Decrease) of Change Order
\$(118,157.91)	None
Contract Price with all Approved Change Orders	Contract Time with Approved Change
\$514,152.29	None
Recommended By:	Approved By:
 Jake Moser, Civil Engineer	 Valley Paving, Inc.

Approved By:


Thomas J. Kaldunski, City Engineer

Approved By:

George Tourville, Mayor

Date of Council Action:

September 28, 2020

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ENGINEER'S REPORT OF FINAL ACCEPTANCE

CITY PROJECT NO. 2019-09C – CAHILL AVENUE MILL AND OVERLAY
(CONCORD BOULEVARD TO INVER GROVE TRAIL)

September 28, 2020

TO THE CITY COUNCIL
INVER GROVE HEIGHTS, MINNESOTA

HONORABLE MAYOR AND CITY COUNCIL MEMBERS:

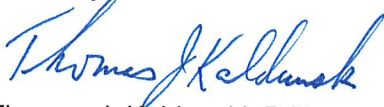
This is to advise you that I have received the work under contract to Valley Paving, Inc.
The work consisted of a street mill and overlay with minor utility improvements.

The contractor has completed the project in accordance with the contract.

It is recommended, herewith, that final payment be made for said improvements to the contractor in the amount as follows:

ORIGINAL CONTRACT PRICE	\$632,310.20
CHANGE ORDERS	\$(118,157.91)
FINAL CONTRACT AMOUNT	\$514,152.29
FINAL VALUE OF WORK	\$514,152.29
PREVIOUS PAYMENTS	\$486,844.16
BALANCE DUE	\$27,308.13

Sincerely,



Thomas J. Kaldunski, P.E.
City Engineer

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION ACCEPTING WORK OF VALLEY PAVING, INC. AND AUTHORIZING FINAL
PAYMENT IN THE AMOUNT OF \$27,308.13

CITY PROJECT NO. 2019-09C – CAHILL AVENUE MILL AND OVERLAY
(CONCORD BOULEVARD TO INVER GROVE TRAIL)

RESOLUTION NO. 2020-199

WHEREAS, pursuant to a written contract with the City of Inver Grove Heights dated April 27, 2020, Valley Paving, Inc., satisfactorily completed improvements and appurtenances for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS: That the work completed under this contract is hereby accepted and approved, and

BE IT FURTHER RESOLVED: That the Mayor and the City Clerk are hereby directed to issue a proper order for final payment on such contract, taking the contractor's receipt in full.

Adopted by the City Council of Inver Grove Heights this 28th day of September 2020.

AYES:

NAYS:

George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Pay Voucher No. 3 for City Project No. 2019-09D – 64th Street Area Improvements

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Thomas J. Kaldunski, 651-315-6336
 Prepared by: Steve W. Dodge, Asst. City Engineer
 Reviewed by: Scott D. Thureen, Public Works Director

TJK

Fiscal/FTE Impact:

- | | |
|-------------------------------------|--|
| ☐ | None |
| ☐ | Amount included in current budget |
| ☐ | Budget amendment requested |
| ☐ | FTE included in current complement |
| ☐ | New FTE requested – N/A |
| ☒ | Other: Pavement Management Fund,
Franchise Fee Funds, Storm Water
Utility Fund, Sewer Fund, Water Fund,
Special Assessments, DCSWCD Grant |

PURPOSE/ACTION REQUESTED

Consider Pay Voucher No. 3 for City Project No. 2019-09D – 64th Street Area Improvements.

SUMMARY

City Project No. 2019-09D was ordered on November 25, 2019, as part of the City's 2020 Pavement Management Program. The contract was awarded to Valley Paving, Inc. on May 11, 2020 with a contract award amount of \$989,601.87.

I recommend approval of Pay Voucher No. 3, in the amount of \$265,817.75 for work on City Project No. 2019-09D-64th Street Area Improvements.

SWD/mw

Attachments: Pay Voucher No. 3
 Bid Abstract

**CITY OF INVER GROVE HEIGHTS
CONSTRUCTION PAY VOUCHER**

ESTIMATE NO: 3 (Three)
DATE: September 28, 2020
PERIOD ENDING: August 31, 2020
CONTRACT: 2020 Pavement Management Program
PROJECT NO: 2019-09D-64th Street Area Improvements

TO: Valley Paving, Inc.
8800 13th Ave E
Shakopee, MN 55379

Original Contract Amount.....	\$989,601.87
Total Addition (Change Order No. 2).....	\$46,663.00
Total Deduction (Change Order No. 1).....	(\$19,405.00)
Total Contract Amount	\$1,016,859.87
Total Value of Work to Date	\$758,189.85
Less Retained (5%)	\$37,909.49
Less Previous Payment	\$454,462.61
Total Approved for Payment this Voucher	\$265,817.75
Total Payments including this Voucher	\$720,280.36

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above stated amount for work performed through August 31, 2020.

Signed by:  September 28, 2020
Thomas J. Kaldunski, City Engineer

Signed by: _____
Valley Paving, Inc. _____
Date _____

Signed by: _____
George Tourville, Mayor _____
September 28, 2020

PAY VOUCHER NO. 3

64TH STREET AREA IMPROVEMENTS

CITY PROJECT NO.: 2019-09D

BMI PROJECT NO. T18.119578

BID DATE: FEBRUARY 13, 2020 AT 11:00 AM

ITEM NO.	SPEC NO.	ITEM	APPROX. NOTES	QUANT.	UNIT	QUANTITY TO DATE	UNIT PRICE	AMOUNT	TOTAL CONTRACT COST TO DATE
PART 1: STREETS									
1	2021.501	MOBILIZATION		1	LS	1.0	\$38,500.00	\$38,500.00	\$38,500.00
2	2101.524	CLEARING		3	TREE	3	\$260.00	\$780.00	\$780.00
3	2101.524	GRUBBING		3	TREE	3	\$52.00	\$156.00	\$156.00
4	2104.502	SALVAGE SIGN TYPE C		6	EACH	6	\$52.00	\$312.00	\$312.00
5	2104.502	SALVAGE LIGHTING UNIT		3	EA		\$572.00	\$1,716.00	
6	2104.503	REMOVE CURB & GUTTER (SPOT REPAIR)		1200	LF	1189	\$8.50	\$10,200.00	\$10,106.50
7	2104.504	REMOVE CONCRETE DRIVEWAY PAVEMENT		48	SY	42	\$19.00	\$912.00	\$798.00
8	2104.504	REMOVE BITUMINOUS DRIVEWAY PAVEMENT		215	SY	348	\$7.50	\$1,612.50	\$2,610.00
9	2105.507	SPOT SUBGRADE EXCAVATION (CORRECTION)	(EV)	642	CY	217	\$32.00	\$20,544.00	\$6,944.00
10	2105.604	FINISH GRADING (P)	(P)	9624	SY	9624	\$0.92	\$8,854.08	\$8,854.08
11	2105.607	COMMON EXCAVATION (P)	(P)	79	CY	79	\$50.00	\$3,950.00	\$3,950.00
12	2105.607	HAUL EXCESS RECLAIM MATERIAL OFF SITE	(EV)	678	CY		\$21.50	\$14,577.00	
13	2123.610	STREET SWEEPER (WITH PICKUP BROOM)		30	HR	6	\$170.00	\$5,100.00	\$1,020.00
14	2130.501	WATER		324	MGAL	225	\$20.00	\$6,480.00	\$4,500.00
15	2211.509	AGGREGATE BASE (EXCESS RECLAIM)	(CV)	30	CY	25	\$26.00	\$780.00	\$650.00
16	2211.607	SUBGRADE CORRECTION W/ EXCESS RECLAIM	(CV)	642	CY	110	\$13.75	\$8,827.50	\$1,512.50
17	2215.504	FULL DEPTH RECLAMATION (P)	(P)	9624	SY	9624	\$1.15	\$11,067.60	\$11,067.60
18	2232.604	EDGE MILL BITUMINOUS SURFACE		67	SY		\$10.00	\$670.00	
19	2331.603	JOINT ADHESIVE (MASTIC)		4800	LF		\$0.57	\$2,736.00	
20	2357.506	BITUMINOUS MATERIAL FOR TACK COAT		674	GAL	100	\$2.50	\$1,685.00	\$250.00
21	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3,C)		1339	TON		\$80.88	\$108,298.32	
22	2360.509	TYPE SP 12.5 NON WEARING COURSE MIXTURE (3,C)		2009	TON	1728	\$72.64	\$145,933.76	\$125,521.92
23	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (2,E), DRIVE		45	TON	50	\$140.00	\$6,300.00	\$7,000.00
24	2501.602	EXCAVATION SPECIAL (POTHOLE EXISTING UTILITY)		3	EA	11	\$850.00	\$2,550.00	\$9,350.00
25	2531.503	CONCRETE CURB AND GUTTER SURMOUNTABLE (HA		1200	LF	978	\$23.85	\$28,620.00	\$23,325.30
26	2531.503	CONCRETE CURB AND GUTTER DESIGN B618 (HAND	(6)	100	LF	211	\$23.85	\$2,385.00	\$5,032.35
27	2531.504	6" CONCRETE DRIVEWAY PAVEMENT		48	SY	37	\$86.25	\$4,140.00	\$3,191.25
28	2531.607	HIGH EARLY STRENGTH CONCRETE SURCHARGE		30	CY	1	\$19.25	\$577.50	\$19.25
29	2545.602	INSTALL LIGHTING UNIT	(7)	3	EA		\$2,225.00	\$6,675.00	
30	2563.601	TRAFFIC CONTROL		1	LS		\$3,200.00	\$3,200.00	
31	2564.518	SIGN PANELS TYPE C		61	SF	61	\$62.40	\$3,806.40	\$3,806.40
32	2573.501	STABILIZED CONSTRUCTION EXIT		1	LS		\$2,130.00	\$2,130.00	
33	2573.501	EROSION CONTROL SUPERVISOR		1	LS	1	\$1,500.00	\$1,500.00	\$1,500.00
34	2573.502	STORM DRAIN INLET PROTECTION		27	EACH	14	\$150.00	\$4,050.00	\$2,100.00
35	2573.503	SEDIMENT CONTROL LOGS, TYPE COMPOST		350	LF	462	\$4.00	\$1,400.00	\$1,848.00
36	2573.601	STORMWATER MANAGEMENT ALLOWANCE		1	LS		\$5,000.00	\$5,000.00	
37	2574.507	BOULEVARD TOPSOIL BORROW, 4" THICK	(LV)	750	CY	80	\$42.25	\$31,687.50	\$3,380.00
38	2575.601	LANDSCAPING ALLOWANCE		1	LS		\$10,000.00	\$10,000.00	
39	2575.608	FLEXTERRA HYDROMULCH, SEED MIX 25-151, FERTIL		4668	SY		\$1.87	\$8,729.16	

\$ (3,892.00)

ITEM NO.	SPEC NO.	ITEM	APPROX. NOTES	QUANT.	UNIT	QUANTITY TO DATE	UNIT PRICE	AMOUNT	TOTAL CONTRACT COST TO DATE
PART 1: STREETS - PROJECT TOTAL								\$516,442.32	\$278,085.15
PART 2: SANITARY SEWER									
40	2104.502	REMOVE CASTING & RINGS (SANITARY)		11	EACH	11	\$125.00	\$1,375.00	\$1,375.00
41	2503.602	FURNISH AND INSTALL EXTERNAL MANHOLE CHIMNI		11	EACH	11	\$215.00	\$2,365.00	\$2,365.00
42	2506.502	INSTALL NEW RINGS AND CASTING (SANITARY)		6	EACH	6	\$1,025.00	\$6,150.00	\$6,150.00
43	2506.602	RECONSTRUCT SANITARY MANHOLE	(8)	5	EACH	5	\$1,900.00	\$9,500.00	\$9,500.00
PART 2: SANITARY SEWER - PROJECT TOTAL								\$19,390.00	\$19,390.00
PART 3: WATERMAIN									
44	2104.502	REMOVE GATE VALVE		1	EACH	1	\$660.00	\$660.00	\$660.00
45	2104.602	REMOVE HYDRANT & VALVE	(1)	5	EACH	5	\$660.00	\$3,300.00	\$3,300.00
46	2104.602	REMOVE WATER SERVICE		3	EACH	2	\$440.00	\$1,320.00	\$880.00
47	2504.602	HYDRANT & GATE VALVE	(2)	5	EACH	5	\$8,500.00	\$42,500.00	\$42,500.00
48	2504.602	6" GATE VALVE & BOX		2	EACH	1	\$2,800.00	\$5,600.00	\$2,800.00
49	2504.602	REMOVE AND REPLACE GATE VALVE BOX		4	EACH	3	\$1,700.00	\$6,800.00	\$5,100.00
50	2504.602	REMOVE AND REPLACE GATE VALVE BOLTS		4	EACH	3	\$2,325.00	\$9,300.00	\$6,975.00
51	2504.602	1" CORPORATION STOP		3	EACH	2	\$565.00	\$1,695.00	\$1,130.00
52	2504.602	1" CURB STOP AND BOX		3	EACH	2	\$630.00	\$1,890.00	\$1,260.00
53	2504.602	ADJUST CURB STOP		6	EACH		\$200.00	\$1,200.00	
54	2504.603	1" COPPER PIPE, TYPE K		120	LF	40	\$70.50	\$8,460.00	\$2,820.00
55	2504.604	4" POLYSTYRENE INSULATION		32	SY	4	\$60.00	\$1,920.00	\$210.00
56	2504.608	DUCTILE IRON FITTINGS		300	POUND	125	\$9.05	\$2,715.00	\$1,131.25
PART 3: WATERMAIN - PROJECT TOTAL								\$87,360.00	\$68,766.25
PART 4: STORM SEWER									
57	2104.502	REMOVE DRAINAGE STRUCTURE		6	EACH	6	\$440.00	\$2,640.00	\$2,640.00
58	2104.502	REMOVE CASTING & RINGS (STORM)		10	EACH	10	\$125.00	\$1,250.00	\$1,250.00
59	2104.503	REMOVE SEWER PIPE (STORM)		70	LF	63	\$12.50	\$875.00	\$787.50
60	2451.609	GRANULAR BACKFILL (STORM)		64	TON	64	\$46.00	\$2,944.00	\$2,944.00
61	2503.503	15" RC PIPE SEWER CLASS V		70	LF	57	\$97.50	\$6,825.00	\$5,557.50
62	2503.602	INTERNAL ADJUSTING RING SEALANT (FLEX-SEAL)	(3)	19	EACH	11	\$725.00	\$13,775.00	\$7,975.00
63	2506.502	CONSTRUCT DRAINAGE STRUCTURE DESIGN 2'X3'		2	EACH	2	\$2,850.00	\$5,700.00	\$5,700.00
65	2506.502	CONSTRUCT DRAINAGE STRUCTURE DESIGN 48-4020		1	EACH	1	\$7,150.00	\$7,150.00	\$7,150.00
64	2506.502	CONSTRUCT DRAINAGE STRUCTURE DESIGN 2'X3' W, (9)		1	EACH	1	\$3,250.00	\$3,250.00	\$3,250.00
66	2506.602	CONSTRUCT DRAINAGE STRUCTURE DESIGN 60-402C (10)		2	EACH	2	\$15,800.00	\$31,600.00	\$31,600.00
67	2506.602	CONSTRUCT DRAINAGE STRUCTURE DESIGN SPECIAL (4)		1	EA	1	\$23,800.00	\$23,800.00	\$23,800.00
68	2506.602	INSTALL NEW RINGS AND CASTING (STORM)		10	EACH	10	\$775.00	\$7,750.00	\$7,750.00
69	2506.602	CONNECT TO EXISTING STORM STRUCTURE		1	EACH	1	\$1,000.00	\$1,000.00	\$1,000.00
70	2506.602	CONNECT TO EXISTING STORM SEWER		4	EACH	4	\$850.00	\$3,400.00	\$3,400.00
PART 4: STORM SEWER - PROJECT TOTAL								\$111,959.00	\$104,804.00

ITEM NO.	SPEC NO.	ITEM	APPROX. NOTES	QUANT.	UNIT	QUANTITY TO DATE	UNIT PRICE	AMOUNT	TOTAL CONTRACT COST TO DATE
PART 5: TRUNK STORM SEWER AND RAVINE IMPROVEMENTS									
71	2104.502	CLEARING		75	TREE	96	\$315.00	\$23,625.00	\$30,240.00
72	2104.503	GRUBBING		75	TREE	96	\$52.00	\$3,900.00	\$4,992.00
73	2104.502	REMOVE DRAINAGE STRUCTURE		4	EACH	4	\$600.00	\$2,400.00	\$2,400.00
74	2104.502	REMOVE CASTING ASSEMBLY		2	EACH	2	\$250.00	\$500.00	\$500.00
75	2104.503	REMOVE SEWER PIPE (STORM)		60	LF	60	\$16.00	\$960.00	\$960.00
76	2104.503	SALVAGE CHAIN LINK FENCE		112	LF	106	\$12.50	\$1,400.00	\$1,325.00
77	2105.607	COMMON EXCAVATION - RAVINE (P)	(P)(EV,	335	CY	335	\$16.00	\$5,360.00	\$5,360.00
78	2105.607	COMMON EXCAVATION - WATER QUALITY BMP (P)	(P)(EV,	519	CY	519	\$25.00	\$12,975.00	\$12,975.00
79	2451.609	GRANULAR BACKFILL (STORM)		142	TON	142	\$62.00	\$8,804.00	\$8,804.00
80	2501.502	12" RC PIPE APRON		1	EACH	1	\$1,100.00	\$1,100.00	\$1,100.00
81	2501.502	24" RC PIPE APRON		1	EACH	1	\$2,050.00	\$2,050.00	\$2,050.00
82	2502.602	INSTALL 6" PVC PIPE DRAIN CLEANOUT (VENTED)		7	EACH	5	\$440.00	\$3,080.00	\$2,200.00
83	2502.603	6" PERF HDPE PIPE DRAIN WITH CIRCULAR KNIT FILT		269	LF	272	\$26.00	\$6,994.00	\$7,072.00
84	2502.603	6" SOLID PVC PIPE DRAIN		25	LF	25	\$36.00	\$900.00	\$900.00
85	2503.503	12" RC PIPE SEWER CLASS V		20	LF	26	\$96.50	\$1,930.00	\$2,509.00
86	2503.503	15" RC PIPE SEWER CLASS V		157	LF	157	\$55.40	\$8,697.80	\$8,697.80
87	2503.503	24" RC PIPE SEWER CLASS IV		459	LF	424	\$80.25	\$36,834.75	\$34,026.00
88	2506.502	CONSTRUCT DRAINAGE STRUCTURE DESIGN 48-4020		5	EACH	6.14	\$4,800.00	\$24,000.00	\$29,472.00
89	2506.502	CONSTRUCT DRAINAGE STRUCTURE DESIGN 60-402C (11)			EACH		\$6,025.00		
90	2506.602	CASTING ASSEMBLY R-4342 W/ PRECAST CONCRETE		2	EACH	2	\$1,125.00	\$2,250.00	\$2,250.00
91	2506.602	CONNECT TO EXISTING STORM SEWER		3	EACH	3	\$850.00	\$2,550.00	\$2,550.00
92	2506.602	RECONSTRUCT DRAINAGE STRUCTURE		1	EACH	1	\$1,350.00	\$1,350.00	\$1,350.00
93	2511.509	RANDOM RIPRAP, CLASS IV		60	CY	87	\$185.00	\$11,100.00	\$16,095.00
94	2571.602	DECIDUOUS SHRUB, 5 GAL		50	EACH	50	\$208.00	\$10,400.00	\$10,400.00
95	2573.502	STORM DRAIN INLET PROTECTION		3	EACH	3	\$250.00	\$750.00	\$750.00
96	2573.503	SILT FENCE, TYPE MS		2200	LF	2593	\$2.05	\$4,510.00	\$5,315.65
97	2573.503	FLOTATION SILT CURTAIN TYPE STILL WATER		360	LF	302	\$11.50	\$4,140.00	\$3,473.00
98	2574.607	FILTRATION MEDIA, 24" THICK	(LV)	297	CY	298	\$70.00	\$20,790.00	\$20,860.00
99	2574.607	BOULEVARD TOPSOIL BORROW, 4" THICK	(LV)	925	CY	735	\$36.00	\$33,300.00	\$26,460.00
100	2575.604	FLEXTERRA HYDROMULCH, SEED MIX 25-151, FERTIL		350	SY	350	\$1.87	\$654.50	\$654.50
101	2575.604	STRAW BLANKET, FOREST GROUND COVER EAST SEE		4980	SY	4980	\$1.87	\$9,312.60	\$9,312.60
102	2575.604	STRAW BLANKET, SEED 33-261, FERTILIZER		370	SY	370	\$1.87	\$691.90	\$691.90
103	2575.604	ENKAMAT TRM		874	SY	874	\$12.50	\$10,925.00	\$10,925.00
104	2501.602	PIPE JOINT TIE		18	EACH	18	\$58.00	\$1,044.00	\$1,044.00
105	2504.602	IRRIGATION SYSTEM REPAIR ALLOWANCE		1	LS		\$3,000.00	\$3,000.00	
106	2506.602	CONSTRUCT DRAINAGE STRUCTURE DESIGN 60-4020 W/ SL		1	EACH	1	\$10,800.00	\$10,800.00	\$10,800.00
107	2506.602	CONST. WATER QUALITY DEVICE - SWD RETROFIT		1	EACH	1	\$5,600.00	\$5,600.00	\$5,600.00
108	2515.618	FLEXAMAT		80	SF	80	\$13.50	\$1,080.00	\$1,080.00
109	2557.603	INSTALL FENCE		75	LF	75	\$26.00	\$1,950.00	\$1,950.00
PART 5: TRUNK STORM SEWER AND RAVINE IMPROVEMENTS - PROJECT TOTAL								\$281,708.55	\$287,144.45

ITEM NO.	SPEC NO.	ITEM	APPROX. QUANT.	UNIT	QUANTITY TO DATE	UNIT PRICE	AMOUNT	TOTAL CONTRACT COST TO DATE
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PROJECT SUMMARY

CITY PROJECT NO. 2019-09D
64TH STREET AREA IMPROVEMENTS

	AMOUNT	TOTAL CONTRACT COST TO DATE
PART 1: STREETS TOTAL	\$516,442.32	\$278,085.15
PART 2: SANITARY SEWER TOTAL	\$19,390.00	\$19,390.00
PART 3: WATERMAIN TOTAL	\$87,360.00	\$68,766.25
PART 4: STORM SEWER TOTAL	\$111,959.00	\$104,804.00
PART 5: TRUNK STORM SEWER AND RAVINE IMPROVEMENTS TOTAL	\$281,708.55	\$287,144.45
TOTAL BASE COST	\$1,016,859.87	\$758,189.85
TOTAL CONTRACT AMOUNT	\$1,016,859.87	
CONTRACT WORK COMPLETED TO DATE		\$758,189.85
RETAINAGE 5%		\$37,909.49
PREVIOUS PAYMENTS		\$454,462.61
AMOUNT DUE THIS PARTIAL PAYMENT		\$265,817.75

CURRENT CONSTRUCTION COST BREAKDOWN TO DATE							
DATE OF COUNCIL ACTION 9/28/2020							
CITY PROJECT NO.	ORIGINAL CONTRACT AMOUNT	TOTAL CHANGE ORDERS	WORK COMPLETED TO DATE	RETAINAGE	CURRENT PAYMENT	PAID TO DATE	CURRENT CONTRACT AMOUNT
CP 2019-09D	\$989,601.87	\$27,258.00	\$758,189.85	\$37,909.49	\$265,817.75	\$454,462.61	\$1,016,859.87

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Approve Custom Grading Agreement for 4045 60th St. (Lot 13, Block 1, Dawn Way Ridge)

Meeting Date:	September 28, 2020	Fiscal/FTE Impact:
Item Type:	Consent	☒ None
Contact:	Thomas J. Kaldunski, 651-450-2572	☐ Amount included in current budget
Prepared by:	Thomas J. Kaldunski, City Engineer	☐ Budget amendment requested
Reviewed by:	Scott D. Thureen, Public Works Director	☐ FTE included in current complement
		☐ New FTE requested – N/A
		☐ Other

PURPOSE/ACTION REQUESTED

Approve Custom Grading Agreement for 4045 60th St. (Lot 13, Block 1, Dawn Way Ridge).

SUMMARY

The owner of 4045 60th St. is affected by the City Ordinance Title 9, Chapter 5, Section 9-5-5. This Ordinance requires lots of record which do not have recorded contracts or agreements with the City to provide information to ensure the Development meets current City standards for grading, erosion control and storm water management.

The owner, Marlon Danner, has provided the required grading and erosion control plans. Mr. Danner has also signed the Custom Grading Agreement (attached). An engineering escrow of \$1,500 has been provided to cover any costs incurred by the City for review and inspection of the site grading. The owner has applied for a building permit and has provided a \$10,000 cash surety prior to permit issuance.

It is recommended that the City Council approve the Custom Grading Agreement for 4045 60th St. (Lot 13, Block 1, Dawn Way Ridge).

TJK/mw

Attachments: Custom Grading Agreement

CUSTOM GRADING AGREEMENT
FOR
LOT 13, BLOCK 1, DAWN WAY RIDGE,
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

CUSTOM GRADING AGREEMENT
FOR
LOT 13, BLOCK 1, DAWN WAY RIDGE,
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

THIS CUSTOM GRADING AGREEMENT (Agreement) is made and entered into on the 28th day of September, 2020 by and between the City of Inver Grove Heights, a Minnesota municipal corporation (City), and the Owner identified herein.

RECITALS:

WHEREAS, the Owner has applied to the City for approval of the Development Plans and a building permit for the Property;

WHEREAS, in conjunction with the granting of these approvals, the City requires that the Property be improved with grading, drainage and erosion control facilities;

WHEREAS, the Council has agreed to approve the Development Plans on the following conditions:

1. That the Owner enter into this Custom Grading Agreement, which contract defines the work which the Owner undertakes to complete; and
2. The Owner shall provide an irrevocable letter of credit in the amount and with conditions satisfactory to the City, providing for the actual construction and installation of such Improvements within the period specified by the City.

WHEREAS, the Owner has filed four (4) complete sets of the Development Plans with the City;

WHEREAS, the Development Plans have been prepared by a registered professional engineer and have been approved by the Director of PWD.

NOW, THEREFORE, subject to the terms and conditions of this Custom Grading Agreement and in reliance upon the representations, warranties and covenants of the parties herein contained, the City and Owner agree as follows:

ARTICLE 1
DEFINITIONS

1.1 TERMS. The following terms, unless elsewhere defined specifically in the Custom Grading Agreement, shall have the following meanings as set forth below.

1.2 CITY. "City" means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 OWNER. "Owner" means Danner Family Limited Partnership, a Minnesota limited partnership, and its successors and assigns.

1.4 DEVELOPMENT PLANS. "Development Plans" means the Certificate of Survey dated July 17, 2017 prepared by Pioneer Engineering approved by the City Engineer on September 9, 2020, and attached to Appendix 1.

The Development Plans also include modifications of the above referenced Development Plans as approved from time to time by the City Engineer.

1.5 CUSTOM GRADING AGREEMENT. "Custom Grading Agreement" means this instant contract by and between the City and Owner.

1.6 COUNCIL. "Council" means the Council of the City of Inver Grove Heights.

1.7 PWD. "PWD" means the Public Works Department of the City of Inver Grove Heights.

1.8 DIRECTOR OF PWD. "Director of PWD" means the Director of the Public Works Department of the City of Inver Grove Heights and his delegates.

1.9 COUNTY. "County" means Dakota County, Minnesota.

1.10 OTHER REGULATORY AGENCIES. "Other Regulatory Agencies" means and includes the following:

- a.) Minnesota Department of Transportation
- b.) Dakota County
- c.) Water Management Organization
- d.) State of Minnesota
- e.) Minnesota Department of Natural Resources
- f.) any other regulatory or governmental agency or entity affected by, or having jurisdiction over the Improvements.

1.11 UTILITY COMPANIES. "Utility Companies" means and includes the following:

- a.) utility companies, including electric, gas and cable
- b.) pipeline companies.

1.12 PRIOR EASEMENT HOLDERS. "Prior Easement Holders" means and includes all holders of any easements or other property interests which existed prior to the grant or dedication of any public easements transferred by the Property or transferred pursuant to this Custom Grading Agreement.

1.13 IMPROVEMENTS. "Improvements" means and includes, individually and collectively, all the improvements identified in Article 3 and on the attached Appendix 2.

1.14 OWNER DEFAULT. "Owner Default" means and includes any of the following or any combination thereof:

- a.) failure by the Owner to timely pay the City any money required to be paid under this Custom Grading Agreement;
- b.) failure by the Owner to timely construct the Improvements according to the Development Plans and the City standards and specifications;
- c.) failure by the Owner to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Custom Grading Agreement;
- d.) breach of the Owner Warranties.

1.15 FORCE MAJEURE. "Force Majeure" means acts of God, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lightning and earthquakes (but not including reasonably anticipated weather conditions for the geographic area), riots, insurrections, war or civil disorder affecting the performance of work, blockades, power or other utility failures, and fires or explosions.

1.16 OWNER WARRANTIES. "Owner Warranties" means that the Owner hereby warrants and represents the following:

- A. **AUTHORITY.** Owner has the right, power, legal capacity and authority to enter into and perform its obligations under this Custom Grading Agreement; no approvals or consents of any persons are necessary in connection with the authority of Owner to enter into and perform its obligations under this Custom Grading Agreement.
- B. **FULL DISCLOSURE.** None of the representatives and warranties made by Owner or made in any exhibit hereto or memorandum or writing furnished or to be furnished by Owner or on its behalf contains or will contain any untrue statement of material fact or omit any material fact the omission of which would be misleading.
- C. **PLAN COMPLIANCE.** The Development Plans comply with all City, County, metropolitan, state and federal laws and regulations, including but not limited to subdivision ordinances, zoning ordinances and environmental regulations.

D. **FEE TITLE.** Owner owns fee title to the Property.

E. **WARRANTY ON PROPER WORK AND MATERIALS.** The Owner warrants all work required to be performed by it under this Custom Grading Agreement against defective material and faulty workmanship for a period of two (2) years after its completion. During the warranty period the Owner shall be solely responsible for all costs of performing repair work required by the City within thirty (30) days of notification. All trees, grass, and sod shall be warranted to be alive, of good quality, and disease free for one year after planting. Any replacements shall be similarly warranted for one year from the time of planting. In addition, the warranty period for drainage and erosion control improvements shall be for two (2) years after completion; the warranty for the drainage and erosion control improvements shall also include the obligation of the Owner to repair and correct and damage to or deficiency with respect to such improvements.

1.17 **CITY WARRANTIES.** "City Warranties" means that the City hereby warrants and represents as follows:

A. **ORGANIZATION.** City is a municipal corporation duly incorporated and validly existing in good standing under the laws of the State of Minnesota.

B. **AUTHORITY.** City has the right, power, legal capacity and authority to enter into and perform its obligations under this Custom Grading Agreement.

1.18 **FORMAL NOTICE.** "Formal Notice" means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to CITY:
City of Inver Grove Heights
Attention: City Administrator
Inver Grove Heights City Hall
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Owner:
Danner Family Limited Partnership
843 Hardman Avenue S.
South St. Paul, MN 55075

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

1.19 **PROPERTY.** Property means the real property located in the City of Inver Grove

Heights, Dakota County, Minnesota legally described on **Exhibit A** attached hereto.

ARTICLE 2

APPROVAL OF DEVELOPMENT PLANS

2.1. APPROVAL OF DEVELOPMENT PLANS. Subject to the terms and conditions of this Custom Grading Agreement, the recitals above, and all other applicable City Code provisions the City hereby approves the Development Plans.

2.2 RECORDING. This Custom Grading Agreement shall be recorded with the County Recorder within thirty (30) days from the date of this Custom Grading Agreement. No building permits shall be issued unless the Owner shows evidence to the City that this Custom Grading Agreement has been recorded with the County Recorder.

ARTICLE 3

IMPROVEMENTS

3.1 IMPROVEMENTS. The Owner shall install, at its own cost, the Improvements in accord with the Development Plans. The Owner Improvements shall be completed by the dates shown on Appendix 2, except as completion dates are extended by subsequent written action of the Director of PWD. Failure of the City to promptly take action to enforce this Custom Grading Agreement after expiration of time by which the Improvements are to be completed shall not waive or release any rights of the City; the City may take action at any time thereafter, and the terms of this contract shall be deemed to be automatically extended until such time as the Improvements are completed to the City's satisfaction.

3.2 GROUND MATERIAL. The Owner shall insure that adequate and suitable ground material shall exist in the areas of private driveways and utility improvements and shall guarantee the removal, replacement or repair of substandard or unstable material. The cost of removal, replacement or repair is the responsibility of the Owner.

3.3 GRADING/DRAINAGE PLAN. The Owner shall construct drainage facilities in accord with the Development Plans. The grading and drainage plan shall include lot and building elevations, drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform with the overall City storm sewer plan. The grading of the site shall be completed in conformance with the Development Plans.

3.4 BOULEVARD AND AREA RESTORATION. The Owner shall seed or lay cultured sod in all boulevards within 30 days of the completion of street related improvements and restore all other areas disturbed by the development grading operation in accordance with the approved erosion control plan. Upon request of the PWD, the Owner shall remove the silt fences after grading and construction have occurred.

3.5 STREET MAINTENANCE, ACCESS AND REPAIR. The Owner shall clear, on a daily basis, any soil, earth or debris from the streets and wetlands within or adjacent to the Property resulting from the grading or building on the land within the Property by the Owner or its agents, and

shall repair to the City's specifications any damage to bituminous surfacing resulting from the use of construction equipment.

3.6 LANDSCAPING. Site landscaping shall be in accordance with the Development Plans.

3.7 PAVING OF DRIVEWAY. The Owner must pave the driveway per City requirements.

3.8 EROSION CONTROL. The Owner shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated in the Minnesota Pollution Control Agency handbook titled Water Quality in Urban Areas. Such plan shall be detailed on the Development Plans and shall be subject to approval of the Director of PWD. The Owner shall install and maintain such erosion control structures as appear necessary under the Development Plans or become necessary subsequent thereto. The Owner shall be responsible for all damage caused as the result of grading and excavation within the Property including, but not limited to, restoration of existing control structures and clean-up of public right-of-way, until the Property is final graded and Improvements are completed. As a portion of the erosion control plan, the Owner shall re-seed or sod any disturbed areas in accordance with the Development Plans. The City reserves the right to perform any necessary erosion control or restoration as required, if these requirements are not complied with after Formal Notice by the City as stated in Article 9. The Owner shall be financially responsible for payment for this extra work.

3.9 GRADING/DRAINAGE PLAN AND EASEMENTS. The Developer shall construct drainage facilities adequate to serve the Property in accord with the Development Plans. The Owner and Developer agree to grant to the City all necessary easements for the preservation of the drainage system, for drainage basins, and for utility service. All such easements required by the City shall be on the Property or in writing, in recordable form, and on the standard easement form of the City, and on such other terms and conditions as the City shall determine; such easements shall be delivered to the City contemporaneously with execution of this Agreement. The grading and drainage plan shall include lot and building elevations, drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform with the overall City storm sewer plan. The grading of the site shall be completed in conformance with the Development Plans. In the event that the Developer fails to complete the grading of the site in conformance with the Development Plans by the stipulated date, the City may declare the Developer in default pursuant to Article 9.

3.10 AS BUILT INFORMATION. The record plan "as built" drawings of the Improvements shall be provided by the Owner in accordance with City standards no later than 90 days after completion and acceptance of the Improvements by the City, unless otherwise approved in writing by the Director of Public Works. If the record plans are not provided to the City within the 90 days, the City may have this work done and pay for it with the developer's sureties.

Final as-built information shall be submitted in an electronic format compatible with the City's Geographic Information System (GIS). All information must be on the Dakota County coordinates system. Compatible formats are emailed AUTOCAD .DWG or .DXF. As-built drawings

shall also be scanned, stored and emailed as images in .TIFF or .PDF. All as-built drawings must be the approved plans modified to reflect as-built conditions Note: All corrected lines, grades and elevations shall have a line drawn through the original text and the new information placed nearby; the original information or text shall not be erased.

3.11 RETAINING WALL. If a retaining wall will be constructed on the Property as part of the Improvements, then prior to the City issuing a building permit for the Property, a retaining wall permit must be issued by the City. If the Property is to have a retaining wall constructed as part of the Improvements, then prior to the City granting a temporary certificate of occupancy or a final certificate of occupancy for the Property, the retaining wall permit must be complete, wall certification must be received and accepted by the Chief Building Official, grading associated with the retaining wall must be accepted by the City Engineer and the retaining wall record drawing must be received and accepted by the City.

ARTICLE 4 **OTHER PERMITS**

4.1 PERMITS. The Owner shall obtain all necessary approvals, permits and licenses from the City, the Other Regulatory Agencies, the Utility Companies, and the Prior Easement Holders. Major design requirements of any such entities shall be determined prior to completion and incorporated into the Development Plans. All costs incurred to obtain the approvals, permits and licenses, and also all fines or penalties levied by any agency due to the failure of the Owner to obtain or comply with conditions of such approvals, permits and licenses, shall be paid by the Owner. The Owner shall defend and hold the City harmless from any action initiated by the Other Regulatory Agencies, the Utility Companies and the Prior Easement Holders resulting from such failures of the Owner.

ARTICLE 5 **RESPONSIBILITY FOR COSTS**

5.1 IMPROVEMENT COSTS. The Owner shall pay for the Improvements; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the City shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the City shall have approved the contract or subcontract.

5.2 CITY MISCELLANEOUS EXPENSES. The Owner shall reimburse the City for all engineering, administrative, legal and other expenses incurred or to be incurred by the City in connection with this Custom Grading Agreement. Bills not paid within thirty (30) days shall accrue interest at the rate of eight percent per year.

5.3 ENFORCEMENT COSTS. The Owner shall pay the City for costs incurred in the enforcement of this Custom Grading Agreement, including engineering and attorneys' fees.

5.4 TIME OF PAYMENT. The Owner shall pay all bills from the City within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of 8% per

year.

ARTICLE 6 **OWNER WARRANTIES**

6.1 STATEMENT OF OWNER WARRANTIES. The Owner hereby makes and states the Owner Warranties.

ARTICLE 7 **CITY WARRANTIES**

7.1 STATEMENT OF CITY WARRANTIES. The City hereby makes and states the City Warranties.

ARTICLE 8 **INDEMNIFICATION OF CITY**

8.1 INDEMNIFICATION OF CITY. Owner shall indemnify, defend and hold the City, its Council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) breach by the Owner of the Owner Warranties;
- b.) failure of the Owner to timely construct the Improvements according to the Development Plans and the City ordinances, standards and specifications;
- c.) failure by the Owner to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Custom Grading Agreement;
- d.) failure by the Owner to pay contractors, subcontractors, laborers, or material;
- e.) failure by the Owner to pay for materials;
- f.) approval by the City of the Development Plans;
- g.) failure to obtain the necessary permits and authorizations to construct the Improvements;
- h.) construction of the Improvements;
- i.) delays in construction of the Improvements;
- j.) all costs and liabilities arising because building permits were issued prior to the

completion and acceptance of the Improvements.

ARTICLE 9
CITY REMEDIES UPON OWNER DEFAULT

9.1 CITY REMEDIES. If an Owner Default occurs, that is not caused by Force Majeure, the City shall give the Owner Formal Notice of the Owner Default and the Owner shall have ten (10) business days to cure the Owner Default. If the Owner, after Formal Notice to it by the City, does not cure the Owner Default within ten (10) business days, then the City may avail itself of any remedy afforded by law and any of the following remedies:

- a.) the City may specifically enforce this Custom Grading Agreement;
- b.) the City may collect on the irrevocable letter of credit or cash deposit pursuant to Article 13 hereof;
- c.) the City may suspend or deny building and occupancy permits for buildings within the Property;
- d.) the City may, at its sole option, perform the work or improvements to be performed by the Owner, in which case the Owner shall within thirty (30) days after written billing by the City reimburse the City for any costs and expenses incurred by the City.

9.2 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this Custom Grading Agreement is breached by the Owner and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the City must be in writing.

9.3 NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Custom Grading Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the Formal Notice.

9.4 EMERGENCY. Notwithstanding the requirement contained in Section 9.1 hereof relating to Formal Notice to the Owner in case of a Owner Default and notwithstanding the requirement contained in Section 9.1 hereof relating to giving the Owner a ten (10) business day period to cure the Owner Default, in the event of an emergency as determined by the Director of PWD, resulting from the Owner Default, the City may perform the work or improvement to be performed by the Owner without giving any notice or Formal Notice to the Owner and without giving the Owner the ten (10) day period to cure the Owner Default. In such case, the Owner shall within thirty (30) days after written billing by the City reimburse the City for any and all costs incurred by

the City.

ARTICLE 10 **ESCROW DEPOSIT**

10.1 ESCROW REQUIREMENT. Contemporaneously herewith, the Owner shall deposit with the City an irrevocable letter of credit, or cash deposit for the amount of \$10,000.

The bank and form of the irrevocable letter of credit, or cash deposit shall be subject to approval by the City Finance Director and City Attorney and shall continue to be in full force and effect until released by the CITY. The irrevocable letter of credit shall be for a term ending December 31, 2022. In the alternative, the letter of credit may be for a one year term provided it is automatically renewable for successive one year periods from the present or any future expiration dates with a final expiration date of December 31, 2022, and further provided that the irrevocable letter of credit states that at least sixty (60) days prior to the expiration date the bank will notify the City that if the bank elects not to renew for an additional period. The irrevocable letter of credit shall secure compliance by the Owner with the terms of this Custom Grading Agreement. The City may draw down on the irrevocable letter of credit or cash deposit, without any further notice than that provided in Section 9.1 relating to a Owner Default, for any of the following reasons:

- a.) a Owner Default; or
- b.) upon the City receiving notice that the irrevocable letter of credit will be allowed to lapse before December 31, 2022.

The City shall use the escrow proceeds to reimburse the City for its costs and to cause the Improvements to be constructed to the extent practicable; after the Director of PWD determines that such Improvements have been constructed and after retaining 10% of the proceeds for later distribution pursuant to Section 10.2, the remaining proceeds shall be distributed to Owner.

With City approval, the irrevocable letter of credit or cash deposit may be reduced pursuant to Section 10.2 from time to time as financial obligations are paid.

10.2 ESCROW RELEASE AND ESCROW INCREASE.

Periodically, upon the Owner's written request and upon completion by the Owner and acceptance by the City of any specific Improvements, ninety percent (90%) of that portion of the irrevocable letter of credit, or cash deposit covering those specific completed improvements only shall be released. The final ten percent (10%) of that portion of the irrevocable letter of credit, or cash deposit, for those specific completed improvements shall be held until acceptance by the City and expiration of the warranty period under Section 1.17 hereof; in the alternative, the Owner may post a bond satisfactory to the City with respect to the final ten percent (10%).

10.3 ENGINEERING ESCROW AMOUNT. In addition to the Escrow Amount, the Owner shall also deposit \$1,500 in cash with the City (hereafter "Engineering Escrow Amount") contemporaneously with execution of this Agreement.

The Engineering Escrow Amount shall be used to pay the City for engineering review and inspection expenses, attorney's fees, consultant fees, erosion and sediment control expenses, staff review time associated with coordination, review, design, preparation and inspection of the Development Plans, the Improvements, and this Agreement and other associated City costs. Fees will be calculated at the City's standard rates charged for such tasks.

The Engineering Escrow Amount shall also be available to the City to pay for deficiencies and problems related to grading, drainage and erosion control and landscaping on the Owner Property in the event such problems and deficiencies arise. The City may also use the Engineering Escrow Amount to correct any such deficiencies or problems or to protect against further deficiencies or problems.

The City shall return to the Owner any remaining Engineering Escrow Amount when all the following events have occurred:

- a.) all of the landscaping and vegetation has been established to the sole satisfaction of the City.

To the extent the engineering inspection charges or the amount needed to correct the deficiencies and problems relating to grading, drainage, erosion control, or landscaping exceed the initially deposited \$1,500 Engineering Escrow Amount, the Owner is responsible for payment of such excess within thirty (30) days after billing by the City.

ARTICLE 11 **MISCELLANEOUS**

11.1 CITY'S DUTIES. The terms of this Custom Grading Agreement shall not be considered an affirmative duty upon the City to complete any Improvements.

11.2 NO THIRD PARTY RECOURSE. Third parties shall have no recourse against the City under this Custom Grading Agreement.

11.3 VALIDITY. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Custom Grading Agreement is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Custom Grading Agreement.

11.4 RECORDING. The City may record this Agreement with the Dakota County Recorder.

11.5 BINDING AGREEMENT. This Agreement shall run with the Property and shall inure to the benefit of the Owner and the City and shall bind Owner and the successors and assigns of Owner and shall be binding upon the City and the successor's and assigns of the City. This Agreement shall also be binding upon any right title or interest of the parties to the Property acquired after the date of this Agreement or acquired after the date of recording of this Agreement.

11.6 ASSIGNMENT. The Owner may not assign this Custom Grading Agreement without the written permission of the Council. The Owner's obligations hereunder shall continue in full force and effect, even if the Owner sells the Property.

11.7 AMENDMENT AND WAIVER. The parties hereto may by mutual written agreement amend this Custom Grading Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Custom Grading Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Custom Grading Agreement, waive compliance by another with any of the covenants contained in this Custom Grading Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Custom Grading Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Custom Grading Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

11.8 GOVERNING LAW. This Custom Grading Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

11.9 COUNTERPARTS. This Custom Grading Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

11.10 HEADINGS. The subject headings of the paragraphs and subparagraphs of this Custom Grading Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

11.11 INCONSISTENCY. If the Development Plans are inconsistent with the words of this Custom Grading Agreement or if the obligation imposed hereunder upon the Owner are inconsistent, then that provision or term which imposes a greater and more demanding obligation on the Owner shall prevail.

11.12 ACCESS. The Owner hereby grants to the City, its agents, employees, officers, and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City during the installation of Improvements.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Custom Grading Agreement.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 28th day of September, 2020, before me a Notary Public within and for said County, personally appeared George Tourville and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

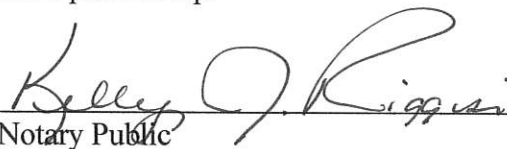
**OWNER:
DANNER FAMILY LIMITED PARTNERSHIP**

By: 
Marlon L. Danner
Its General Partner

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 21st day of September, 2020, before me a Notary Public within and for said County, personally appeared Marlon L. Danner to me personally known, who being by me duly sworn, did say that he is the General Partner of Danner Family Limited Partnership, the limited partnership named in the foregoing instrument, and that said instrument was signed on behalf of said limited partnership by authority of the Board of Governors and said Marlon L. Danner acknowledged said instrument to be the free act and deed of the limited partnership.




Notary Public

THIS INSTRUMENT DRAFTED BY:
Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING, PLEASE
RETURN DOCUMENT TO:**
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Inver Grove Heights, County of Dakota, State of Minnesota legally described as follows:

Lot 13, Block 1, Dawn Way Ridge, according to the recorded plat thereof, Dakota County, Minnesota.

Torrens Property

APPENDIX 1
LIST OF DEVELOPMENT PLANS

<u>PLAN</u>	<u>DATE OF PLAN PREPARATION</u>	<u>PREPARED BY</u>
Certificate of Survey	7/17/2017	Pioneer Engineering

The Development Plans were approved by the City Engineer on September 9, 2020



City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077-3412

Approval is only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Contractor is responsible for all dimensions, quantities and performance requirements to be confirmed and confirmed at the job site; for all information that pertains solely to the fabrication and construction techniques of construction for all construction of the work of all trades and for assuring consistency with the Contract Documents.

Approval of drawings or items does not relieve the Contractor of the responsibility for complying with all requirements of the Contract Documents.

☒ APPROVED
☐ APPROVED AS NOTED
☐ DISAPPROVED
☐ REVISED AND RESUBMIT

Date: 9/9/2020
Signature: [Signature]

Lot area = 38091 SF
House area = 1556 SF
Porch area = 41 SF
Sidewalk area = 72 SF
Driveway area = 1716 SF
Total Impervious Area = 3395 SF
Impervious Coverage = 8.9%

Certificate of Survey for:
Elevate Builders LLC
190 Jan 714
Paseo Lakes, MN 55025
Phone: (612) 596-6707

Lot 13, Block 1
Dawn Way Ridge
according to this recorded plat thereof
Dakota County, Minnesota
Address: 4045 60th Street E., Inver Grove Heights, Minnesota
House Model: [Model Name]
Buyer:

PIONEER engineering, P.A.
1117 17th Avenue S.
St. Paul, MN 55108
Phone: (612) 596-6707
Fax: (612) 596-6707
Email: info@pioneereng.com
Website: www.pioneereng.com
Project: 117-167000 [Address] [City] [State]

We hereby certify to Elevate Builders LLC that this survey, plan or report was prepared by me or under my direct supervision, and that I am a duly licensed Land Surveyor under the laws of the State of Minnesota, dated 07/17/17.

Signed: [Signature] Pioneer Engineering, P.A.

By: Peter J. Hovmiller, Professional Land Surveyor
Minnesota License No. 42289 email: phovmiller@pioneereng.com

Lowest floor elevation per grading plan:	730.0
House elevations	(Proposed) / As-built
Lowest Floor Elevation	(727.5) /
Top Of Foundation Elev.	(730.7) /
Garage Slab Elev. @ Door	(729.7) /

Remarks:
1. Survey of Property
2. Proposed Building Footprint
3. Proposed Driveway and Sidewalk
4. Proposed Lot Dimensions

- Denotes iron pipe
- Denotes service
- Denotes telephone box
- Denotes electric box
- Denotes telephone box
- Denotes existing elevation
- Denotes proposed elevation
- Denotes drainage flow direction
- Denotes spike

- Construction Notes:
- Install rock construction entrance.
 - Install silt fence as needed for erosion control.
 - Sidewalks shall drain away from house a minimum of 1.0%.
 - Contractor must verify driveway design.
 - Contractor must verify service elevation prior to construction.
 - Add or remove foundation ledge as required.
 - Remove trees as grading requires.
- General Notes:
- Grading plan by Loucks & Associates Ltd. dated 4/10/00 was used to determine proposed elevations shown herein.
 - This survey does not purport to show improvements or encroachments, except as shown, as surveyed by me or under my direct supervision.
 - Proposed building dimensions shown are for horizontal location of structures on the lot only. Contact builder prior to construction for approved construction plans.
 - No specific soils investigation has been performed on this lot by the surveyor. The suitability of soils to support the specific house proposed is not the responsibility of the surveyor.
 - This certificate does not purport to show easements other than those shown on the recorded plat.
 - Bearings shown are based on an assumed datum.

APPENDIX 2
IMPROVEMENTS

The items checked with an "X" below are the Improvements.

<u>CHECKED</u>	<u>COMPLETION DATE</u>	<u>IMPROVEMENT</u>
<u> X </u>	Prior to obtaining building permit	Grading, drainage, sediment & erosion control
<u> X </u>	Prior to Certificate of Occupancy	Driveway
<u> X </u>	Prior to Certificate of Occupancy	As-built
<u> X </u>	Within 6 months after Certificate of Occupancy	Landscaping

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider a Resolution Ordering Feasibility Study, Accepting Engineering Services Proposal IPO 39 from Kimley-Horn & Associates, Inc., Accepting Proposal from Metzen Appraisal Services for Assessment Benefit Analysis, and Authorizing Geotechnical Services for City Project No. 2020-09D Delaney Circle and Delaney Court Improvements

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Thomas J. Kaldunski, City Engineer
 651.315.6336
 Prepared by: Steve W. Dodge, Asst. City Engineer
 Reviewed by: Scott D. Thureen, Public Works Director

SDT

Fiscal/FTE Impact:	
☐	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☒	Other: Special Assessments, Pavement Management Fund, Franchise Fees and Grants

PURPOSE/ACTION REQUESTED

Consider a resolution ordering feasibility study, accepting engineering services proposal IPO 39 from Kimley-Horn & Associates, Inc., accepting proposal from Metzen Appraisal Services for assessment benefit analysis, and authorizing geotechnical services for City Project No. 2020-09D Delaney Circle and Delaney Court Improvements.

SUMMARY

The project was initiated by a valid petition received by Council on July 13, 2020. Out of the 36 parcels in the project area, the owners of 29 parcels signed the petition. It is not part of the approved 2020-2024 Capital Improvement Plan so budgetary considerations are necessary as part of the approval process for the 2021 pavement management program. The project area includes Delaney Circle and Delaney Court street and drainage improvements.

A proposal for the engineering services in the amount of \$181,450 was received from Kimley-Horn & Associates, Inc., a member of the City's consulting engineer pool. They will prepare a feasibility study for the project to determine the most feasible pavement rehabilitation method, drainage improvements, project costs and funding. Staff has selected Kimley-Horn from its consulting pool of engineering firms based on their project approach, understanding of the scope of work, the expertise of their project team, the proposed cost of their services and their knowledge of the City's engineering standards.

It is necessary to conduct additional geotechnical investigation of the area streets by use of potholing and testing of the bituminous, gravel and subgrade soils to determine the most feasible pavement rehabilitation strategy. We have completed preliminary soil borings which provide the City a general overview of the conditions.

Metzen Appraisal Services has provided a proposal to conduct an assessment benefit analysis on the project in the amount of \$6500. The City Attorney will be authorized to provide his services on the project.

I recommend passage of the resolution ordering feasibility study, accepting engineering services proposal IPO 39 from Kimley-Horn & Associates, Inc. in the amount of \$181,450, authorizing assessment benefit analysis by Metzen Appraisal Services in the amount of \$6,500, and authorizing staff to obtain geotechnical services for City Project No. 2020-09D Delaney Circle and Delaney Court Improvements

SWD/kf

Attachments: Resolution
 Petition Map
 Proposals from Kimley and Metzen Appraisal Services

**DAKOTA COUNTY
INVER GROVE HEIGHTS, MINNESOTA**

**RESOLUTION ORDERING FEASIBILITY STUDY, ACCEPTING ENGINEERING SERVICES
PROPOSAL IPO 39 FROM KIMLEY-HORN, ACCEPTING PROPOSAL FROM METZEN APPRAISAL
SERVICES FOR ASSESSMENT BENEFIT ANALYSIS, AND AUTHORIZING GEOTECHNICAL
SERVICES FOR CITY PROJECT NO. 2020-09D**

RESOLUTION NO. 2020-200

WHEREAS, it is proposed to make improvements and to assess or tax the benefited properties for all or a portion of the cost of said improvement, pursuant to Minnesota Statutes, Section 429.111 to 429.111 (Laws 1953, Chapter 398, as amended) and Section 103B.201 and 103B.251 as follows:

<u>Project No.</u>	<u>Improvements</u>
2020-09D	Delaney Circle and Delaney Court Improvements

WHEREAS, the City has requested and received engineering services proposal IPO 39 from Kimley-Horn & Associates, Inc. in the amount of \$181,450; and

WHEREAS, the City has requested and received an appraiser's special benefit analysis proposal from Metzen Appraisal Services in the amount of \$6,500; and

WHEREAS, the project was initiated by neighborhood petition as a potential 2021 pavement management project where 29 of 36 property owners signed the petition for City Project No. 2020-09D Delaney Circle and Delaney Court Improvements

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, MINNESOTA:

1. The Public Works Director is hereby authorized to prepare the feasibility report, conduct the assessment benefit analysis, conduct geotechnical investigations, and complete related professional engineering services on the proposed street improvements.
2. Staff and Kimley-Horn, Inc. are authorized to prepare the feasibility report, provide a topographic survey of the project, and prepare preliminary design.
3. The City Attorney is hereby authorized to assist the City Engineer on this project and provide land acquisition services.
4. Metzen Appraisal Services is authorized to complete a special benefit analysis.
5. Project funding is provided through the Pavement Management Fund, special assessments, franchise fee and grants.

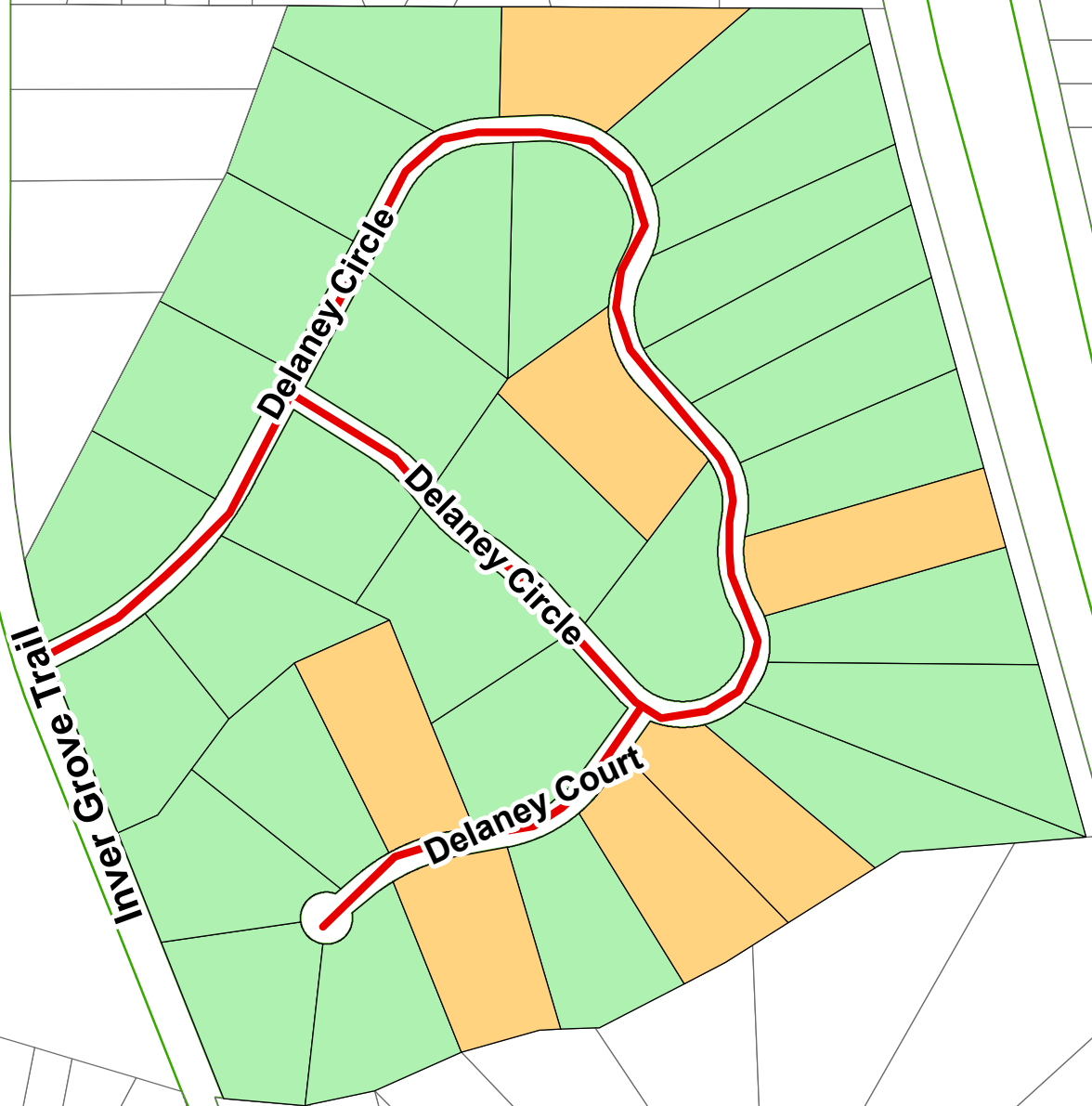
Adopted this 28th day of September 2020 by the City Council of Inver Grove Heights, MN

George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

Delaney Circle/Delaney Court Street Improvements
City Project No. 2020-09E
Petition Map



Legend

-  Affected Resident
-  Petitioners
-  Potential Street Improvements

INDIVIDUAL PROJECT ORDER NUMBER 39

Describing a specific agreement between Kimley-Horn and Associates, Inc. (the Consultant), and City of Inver Grove Heights (the Client) in accordance with the terms of the Master Agreement for Continuing Professional Services dated April 19, 2011, which is incorporated herein by reference.

Identification of Project: Delaney Circle and Delaney Court Improvements
City Project No. 2020-09D

General Category of Services: Feasibility Study, Preliminary Design, Final Design, Bidding Phase Services, and Construction Phase Services.

Specific Scope of Basic Services: Preparation of feasibility study and report for City Project 2020-09D. Final design and bidding phase services for City Project 2020-09D. Construction phase services for City Project 2020-09D. See attached Exhibit A for a more detailed summary of the scope of services.

Additional Services if Required: None identified at this time

Schedule: See attached Exhibit C

Deliverables: Feasibility Study and Report, Preliminary Drainage Report, Final Construction Plans, Project Manual/Specifications, Construction Administration, Construction Staking

Method of Compensation To be billed on an hourly (cost plus) basis as detailed in attached Exhibit B

Special Terms of Compensation: None

Other Special Terms of Individual Project Order: None

ACCEPTED:

CITY OF INVER GROVE HEIGHTS

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

EXHIBIT A
SCOPE OF SERVICES

INDIVIDUAL PROJECT ORDER (IPO) NO. 39

DELANEY CIRCLE AND DELANEY COURT IMPROVEMENTS
CITY PROJECT NO. 2020-09D

We understand the City of Inver Grove Heights is planning to reconstruction the existing bituminous pavement and further investigate aggregate base course replacement in the Delaney Circle and Delaney Court area neighborhood. This IPO includes feasibility study phase, design phase, bidding phase, and construction phase services services for City Project 2020-09D, Delaney Circle and Delaney Court Improvements. The project includes the following street segments:

- Delaney Circle East
- Delaney Court

The scope of services detailed below assumes that the project will include the street segments listed above totaling approximately 5,500 linear feet of roadway.

1. DATA COLLECTION

A. Topographic Survey

Gorman Surveying Inc., as a Kimley-Horn sub-consultant, will obtain topographic survey information of the project area necessary for the Delaney Circle and Delaney Court improvements. No survey is proposed to be obtained outside of the existing right-of way and drainage and utility easements. The following is a summary of the information that will be gathered through the topographic survey work:

- i. Surface Features such as Signs, Light Poles, Trees, and Mailboxes
- ii. Private Driveway Profiles and Garage Floor Elevations
- iii. Profile Streets and Intersections including Edge/Center of Pavement
- iv. Locate Existing Property Irons and Underground Utilities (Gopher One Call)
- v. Survey Utilities (Storm Drain, Sanitary Sewer and Watermain Structures)
- vi. Establish Survey Control and Set Project Benchmarks

B. Geotechnical Investigation

Braun Intertec, as a Kimley-Horn sub-consultant, will sample existing aggregate base material at three test pit locations. The samples will be tested for compliance with aggregate base gradation specifications. The results of the aggregate base testing will be combined with the geotechnical investigation perform previously as part of the City-wide geotechnical investigation to develop final pavement reconstruction recommendations for the project.

We have assumed the City will hire a contractor to pothole the roadways separately. We will coordinate timing with the Contractor to get Braun on-site during potholing to sample the existing aggregate base.

2. FEASIBILITY STUDY PHASE SERVICES

A. Stakeholder Involvement/Meetings

The feasibility study phase of the project will include meetings with area property owners and stakeholders to gather input on the proposed improvements. We will attend up to two (2) individual meetings with project stakeholders or residents to discuss the project. We anticipate those meetings will likely focus on drainage or erosion concerns in the neighborhood. We will assist City staff with correspondence and coordination with residents and stakeholders within the project area. We have assumed this will include the preparation of up to two (2) letters which will be mailed to residents to inform them of the project. We have assumed we will coordinate mailings to up to 36 residents/stakeholders to notify them of the project. We have assumed the City will provide postage and mail the letters.

B. Informational Meetings and Public Hearings

We will prepare for and attend two (2) public open house neighborhood meetings. We have assumed the public open house neighborhood meetings will include preparation of a presentation and up to four (4) boards for public viewing. It is assumed open houses will be virtual and the presentations and boards will be shared virtually. The open house meetings are assumed to be recorded and uploaded to the City project website for those who could not attend.

Kimley-Horn will prepare project presentations for one (1) City Council work session/meeting to update the Council on the findings of the feasibility analysis prior to submittal of the final feasibility report if necessary. Consistent with previous projects, we have assumed City staff will give the presentation to Council. We will also attend one (1) regular City Council meeting where we have assumed the Council will accept the feasibility report and order the final design of the project.

C. Meetings

We will attend up to one (1) project meeting with City staff to discuss the analysis and findings of the feasibility report. We have assumed this meeting will be held virtually, via conference call. We have assumed this meeting to be a draft report review meeting to discuss any comments.

D. Report Preparation

We will prepare a feasibility study and report detailing the recommended roadway and drainage improvements to be included with the project. No sanitary sewer or water improvements are assumed to be included with the project. We will provide the City with three (3) copies of a draft report and up to fifteen (15) copies of the final version of the report. We will also provide the City with an electronic copy of the report at the draft and final stages.

E. Preliminary Cost Estimates

Included in the feasibility study and report will be a preliminary engineer's opinion of probable cost. We have assumed the cost estimate will be reviewed by City staff during update meetings and following the submittal of the draft report. We will revise the estimates based on input received during those comment periods and include a final preliminary engineer's opinion of probable cost to be included in the feasibility study.

F. Financing Plan

We will work with City staff to develop a financing plan for the proposed improvements consistent with MN Statute 429 regarding assessments. We have assumed the City will provide tax identification numbers and street addresses for the properties to be assessed. We have also assumed the City will hire the appraiser to define sustainable assessments by property.

G. Assessment Roll Preparation

We will prepare a draft and final assessment roll based on the cost estimate included in the report and the current City assessment policy. We have assumed City staff will review the draft assessment roll for consistency with City policy and provide comments on the draft assessment roll. The final assessment roll will be included in the final version of the feasibility study.

H. Wetland Review

The scope of stormwater improvements will not be known until completion of the feasibility study. We will perform a drive-by/site review of the project area for potential wetlands and a review of the area ravines. We have assumed that a full wetland delineation will not be needed.

3. PRELIMINARY DRAINAGE STUDY

A. Preliminary Drainage Analysis

We will perform a preliminary drainage analysis of the project area and contributing area watersheds. The purpose of the preliminary drainage analysis is to analyze the following items:

- Review of the capacity and condition of existing driveway and roadway crossing culverts in the neighborhood
- Analyze the existing ditch systems and identify emergency overflows throughout the project area
- Incorporate project specific stormwater modeling into the City's Mississippi River Drainage Basin modeling as a part of the 4th Generation Water Resources Management Plan
- Review regional ponding outlets along the east side of Inver Grove Trail that outlet into the project neighborhood
- Review of the project area for erosion concerns

- Identify possible locations for infiltration or other stormwater management BMPs throughout the project area. Evaluate possible PSIG or Dakota County SWCD grant funding opportunities for potential BMPs.

We have assumed the preliminary drainage analysis will include one (1) site visit to review area specific erosion and stormwater conditions for inclusion into the findings of the analysis. We will prepare a Preliminary Stormwater Report that summarizes the recommended stormwater system improvements and identified funding sources, if available.

We have assumed any funding applications for a stormwater BMP improvement would be covered by a contract amendment.

4. FINAL DESIGN SERVICES

A. Project Management

Kimley-Horn will provide overall project management and utilize internal project management tools to monitor budgets, staff roles, and responsibilities of all team members throughout the project. We will communicate directly with the City's project manager on a regular basis to discuss design decisions and progress throughout the project. We will manage day-to-day activities and milestones within the project. Kimley-Horn will prepare monthly billing invoices and provide a summary of the work tasks completed at the end of each month upon request.

B. Stakeholder Involvement/Meetings

The final design phase of the project will include meetings with area property owners to coordinate the proposed improvements. We have assumed that attendance at up to three (3) individual meetings with project stakeholders or residents will be necessary. We will assist City staff with correspondence and coordination with residents and stakeholders within the project area. We have assumed this will include the preparation of up to two (2) letters which will be mailed to residents to inform them of the project. We have assumed the City will provide postage and mail the letters.

We have assumed no temporary or permanent easement acquisition will be required with the project. If easement acquisition is identified in the feasibility study phase, we have assumed effort to assist the City with acquiring property rights would be included in a contract amendment.

C. Design Team Meetings

We have assumed we will prepare for and conduct up to three (3) meetings with City staff through the plan development process. We have assumed that the following meetings will be necessary:

- Final design kick-off meeting
- 95% plan review and project specifications/special provisions meeting
- Final redlines review meeting

D. Preparation of Construction Plans

We will prepare final construction plans including plan and profile information for the roadway, utility, and storm water improvements. The plans will be prepared consistent with previous roadway plans completed for the City to include the plan sheets listed below:

- Cover Sheet
- Statement of Estimated Quantities
- Typical Sections and Details
- Alignment Plan and Tabulation
- Staging/Traffic Control
- Removals and Existing Conditions Plan
- Construction Plan and Profile
- Signing Plan
- Turf Establishment and Erosion Control Plan
- Cross Sections (50' Intervals and all Driveways)

Modifications to the existing roadway profiles is not anticipated. Due to the likely presence of varying existing roadway crowns, we have assumed cross sections will be included to identify any areas of roadway crown correction and fore-slope grading.

We have assumed no stormwater management BMP plans will be included with the project.

We have assumed that up to sixty (60) plan sheets will be necessary to complete the plan set. As part of the plan development, we will provide the City with 60% plans that include plan, profile, and cross section information for the roadway and storm water improvements for review. Comments received at 60% will be included in a 95% submittal of all plans and specifications to City staff for final review. We will provide the City with one full-size set and PDF of the plans for each submittal. We will provide the City with one full-size set and all electronic files at the final plan completion stage containing cross sections at all driveways within the project limits.

E. Detailed Bid Items and Quantities

Upon completion of final design, we will provide the City with detailed quantities and bid items for all the improvements proposed as part of the project. We have assumed this task will include updated cost estimates at 60%, 90%, and final completion of plans and specs.

F. Final Construction Specifications and Project Manual

We will prepare a project manual containing the bidding and technical specifications for the project consistent with City standard documents. We have assumed the City will provide their most recent bidding documents as a go-by.

G. Final Drainage Analysis

We will complete the final design of the necessary roadway and driveway culvert replacements. We have assumed no stormwater BMP design will be included in the final

design of the project. If a stormwater BMP is identified to be included with the project, we have assumed a contract amendment will be executed for the design of this work.

H. Private Utility Coordination

We will utilize the survey of underground utilities to understand the potential private utility conflicts for the project. We will conduct one (1) meeting with private utility companies prior to the pre-construction meeting to discuss the project. We have assumed that the meetings will be held at the 90% (during bidding phase) plan completion level. Impacts to private utilities are not generally anticipated with the scope as the disturbance area is expected to generally be maintained within the roadway core.

5. BIDDING ASSISTANCE

We will produce a PDF version of the plans and specifications to be uploaded to QuestCDN. We have assumed that we will reproduce up to four (4) sets of plans and specifications for City staff use and maintain up to two (2) sets of plans and specifications in house for review by contractors during bidding. We will attend the bid opening. We will field contractor questions related to the project plans and specifications and prepare any necessary addenda. We have assumed one (1) addendum will be necessary during bidding. We will also prepare a bid tabulation and a bid summary letter following the bid opening.

6. CONSTRUCTION STAKING

A. Construction Staking

A Kimley-Horn subconsultant, Gorman Surveying, will provide construction staking for the project. We have assumed the following will be required for staking the proposed improvements:

- i. All staking will be on a one-time basis
- ii. Edge of roadway stakes every 50' on tangent, 25' in curves, and all grade and alignment changes
- iii. Blue tops for aggregate base grading
- iv. Stake construction limits every 50' and all angle points
- v. Stake sign locations
- vi. Pond staking at two (2) contour lines (if necessary)

B. As-Built Survey

A Kimley-Horn subconsultant, Gorman Surveying, will conduct an as-built survey for the project. We have assumed the following will be required for the survey:

- i. As-built survey information will be collected for the following:
 1. Stormwater BMP and structures (if necessary)
- ii. As-built plans to be prepared by City staff
- iii. Traffic control will not be required
- iv. Survey will be conducted after construction is complete

7. CONSTRUCTION PHASE SERVICES

A. Pre-Construction Meeting/Contract Documents/Open House #3

We will conduct a pre-construction meeting with the contractor, sub-contractors, City staff, and private utilities and produce meeting minutes. We will also prepare conformed contract documents and coordinate execution of the documents with the contractor and City staff.

We will prepare for and attend a third open house meeting with residents to discuss construction expectations and further detail proposed assessments. We have assumed this meeting is following opening of bids.

B. Project Submittals and Coordination

We will review project submittals provided by the contractor. We will also coordinate any necessary submittal revisions with the contractor and the City.

C. Construction Coordination

We will provide construction coordination assistance to City staff. This task will include attendance at weekly construction meetings (up to 12), coordination with City staff, and coordination with the contractor as directed by City staff. We have assumed approximately 10 hours of effort per week for 12 weeks will be necessary to provide these services through final completion of the project.

D. Preparation of Change Orders, Budget Summaries, and Construction Closeout Documents

Upon request by City staff, Kimley-Horn will prepare necessary change orders for the project. We have assumed the preparation of up to two (2) change orders may be necessary. Kimley-Horn will also prepare updated budget summary tabulations for the project. This work will consist of tabulating the partial payments, change orders, and City project activity reports to track the project budget and contingencies. We have assumed preparation of up to two (2) iterations of the budget summaries will be necessary.

We will assist the City with construction closeout documentation and final negotiations with the Contractor following substantial completion of the project. We have assumed up to ten (10) hours for the construction closeout process.

EXHIBIT B
ESTIMATED COSTS

INDIVIDUAL PROJECT ORDER (IPO) NO. 39

DELANEY CIRCLE AND DELANEY COURT IMPROVEMENTS
CITY PROJECT NO. 2020-09D

Kimley-Horn proposes to perform all services included within this IPO on an hourly (cost plus) basis using our current standard hourly rate schedule. The following is a summary of our estimated costs for the services included as a part of this IPO:

Task	<i>CP 2020-09D Roadway Cost</i>	<i>CP 2020-09D Storm Sewer Cost</i>	Total CP 2020-09D Estimated Fee
1. Data Collection	<i>\$18,800</i>	<i>\$1,200</i>	\$ 20,000
2. Feasibility Study Phase Services	<i>\$18,700</i>	<i>\$1,200</i>	\$ 19,900
3. Preliminary Drainage Study	<i>\$0</i>	<i>\$9,800</i>	\$ 9,800
4. Final Design Services	<i>\$71,600</i>	<i>\$4,500</i>	\$ 76,100
5. Bidding Assistance	<i>\$4,600</i>	<i>\$0</i>	\$ 4,600
6. Construction Staking	<i>\$15,300</i>	<i>\$1,000</i>	\$ 16,300
7. Construction Phase Services	<i>\$24,700</i>	<i>\$1,600</i>	\$ 26,300
Subtotal	<i>\$153,700</i>	<i>\$19,300</i>	\$ 173,000
Reimbursable Expenses	<i>\$7,950</i>	<i>\$500</i>	\$ 8,450
Total	<i>\$161,650</i>	<i>\$19,800</i>	\$ 181,450

Our total estimated not-to-exceed cost for the scope of services included as a part of this IPO is, therefore, **\$181,450** including all labor and reimbursable expenses.

EXHIBIT C
SCHEDULE

INDIVIDUAL PROJECT ORDER (IPO) NO. 39

DELANEY CIRCLE AND DELANEY COURT IMPROVEMENTS
CITY PROJECT NO. 2020-09D

The following is a summary of the proposed schedule for the project:

Contract Authorization	September 28, 2020
Order Feasibility Report*	
Prepare Draft Feasibility Report	September/October 2020
Submit Draft Feasibility Report	October 16, 2020
Neighborhood Meeting #1	October 22, 2020
Submit Final Feasibility Report	November 3, 2020
Council Receives Feasibility Report	November 9, 2020
Call Public Hearing*	
Neighborhood Meeting #2	December 2, 2020
Public Hearing	December 14, 2020
Council Order Project*	
Authorize Final Plans and Specs*	
Prepare Final Plans and Specs	December 2020/January 2021
Submit 95% Plans and Specs	January 22, 2021
Final Plan Review Meeting	February 9, 2021
Council Approve Plans and Specs	February 22, 2021
Authorize Advertisement for Bid*	
Plans Uploaded for Bidding	February 26, 2021
Bid Opening	March 26, 2021
City Council Accepts Bids	April 12, 2021
Call Assessment Hearing*	
Neighborhood Meeting #3	April 28, 2021
Assessment Hearing	March 10, 2021
Council Awards Project*	
Construction Start	June 2021

*Denotes Council Action



Thomas Kaldunski,

I have reviewed the area as well as the scope of the project. Based on the information provided I can provide a Benefit Analysis Report for this project at a cost of \$6,500. Please contact me if you have any questions.

Regards,

Laurence M Danich

Metzen Realty and Associates CO.

Tel: 651-455-2214

Cell: 612-961-0422

Fax: 651-455-2729

Email: lmdanich@yahoo.com

METZEN REALTY AND ASSOCIATES CO.

412 SOUTHVIEW BLVD. / SOUTH SAINT PAUL / MINNESOTA 55075 / PHONE: 651-455-2214 • FAX: 651-455-2729

www.MetzenRealty.com

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Resolution Accepting Proposal for Stormwater Review Services from Barr Engineering for the CDA Development (6300 Concord Blvd.)

Meeting Date: September 28, 2020
 Item Type: Consent
 Contact: Thomas J. Kaldunski, 651.450.2572
 Prepared by: Thomas J. Kaldunski, City Engineer
 Reviewed by: Scott D. Thureen, Public Works Director

Fiscal/FTE Impact:

☐	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☒	Other: Developer-provided engineering escrow account

PURPOSE/ACTION REQUESTED

Consider resolution accepting proposal for stormwater review services from Barr Engineering for the CDA Development (6300 Concord Blvd.)

SUMMARY

The proposed CDA Development (6300 Concord Blvd.) would consist of redevelopment of several parcels totaling approximately 3.6 acres bounded by Concord Boulevard, Delilah Avenue, Diffley Avenue, and East 63rd Street. The conceptual design shows approximately 34 housing units, 36 garages, and 51 parking spaces.

Currently the project area has no stormwater treatment facilities. Stormwater runoff drains south and east to the Concord Blvd. storm sewer system which conveys it to the Mississippi River via the 64th Street outfall. The City is in the planning stage of a street and utility reconstruction project for much of Old Village drainage basin, including this project area.

Staff requested a proposal (attached) from Barr Engineering to assist in site review, stormwater modeling, stormwater management plan review, and meetings with stakeholders. Barr Engineering submitted their proposed dated September 21, 2020 in the amount of \$5,500. The funding sources for these services will be from the developer-provided escrow.

Staff recommends that the Council adopt the resolution accepting the proposal from Barr Engineering in the amount of \$5,500 for stormwater review services for the CDA Development (6300 Concord Blvd.)

TJK/kf

Attachment: Resolution
 Proposal

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY**

**RESOLUTION ACCEPTING A PROPOSAL FOR STORMWATER REVIEW SERVICES FROM
BARR ENGINEERING FOR THE CDA DEVELOPMENT (6300 CONCORD BLVD.)**

RESOLUTION NO. 2020-201

WHEREAS, the CDA Development (6300 Concord Blvd.) would consist of redevelopment of several parcels totaling approximately 3.6 acres bounded by Concord Boulevard, Delilah Avenue, Diffley Avenue, and East 63rd Street. The conceptual design shows approximately 34 housing units, 36 garages, and 51 parking spaces; and

WHEREAS, to complete stormwater review services for the CDA Development (6300 Concord Blvd.), assistance of a consulting engineering firm is required; and

WHEREAS, City staff requested, and received, a proposal from Barr Engineering for stormwater review services; and

WHEREAS, based on the experience of the firm, the scope and associated fee for the proposed services, their familiarity with the area, it was decided that Barr Engineering be selected from the City's engineering consultant pool as the consulting firm for stormwater review services for the CDA Development (6300 Concord Blvd.)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE INVER GROVE HEIGHTS, MINNESOTA THAT:

1. The proposal from Barr Engineering is accepted and staff is authorized to enter into a contract in the amount of \$5,500 for stormwater review services as outlined in their September 21, 2020 proposal.
2. Funding will be provided through a developer-provided escrow account.

Adopted by the City Council of Inver Grove Heights, Minnesota this 28th day of September 2020


George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

**Work Order For:
Stormwater Review for 6300 Concord CDA Development**

Applicable to Addendum No. 1 and Master Service Agreement Dated June 27, 2012

between

**Barr Engineering Co. (Barr)
4300 MarketPointe Drive, Suite 200
Minneapolis, MN 55435**

**City of Inver Grove Heights (City)
8150 Barbara Avenue
Inver Grove Heights, MN 55077**

Designated Representative:

Karen Chandler, PE

Designated Representative:

Tom Kaldunski, PE

I. Scope Language

We understand that the proposed Dakota County Community Development Agency (CDA) project (Project) would consist of redevelopment of several parcels totaling approximately 3.6 acres bounded by Concord Boulevard, Delilah Avenue, Diffley Avenue, and East 63rd Street. The Project lies within the Old Village drainage basin of Inver Grove Heights. The conceptual Project design prepared by LHB and dated February 12, 2020 shows a total of 34 housing units, 36 garages, and 51 parking spaces.

Currently the Project area has no stormwater treatment facilities. Stormwater runoff drains south and east to the Concord Boulevard storm sewer system which conveys it to the Mississippi River via the 64th Street outfall. The City is in the planning stage of a street and utility reconstruction project for much of Old Village drainage basin, including the Project area.

The scope of work includes site review, stormwater modeling, stormwater management plan review, and meetings with stakeholders and is divided into the following tasks:

1. Site review: Barr will review data provided by the City or the applicant regarding existing Project site conditions such as proximity to bedrock or known contamination issues. Barr will provide input regarding potential stormwater treatment limitations due to site conditions.
2. Plan review: Barr will review engineering plans and stormwater management reports provided by the applicant for compliance with City stormwater requirements. Barr will review up to three (3) versions of the engineering plans and stormwater management report.
3. Watershed modeling: Barr will update the PCSWMM stormwater model for the Old Village Drainage Basin to include the proposed Project drainage divides, stormwater treatment facilities, and storm sewer utilities.
4. Meetings: Barr will attend up to three (3) "virtual" meetings with City staff and the applicant via Microsoft Teams or Zoom.

5. Preliminary review memo: Barr will provide comments summarizing the initial stormwater plan review in a preliminary memo to City staff and the applicant.
6. Final review memo: Barr will provide comments summarizing Barr's review of the final stormwater plan revisions in a final memo to City staff and the applicant.
7. GIS updates: Barr will update the special studies GIS map layers to include the approved Project watershed boundaries and watershed boundaries that were revised during the stormwater modeling task.
8. Communications: Barr will communicate with the applicant and city staff via phone and email as needed throughout the review.

Deliverables

Barr will provide the City with the following deliverables:

1. Preliminary review memo
2. Final review memo
3. Updated PCSWMM model files (if requested)

II. Maximum Compensation and Assumptions ("Service Assumptions") Upon Which Maximum is Based

For the services referenced above, you will pay us for time and expenses not to exceed the total amount shown in Section III below without prior approval, in accordance with the referenced Master Service Agreement. The scope of services assumes the following:

1. The applicant will provide existing and proposed conditions hydrologic and hydraulic models, grading and utility plans, and a proposed conditions water quality model (if applicable).
2. Survey or other field activities are not included in this scope of work.
3. Review and modeling of two (2) additional plan revisions; review and modeling of additional revisions is not included in this scope of work.

III. Schedule and Budget

Project Milestone	Schedule	Budget
Preliminary Review Memo	Within ten (10) business days of receiving a preliminary plan set and stormwater management plan.	\$5,500
Final Review Memo	Within five (5) business days of receiving final revisions of the stormwater management report and Project plans	

ACCEPTED AND AGREED TO:

BARR ENGINEERING CO.

City of Inver Grove Heights

By: Karen L. Chandler

By: _____

Title: Vice President

Title: _____

Date: September 21, 2020

Date: _____

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Resolution Accepting Proposals and Authorizing Consultant Professional Engineering Services for the Canvas at Inver Grove Heights Development

Meeting Date: September 28, 2020		Fiscal/FTE Impact:
Item Type: Consent	☐	None
Contact: Thomas J. Kaldunski, 651.450.2572	☒	Amount included in current budget
Prepared by: Steve W. Dodge, Assistant City Engineer	☐	Budget amendment requested
Reviewed by: Scott D. Thureen, Public Works Director	☐	FTE included in current complement
	☐	New FTE requested – N/A
	☒	Other: NW Area Funds and Developer-provided engineering escrow account

PURPOSE/ACTION REQUESTED

Consider resolution accepting proposals and authorizing consultant professional engineering services for the Canvas at Inver Grove Heights development.

SUMMARY

Canvas at Inver Grove Heights is a proposed planned unit development, located at the northeast quadrant of Robert Trail and 70th Street, which is scheduled to go before the Planning Commission for preliminary review on October 6, 2020. This site was previously reviewed under the name of Hannah Meadows. There are three engineering consultants that will be providing engineering review and design services: Wenck & Associates, Bolton & Menk, and Stantec. These consultant companies are part of the engineering consultant pool, have provided these professional engineering services before, and know the NW Area and City standards. These services are needed due to the complexity of the public improvements and to provide plan review feedback and preliminary design services in a timely manner in accordance with the developer's schedule. The proposals will provide consultant engineering services for the Canvas at IGH development through preliminary and final plat and plan reviews. The funding source for these services will be from the NW Area funds and developer-provided engineering escrow.

Wenck & Associates, Inc. has provided two attached proposals: (1) a stormwater management plan review in the amount of \$11,200 and (2) design of temporary storm lift stations and forcemain in the amount of \$30,800. The stormwater management plan review will provide staff and the developer timely feedback on meeting the NW Area stormwater development standards, following the Robert Trail Watershed Feasibility Study (CP 2015-19) and protecting regional basins. The preliminary and final design of temporary storm lift stations and forcemain is needed to identify and design the necessary trunk stormwater conveyance systems from regional basins and provide plans to install and route the system through the development.

Bolton & Menk has provided the attached proposal to complete trunk sanitary sewer review in the amount of \$7,500. Bolton & Menk is the NW Area consultant that addresses the City's Comprehensive Sanitary Sewer Plan (CSSP). Construction of trunk infrastructure through the development will extend sewer service to several upstream and adjacent land development parcels and must be done in accordance with the CSSP.

Stantec provides comprehensive trunk watermain modeling for proper sizing, flow and connectivity in the NW Area. Staff is requesting authorization for Stantec to provide comprehensive trunk watermain modeling and review for the Canvas at IGH development in the amount of \$2500.

Staff recommends that the Council adopt the resolution accepting the engineering services proposals from Wenck & Associates in the amount of \$42,000 and Bolton & Menk, Inc. in the amount of \$7,500 and authorizing Stantec water main modeling for \$2500 for Canvas at Inver Grove Heights.

SWD/kf

Attachment: Resolution
Consultant Proposals

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY**

**RESOLUTION ACCEPTING A PROPOSALS AND AUTHORIZING PROFESSIONAL
ENGINEERING SERVICES FROM WENCK & ASSOCIATES, BOLTON & MENK AND STANTEC
FOR CANVAS AT INVER GROVE HEIGHTS**

RESOLUTION NO. 2020-202

WHEREAS, the Canvas at Inver Grove Heights is a proposed planned unit development located at the northeast quadrant of Robert Trail and 70th Street in Inver Grove Heights; and

WHEREAS, to complete the preliminary and final plat and plan review, assistance of a consulting engineering firms is required; and

WHEREAS, City staff requested and received a proposal from Wenck & Associates and Bolton & Menk for professional engineering services for Canvas at Inver Grove Heights; and

WHEREAS, City staff is requesting professional engineering services from Stantec for comprehensive trunk watermain modeling in the amount of \$2500; and

WHEREAS, based on the experience of the firms, the scope and associated fee for the proposed services, Wenck, Bolton & Menk, and Stantec have been selected from the City's engineering consultant pool for professional engineering services for the Canvas at Inver Grove Heights development.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE INVER GROVE HEIGHTS, MINNESOTA THAT:

1. The proposals from Wenck & Associates, Inc.: (1) a stormwater management plan review in the amount of \$11,200 and (2) design of temporary storm lift stations and forcemain in the amount of \$30,800 are accepted, and staff is authorized to enter into contracts for professional engineering services for a total amount of \$42,000 for Canvas at IGH development.
2. The proposal from Bolton & Menk, Inc. is accepted, and staff is authorized to enter into a contract in the amount of \$7,500 for professional engineering services for Canvas at IGH development.
3. Staff is authorized to contract with Stantec for comprehensive NW Area water modeling in the amount of \$2500 for Canvas at IGH development.
4. Funding is provided through an escrow account as provided by the developer for consultant plan review services. The funding source for consultant design services will be from a combination of NW Area funds and developer-provided engineering escrow.

Adopted by the City Council of Inver Grove Heights, Minnesota this 28th day of September 2020

George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk



September 22, 2020

Mr. Steve Dodge

Assistant City Engineer
City of Inver Grove Heights
8150 Barbara Ave
Inver Grove Heights, MN 55077

SUBJECT: Proposal for Canvas Development Pumping Stations and Forcemain

Dear Mr. Dodge:

We appreciate the opportunity to present this proposal to the City of Inver Grove Heights. Our proposal includes a scope of work and budget to provide design drawings and specifications for the two stormwater pumping stations and forcemain at the Canvas Development. These areas were reviewed by Wenck in 2017 as part of the Robert Watershed Corridor Feasibility Report. Wenck will expound upon the concepts put together in that report to create final design drawing and specifications for the basins EP-027a and EP-034. We appreciate our continued relationship with the City of Inver Grove Heights and are pleased to continue assisting with growth within the city.

Fee Estimate, Schedule & Deliverables

- **Fee estimate** The cost for Wenck to complete the scope of work detailed below is \$30,800. Subtotals by task are provided below.
- **Schedule** We understand that the drawings and specifications will be used in conjunction with the overall master plans of the Canvas Development which will begin construction in 2021.
- **Deliverables**
 - a. Construction plans and technical specifications for pumping stations at EP-027a and EP-034.
 - b. Provide CAD-generated plan sheets of pumping station and associated utilities for Alliant Engineering to incorporate into the background of remaining civil package.

Scope of Work

- **Task 1: Pump Station Layout, Coordination & 60% Plans**
\$20,500
 - a. Review AutoCAD drawings provided by Alliant and convert into usable drawings with current CAD standards.
 - b. Review site changes for the pumping stations as identified in the feasibility report with the proposed conditions.
 - c. Update pumping station and hydraulic design calculations.
 - d. Review potential pumping pad locations with the City of Inver Grove Heights and the developer to incorporate into the site plan.
 - e. Prepare 60% site and utility plans for the proposed pumping station and forcemain. We anticipate approximately 12 sheets including plan, profile, and details.
 - f. Prepare 60% technical specifications.
 - g. Coordinate and lead three (3) meetings with City staff and developer's representatives.
- **Task 2: Construction Drawings and Technical Specifications**
\$8,500
 - a. Perform final design based on comments received during Task 1 and final design drawings provided by the developer.
 - b. Provide final technical specifications.
 - c. Coordinate and lead one (1) meeting with City staff and developer's representative.
- **Task 3: Cost Estimate**
\$1,800
 - a. Perform takeoffs on the proposed design during both the preliminary design and final design stages of the project and provide an engineering cost estimate for construction of the design.

Design Assumptions

- Wenck assumes that all relevant site drawing information will be provided by Alliant Engineering and developer in AutoCAD format to incorporate into drawings. This includes existing conditions, grading plan, site plan, utility information, stormwater plan, wetland delineations and any other relevant information to the site design.
- Wenck will prepare site plan, utility plan and profiles for the forcemain and associated storm sewer and provide relevant details for the described work.
- Wenck assumes that retaining walls required for the site layout will be less than 4' in height.
- Wenck assumes that site plan and grading plan will be finalized prior to Wenck completing the design. The 60 percent design documents generated in Task 1 will be reviewed with city staff prior to finalizing the design and technical specifications (Task 2).
- Wenck will work with Dakota County on a permit for the work within the County Right-of-Way. Otherwise, Wenck assumes that all permits will be obtained by others.
- Wenck assumes that we will complete the technical specifications for work included in our plans. The contract and bidding documents will be prepared by others.

Mr. Steve Dodge
City of Inver Grove Heights
Sept 22, 2020



- Bidding assistance and construction administrative services will be provided under a separate scope of work.
- Geotechnical report will be provided by Alliant Engineering. If any additional borings are necessary to complete the site design, Wenck assumes that those borings will be coordinated and performed by the developer. Wenck will provide locations for additional geotechnical investigation locations, if necessary.

Project Team

The following Wenck staff have been selected to execute the Scope of Work.

- Project Manager Todd Shoemaker
- Water resource engineers Eric Osterdyk, Louis Sigtermans
- Civil engineers Steve Hegland, Cody Mathisen

Proposal Terms & Acceptance

- Wenck will complete this scope of work according to the attached terms and conditions and fee schedule.
- Wenck will perform the scope of work on a time and materials basis and will not exceed the authorized budget without prior authorization.
- To accept the proposal as stated above, please complete the following:

City of Inver Grove Heights

Type or Print Name

Signature

Title

On behalf of the 300+ employee-owners of Wenck, thank you for this opportunity to continue working with the City of Inver Grove Heights. Should you have any questions or need clarification of anything presented in the attached proposal, please do not hesitate to contact me.

Sincerely,

Wenck Associates, Inc.

A handwritten signature in blue ink that reads 'Todd Shoemaker'.

Todd Shoemaker, PE (MN, IA), CFM
Principal Water Resources Engineer

GENERAL TERMS AND CONDITIONS

Article 1 Our Agreement

1.1 Our agreement with you consists of these General Terms and Conditions and the accompanying written proposal or authorization (Agreement). This Agreement is our entire Agreement and supersedes all prior agreements. This Agreement may be modified only in a writing signed by both us and you, making specific reference to the provision modified. Directing us to start work prior to execution of this Agreement constitutes your acceptance of this Agreement.

1.2 The words “you,” “we,” “us,” and “our” include officers, employees, and subcontractors.

1.3 Any conflicting or additional terms in a purchase order, work order, or other form used to authorize our services are not part of our Agreement unless we specifically accept them in writing. If we cannot agree on mutually acceptable terms, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

Article 2 Our Responsibilities

2.1 We will provide the services specifically described in our Agreement. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our services, we will use that degree of care and skill ordinarily exercised by reputable members of our profession practicing under similar circumstances in the same locality at the same time. .

2.3 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

2.4 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing. You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us.

2.5 Our estimates of construction or remediation costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

2.6 Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and that site conditions may change over time.

Article 3 Your Responsibilities

3.1 You agree to provide us with all site information and data to which you have access which may affect our services. We will not be responsible for locating buried objects at the site unless we accept that duty in writing. You agree to hold us harmless from claims, damages, losses, and related expenses involving buried objects that were not properly marked or identified or of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others on your behalf furnished to us.

3.2 You will provide access to the site. In the course of our work some damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site but we will not be responsible for reasonable or normal damage. We have not included the cost of restoration of such damage in the estimated charges.

3.3 You agree to provide us with information in your possession or control relating to contamination at the work site.

3.4 Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to hold us harmless and indemnify us from any such claim or loss.

3.5 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

3.6 You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. You agree to hold us harmless and indemnify us from claims related to disclosures made by us that are required by law and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.

Article 4 Reports and Records

4.1 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

4.2 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you.

4.3 If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

GENERAL TERMS AND CONDITIONS

4.4 Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

4.5 Electronic data, reports, photographs, samples and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Article 5 Compensation

5.1 You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

5.4 Your obligation to pay for our services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which we are not involved, your successful completion of a project, receipt of payment from another, or any other event. No retainage will be withheld.

5.5 You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

5.6 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation.

5.7 In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees otherwise due us.

Article 6 Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to

those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

6.3 For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the proceeds from available insurance.

6.4 You agree to indemnify and defend us from all liability to others in excess of the risk allocation stated above and to insure this obligation.

6.5 The prevailing party in any action relating to this agreement shall be entitled to recover its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

6.6 The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury.

Article 7 General Indemnification

7.1 We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

7.3 You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

Article 8 Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

8.5 If a provision of this Agreement is invalid or illegal, all other provisions shall remain in full force and effect.



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Exceptional outcomes.

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wenckmp@wenck.com
www.wenck.com

Wenck Associates, Inc.
Fee Schedule
January 2020

<u>Classification</u>	<u>Hourly Rate</u>
Interns	\$64.00
Administrative Support / Technician	\$87.00
Professional I-A	\$99.00
Professional I-B	\$110.00
Professional I-C	\$123.00
Professional II-A	\$135.00
Professional II-B	\$148.00
Professional II-C	\$160.00
Professional III-A	\$170.00
Professional III-B	\$180.00
Professional III-C	\$190.00
Professional IV-A	\$200.00
Professional IV-B	\$200.00
Professional IV-C	\$200.00
Professional V-A	\$200.00
Professional V-B	\$200.00

- *Classifications listed above refer to the firm's internal system for billing purposes. The term "Professional" refers to engineers, scientists and business professionals.*
- *Subcontracted services will be billed at cost plus 15 percent.*
- *Company vehicle mileage will be billed at the rate of \$0.75/mile.*
- *Personal vehicle mileage will be billed at the IRS approved rate.*
- *Invoices are due upon presentation. Invoice balances not paid within thirty (30) days of invoice date are subject to 1-1/2% (18% annual) interest or finance charge.*
- *Specialized software used on a given project will be billed at a rate of \$15.00/hour.*
- *Rates to be adjusted annually.*



July 2, 2020

Mr. Tom Kaldunski

City Engineer
City of Inver Grove Heights
8150 Barbara Ave
Inver Grove Heights, MN 55077

SUBJECT: Proposal for Stormwater Management Review of Robert Trail Property
Preliminary PUD Submittal

Dear Mr. Kaldunski:

We appreciate the opportunity to present this proposal to the City of Inver Grove Heights. Our proposal includes a scope of work and budget to review the Robert Trail property preliminary PUD stormwater management plan. Wenck previously studied this area when developing the Robert Corridor Watershed PCSWMM computer model, so we are pleased to continue assisting with growth of the City.

Fee Estimate, Schedule & Deliverables

- **Fee estimate** The cost for Wenck to complete the scope of work detailed below is \$11,200. Subtotals by task are provided below.
- **Schedule** We understand that the City expects the preliminary PUD to be submitted in early July. If submittal occurs by July 17, we will complete our review by August 7, 2020.
- **Deliverables**
 - a. Memo summarizing our review findings and comments.
 - b. Updated PC-SWMM computer model based on the proposed stormwater management plan.

Scope of Work

- **Task 1: Review Stormwater Management Plan \$4,325**
 - a. Review and comment on grading, drainage, erosion control, utility, landscaping, and detail plan sheets as they relate to stormwater management.
 - b. Conduct review according to recommendations and requirements reported in the City's *Northwest Area Stormwater Manual* and the *Minnesota Stormwater Manual*.

- **Task 2: Review
Forcemain &
Portable Pump
Design
\$3,425**
 - a. Review and comment on grading, drainage, erosion control, utility, landscaping, and detail plan sheets as they relate to forcemain design, portable pump station, and suction line.
 - b. Review and comment on calculations submitted for the forcemain design, portable pump station, and suction line.
- **Task 3: Update
PCSWMM Model
\$3,450**
 - a. Update Northwest Area PCSWMM model per the proposed stormwater management plan.
 - b. Execute, review and comment on negative impacts predicted by the model as a result of the proposed stormwater management plan.

Project Team

The following Wenck staff have been selected to execute the Scope of Work.

- Project Manager Todd Shoemaker
- Water resource engineers Eric Osterdyk, Louis Sigtermans
- Civil engineer Steve Hegland

Proposal Terms & Acceptance

- Wenck will complete this scope of work according to the attached terms and conditions and fee schedule.
- Wenck will perform the scope of work on a time and materials basis and will not exceed the authorized budget without prior authorization.
- To accept the proposal as stated above, please complete the following:

City of Inver Grove Heights

Type or Print Name

Signature

Title

Mr. Tom Kaldunski, PE
City of Inver Grove Heights
July 2, 2020



On behalf of the 300+ employee-owners of Wenck, thank you for this opportunity to continuing to work with the City of Inver Grove Heights. Should you have any questions, or need clarification of anything presented in the attached proposal, please do not hesitate to contact me.

Sincerely,

Wenck Associates, Inc.

A handwritten signature in blue ink, reading 'Todd Shoemaker', with a stylized flourish at the end.

Todd Shoemaker, PE (MN, IA), CFM
Principal Water Resources Engineer

GENERAL TERMS AND CONDITIONS

Article 1 Our Agreement

1.1 Our agreement with you consists of these General Terms and Conditions and the accompanying written proposal or authorization (Agreement). This Agreement is our entire Agreement and supersedes all prior agreements. This Agreement may be modified only in a writing signed by both us and you, making specific reference to the provision modified. Directing us to start work prior to execution of this Agreement constitutes your acceptance of this Agreement.

1.2 The words “you,” “we,” “us,” and “our” include officers, employees, and subcontractors.

1.3 Any conflicting or additional terms in a purchase order, work order, or other form used to authorize our services are not part of our Agreement unless we specifically accept them in writing. If we cannot agree on mutually acceptable terms, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

Article 2 Our Responsibilities

2.1 We will provide the services specifically described in our Agreement. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our services, we will use that degree of care and skill ordinarily exercised by reputable members of our profession practicing under similar circumstances in the same locality at the same time. .

2.3 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

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2.5 Our estimates of construction or remediation costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

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3.4 Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to hold us harmless and indemnify us from any such claim or loss.

3.5 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

3.6 You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. You agree to hold us harmless and indemnify us from claims related to disclosures made by us that are required by law and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.

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4.2 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you.

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6.4 You agree to indemnify and defend us from all liability to others in excess of the risk allocation stated above and to insure this obligation.

6.5 The prevailing party in any action relating to this agreement shall be entitled to recover its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

6.6 The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury.

Article 7 General Indemnification

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Wenck Associates, Inc.
Fee Schedule
January 2020

<u>Classification</u>	<u>Hourly Rate</u>
Interns	\$64.00
Administrative Support / Technician	\$87.00
Professional I-A	\$99.00
Professional I-B	\$110.00
Professional I-C	\$123.00
Professional II-A	\$135.00
Professional II-B	\$148.00
Professional II-C	\$160.00
Professional III-A	\$170.00
Professional III-B	\$180.00
Professional III-C	\$190.00
Professional IV-A	\$200.00
Professional IV-B	\$200.00
Professional IV-C	\$200.00
Professional V-A	\$200.00
Professional V-B	\$200.00

- *Classifications listed above refer to the firm's internal system for billing purposes. The term "Professional" refers to engineers, scientists and business professionals.*
- *Subcontracted services will be billed at cost plus 15 percent.*
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- *Personal vehicle mileage will be billed at the IRS approved rate.*
- *Invoices are due upon presentation. Invoice balances not paid within thirty (30) days of invoice date are subject to 1-1/2% (18% annual) interest or finance charge.*
- *Specialized software used on a given project will be billed at a rate of \$15.00/hour.*
- *Rates to be adjusted annually.*



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Bolton-Menk.com

September 22, 2020

Mr. Tom Kaldunski, P.E.
City Engineer
City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077

Re: Proposal for Professional Engineering Services
Canvas at Inver Grove Heights
City of Inver Grove Heights, Minnesota

Dear Mr. Kaldunski:

Thank you for the opportunity to submit this proposal to complete a trunk sanitary sewer review for the proposed planned unit development (PUD), referred to as Canvas at Inver Grove Heights, located at the northeast quadrant of Robert Trail (Hwy 3) and 70th Street (CR 26) in the City of Inver Grove Heights. This site has previously been reviewed under the name Hannah Meadows and has also been the subject of City-led trunk sanitary sewer analyses. Construction of trunk infrastructure through the development will extend sewer service to several upstream parcels and must be done in accordance with the City's Comprehensive Sanitary Sewer Plan (CSSP). A technical analysis of both the proposed infrastructure improvements and the proposed site improvements relative to the region's long-term development plan is vital to the continuing growth of the region.

Preliminary Plat and Preliminary Plan Review

Eric Seaburg will lead this review with input from other technical experts on staff. He has worked with City staff on several trunk sanitary sewer studies through this area and is very accustomed to the City's CSSP and technical standards. We anticipate the following scope for his review:

- Review the proposed utility plan
- Review the following comprehensive plans and relevant infrastructure studies
 - Comprehensive Sanitary Sewer Plan Update (2017)
 - North Robert District Sanitary Sewer Study, Alternates 1 and 2 (2017)
 - County Road 70 / Robert Trail Roundabout Feasibility Report (2017)
- Develop list of technical concerns and/or requirements relative to the City's infrastructure standards, including but not limited to the following:
 - Review proposed construction methods
 - Review proposed pipe grades, sizes, and materials
 - Review internal lateral sewer access, drop manholes, and services
 - Review future connections in adjacent developable parcels
 - Review proposed easements and accessibility of system
 - Review long-term maintenance and operation of system
- Prepare a memorandum of findings

Name: Tom Kaldunski, P.E.

Date: September 22, 2020

Page: 2

Final Plat and Final Plan Review

Once a final plat and final plan have been submitted, we will review and provide comments to the City within the time allotted. This may include multiple iterations until a final plan is approved. We anticipate the following scope for this review:

- Review the proposed site plan
- Determine if comments made in the preliminary plat & plan review were addressed
- Develop list of technical concerns and/or requirements relative to the City's infrastructure standards
- Prepare a memorandum of findings

Construction Services

We understand that construction inspection or as-built services may be requested at a future date. Accordingly, construct services have not been included in this scope of work.

Proposed Fee

Bolton & Menk proposes to complete the scope of work as described above for a not-to-exceed hourly fee of \$7,500. Our ability to perform the reviews within the proposed not-to-exceed amount will depend on the developer's ability to efficiently respond to plan comments and directives. Our fee may require adjustment in the event there are substantial plan changes requiring additional plan review iterations. We look forward to working with you and the City on this project. If you have any questions regarding our proposal, please do not hesitate to call us.

Sincerely,

Bolton & Menk, Inc.



Eric Seaburg, P.E.
Project Manager



Brian Hilgardner, P.E.
Principal

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Resolution Establishing Parking Restrictions on Carbon Court and Accepting Barr Engineering Construction Services Proposal for Pine Bend Estates Development

Meeting Date:	September 28, 2020		Fiscal/FTE Impact:
Item Type:	Consent	☐	None
Contact:	Thomas Kaldunski, City Engineer 651.315.6336	☐	Amount included in current budget
Prepared by:	Steve W. Dodge, Assistant City Engineer	☐	Budget amendment requested
Reviewed by:	Scott Thureen, Public Works Director	☐	FTE included in current complement
		☐	New FTE requested – N/A
		☒	Other: Developer Escrow Funds

PURPOSE/ACTION REQUESTED

Consider resolution establishing parking restrictions on Carbon Court and accepting Barr Engineering construction services proposal for Pine Bend Estates Development

SUMMARY

The Pine Bend Estates final plat for a 14-lot subdivision was approved by City Council on September 14, 2020. Carbon Court is a 28-foot wide road with a standard cul-de-sac. Parking is restricted in cul-de-sacs and on one side of a 28-foot wide road for public safety access. Typically, signs are placed on the hydrant side of the street to maximize parking spaces.

Public Works and Public Safety have reviewed the subdivision plans and agree with the proposed sign placement. Once streets are constructed no parking signs will be placed in the cul-de-sac and on the westerly side of Carbon Court (see Exhibit A).

The developer has requested that Barr Engineering perform construction inspections on ponding and water quality features for the Pine Bend Estates development. Barr Engineering has submitted a proposal in the amount of \$8,400 for storm water pond, basin and raingarden inspections (attached).

I recommend passage of the attached resolution which would authorize the posting of no parking signs on Carbon Court and accepting Barr Engineering construction services proposal in the amount of \$8,400 for the Pine Bend Estates Development.

SWD/kf

Attachments: Resolution
Exhibit A – Parking Restrictions
Barr Proposal

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**RESOLUTION RELATING TO PARKING RESTRICTIONS ON CARBON COURT AND
ACCEPTING BARR ENGINEERING CONSTRUCTION SERVICES PROPOSAL FOR THE
PINE BEND ESTATES DEVELOPMENT**

RESOLUTION NO. 2020-203

WHEREAS, this resolution was passed this 28th day of September 2020 by the City of Inver Grove Heights in Dakota County, Minnesota. The municipal corporation shall hereinafter be called the "City", WITNESSETH:

WHEREAS, parking is to be restricted in a new subdivision in the cul-de-sacs and to one side of a 28-foot wide street; and

WHEREAS, the proposed cul-de-sac and 28-foot-width Carbon Court in the Pine Bend Estates development must meet City Policy on parking restrictions; and

WHEREAS, Public Works Department and the Public Safety Departments staff has reviewed and concur with proposed parking restrictions; and

WHEREAS, City Code Title 6, Chapter 3, and Minnesota State Statute 169.04 does authorize "Regulatory and Warning Sign Placement"; and

WHEREAS, Minnesota Statutes, Chapter 169.04, has been adopted by the City Council of Inver Grove Heights by reference as part of said City Code; and

WHEREAS, at the developer's request, Barr Engineering has submitted a proposal in the amount of \$8,400 for storm water pond, basin and raingarden inspections on the Pine Bend Estates development.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the City shall ban the parking of motor vehicles in the cul-de-sac and on the westerly side of Carbon Court in the Pine Bend Estates development (see Exhibit A)

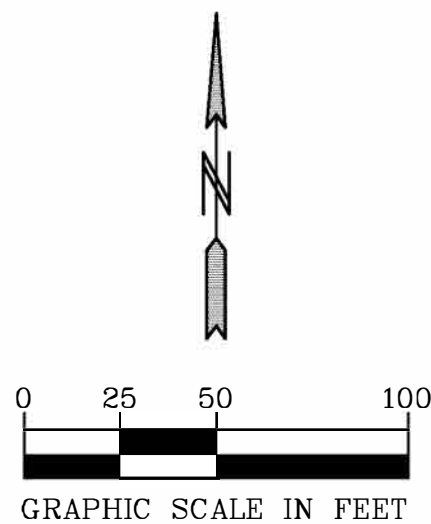
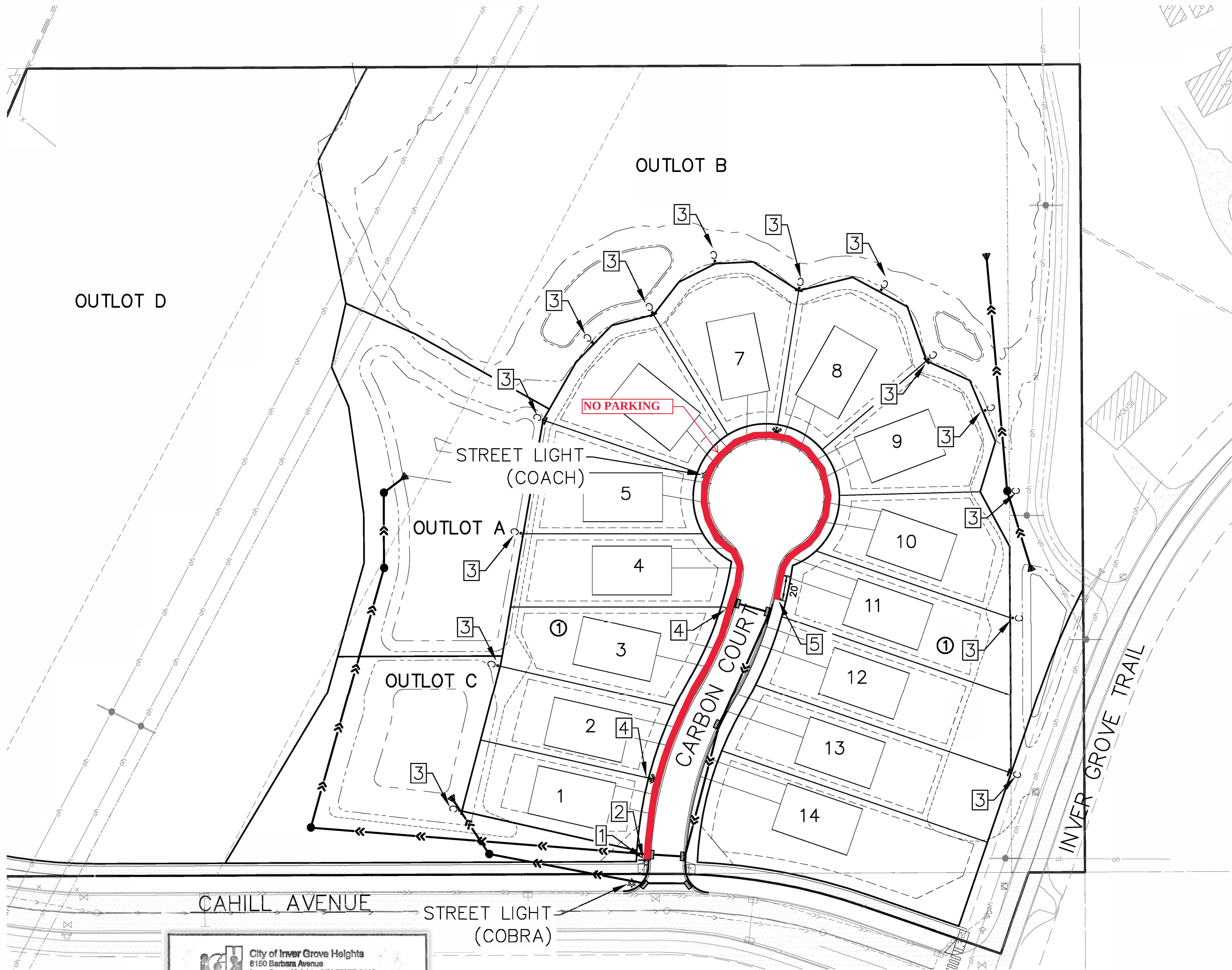
- (1) All such signs, upon placements, shall be in full force and effect under the Laws of the State of Minnesota, Chapter 169.04, and the Highway Traffic Regulation Act.
- (2) The proposal from Barr Engineering is accepted and staff is authorized to enter into a contract in the amount of \$8,400 for storm water facility construction inspection services on the Pine Bend Estates development.
- (3) Funding is provided through an escrow account as provided by the developer.

Adopted by the City Council of the City of Inver Grove Heights this 28th day of September 2020

George Tourville, Mayor

ATTEST:

Rebecca Kiernan, City Clerk



BENCH MARK
TNH 400' WEST CAHILL
AVE. & INVER GROVE
TRAIL INT.
ELEV=870.62

SIGNAGE LEGEND		
1		R1-1
2	STREET SIGNS "CARBON COURT" "CAHILL AVENUE" [NO OUTLET] W14-2a	
3	CONSERVATION AREA SIGN (PROVIDE 4X4 TREATED WOOD POST)	
4		R8-3A 18"x18" 12"x6"
5		R8-3A 18"x18" 12"x6"

City of Inver Grove Heights

6160 Barbara Avenue

Inver Grove Heights, MN 55077-9412

Approval is only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Contractor is responsible for all dimensions, quantities and performance requirements to be confirmed and controlled at the job site, for all information that pertains solely to the fabrication processes or to techniques of construction; for all execution of the work of all trades; and for ensuring consistency with the Contract Documents.

Approval of drawings or items does not relieve the Contractor of the responsibility for complying with all requirements of the Contract Documents.

☒ APPROVED

☐ DISAPPROVED

☐ APPROVED AS NOTED

☐ REVISED AND RESUBMIT

Date: 9/22/2020

By:

**Work Order For:
Construction Observation Services
for Pine Bend Estates Housing Development**

Applicable to Addendum No. 1 and Master Service Agreement Dated June 27, 2012

between

**Barr Engineering Co. (Barr)
4300 MarketPointe Drive, Suite 200
Minneapolis, MN 55435**

**City of Inver Grove Heights (City)
8150 Barbara Avenue
Inver Grove Heights, MN 55077**

Designated Representative:

Karen L. Chandler

Designated Representative:

Steve W. Dodge

I. Scope Language

Barr understands that the Pine Bend Estates housing development project (Project) will consist of clearing and re-grading an approximately 9-acre parcel located at the intersection of Inver Grove Trail and Cahill Avenue in Inver Grove Heights. As currently proposed, the Project would construct 14 new single-family homes, with associated streets, utilities, and stormwater management features.

Barr understands that our scope of work includes attendance at the grading preconstruction meeting, construction observation during the construction of infiltration basins and stormwater control structures, and attendance at construction meetings related to stormwater basin construction. Barr understands that NPDES inspections will be performed by the contractor and that utility construction observation – including storm sewer pipe construction – will be performed by City staff.

Barr's role in construction observation will be to observe the construction of stormwater infiltration facilities at the site and report deficiencies and compliances to the City. Barr will discuss alternative strategies for grading of infiltration facilities with the project engineer, grading contractor, and city staff, but will not direct the work of the contractor.

The scope of work is divided into the following tasks:

Task 1: Construction Observation: \$ 4,000

- on-site stormwater basin and control structure construction observation
- equipment and travel expenses

Task 2: Construction Meetings: \$800

- attendance at one (1) grading pre-construction meeting with contractor and city staff. Barr assumes that this will be a virtual meeting using Microsoft Teams.
- attendance at construction meetings on-site when applicable to infiltration basin construction.

Task 3: Infiltration Testing: \$2,400

- infiltration testing of subgrade soils for the rainwater gardens and infiltration basin areas using falling head infiltrometer equipment.
- equipment, reporting, and travel expenses

Task 4: Project and Task Management: **\$1,200**

- Barr will review soil testing results for native and imported infiltration basin subgrade and infiltration media to ensure conformance with construction specifications
- Barr will provide construction observation summaries via emails to the project engineer, construction contractor, and City staff
- Barr will communicate with contractors and City staff as needed to schedule on-site work and to inform all parties of construction issues
- Barr will provide timely invoices to the City

Fee Estimate Total: **\$8,400**

These fees are based on the scope and schedule assumptions as listed below.

Deliverables

Barr will provide the City with the following deliverables during the proposed work:

1. Photographs and field notes for stormwater infiltration facility construction
2. Infiltrometer testing results

II. Maximum Compensation

For the services referenced above, you will pay us for time and expense not to exceed the amount listed above without prior approval, in accordance with the referenced Master Service Agreement.

III. Schedule and Assumptions Upon Which Schedule and Maximum Compensation are Based

The scope of services assumes that Barr will provide services during construction work occurring during the period between August 1, 2020 and November 30, 2020. This cost proposal does not include work completed during other time periods. Barr will perform additional requested tasks on a time and expense basis outside the scope of this work order. Additional assumptions are listed below:

- Barr will attend one (1) grading preconstruction meeting
- Barr will perform one (1) infiltrometer test for each rainwater garden and two (2) infiltrometer tests for the infiltration basin area.
- Barr assumes eight (8) site visits for construction observation and one (1) site visit for infiltrometer testing.
- Barr assumes that on-site construction meeting attendance will occur concurrently with construction observation site visits
- If stormwater basin and control structure construction is not completed in 2020, additional construction observation in 2021 will be arranged under a separate work order.

ACCEPTED AND AGREED TO:

BARR ENGINEERING CO.

City of Inver Grove Heights

By: Karen L. Chandler

By: Steven W. Dodge

Title: Vice President

Title: Assistant City Engineer, P.E.

Date: July 20, 2020

Date: September 18, 2020

CITY OF INVER GROVE HEIGHTS

REQUEST FOR CITY COUNCIL ACTION

RESOLUTION AUTHORIZING APPROPRIATE CITY OFFICIALS TO EXECUTE A PROFESSIONAL SERVICE AGREEMENT WITH HKGI FOR PROFESSIONAL PLANNING SERVICES TO DEVELOP A SMALL AREA PLAN FOR A PORTION OF THE NORTHWEST AREA OVERLAY DISTRICT AT A FEE NOT TO EXCEED \$50,000

Meeting Date: September 28, 2020
 Item Type: Consent
 Prepared by: Heather Rand, CD Director
 Scott Thureen, Public Works Director
 Contact: 651-450-2546

Fiscal/FTE Impact:

- | | |
|-------------------------------------|------------------------------------|
| ☐ | None |
| ☐ | Amount included in current budget |
| ☒ | Budget amendment requested |
| ☐ | FTE included in current complement |
| ☐ | New FTE requested – N/A |
| ☐ | Other |

PURPOSE/ACTION REQUESTED:

Adopt a resolution authorizing appropriate city officials to execute a professional service agreement with HKGI to provide comprehensive professional planning services to assist the city of Inver Grove Heights with the development of a small area plan (SAP) for a portion of the Northwest Area Overlay (NWA) with boundaries defined as land located South of 70th Street, North of Highway 55, West of Argenta Trail and East of the City of Eagan boarder at a fee not to exceed \$50,000.

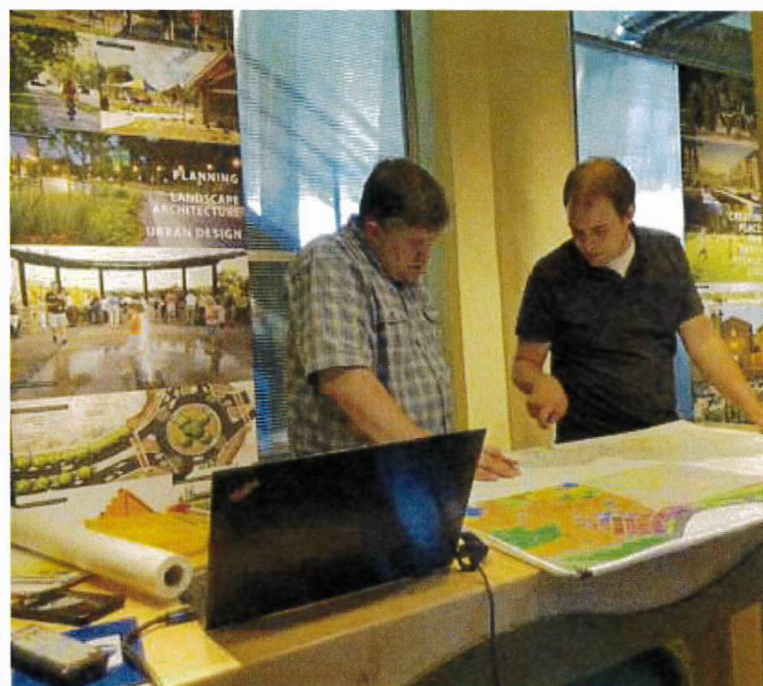
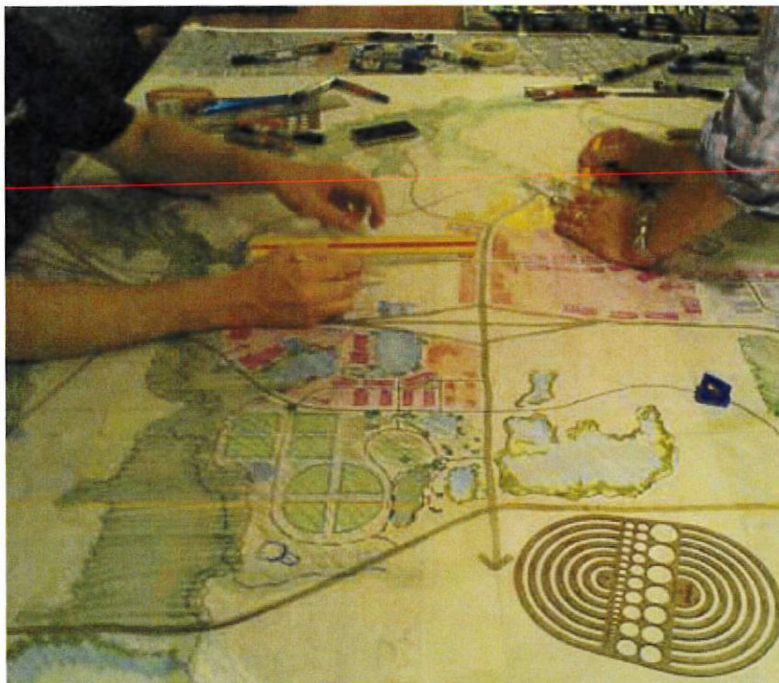
SUMMARY:

At city council meetings in late June and July, a proposed new high-density housing development project by Commonbond Communities was being considered by city council. After evaluating input from residents, the developer, and city staff, the city council determined that a small area plan for that section of the city would be prudent to pursue to maximize development opportunities yet provide proactive solutions to concerns such as development density, access, utility rights of way, stormwater management, etc. To achieve this end, the city council directed city staff to draft a professional service request for proposals (RFP) for professional planning services to insure that a small area plan with facilitated stakeholder input could be developed utilizing existing city studies and plans as a starting point. At an August 2020 city council meeting, the city council approved such RFP with defined scope of planning services, delineated consultant selection criteria and selection process. In keeping with the RFP, staff issued the RFP and solicited proposals from 8 Twin Cities Metro located professional planning firms.

By the September 16, 2020 RFP posted submittal deadline, complete proposals were received from 3 professional planning firms; WSB for a fee not to exceed \$65,756, HKGI for a fee not exceed \$50,000, and Kimley-Horn for a fee not to exceed \$34,530. Per the city council approved RFP, the selection review committee included Public Work Director Scott Thureen, Community Development Director Heather Rand, City Engineer Thomas Kaldunski and City Planner Allan Hunting. Proposals were reviewed on September 23, 2020 and the selection committee unanimously recommended that the city enter into a professional service contract with HKGI for a fee not to exceed \$50,000.

While all three professional planning services firms that submitted proposals by the deadline are held in high esteem by the selection committee, the HKGI proposal provided a greater degree of valued service to the city of Inver Grove Heights than the others. Namely, the HKGI proposal includes a multi-layered team approach by partnering with Bolton & Menck for additional engineering expertise, Ehlers Financial to provide financial advice and analysis, and Marquette Advisors to provide real estate market insights. This project team including HKGI's proven track record with the city for successfully providing community-centered, public planning and design services solidified the unanimous selection recommendation. The reason why the lower bid proposal Kimley-Horn was not selected is because the selection review committee noted that its team did not possess the multi-disciplinary approach HKGI did especially with respect to real estate market knowledge, and the public outreach component was less robust than HKGI.

For the purpose of engaging the public as soon as possible and completing the development of a SAP that will guide city leadership and private landowners in next stage development for this area, the selection committee recommends that the city council select HKGI to perform the work as outlined in their RFP response dated September 16, 2020 (see attached) and authorize appropriate city officials to execute a professional service contract to perform such planning services for a fee not to exceed \$50,000. While this expense is not a 2020 budgeted expense, it is further recommended that the city council authorize a budget amendment allocating up to \$50,000 of Host Community Funds to cover such city council authorized expense.



PROPOSAL FOR PLANNING SERVICES

SMALL AREA PLAN IN NORTHWEST OVERLAY DISTRICT INVER GROVE HEIGHTS, MINNESOTA



Prepared by HKGi with
Bolton & Menk, Ehlers, Marquette Advisors
September 16, 2020

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123 N. 3rd Street, Suite 100
Minneapolis, MN 55401

612-338-0800

www.hkgi.com

COLLABORATE
LISTEN
EXPLORE
CREATE

September 16, 2020

Heather Rand, Community Development Director
City of Inver Grove Heights
hrand@invergroveheights.org

Re: HKGi Proposal to Conduct Small Area Planning for Northwest Overlay District

Dear Ms. Rand and Members of the Selection Committee:

On behalf of the HKGi team, I am pleased to submit our proposal to assist the City of Inver Grove Heights in developing a Small Area Plan for a portion of the Northwest Overlay District. For this project we have assembled a team that is well-positioned to conduct a thorough planning process for the project area within the City's desired timeframe for completing the project.

HKGi, Bolton & Menk, and Ehlers have well-established relationships with the City and have been providing planning, engineering, and financial advisory services for well over a decade. Staff members from all three firms are well-acquainted with the specific challenges associated with development in the Northwest Area. That familiarity will allow us to provide efficient service and facilitate greater exploration and consideration of the opportunities and challenges presented by the project area. All three firms also bring extensive experience providing service on similar projects throughout the Twin Cities metropolitan region, as does our team's fourth member, Marquette Advisors, which will provide real estate market insights and analysis to the project team.

We are excited about the opportunity to be considered for this critical project for the City's development future in the Northwest Area. We feel that our community-centered approach to planning is an excellent fit for this particular project. Planning and development in this area face many difficult challenges, but the area also promises great opportunities for the City to guide successful development in this part of the city. An approach that emphasizes building long-term community support for the project, complemented by creative urban design principles and knowledgeable financial advice, will be key to generating successful outcomes in the future. We look forward to embracing the challenges presented by this project.

I will serve as the Project Manager for the planning team, and Brad Scheib will provide key insights and innovative thinking to the land use planning effort. Please feel free to contact us with any questions regarding our proposal. We look forward to speaking with you in more detail about this project and our team's qualifications.

Sincerely,

Bryan Harjes, Vice President
bryan@hkgi.com | 612-252-7124

Brad Scheib, Vice President
brad@hkgi.com | 612-252-7122



PROJECT APPROACH

Project Understanding

The HKGi team has extensive history and current working understanding of the project area.

- » **HKGi** has completed a number of comprehensive plan updates that included working with landowners in the Northwest Area to understand development pressures, site constraints and challenges (topographic and natural resource based), infrastructure needs and challenges (utility pipeline easements, sanitary sewer and water system improvements, stormwater management needs), and transportation and access challenges (agency coordination, roadway function and design, site access and sightlines/spacing, and traffic). We have also worked closely with the city finance team to understand the impacts that market driven development and growth have had on the methodology used to fund development costs.
- » **Ehlers** has worked closely with HKGi in developing and maintaining a fiscal model to make sure that the city understands the financial implications when pressured to approve market driven development proposals that don't necessarily pay their own way. Ehlers and HKGi have worked to continually re-evaluate land use in the Northwest Area and make sure land use and infrastructure assumptions can still enable a financially feasible future.
- » **Bolton & Menk** has extensive history and current project work planning and designing the City's sanitary sewer infrastructure serving

the Northwest Area. Bolton & Menk also have strong knowledge of the County and State roadway systems surrounding this area and the access management standards. Additionally, Bolton & Menk staff have extensive experience coordinating infrastructure with Dakota County and MnDOT staff within the Northwest Area. HKGi has worked closely with Bolton & Menk to integrate sanitary sewer data into land use planning in the Northwest Area and the comprehensive plan updates.

- » **Marquette Advisors** has a long history of working with public and private sector clients within the region in understanding market demand and supply, and working strategically to help determine what a community might need to do in order to position itself for a use that the market may not be primed for.

A lot of planning has been done in the Northwest Area and a lot of planning continues to occur. We recognize the city is working towards establishing a park system to serve the Northwest Area including a parcel that is in the subject area of the small area plan. We will work to ensure that exploration of alternative development scenarios is done in collaboration with park staff so the status of land negotiations or acquisitions can be considered.

Together, our team has the ability to navigate an extremely challenging set of objectives where conflict may exist at most every turn. We recognize that tough recommendations may need to be made. We also recognize that in the end, it is likely there

will be both winners and losers in the eyes of certain stakeholders. The HKGi team understands the need and importance of working with all stakeholders in the small area planning process, understanding wants and needs, issues or concerns, and varying perspectives.

At the end of the day, the process is almost as important as the plan. We understand and believe strongly in conducting a transparent and open planning process and that being honest and respectful throughout will lead to successful and enduring outcomes.

Assumptions

- » In response to the COVID-19 pandemic, all meetings will be held either as virtual or in person meetings using proper social distancing, masks or other attire. The HKGi team will work within the directives appropriate for the comfort level of the City staff, City Council, the HKGi team and stakeholders.
- » Agency coordination (MnDOT, Dakota County, City of Eagan) will be done throughout the course of the project and is built into each task.
- » The HKGi team will work closely with the City GIS staff to ensure accurate mapping is used at the beginning of the process and will provide City GIS staff with all deliverables that are GIS data driven at the end of the process.
- » The HKGi team will work closely with various department heads to ensure continual communication across all department needs relevant to the project so that various advisory boards and commissions can be kept abreast of the project status and overlapping planning tasks that are considered.
- » Final deliverables will be prepared in a way to facilitate future efficient financial analysis for Northwest Area development fees.
- » Staff will facilitate final consideration by City Council. The Consultant team will provide support as needed.

Northwest Area Change Area

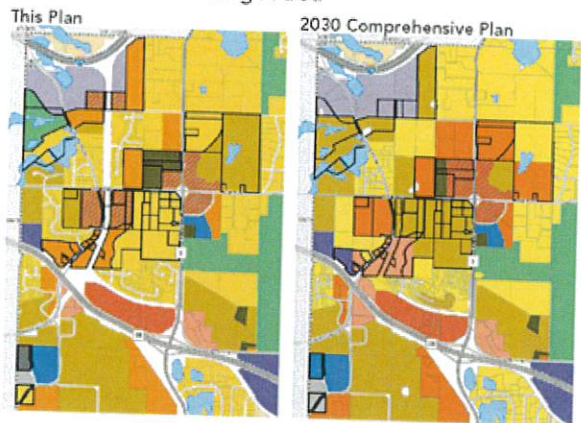
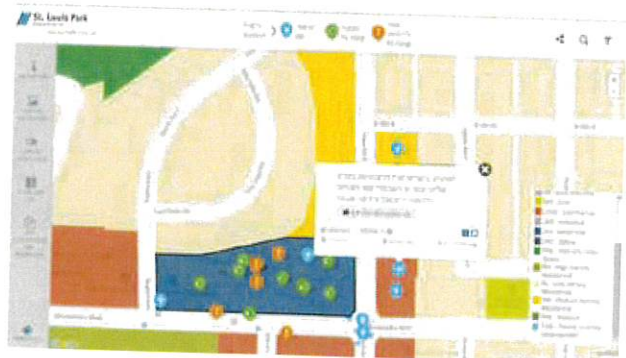


Table 2-12. Northwest Area Change Area

2030 Planned Land Use	2010 Planned Land Use	Acres
Community Commercial		35.8
	Low Density Res.	7.0
	Medium Density Res.	28.8
High Density Res.		11.1
	High Density Res.	11.1
Industrial Office Park		9.0
	Medium Density Res.	9.0
Low Density Res.		42.6
	Low-Med. Density Res.	39.7
	Medium Density Res.	2.9
Light Industrial		7.5
	Low Density Res.	7.5
Low-Med. Density Res.		201.4
	Low Density Res.	102.6
	Medium Density Res.	45.0
	Mixed Use	21.1
	Office	2.5
	Public Parks Open Space	24.4
	Right-of-Way	5.8
Medium Density Res.		132.2
	Low Density Res.	32.9
	Low-Med. Density Res.	61.5

Land uses and planning initiatives for the Northwest Area have continued to evolve as the development context has matured.



Online engagement will enable stakeholders to share detailed information with the planning team via map-based input tools.

Work Plan

Task 1 - Understand the Context

The HKGi team has a leg up in this task and can be very efficient. Our team is intimately familiar with the existing land ownership patterns, infrastructure system and land use plan. We understand the topographic constraints, access issues and land uses both within and adjacent to the site. With this task we will create a series of graphics showing the site context including developable and undevelopable lands, natural resources, development constraints, and known issues. We will assemble diagrams that layer on top of each other to fully demonstrate the challenges, issues, and opportunities within the NW Area.

Subtasks include:

- 1.1 Project mapping
- 1.2 Project story boarding graphics
- 1.3 Collaboration with City Staff
- 1.4 Coordination with agency and stakeholders – particularly access management and long-term transportation plans for Argenta Trail

Task 1 Deliverables:

- » Project context storymap and online information platform

Task 2 - Confirm Project Objectives

This project includes responding to both needs and wants. The value the HKGi team brings is the ability to lead a broad group of stakeholders with divergent perspectives and opinions through a process to find the right balance in order to move forward.

- » Certain project components are absolutes or non-variable. For development to occur sewer and water service must be extended. Stormwater must be managed. A transportation network must serve the area and provide access. Public and private improvements need to be financially feasible and supported by the market place. Entitlements require a process.
- » Other project components are more variable or subjective. These represent more of a want than a need. They are expressed in generalities and often carry with them trade-offs or additional steps needed in order for them to be realized.

Existing residents may want nothing to happen or prefer open space. A property owner may want a greater possible return on their investment. A city wants to find the best solution to meet the needs of all.

This task will include an extensive amount of stakeholder engagement, listening to the perspectives of all stakeholders. We will include the following key subtasks to ensure engagement occurs in a safe yet inclusive manner.

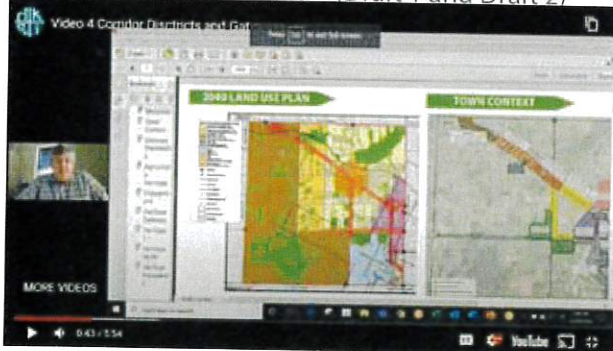
- 2.1 Set up an online engagement tool to garner initial open-ended input through an interactive mapping and survey mechanism.
- 2.2 Facilitate workshops with key property owners who might be development oriented. We envision 6 workshops for this task, one with each property owner in an individual setting.
- 2.3 Facilitate one workshop with existing residents within the project area.
- 2.4 Facilitate a workshop with City Council/EDA to review findings. We will also prepare materials for staff to facilitate discussion with other advisory commissions as needed (Planning/Parks/Housing).
- 2.5 We will draft a set of project objectives (Draft 1 will be developed with City staff and presented to City Council at a work session, Draft 2 will include City Council and City staff). These objectives will help guide the rest of the process.

Task 2 Deliverables

- » Online interaction tools
- » Survey questions
- » Context presentation and graphics for stakeholder use
- » Invite text/information for stakeholder engagement
- » Summary of stakeholder input



» Draft objectives memo – (Draft 1 and Draft 2)



Stakeholder engagement during Task 2 will be critical to ensure that stakeholders have adequate input early in the process, when more detailed and specific project objectives are being established.

Task 3 - Explore Alternatives

Concept Alternatives

We will explore up to three alternatives at a general site plan level of detail (i.e. building footprints, parking, stormwater allocation and rough grading) to test scenarios for development. Alternative 1 would be consistent with the comprehensive plan; Alternative 2 is a more commercial/industrial concept; and Alternative 3 would be a blended approach or other. We will work with City staff and Marquette Advisors and their knowledge of the development market to best determine the appropriate mix of land uses and product types to explore in the alternatives. Each alternative will include a summary of land use/development yield by parcel, roadway network, and pattern including access and circulation to major roadways, stormwater allocation, and grading impacts.

Alternatives will be generated in rough concept sketch then vetted with City Staff. Modifications will be incorporated and graphics will be assembled into a computer rendered model for clear communication to stakeholders.

Utility Service Review

Using the City's comprehensive planning documents, prior area studies, and our knowledge of the area, we will provide an analysis of utility service options for the Alternative scenarios. This will include discussion of trunk and lateral utility extension fees, utility depths, and considerations for utility phasing and construction.

Traffic and Transportation Analysis and Review

Using previous information included in the Comprehensive Land Use Plan, NW Area AUAR, Collector Street Plan, and the Regional Roadway System Visioning Study as a basis, we will complete an analysis and determination of the street network appropriate for the area. This analysis will examine expected traffic volumes, access spacing, land use destinations, and other factors that impact the roadway network needs.

Of special consideration in these types of studies is ensuring that the roadway section can handle the expected traffic volumes and that the roadway

is planned for safe and mobile travel. We will determine the expected number of trips on the roadways and its impact to roadway capacity limits and review access locations and spacing appropriate to handle the traffic in a safe way. Traffic volumes will be collected through the previous studies, trip generation analysis as required, and available traffic data. Recommendations will include access locations, roadway sections, and a general understanding of potential traffic control needs as the area is developed.

Subtasks include:

- 3.1 Market evaluation and assessment
- 3.2 Alternative scenario development
- 3.3 Utility service review
- 3.4 Traffic and transportation analysis and review
- 3.5 Fiscal impact and proforma for each Alternative
- 3.6 Staff workshop to review alternatives
- 3.7 Alternative scenario refinement
- 3.8 City Council workshop

Task 3 Deliverables

- » Three sketch level Alternatives
- » Alternatives in computer rendered model
- » System diagrams (roadway/traffic, sewer/water, stormwater, parks, trails/sidewalks)
- » Development proforma (all three Alternatives)
- » Market evaluation and assessment



The planning team will work with the City to develop and evaluate multiple potential development scenarios. Each scenario will be tested for fit with the objectives established for the project.

Task 4 - Converge on a Preferred Plan

This task will focus on an engagement process to help stakeholders understand the components of each alternative and the challenges and opportunities with each. This task will also facilitate a discussion around the design details that could be incorporated with each alternative in order to address major concerns or issues. Lastly, a simple survey will be deployed to gauge a high-level political acceptance of each alternative. The following are key subtasks:

- 4.1 Prepare summary presentation materials
- 4.2 Prepare and launch online engagement mechanism
- 4.3 Facilitate stakeholder reviews including up to 5 individual meetings, 1 community workshop, and City Council meeting

Task 4 Deliverables

- » Presentation materials
- » Online engagement platform
- » Meeting notice/invite text and meeting facilitation
- » Summary memorandum of engagement results.

Task 5 - Assemble Master Plan

This task will include assembling the preferred master plan based on the technical review of the alternatives and the engagement process. A preferred master plan will be assembled to include a bubble land use diagram, an illustrative master plan, development yield data, and development proforma data including public infrastructure costs. Additional design details/policy/guidelines will be developed as a mechanism to facilitate future site plans and entitlements. Key road way network and intersection design standards will be established associated with the preferred master plan and level of magnitude.

Task 5 key deliverables and subtasks

- 5.1 Draft 1 - Preferred master plan for review (PDF)
- 5.2 Draft 2 - Preferred master plan for approval (PDF)
- 5.3 Draft 1 - Final master plan (PDF)

Task 5 Additional Deliverables

- » Materials for City Council consideration
- » All digital files in original form

The 105th Avenue Growth Area Plan project in Maple Grove included extensive evaluation of several development factors such as access and circulation, natural resources, opportunities within and adjacent to the project area, and parks and trails opportunities.

These factors were used to develop framework diagrams and other visual communications materials to clearly communicate key plan principles and initiatives to stakeholders and community members.



Schedule

The table on the following page illustrates our anticipated schedule to conduct the preceding work scope. The RFP indicates a desire to complete the planning process by December, 2020. We propose a schedule that will allow us to complete the preferred plan developed in Task 4 by the end of December, but will require an additional month for the review and approval process. This project schedule provides adequate time to conduct an effective engagement process with the key stakeholders that need to be involved in order for this project to achieve maximum success.

		October				November				December				January				
		5-9	12-16	19-23	26-30	2-6	9-13	16-20	23-27	30-4	7-11	14-18	21-25	28-1	4-8	11-15	18-22	25-29
Task	Task Description																	
1	Understand the Context																	
1.1	Project Mapping																	
1.2	Project Storyboard graphics																	
1.3	Collaboration with City staff																	
1.4	Coordination with Agencies and Stakeholders																	
2	Confirm Project Objectives																	
2.1	Set up online engagement tool + Survey questions																	
2.2	Facilitate workshops with property owners (6)																	
2.3	Facilitate workshop with existing residents																	
2.4	Facilitate workshops with City Council/ EDA																	
2.5	Draft set of project objectives																	
3	Explore Alternatives																	
3.1	Market evaluation and assessment																	
3.2	Alternative development + system diagrams																	
3.3	Utility service review																	
3.4	Traffic and Transportation analysis and review																	
3.5	Fiscal impact and proforma for each alternative																	
3.6	Staff workshop to review alternatives																	
3.7	Alternative refinement																	
3.8	City Council Workshop																	
4	Converge on a Preferred Plan																	
4.1	Prepare summary presentation materials																	
4.2	Prepare and launch online engagement platform																	
4.3	Meeting notice/ invite text and meeting facilitation																	
4.4	Summary memorandum of engagement results																	
5	Assemble Master Plan																	
5.1	Preferred master plan in electronic PDF form - Draft 1																	
5.2	Preferred master plan in electronic PDF form - Draft 2																	
5.3	Preferred master plan in electronic PDF form - Final Plan																	
5.4	Coordination with City staff																	
★	City Council Work Session																	
★	City Council Meeting (Final Approvals)																	
△	Stakeholder / Agency Meetings-Review																	
⊕	Property Owners and Residents Meetings-Review																	
□	Online Review																	
■	Staff Meetings/ Workshop																	



CONSULTANT TEAM

HKGi

HKGi was established in 1982 to provide community-based planning and landscape architecture services to clients throughout the Upper Midwest. Our objective is to help our clients build great places for people to live, work, and play. We achieve this objective by combining our technical skills and creativity with the knowledge about the community's strengths, values, and challenges that only community members and leaders can provide. We use their input as the foundation for plans, designs, and strategies that prepare them for the future and put them in position to thrive as the community grows and evolves.

This community-based approach has been at the heart of our practice since HKGi's founding. Regardless of whether we are developing a comprehensive plan, creating a redevelopment master plan, or designing a key community amenity, gathering and responding to community input remains essential to ensuring that our plans and designs are feasible, supported by the community, and will generate positive results for our clients and their constituents.

Our staff includes seven Landscape Architects, four Certified Planners, and six graduate planners and urban designers, all of whom bring a passion for helping communities grow stronger by applying their creative problem solving and critical thinking skills to the opportunities and challenges that communities face.

Bolton and Menk, Inc.

We believe all people should live in safe, sustainable, and beautiful communities and we take pride in our ability to make that happen.

Our commitment to communities began in 1949 with two hard working Midwesterners, John Bolton and Martin Menk. They saw people in their surrounding communities who had dreams of a bright future, a desire to grow, and a common challenge of aging infrastructure. John and Martin's goal was to help communities make progress by listening to what people want, finding the best solutions for their needs, and



Planning
Landscape Architecture
Urban Design

612.338.0800

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123 North Third Street Suite 100
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& MENK**

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treating them right. Their legacy lives on. We still want to help, we work hard every day, and we always remember what got us here—we're people helping people. Today, Bolton & Menk, Inc. has more than 450 employees including a professional staff of more than 150 engineers, planners, landscape architects, and surveyors.

We specialize in providing public infrastructure solutions. We provide the best services and solutions for our clients, from advocating for our communities to designing their dreams to finding funding. We take pride in our work and are committed to collaborative decision-making and to keeping our clients' projects on schedule, within budget, and focused on real, workable solutions.

Ehlers

Ehlers helps public sector clients build outstanding places to live, work, learn and play by delivering focused, fully-integrated municipal financial advisory services. We build strong, long-lasting client relationships—working directly and collaboratively with your staff—to complete projects and drive initiatives forward. We leverage decades of industry experience, deep market and community knowledge, and our unique team-based approach to successfully guide clients through all facets of public finance. We serve more than 1,500 clients across five states. We do not represent underwriters, developments, or the private sector.

Ehlers has been privileged to serve as financial advisor to the City of Inver Grove Heights for over two decades. Our familiarity with the Northwest Area and the City's development goals began in 2007 when utilities were first extended into that part of the City. We have worked in partnership with the City and HKGi since that time to plan and finance street and utility improvements in the Northwest Area.

Ehlers reviews dozens of development proposals every year and is familiar with current market conditions and factors that determine whether a project will be financially feasible such as financing terms and availability, per unit costs for land acquisition and construction, and typical site improvement costs for various types of development. We will bring this knowledge to this project and evaluate the financial feasibility of various development options for the sites included in the Small Area Plan.

Marquette Advisors

Marquette Advisors is a full-service real estate consulting firm, providing market and financial feasibility studies, appraisals, and varied advisory services on behalf of the real estate development community. We are regularly called upon to assist property owners, developers, investors, lenders, and public agencies in making intelligent decisions regarding real estate development and investment opportunities. We provide market analysis and advisory services for multi- and single-family residential development; mixed-use developments; community housing needs assessments; retail/office/industrial; and recreational facilities.

ROLE: MUNICIPAL INFRASTRUCTURE AND TRANSPORTATION PLANNING AND ENGINEERING



3060 Centre Pointe Drive
Roseville, MN 55113

p: 651.697.8500
w: www.ehlers-inc.com

ROLE: DEVELOPMENT FINANCIAL FEASIBILITY



50 South 6th Street, Suite 1308
Minneapolis, MN 55402

p: 612.335.8888
w: www.marquetteadvisors.com

ROLE: MARKET OVERSIGHT AND STRATEGY

Key Personnel

HKGi has assembled a team that brings knowledge of the City of Inver Grove Heights, its development context, and the topographic, financial, and infrastructure challenges that exist in the Northwest Overlay District. Our team members bring expertise in the areas of urban design, land use planning, landscape architecture, public financing and strategic planning, real estate market research and analysis, and transportation and infrastructure planning and engineering.

The structure of the planning team is illustrated below. Resumes for all of the key personnel listed below are included on the following pages.

City of Inver Grove Heights

Bryan Harjes

HKGi
Project Manager &
Urban Design Lead

Brad Scheib

HKGi
Land Use Planner

Brian Hilgardner

BOLTON & MENK
Engineering Principal

Eric Seaburg

BOLTON & MENK
Engineering Lead

Aaron Warford

BOLTON & MENK
Transportation Engineer

Bryan Nemeth

BOLTON & MENK
Traffic Engineer

Jason Aarsvold

EHLERS
Financing Strategy

Jessica Cook

EHLERS
Financing Strategy

Brent Wittenberg

MARQUETTE ADVISORS
Market Strategy

Small Area Plan



Bryan Harjes

PLA, LEED AP

Vice President



612.252.7124



bryan@hkgi.com

Years of Experience: 21

Education

Master of Landscape Architecture and
Bachelor of Environmental Design,
University of Minnesota

Registration

Landscape Architect, Minnesota, License No.
42954

Awards

2018 ASLA-MN Merit Award for Planning
and Urban Design - St. Louis River Estuary
National Water Trail Master Plan - Duluth-
Superior

2016 AIA Minneapolis Preservation Award
- Minnehaha Park Refectory Renovation,
Minneapolis

2015 ACEC-MN Engineering Excellence
Honor Award - Buffalo Commons, Buffalo,
MN

2014 APA-IA Innovation in Economic
Planning and Development Award - Merle
Hay Road Gateway Redevelopment Master
Plan, Johnston, IA

Bryan will serve as the Project Manager for the planning team and will also provide urban design leadership for the exploration of potential development concepts.

Bryan's involvement in numerous award-winning projects attests to his expertise and creativity as an urban designer. He has provided urban design and concept planning leadership on several projects similar to the small area planning that will be involved in this project.

He brings creativity, an ability to lead and facilitate idea generation, and strong critical thinking skills to his project work. His contributions are particularly effective in public workshop and charrette environments, where his ability to listen to ideas and transform them into drawings enables participants to envision and evaluate potential development scenarios.

Relevant Project Experience

- » Comprehensive Plan | Inver Grove Heights, MN
- » CR50 Economic Development Study | Lakeville, MN
- » Downtown West Development Study | Victoria, MN
- » 105th Avenue Area Master Plan | Maple Grove, MN
- » Lockheed Martin Site Redevelopment Study | Eagan, MN
- » Four Seasons Mall - Redevelopment Master Plan | Plymouth, MN
- » Western Shakopee/Jackson Township Land Use Master Plan | Shakopee, MN
- » Downtown Master Plan | St. Francis, MN
- » Concord Boulevard Neighborhood Master Plan | Inver Grove Heights, MN
- » Merle Hay Road Gateway Redevelopment Plan | Johnston, IA
- » Urban Village Master Plan | Woodbury, MN



STRENGTHS SUMMARY

Design Creativity
Problem Solving
Idea Generation & Evaluation



Brad Scheib

AICP

Vice President

612.252.7122

bscheib@hkgi.com

Years of Experience: 26

Education

B.S., Community and Regional Planning -
Iowa State University

Registration

American Institute of Certified Planners -
Cert. #013665

Awards

2019 WI APA Innovation in Planning Award -
New Richmond Comprehensive Plan

2019 MN APA Excellence in Community
Engagement Award - Red Wing 2040
Community Plan

2015 MI APA Daniel Burnham Award for a
Comprehensive Plan - Comprehensive Plan
for the City of Ironwood

2015 MN APA Planning in Context Award -
Moorhead River Corridor Master Plan

2010 MN Preservation Award and 2010
MN-ASLA Merit Award for Planning and
Research - Red Wing Downtown Action Plan

2004 MN-APA Award for an Outstanding
Plan - Downtown East/North Loop Master
Plan; Minneapolis

Brad will provide land use planning expertise and will leverage his knowledge and experience conducting planning for the Northwest Area to provide the team with valuable insights into the development opportunities in the area.

Brad has been a leader in community planning and development throughout his career. He has a strong understanding of the factors that lead to successful community development, which he has built through planning work on AUAR projects and in growth areas throughout the metropolitan area.

Brad has also been a leader in the innovative use of technology to create community planning solutions. He has created several tools to help clients explore potential land use scenarios and track implementation initiatives. He is a bold thinker who consistently explores new methods for enhancing the planning process and solving community development problems.

His life experiences growing up on a farm and in a small rural town in Iowa complements his planning experience.

Relevant Project Experience

- » Comprehensive Plan (3) | Inver Grove Heights, MN
- » NW Quadrant Study and Zoning Ordinance | Inver Grove Heights, MN
- » Western Shakopee/Jackson Township Land Use Master Plan | Shakopee, MN
- » Lockheed Martin Site Redevelopment Study | Eagan, MN
- » Downtown Redevelopment Plan | Victoria, MN
- » Sub-Area Plan and Zoning Ordinance Update | Greenville, WI
- » Growth Area AUAR and Bluff Creek Zoning Overlay District | Chanhassen, MN



STRENGTHS SUMMARY

Creative Problem Solving
Innovative Use of Technology
Listening & Communication



JASON AARSVOLD, CIPMA

Senior Municipal Advisor

Jason serves as a Senior Municipal Advisor for Ehlers' Minnesota City Team. He brings nearly two decades of municipal development and finance experience to his role with the firm. Jason has analyzed and negotiated some of the most complicated economic development and redevelopment projects in Minnesota, navigating complex financial issues and creating new, innovative community solutions. One of Jason's greatest attributes is his ability to demystify the complexities of the economic development process for his clients. He unites community leaders, developers and residents, guiding them through program development with his strong market knowledge and public finance expertise.

☎ (651) 697-8512 ✉ jaarsvold@ehlers-inc.com

AREAS OF EXPERTISE

Debt Planning & Issuance

- Analysis & Presentation of Alternative Financing Options
- TIF Revenue Bonds
- Housing Revenue Bonds
- Non-Profit & Industrial Revenue Bonds
- Client Representation to Bond Market & Rating Agencies
- Referendum Strategy
- Special Legislation Strategy

Financial Management Planning

- Economic Development Strategy
- Financial Management Planning
- Capital Improvement Planning

Economic Development & Redevelopment

- Tax Increment & Tax Abatement
- Downtown Redevelopment & Revitalization
- Developer Selection & Negotiations
- Developer Pro-Forma Analysis/But-For Test
- Project Management Services
- Land Acquisition & Relocation
- Grant Writing
- Public Participation Process

LICENSES & CERTIFICATIONS

- Series 50 License: Municipal Advisor Representative
- Registered Municipal Advisor
- Economic Development Finance Professional

- Certified Independent Professional Municipal Advisor (CIPMA)
- Housing Development Finance Professional

PROFESSIONAL MEMBERSHIPS

- Economic Development Association of Minnesota
- Urban Land Institute

EDUCATION

- Bachelor of Arts - Local and Urban Affairs
St. Cloud State University
- Master of Arts - Urban and Regional Studies
Minnesota State University, Mankato

NOTABLE PROJECTS

Target Office Campus (Brooklyn Park) - negotiated agreement for 330+ acre build-out

New Hope City Center - Advised in developer selection and negotiation, analyzed project financing, created TIF district and provided project management services

Duluth Housing Action Plan - Prepared action plan for needed housing, identified financing options, analyzed financial feasibility of proposed projects and creation of TIF Districts





JESSICA COOK

Economic Development Advisor

Jessica is an Economic Development Advisor with Ehlers' Minnesota Municipal Finance Team and also leads our Financial Specialist Team for all regions. She works with communities on financial planning and development financing, with specialized expertise in utility rate studies. Under Jessica's collaborative leadership, Ehlers' specialists have completed over 50 utility rate studies and 70 long-term financial plans in the last five years alone. In addition, she advised on projects including the Southdale Mall redevelopment and the Target store in Inver Grove Heights, MN. One of Jessica's strengths is her ability to communicate the policy implications of financing and rate setting options, leading communities to make sound financial decisions.

☎ (651) 697-8546 ✉ jcook@ehlers-inc.com

AREAS OF EXPERTISE

Financial Management Planning

Strategic Long-Term Financial Planning
Utility Rate Studies
Capital Improvement Planning
Development Fee Analyses

Economic Development & Redevelopment

Tax Increment Financing (TIF)
TIF District Creation & Amendment
TIF Revenue Projection
Developer Selection & Negotiations
Developer Pro-Forma Analysis / But-For-Test

LICENSES & CERTIFICATIONS

Series 50 License: Municipal Advisor Representative

PROFESSIONAL MEMBERSHIPS

Minnesota Government Financial Officers Association
Sensible Land Use Coalition
National Association of Housing & Redevelopment Officials

EDUCATION

Bachelor of Science - Sociology
University of Wisconsin, Madison
Master of Business Administration (Coursework)
University of St. Thomas, St. Paul

COMMUNITY INVOLVEMENT

OneVillage Partners - Volunteer

NOTABLE PROJECTS

Stormwater Analysis, City of St. Paul – developed financial plan for funding stacked green infrastructure for Allianz Field and Westside Flats redevelopment areas

Utility Rate Study, City of Chanhassen – complete annual rate study to establish user charges and development fees to finance new water treatment plant

Target, Inver Grove Heights – negotiated public assistance amount and structure for new Target store and outlot development



Brian will be responsible for committing sufficient personnel and resources to accomplish the work plan and schedule within the time frame defined. He will monitor progress, schedule, and budget. He will work closely with Eric to ensure critical issues are addressed in a timely manner.

When it comes to clients, Brian takes time to get to know them on a deeper level, building trust in him and the Bolton & Menk team. Since beginning his career in 1998, he has gained a range of experience in project administration, from conception through construction. His background as a project manager includes development and design of municipal reconstruction projects, with an expertise in trenchless technology techniques. Over the years, Brian has fostered strong relationships with both his clients and employees. He is passionate about mentoring and helping train young EITs on proper construction observation skills and career development.



Brian Hilgardner
P.E.

Senior Project Manager/Principal-in-Charge

Eric serves as the primary point-of-contact for Bolton & Menk municipal services in Inver Grove Heights. He will coordinate all aspects of project delivery and will be responsible for meeting the schedule, scope management process, design, and budget. Eric is a proven project manager and thrives in multi-disciplinary projects requiring input from Bolton & Menk's various specialty groups. His prior work in the City of Inver Grove Heights and Dakota County will provide the backbone needed for a successful private utility coordination process.

Working as a team with our clients to solve difficult problems is what drives Eric in his role as a project engineer. Eric began his engineering career in 2008. He ushers projects through conception, CIP budgeting, design, construction, and long-term maintenance. He is experienced with project management, schedule and budget management, construction management, right-of-way acquisition and management, utility coordination and permitting, state aid procedures and reporting, multi-agency coordination, asset management, and as-built drawing development. His prior experience working for a municipality helps him relate to our clients and deliver projects that meet their expectations.



Eric Seaburg
P.E.

Project Manager



Aaron will provide coordination with Dakota County and MnDOT as needed for transportation system impacts of the study.

In serving clients for more than 20 years, Aaron has developed considerable expertise managing multi-agency transportation projects, including several recent corridor expansion projects for both MnDOT and Dakota County. These projects required traffic, mobility, and safety improvements impacting city, county, and state highways. Under Aaron's leadership, Bolton & Menk has assisted city, county and MnDOT staff in developing and implementing public involvement plans for critical arterials in growing communities. We focus on developing publicly acceptable solutions that meet the needs of local and regional users and will always represent project partner interests in a positive and professional manner.



Aaron Warford

P.E.

Principal Transportation Engineer

Bryan will lead the traffic analysis and access management study components.

Bryan will be responsible for completing critical review of traffic elements and completing traffic analysis as required. This includes evaluating access locations, traffic volumes, roadway lane needs, and overall traffic elements in the development of a safe roadway system. Bryan has extensive experience with traffic operations and safety analysis as required for these studies.



Bryan Nemeth

P.E., PTOE

Principal Traffic Engineer

Bryan is a principal traffic engineer with nearly 20 years of experience. He leads the Bolton & Menk traffic group and provides project management on traffic analysis, strategic planning, and design projects. He has extensive knowledge of the technologies and infrastructure components of the transportation system. He uses this knowledge to enhance the planning for regional and local transportation initiatives and move ideas into actual deployment. His passions include traffic safety, traffic operations, deployment of new technologies, and critical methodology analysis.





Brent E. Wittenberg CRE

Vice President

Brent will provide market research and analysis expertise to this project. His contributions will be essential in helping the planning team identify feasible land use concepts and housing strategies.

Brent has a diverse background and for more than 23 years has completed numerous consulting assignments for income producing real estate developments. He has completed assignments in 37 states and in Canada, including market and financial feasibility studies, economic and fiscal impact studies, and varied consulting assignments.

He is a known expert in the field of real estate research and feasibility analysis, spanning all property sectors. He has completed engagements related to multifamily housing, residential subdivision analysis, seniors housing, student housing, hotels, casinos, conference and banquet facilities, golf courses, retail shopping centers, office buildings, business and industrial parks, individual retail store operations, gas station/convenience stores, full service truck stops, office and industrial developments, community centers and health/fitness clubs, and aviation-related real estate facilities such as corporate hangars and FBOs. Brent has developed an expertise in providing feasibility studies for complex mixed-use projects, redevelopment projects, urban infill and downtown development. He understands the unique aspects of redevelopment and public-private partnerships, having also worked in city planning.

Brent has also developed a specialty in providing affordable housing market analyses and needs assessments on behalf of cities, counties, regional and state planning agencies throughout the United States. Specifically, his studies have addressed the relationship between housing affordability and economic development. Recently, he has authored reports on this issue on behalf of clients in the Twin Cities Metro Area, as well as Portland, OR Tallahassee, FL and Jasper and Beaufort Counties (Hilton Head), SC.

Education

Master of City and Regional Planning - Clemson University

Bachelor of Arts Degree in Local and Urban Affairs - St. Cloud State University

Memberships

American Society of Real Estate Counselors (CRE).

Activities

- Guest Speaker - Urban Land Institute conferences and seminars sponsored by the Minnesota Multi-Housing Association and the Institute of Real Estate Management.
- Past Member, Board of Directors - Minnesota Multi-Housing Association

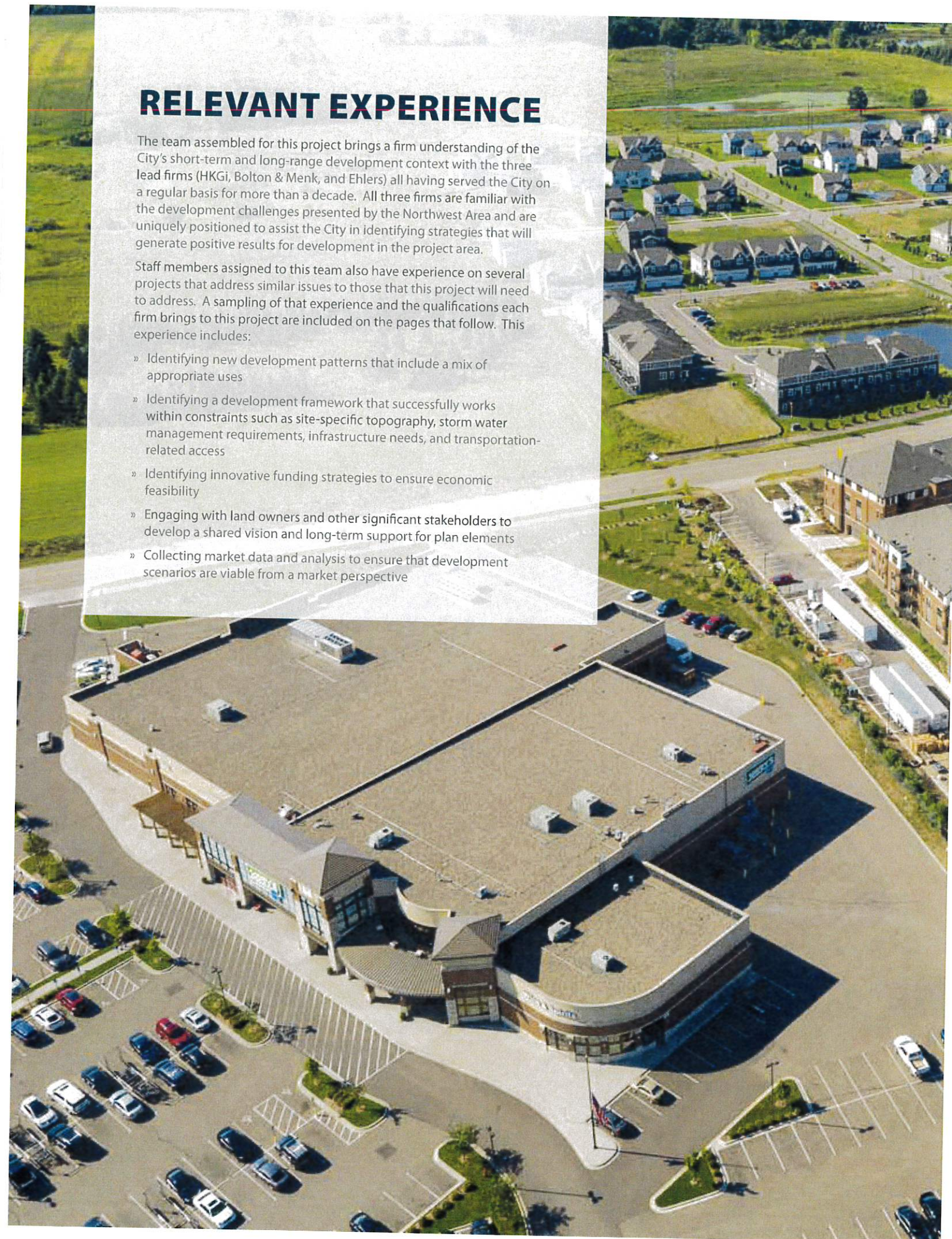


RELEVANT EXPERIENCE

The team assembled for this project brings a firm understanding of the City's short-term and long-range development context with the three lead firms (HKGi, Bolton & Menk, and Ehlers) all having served the City on a regular basis for more than a decade. All three firms are familiar with the development challenges presented by the Northwest Area and are uniquely positioned to assist the City in identifying strategies that will generate positive results for development in the project area.

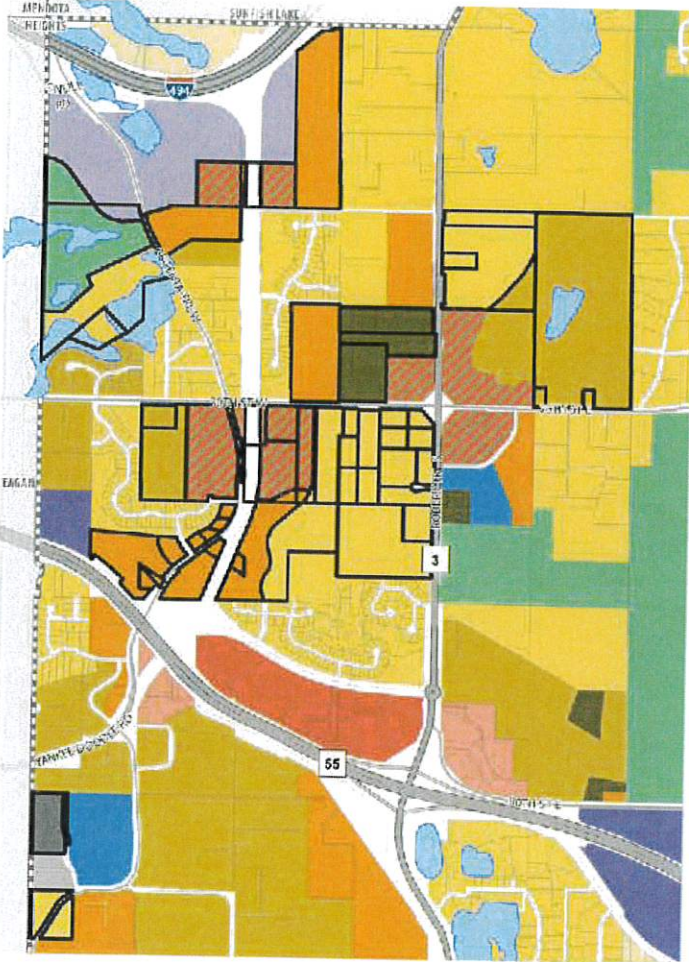
Staff members assigned to this team also have experience on several projects that address similar issues to those that this project will need to address. A sampling of that experience and the qualifications each firm brings to this project are included on the pages that follow. This experience includes:

- » Identifying new development patterns that include a mix of appropriate uses
- » Identifying a development framework that successfully works within constraints such as site-specific topography, storm water management requirements, infrastructure needs, and transportation-related access
- » Identifying innovative funding strategies to ensure economic feasibility
- » Engaging with land owners and other significant stakeholders to develop a shared vision and long-term support for plan elements
- » Collecting market data and analysis to ensure that development scenarios are viable from a market perspective

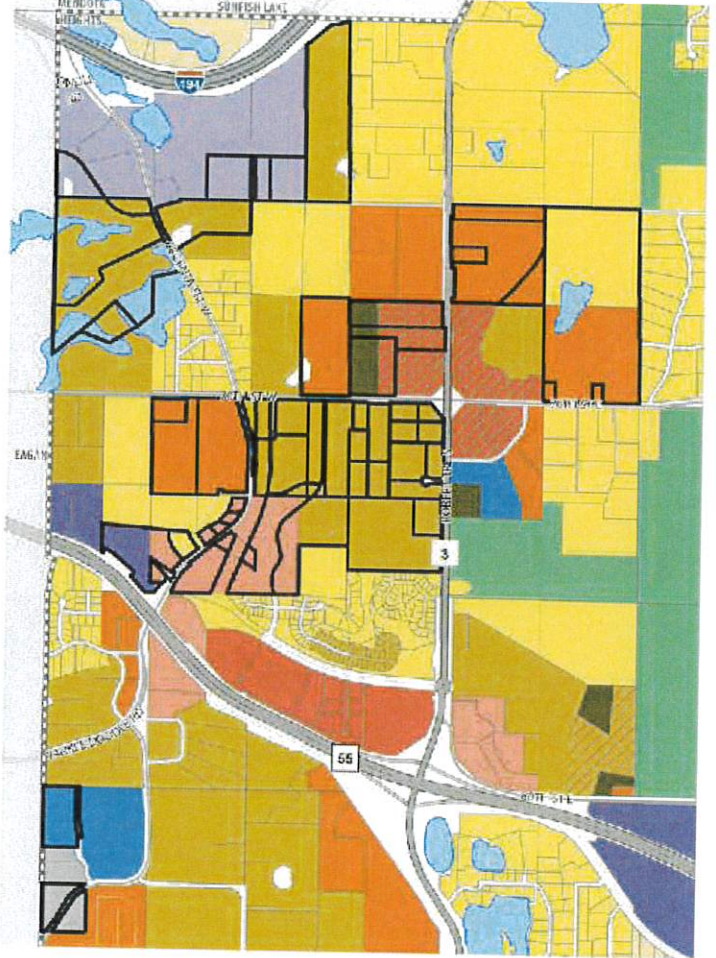


Northwest Area Change Area

This Plan



2030 Comprehensive Plan



2040 Comprehensive Plan and NW Area Planning

HKGi has assisted the City with its comprehensive planning since 1999 and recently completed its third Comprehensive Plan for the City, which is intended to guide planning and investment decisions through 2040. Since HKGi conducted the Northwest Quadrant Study and helped the City create the Northwest Overlay District in the early 2000s, planning for the Northwest Quadrant has remained an important component of the two most recent Comprehensive Plans and other planning initiatives.

Topography, infrastructure and transportation improvements, tree cover, storm water management techniques, market conditions, and property owner interests have continued to be important factors influencing development in the Northwest District. As conditions, technology and Best Management Practices continue to evolve, achieving a balance to ensure that development can occur in a fiscally feasible manner has continued to require adjustments to planning for the area. The Land Management Database Tool that HKGi developed has aided the planning team and the City's planners in the analysis of development assumptions, allowing planners to more efficiently assess the impacts of potential development and update development projections over time.

HIGHLIGHTS

Consistent planning in the Northwest Area since the establishment of the Overlay District

Land use development tool created to assist in analysis of development impacts

Long-term understanding of the community, its development context, and its development objectives





Lockheed Martin Site Redevelopment Study

Eagan, Minnesota - The City of Eagan retained HKGi to create a series of alternative redevelopment scenarios for the 50-acre former Lockheed Martin corporate office site at the intersection of Yankee Doodle Road and Pilot Knob Road. Taking cues from a recent market study, HKGi developed concepts that explored a range of commercial and retail tenants; mixed use development patterns; and a blend of commercial, retail, office, housing and park uses to create an urban village. This redevelopment study provided the foundation for the Central Park Commons project, which opened in 2016 and features several important elements from concepts created during this study, particularly the creation of public outdoor space as a pedestrian area in the northern part of the site.

HKGi's planners addressed access, circulation and screening issues and also created concepts for enhanced pedestrian amenities and features throughout the development. HKGi prepared development principles for each concept and evaluated each alternative for pros and cons related to the City's comprehensive plan. These evaluations were designed to assist City staff and elected officials in determining the desired future direction for the property.

HIGHLIGHTS

- Explored multiple potential redevelopment concepts
- Emphasis on creating a commercial development that would enable elements of an urban village to occur
- Public outdoor space includes stronger pedestrian elements and outdoor gathering spaces





Four Seasons Redevelopment Study

Working as part of a multi-disciplinary consultant team, HKGi created four distinct redevelopment scenarios that reflect both achievable development in the marketplace and sensitivity to the surrounding neighborhood with the appropriate size and scale of development.

The primary focus of the project was to establish a set of "guiding principles" for each redevelopment scenario for the city's use in reviewing and evaluating future development proposals. The guiding principles are rooted in the comprehensive plan, but correlate directly to specific site conditions and have relationships to existing uses. The guiding principles are focused on four areas: 1) land use and urban design; 2) architecture; 3) transportation and connectivity; and 4) stormwater treatment techniques. All of the principles represent the desired outcomes for redevelopment at the site from the community's perspective.

The site is roughly 21 acres, 16 to 17 of which were buildable due to existing site conditions. Because the site fronts major thoroughfares on all four sides, appropriate orientation was critical to the success of all of the redevelopment scenarios. Balancing highway visibility and respecting existing uses to the west was a primary objective for the site design.

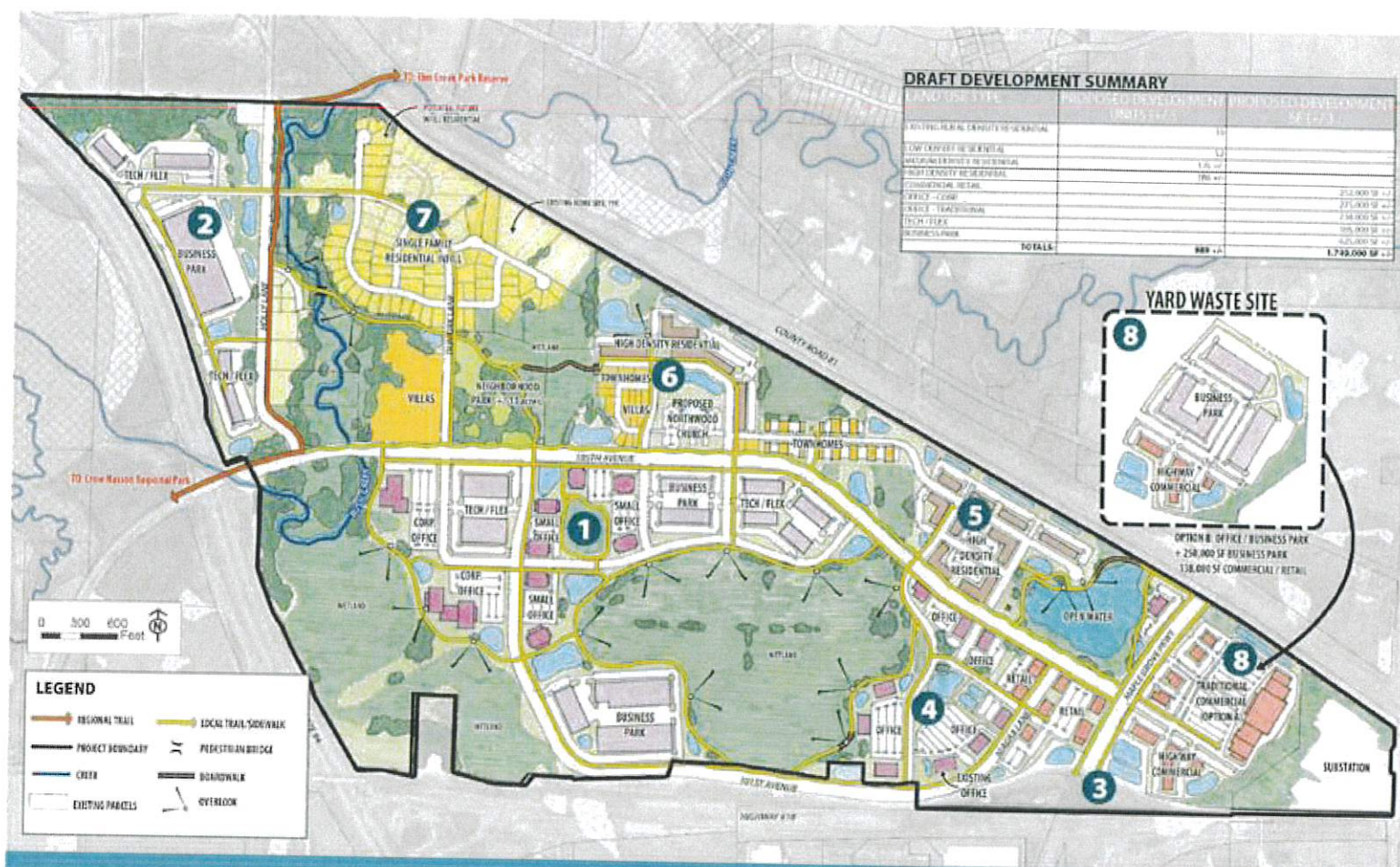
HIGHLIGHTS

Development and analysis of four potential development concepts

Test development scenarios against comprehensive plan and guiding principles

Identify feasible development concepts in relation to the market





Development concept plan with development district designations highlighted.

105th Avenue Growth Area Master Plan

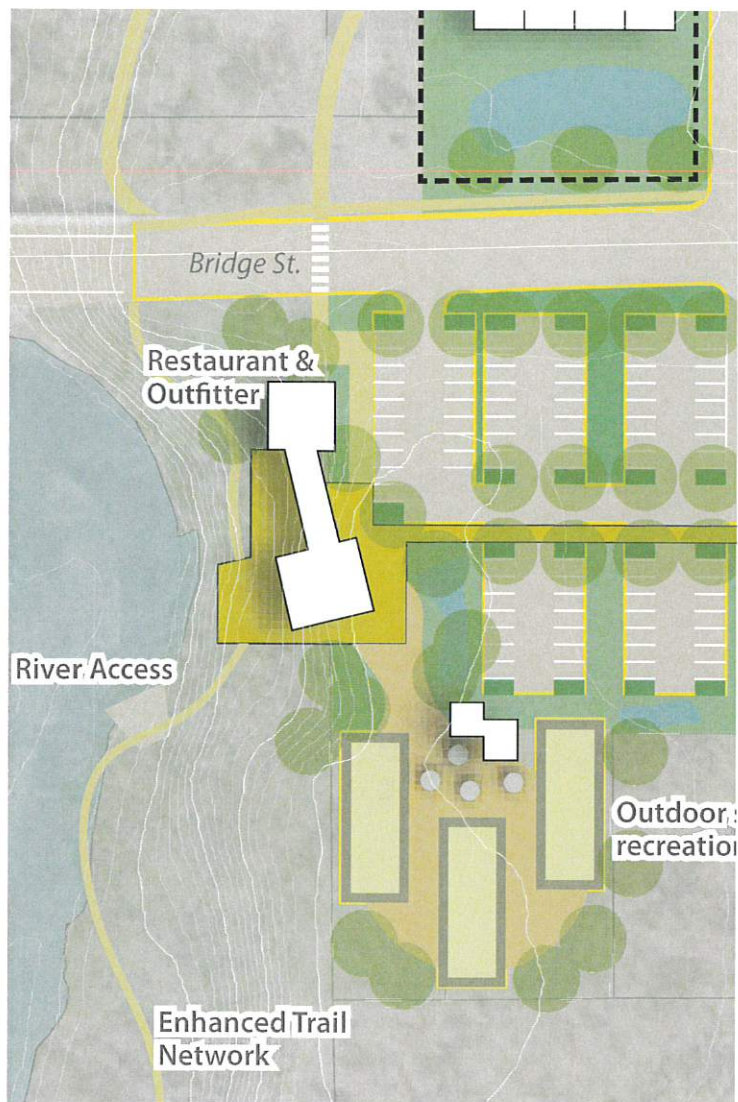
Maple Grove, Minnesota - HKGi recently completed a master plan for a 650-acre portion of Maple Grove's northwestern growth area. The project involved an examination of land use alternatives to help the City identify future infrastructure investments in the area. HKGi engaged existing landowners to understand their current and future interests, and used market data and other planning and development data to understand the potential for future development intensity and typologies in the area. The final development concept master plan envisions a vibrant mix of commercial and employment uses estimated at nearly 1.8 million sq. ft. of new commercial, office and business park uses and approximately 1,000 housing units of various types.

The planning team took a market-based approach, collecting input and feedback on concepts from real estate brokers and other representatives from the development community. Master planning involved identifying sites for particular types of uses. HKGi also developed a parks, trails and open space plan which integrates existing natural resources and a stormwater treatment approach. A set of design guidelines addresses items such as building orientation, parking, and loading areas.

HIGHLIGHTS

- Scenario-based planning approach with market testing
- Urban design guidelines
- Parks and Open Space planning
- Engagement with development community





Plan views and 3D renderings illustrate potential redevelopment concepts along the Rum River.



Comprehensive Planning, Downtown Master Planning, and General Planning Services

St. Francis, Minnesota - Since 2016, HKGi has provided the City of St. Francis with planning assistance both on a day-to-day basis as well as on individual comprehensive and downtown planning initiatives. Most recently, HKGi has helped the City write and implement zoning ordinance revisions and promote a redevelopment initiative at Bridge Street just east of the Rum River.

HKGi's redevelopment concepts for the site on Bridge Street downtown take advantage of river access and potential trail connections north and south to envision this as a prime site for a potential outfitter and related dining and retail businesses. In planning for this site, HKGi's landscape architects have had to address topography and other factors that constrain development on site.

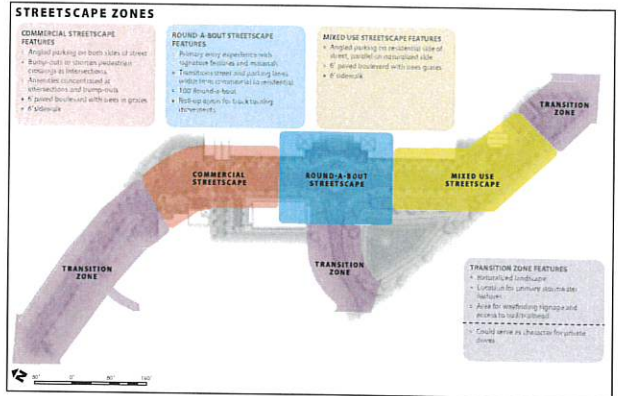
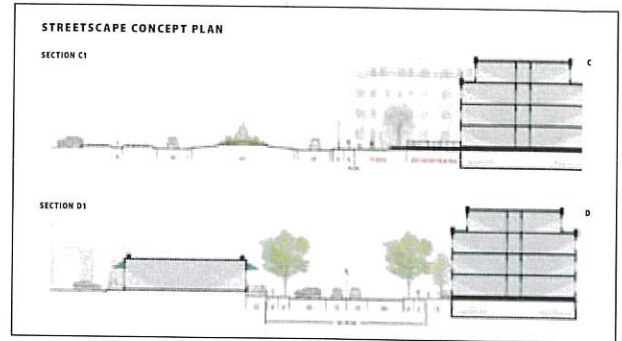
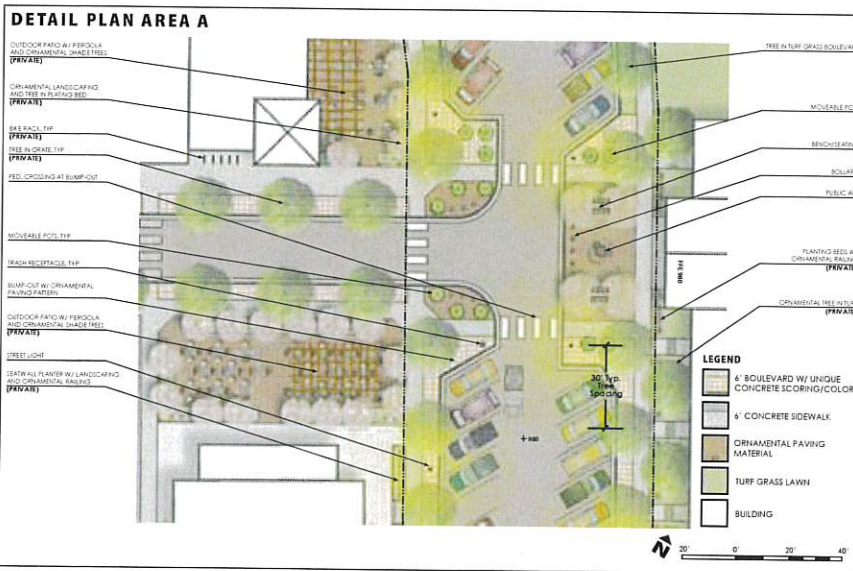
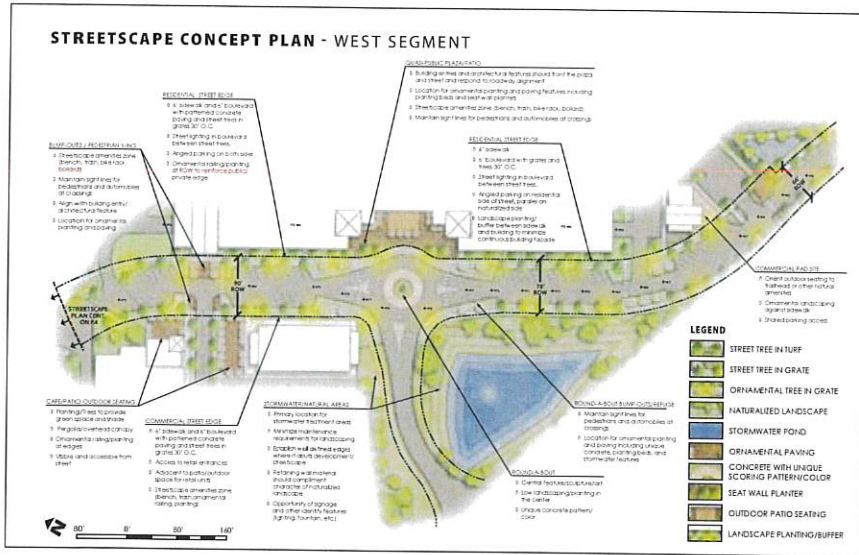
3D visualization was used to communicate siting of building elements and development character to members of the public and potential developers.

HIGHLIGHTS

Visualizations will be utilized by the City to attract development interest and illustrate the community's desired development character

Zoning ordinance revisions and design guidelines to increase the character of the built environment in the downtown area





This plan addresses streetscape and infrastructure improvements for the greenfield site west of downtown. Details illustrate potential streetscape treatments, plaza and patio areas, and potential public art locations.

Cross sections illustrate street widths and pedestrian zones, and an initial analysis allowed the team to identify streetscape zones that would establish appropriate development types for the site.

Downtown West Development Planning and Streetscape Improvements

Victoria, Minnesota - After creating a redevelopment plan for picturesque downtown Victoria, HKGi was part of a multi-disciplinary planning team hired by the City to create streetscape and infrastructure standards and concepts for a 13-acre greenfield site immediately west of the downtown core. The site topography presents numerous development challenges that the planning team addressed through roadway alignment and building location strategies.

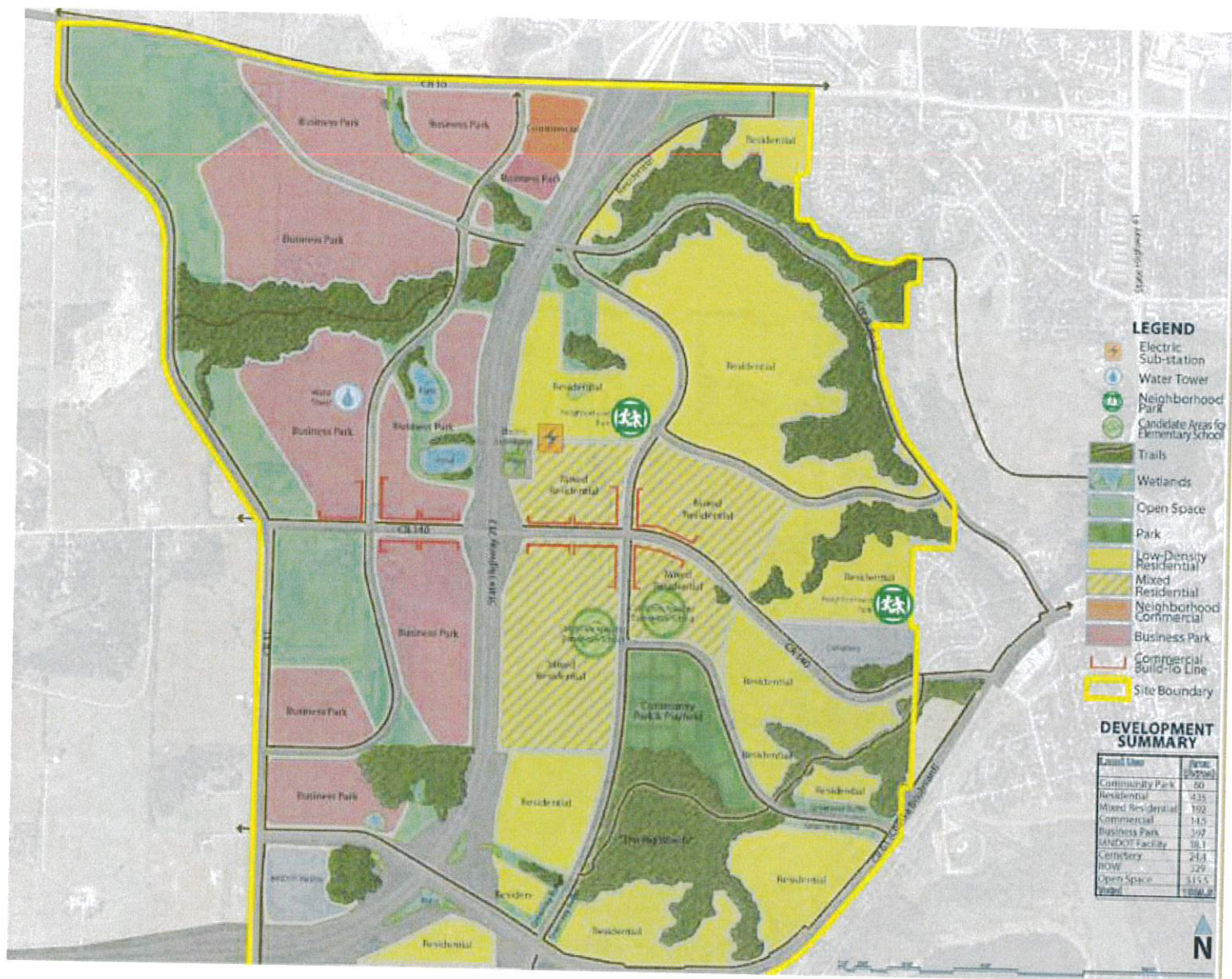
The final concept envisions a development that will complement downtown Victoria's pedestrian friendly character, and the streetscape concepts support this vision by including plaza-style streets, cafe seating areas, bump-outs that reduce crossing times, angled parking to slow traffic and maximize parking availability, and a signature roundabout that will service as a central feature of the neighborhood.

HIGHLIGHTS

Development on greenfield site included addressing development constraints related to site topography

Final deliverable includes streetscape design guide for City infrastructure investments





Southwest Chaska Growth & Development Plan

HKGI's work on the Southwest Growth Area Plan and the 2040 Comprehensive Plan complements the firm's work on the Downtown Master Plan for Chaska's historic downtown.

Planning for the 1,800-acre Southwest Growth Area maximizes connectivity between the growth area and the adjacent downtown core and represents realistic, flexible development guidance that contrasts with previous plans that were too prescriptive. Located immediately west of historic downtown Chaska, the Southwest Chaska Growth Area was intentionally developed to contribute to the strength of Chaska's historic downtown area, rather than creating commercial areas that would likely compete. Planned residential areas were designed with easy connections to the downtown core. The projected development plan reflects the existing community pattern and context, the area's unique landscape, and the recent changes to the regional roadway network.

The recently-completed 2040 Comprehensive Plan continues to promote the City's core strategies of enhancing the community's high quality of life, commitment to excellence, and maintaining its small town character.

HIGHLIGHTS

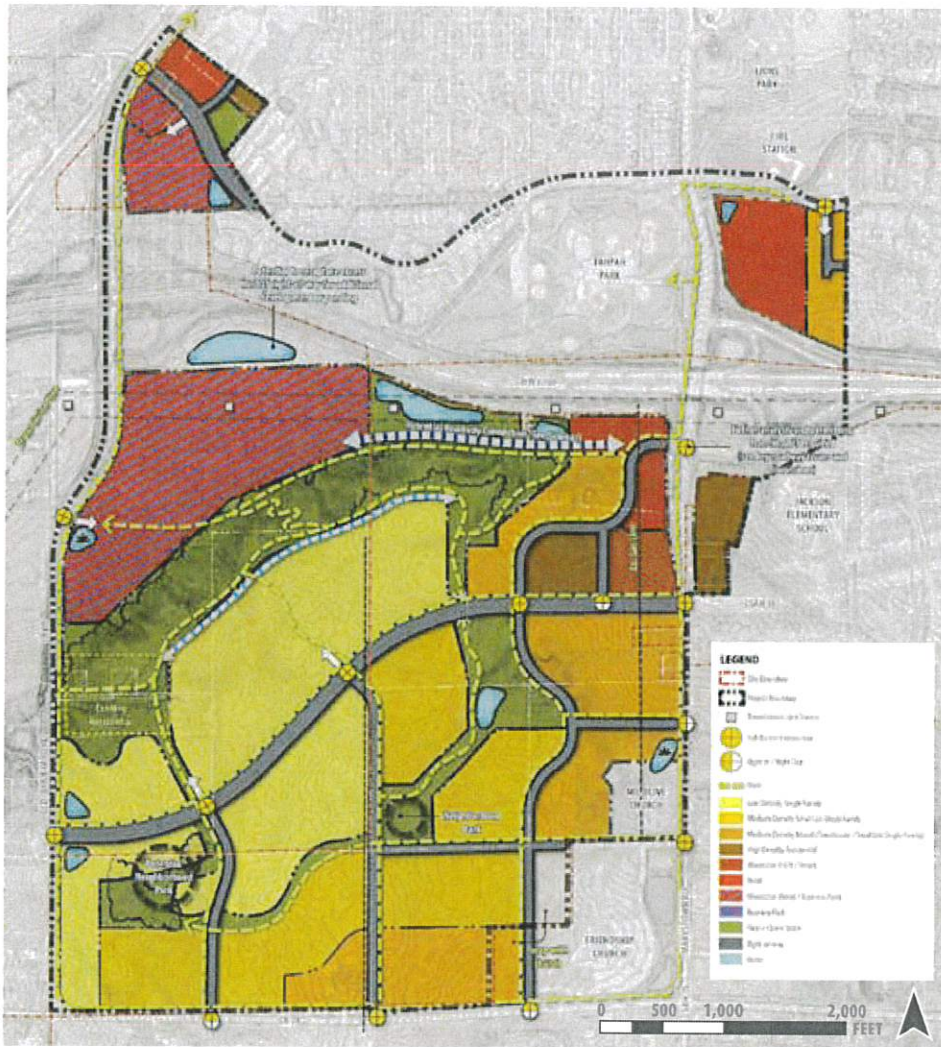
Growth area planning designed to complement planning initiatives for adjacent historic downtown

Emphasis on feasibility of development scenarios

Identify greenway connectivity and landscape protection

Planning initiative driven by new highway construction through project area





The Land Use Master Plan (left) and the Park and Open Space Network Plan (right) will help establish the character of development in the project area.

West Shakopee/Jackson Township Land Use Study and Master Plan

Shakopee, Minnesota - HkGi provided land use planning expertise to the development of a land use master plan for an 850-acre area in western Shakopee and Jackson Township. The project was intended to establish a community vision for the area, determine an optimal mix of land uses, provide a preliminary guide to future infrastructure improvements that would facilitate growth, and create a set of implementation strategies to help the City understand the actions that would be required to realize community members' vision for the area.

The planning team conducted outreach to area landowners and community members, analyzed current local and regional policies influencing development in the area, and assessed market development potential in order to establish the framework for the land use plan, the open space network concept, and the development phasing concept. The project area contains a sensitive ridgeline that can serve as a neighborhood amenity that can add value to future development provided that public frontage on the ridgeline is preserved.

HIGHLIGHTS

Growth area plan that included a key open space network concept that will help preserve a sensitive ridgeline

Implementation strategies provide clear guidance regarding the City's next steps to help development occur according to the community's vision



Bolton & Menk Experience in the Northwest Area

The City of Inver Grove Heights' Northwest Area consists of over 3,000 acres and is largely undeveloped with primarily acreage lots and rural roads. The area features numerous steep slopes, wetlands, and many small forests. Most of the existing land use is residential with only a few scattered non-residential uses.

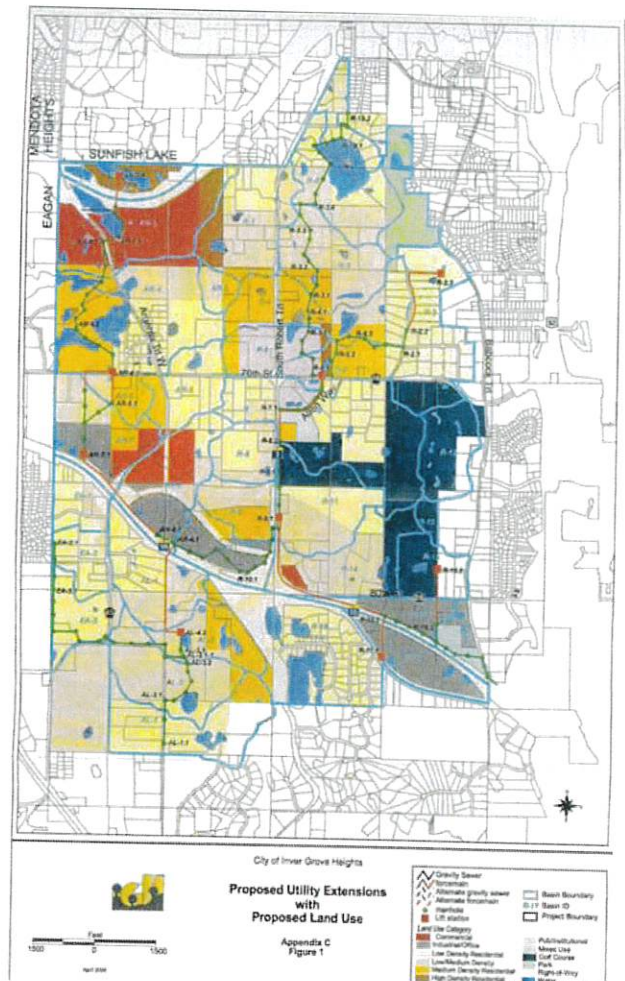
Bolton & Menk has been assisting the City since 2006 with the development of the City's Northwest Area infrastructure. Our work has been extensive in the area and includes:

- » NW Area Trunk Utility Feasibility Report
- » Design and construction of the first \$12M of trunk utility improvements along 80th street and TH 3.
- » Design and construction services of the Argenta Trunk Utilities through the Blackstone development.
- » Studies and final design/construction services for the Loch Gregor area.
- » Hannah Meadows Sewer Study and Robert District Gravity Sewer Study.
- » Lift station and sanitary sewer review and design for Blackstone Vista, Blackstone Ponds developments
- » Argenta trunk sanitary sewer extension

We believe our collective experience and knowledge of the NW Area makes us eminently qualified to evaluate the utilities that will potentially serve the area within the small area study being proposed. We have already evaluated much of this area when utilities were extended into the surrounding Blackstone Developments.

In addition to our utility knowledge, we also have a superior transportation team that has completed multiple projects with Dakota County and MnDOT. We understand the importance of coordinating with agency partners for traffic analysis, access management, and area studies of this nature. Aaron and Bryan have fostered strong relationships with Dakota County and MnDOT, and have solid reputations collaborating with them to ensure decisions are vetted, documented, and implemented to the satisfaction of all partners.

Through all of our projects in this area it has allowed us several opportunities for community outreach. We understand the diverse ideas from the area as there are several varying land uses. Our familiarity with this neighborhood and surrounding rural area will help us in building consensus with all of the project stakeholders.



Comprehensive Utility Study,

Elko New Market, Minnesota - The City of Elko New Market is a fast-growing community located 15 minutes south of Lakeville. Elko New Market is quickly becoming a suburb of the Twin Cities Metropolitan Area with significant commercial and industrial growth potential. These changes place new demands on the infrastructure and public services and accelerate those demands.

For the Wastewater Collection System Study, the City of Elko New Market's ultimate boundary of 9 square miles was used. Recommendations for serving new areas were provided along with growth staging for those 9 square miles. The use of lift stations and forcemains were implemented into the study due to the topography of the area.

In total, Bolton & Menk identified over \$20 million in upcoming sanitary sewer improvements. In addition, Bolton & Menk assisted the city with the preparation of sewer trunk and SAC fees.

Kenyon Avenue Improvements

Lakeville, Minnesota - The City of Lakeville needed to upgrade its aging infrastructure to meet the increased demands of new development. Bolton & Menk urbanized a rural collector road associated with an incoming development, including roadway expansion, curb and gutter, storm sewer network, regional infiltration basin BMP, and a large prefabricated modular block retaining wall. Improvements were sandwiched between I-35 and Lee Lake with steep slopes and limited right-of-way. We maintained close coordination with MnDOT water resources staff to address water quality concerns with the project's proximity to Lee Lake, and helped the city secure a significant watershed grant to help fund construction of a regional infiltration basin. A creative and iterative design process was required to meet city needs while staying within budget. Communication with the city and other stakeholders was essential in creating a product that worked for all parties.

2019 Street Improvements

West St. Paul, Minnesota - The City of West St. Paul's pavement management program included the reconstruction of Livingston Avenue. This state aid collector road served both commercial and residential properties in the heart of the city. Many businesses impacted by construction were also impacted by the previous Robert Street construction. A thoughtful approach to construction staging and driveway phasing helped alleviate access concerns posed by certain businesses. Our team coordinated with SPRWS to replace the existing watermain within the project limits. Bolton & Menk staff worked with West St. Paul staff to deliver this project on time and under budget.



Real People. Real Solutions.

Redevelopment and Development Management Services

Ehlers provides the most extensive suite of Redevelopment and Development Management Services available to local governments and public agencies in the state. We advise communities across a wide spectrum of redevelopment/economic development processes, with projects ranging from \$500,000 to \$640 million. Many of our advisors have also worked and served in local government during their careers, giving them a keen understanding of development and redevelopment goals from your perspective, not just through the financing lens.

Tax Increment Financing Experience

Ehlers has more experience and longevity executing tax increment financing in Minnesota than competing firms, providing guidance on more than 900 projects and generating billions in development. The scope of that work includes:

- » Evaluating TIF applications and proposals from developers to determine if the project meets the “but for” test and warrants assistance, and the amount and structure (e.g. TIF, tax abatement) of the assistance
- » Creating and modifying TIF Districts along with all supporting documentation (schedules, public hearing notices, TIF Plans)
- » Communicating with legal professionals to ensure statutory compliance
- » Filing all documentation with the appropriate State and County officials
- » Working with Cities and their EDAs and attorneys throughout the development agreement process
- » Attending public hearings and work session meetings
- » Hosting an annual public finance seminar focusing on tax increment financing and development education
- » Preparing annual state auditor TIF reports for over 80 cities/authorities totaling approximately 360 districts (including Brooklyn Park)
- » Making recommendations for financial reporting systems to accommodate the requirements of the Office of the State Auditor (OSA) and assisting communities in responses to questions and/or non-compliance issues
- » Preparing TIF Management Plans that show how communities can use TIF from existing districts to achieve their goals while ensuring compliance with OSA requirements and monitoring ongoing performance of the districts.



Positive Relationship with the OSA

Ehlers maintains a strong and productive working relationship with the OSA. In fact, we are often asked for opinions on interpretation of TIF statutes. The office commends us for the standard we established for pro forma analysis, “look-back” provisions and meeting the required “But-for” findings.

General Feasibility Analysis/Developer Roundtables

Once a community decides to pursue development or redevelopment of a site, two questions must be addressed: “Is the project financially feasible?” and “Is it feasible in the current market?” Typically, cities conduct expensive planning studies and market analyses to answer those questions and the reports often succumb to a short shelf-life. Ehlers developed a more cost-effective process. We coordinate structured meetings with developers who provide direct feedback to the client. Staff and policymakers learn what development types can work best for the site and Ehlers prepares an analysis on the level of financial assistance required to achieve different types of development. We call them Developer Roundtables and they often create developer interest and lead to formal proposals for development.

Developer Selection

Redevelopment and economic development are successful only when there is a good partnership between the private and public sector. Ehlers can help you select an appropriate partner to help you meet your development goals.

Pro Forma Analysis/But-For Test/Negotiation

One of the biggest challenges communities face in moving economic development initiatives forward is working with developers to determine if a) assistance is warranted and, if so, b) calculate the appropriate level of assistance. Because Ehlers keeps current with (and ahead of) potential changes in industry standards and construction costs for differing real estate products, we “demystify” the process of analyzing true need. Our financial advisors regularly conduct pro forma analyses for cities to help them determine the appropriate level of need and developer assistance.

Project Management

Local governments often find themselves short-staffed for major or specialized projects such as large-scale redevelopment or economic development projects. Ehlers offers the experience and band-width to step into the role of a staff person for a local government, write reports to council and coordinate developers’ applications and review of various types of projects.

Southwest LRT Corridor – Comprehensive Housing Gaps Analysis

Client: Hennepin County, MN; SW-LRT Community Works, and partner cities of Minneapolis, St. Louis Park, Hopkins, Edina, Minnetonka and Eden Prairie

Marquette Advisors was retained to provide a comprehensive assessment of housing gaps and future development potential for the “Green Line” LRT corridor, and for specific station areas along the route which will connect Downtown Minneapolis with the Twin Cities southwest suburbs.

Minnetonka Comprehensive Housing Needs Assessment & Commercial Real Estate Market Analysis

Client: City of Minnetonka, MN

Marquette Advisors provided a comprehensive analysis of the housing market in Minnetonka, MN. This included a review of current and projected future housing needs within the community, by product type and by price/rent level. A detailed analysis of the housing/jobs balance was provided, with insight regarding housing affordability, commuting patterns, and potentially unmet demand for workforce housing in the community. Subsequently, Marquette was retained by the City to provide an analysis of retail, office and industrial market conditions throughout the community, advising the City on key market trends and property development/redevelopment opportunities.

Richfield East 66th Street Corridor Plan

Client: Hennepin County Community Works / City of Richfield

Marquette Advisors provided a review of residential and commercial real estate market conditions for the East 66th Street Corridor in Richfield, a first-ring suburb of Minneapolis. This report examined the potential demand for infill and redevelopment activity along the corridor, spanning both residential and commercial property types. Marquette also provided site-specific development feasibility analytics that were used by the project team lead, Minneapolis-based Damon Farber Associates, in developing a development framework for the corridor.

Uptown Small Area Plan

Client: City of Minneapolis, MN

Market study provided to guide development of the award-winning “Uptown Small Area Plan.” Marquette also provided market and financial review of several development scenarios for multiple parcels within the study area, identifying the financial viability of varied alternatives and need for gap financing.



TEAM CAPACITY

Projected workloads for staff members included on the HKGi team indicate that all team members will have adequate capacity to conduct this planning process. If selected for this project, the team will be able to commit the necessary staff time to complete primary planning on this project by December, 2020.

As a Principal with HKGi, Project Manager Bryan Harjes will ensure that the team has the resources necessary to keep the project on schedule and on budget. He will ensure that the team delivers superior client service and the City's objective for this project are fulfilled by the planning process and the project deliverables.

REFERENCES

HKGi

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City of Maple Grove
pvickerman@maplegrovern.gov
763-494-6040

Dave Olson, Director of Community and Economic Development
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651-300-4261

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Marquette Advisors

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John Stark
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JStark@richfieldmn.gov
612-861-9775

CONFLICT OF INTEREST

The firms that make up the HKGi consulting team proposed to provide service on this project have no conflicts of interest to declare.

COSTS

The table below includes a task by task breakdown of the HKGi team's proposed fee to conduct this planning process. This fee estimate is based on the work plan and schedule included earlier in this document. If the HKGi team is selected to conduct this project, we will work with City staff to confirm or revise the work plan to best fit the objectives of the project. Revisions to the work plan may result in adjustments to the proposed fee and will be communicated to staff during the scope negotiation process.

TASK	HOURS	FEE
Task 1 - Understand the Context	60	\$6,700
Task 2 - Confirm Project Objectives	30	\$5,000
Task 3 - Explore Alternatives	180	\$23,400
Task 4 - Converge on a Preferred Plan	50	\$5,300
Task 5 - Assemble Master Plan	110	\$9,100
Sub-Total	430	\$49,500
	Reimbursable Expenses	\$500
	Not-to-Exceed Total	\$50,000

Hourly Rates

HKGi

- » Bryan Harjes, PLA, LEED AP: \$190
- » Brad Scheib, AICP: \$190
- » Technical Support: \$70-\$100

Bolton & Menk

- » Eric Seaburg, PE: \$159
- » Bryan Nemeth, PE, PTOE: \$185
- » Aaron Warford, PE: \$190
- » Brian Hilgardner, PE: \$177

Ehlers

- » Jason Aarvold: \$250
- » Jessica Cook: \$250

Marquette Advisors

- » Brent Wittenberg: \$350



CREATING
PLACES
THAT *ENRICH*
PEOPLE'S
LIVES.

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 2020-204

RESOLUTION AUTHORIZING APPROPRIATE CITY OFFICIALS TO EXECUTE A PROFESSIONAL SERVICE AGREEMENT WITH HKGI FOR PROFESSIONAL PLANNING SERVICES TO DEVELOP A SMALL AREA PLAN FOR A PORTION OF THE NORTHWEST AREA OVERLAY DISTRICT AT A FEE NOT TO EXCEED \$50,000 AND APPROVING RELATED BUDGET AMENDMENT

WHEREAS, the Inver Grove Heights city council has determined the need for developing a small area plan (SAP) with ample public input that may better guide the development of an portion of the Northwest Area Overlay that is South of 70th Street, North of Hwy 55, West of Argenta Trail and East of the City of Eagan, and approved the issuance of a request for proposals (RFP) for professional planning services to accomplish such on August 25, 2020; and

WHEREAS, three professional planning services proposals were received by the approved RFP deadline and evaluated by the RFP denoted selection review committee, such selection committee unanimously recommending the city council accept a September 16, 2020 proposal from HKGI to perform such SAP services for a fee not to exceed \$50,000; and

WHEREAS, the city council has the authority to authorize a 2020 budget amendment, that may designate up to \$50,000 in Host Community Funds be allocated for the payment of such HKGI professional service agreement and further, authorize the appropriate city officials to execute an professional service agreement with HKGI in keeping with the objectives of the city council approved RFP.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, THAT HKGI HAS BEEN SELECTED PER A FORMAL RFP PROCESS, TO PEFORM PROFESSIONAL PLANNING SERVICES FOR A SAP AS DELINEATED IN A SEPTEMBER 16, 2020 DATED PROPOSAL FOR A FEE NOT TO EXCEED \$50,000, AND APPROPRIATE CITY OFFICALS MAY EXECUTE A RELATED PROFESSIONAL SERVICE AGREEMENT, AND FURTHER, A BUDGET AMENDMENT OF UP TO \$50,000 IN FUNDS FROM THE HOST COMMUNITY FUND IS HEREBY AUTHORIZED FOR SUCH CITY EXPENDITURE.

Adopted by the City Council of Inver Grove Heights on this 28th day of September, 2020.

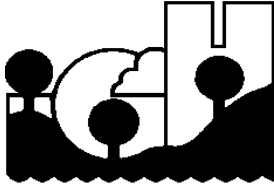
Ayes:

Nays:

ATTEST:

George Tourville, Mayor

Rebecca Kiernan, City Clerk



CITY OF INVER GROVE HEIGHTS

MEMORANDUM

TO: Mayor & City Council

FROM: Joe Lynch, City Administrator

SUBJECT: Comcast Franchise Agreement

DATE: September 28, 2020

CC: J. Miller NDCTV

Enclosures: Draft Franchise Agreement
NDC4 Commssion Memorandum
Comcast Side letter

Background:

- We currently have a Franchise Agreement with Comcast
- The previous 15-year Franchise Agreement expired in 2015
- The Cable Commission and Executive Director have been negotiating with Comcast over the last five (5) years for a new Agreement
- They think we have reached terms for new ten (10) year agreement
- The Agreement is an Ordinance and adoption takes three (3) readings to pass
- Our second reading of an Ordinance is a Public Hearing for public comment and feedback
- NDC4 Commission representatives, Executive Director Jodie Miller and Cable Commission Attorney Brian Grogan will give a presentation at the second reading of the ordinance on September 28th

Overview

NDC4 Commission, the Cable commission and the Cable TV Executive Director have negotiated a new ten (10) year Cable Franchise Agreement with Comcast Cable. At this time, the Agreement is being presented to the Council for your review and comment. This is the first reading of proposed new cable franchise agreement with Comcast. Because this has been discussed, negotiated and reviewed many times over the last five years, we will recommend passing this Ordinance in one reading.

Some of the highlights of the new Agreement are:

- ✓ We will maintain the ability to have the PEG (Public Education and Government) channels and continue to collect a fee for this. This will be, on average, 2.25% of gross revenues.
- ✓ We will continue to maintain the collection of a Franchise Fee equal to the same percentage of the previous agreement (5%) of quarterly gross revenues. This has averaged approximately \$100,000 annually to the city to help offset costs related to technology and maintenance of the system in the Council Chambers, as well as costs related to other programming.
- ✓ This is a non-exclusive agreement for services. That means that this is an open market for Cable services. However, we would have to treat, negotiate, and reach a similar agreement with any other providers.

This Agreement has been negotiated by the Executive Director, the Cable Attorney and the League of Minnesota Cities appointed attorneys. They recommend that all communities in the NDC4 Commission group (Inver Grove Heights, Mendota Heights, South St. Paul, West St. Paul, Lillydale and Mendota) adopt this new agreement and hold their respective meetings to do so.

Recommendation

Staff recommends the Council hold the first reading of the new Cable Franchise Agreement and consider adoption in one reading.



Moss & Barnett

We Advise.  You Decide.

Comcast Franchise Renewal

Northern Dakota County Cable Communications Commission (NDC4)

August 31, 2020

Brian T. Grogan, Esq.

(612) 877-5340

www.lawmoss.com



What are we here to consider?

- After more than 5 years of effort
- NDC4 and Comcast agree on new cable franchise
- August 5, 2020
 - NDC4 unanimously recommends Member Cities approve cable franchise
- **NDC4 recommends adoption of new cable franchise with Comcast**
 - Approval to execute side letter with Comcast.
- **Timing**
 - Comcast to execute once all cities have adopted
 - “Effective Date” triggers certain new franchise obligations
 - Goal = **identical** franchise documents for all 7 member cities



Timeline – how did we get here?

- 2000 – Comcast is granted existing franchise
- 2012 – parties begin renewal proceedings
- 2014 – Comcast seeks to transfer franchise (Time Warner)
- 2015-2016 CenturyLink is granted franchise
- March 2015 – existing franchise extended – 6 total extensions
- Informal negotiations between parties



Comcast Formal Renewal

February 2018

- NDC4 directs staff to begin preparing “formal” renewal documents required under Cable Act
- NDC4 prepares a Needs Report, which includes:
 - Formal Needs Assessment Report
 - Request for Formal Renewal Proposal
 - Model Cable Television Franchise Ordinance

April 4, 2018 – Full NDC4 Cable Commission approves the Needs Report

August 15, 2018 - Comcast submits its Formal Proposal to NDC4 in response to the Needs Report



Comcast Formal Renewal

December 12, 2018

- NDC4 recommends that the Member Cities issue a preliminary assessment that the Comcast Formal Proposal should be denied and the Comcast Franchise should not be renewed

1st Quarter 2019

- Member Cities each vote to preliminarily deny Comcast's Formal Proposal
- LMCIT – insurance trust – assigns John Baker as litigation attorney
- Administrative Law Judge assigned
- Informal settlement meetings continue to run parallel to formal legal process



FCC 621 Order

- **Order Adopted** – August 2, 2019
- **Effective Date** - September 26, 2019
- **Reinterprets** - 35 year old Cable Act
- **Appeal of FCC 621 Order**
 - NDC4 and many others are parties to legal challenge
 - Decision on appeal not expected until spring of 2021, or later



FCC 621 Order

- **Non-monetary franchise obligations – potential deduction from Franchise Fees**
- Valued at “**fair market value**”
 1. Free or discounted cable TV service
 - to schools and public buildings
 2. PEG signal transport
 - “Maintenance and use” (Does not include cost of construction)
 3. Institutional networks
 - Separate network serving cities and schools
 - Operator allowed to charge FMV



Side Letter Agreement

Service to public buildings

- a) Impacted by FCC 621 Order
- b) Comcast has option to charge schools and public buildings for cable service
- c) If FCC Order is overturned by Court - then complimentary service is restored

Institutional Network

- a) Comcast will wind down I-Net
- b) Dark fiber through end of 2020
 - i. 4 Inver Grove Heights sites; and
 - ii. 2 West St. Paul sites.
- c) Possible extension to 10/31/21
- d) \$330 per location for each additional month beyond the end of calendar year 2020



Key Terms of New Franchise

1. **10 year term**
2. **5% Franchise Fee**
 - a) Strong definition of “Gross Revenues”
 - b) Bundled services addressed
 - c) Payments due within 30 days of end of quarter – along with report showing computation
3. **Competitive Equity**
 - a) Protection for Comcast should cable service competitor enter market
4. **City Code incorporated**
 - a) ROW protections
 - b) Definition of “street”
 - c) Minnesota Rules referenced to address utility protections for ROW



Key Terms of New Franchise

- 5. **Performance Bond - \$100,000**
- 6. **Letter of Credit - \$25,000**
- 7. **Streamlined Enforcement Procedure**
- 8. **Strong Customer Service Standards**
 - a) FCC standards
 - b) Franchise obligations
 - c) Reporting obligations
 - i. Trade secret/confidentiality
 - ii. Subscriber statistics due 6 times per year (currently monthly)
 - iii. Telephone Service Level (TSL) due quarterly (currently monthly)



Key Terms of New Franchise

9. 7 PEG Channels

- a) Channel #s 14, 15, 16, 18, 19, 20 and 21
- b) Within 90 days of effective date
 - i. 5 SD and 2 HD PEG Channels provided
- c) 3rd HD PEG Channel provided January 1, 2022
 - i. Retain 5 SD PEG channels
- d) Upon 5th anniversary
 - i. Comcast can provide 90 days notice
 - ii. Commission gives back 1 SD PEG Channel
 - iii. Resulting in 4 SD and 3 HD PEG channels
- e) If Comcast terminates SD channels and services
 - i. Comcast moves to all HD lineup
 - ii. After 90 days written notice to Commission
 - iii. Comcast will provide 4 HD channels



Key Terms of New Franchise

10. PEG Fee

- a) 2.25% of gross revenues
 - i. Existing PEG fee started at \$.83 – currently \$1.99
- b) Payment due quarterly to NDC4
 - i. PEG Fee is over and above 5% franchise fee
- c) PEG Fee to be used for PEG capital purposes
- d) Comcast can recoup additional PEG capital support, but separate from PEG fee line item
 - i. Consistent with federal Cable Act and FCC regulations



Key Terms of New Franchise

11. PEG issues

- a) Transport and Interconnection
 - i. Other Twin Cities PEG stations by Prisma and C-RAN
 - ii. Satellite feeds
 - iii. Fiber backhaul for city halls
 - iv. Cable modem for truck
- b) Technical quality
- c) PEG monitoring – NDC4 office and 4 City Halls



Questions?

Brian T. Grogan, Esq.

Moss & Barnett, A Professional Association

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Minneapolis, MN 55402

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E-mail: Brian.Grogan@lawmoss.com

Web site: www.lawmoss.com

NORTHERN DAKOTA COUNTY CABLE COMMUNICATIONS COMMISSION

RESOLUTION NO. 8-5-2020-1

**RESOLUTION RECOMMENDING RENEWAL OF A CABLE TELEVISION
FRANCHISE WITH COMCAST OF ST. PAUL, INC.**

WHEREAS, the Northern Dakota County Cable Communications Commission (the "Commission") is a Joint Powers Cooperative organized pursuant to Minnesota Statutes §238.08 and §471.59, as amended, and includes the following seven (7) municipalities: Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul, Minnesota (the "Member Cities"); and

WHEREAS, in the spring of 2000, the Member Cities enacted separate ordinances and entered into individual franchise agreements authorizing MediaOne of St. Paul, Inc. to provide cable service (collectively, the "Franchises"); and

WHEREAS, as a result of several transfers of the Franchises, Comcast of St. Paul, Inc. ("Comcast") currently holds the Franchises in the Member Cities; and

WHEREAS, the initial term of the Franchises has been extended multiple times by agreement of Comcast, the Commission, and the Member Cities; and

WHEREAS, the Commission has the authority to administer the Franchises on behalf of the Member Cities, including negotiating and recommending renewal of the Franchises; and

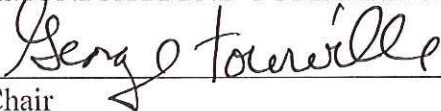
WHEREAS, the Commission and Comcast have informally negotiated the attached renewed cable television franchise (the "2020 Franchise") as contemplated by federal law at 47 USC § 546(h); and

WHEREAS, it is the finding of the Commission that adoption of the 2020 Franchise is in the best interests of the Member Cities and their residents.

NOW, THEREFORE, BE IT RESOLVED THAT, the Commission hereby recommends adoption of the 2020 Franchise by its Member Cities.

This resolution is passed and adopted by the Commission this 5th day of August, 2020.

**NORTHERN DAKOTA COUNTY CABLE
COMMUNICATIONS COMMISSION**

By: 
Its: Chair

ATTEST:


Executive Director

ATTACHMENT 1

2020 Cable Television Franchise

Mendota and Sunfish Lake's Publication for New Franchise Ordinance

South-West Review
March 26, 2000

SUMMARY FOR PUBLICATION

On March 14, 2000 the City of Mendota ("City") adopted a Cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a nonexclusive cable television franchise to MediaOne to operate, construct, and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750 MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of the annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7) channels initially available for public, educational and governmental programming with MediaOne to provide grants to support such programming throughout the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter, and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

Persons interested in reviewing a complete copy of the Ordinance may do so by contacting the City Clerk, Joan Olin at (651) 454-0079, during the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, or at the office of the Northern Dakota County Cable Communications Commission, 5845 Blaine Avenue, Inver Grove Heights, MN 55078, (651) 450-9891, during the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.
(South-West Review: March 26, 2000)

CITY OF SUNFISH LAKE DAKOTA COUNTY, MINNESOTA ORDINANCE NO. 2000-01 AN ORDINANCE ADOPTING NEW CABLE TELEVISION FRANCHISE ORDINANCE SUMMARY FOR PUBLICATION

On February 1, 2000 the City of Sunfish Lake ("City") adopted a Cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a nonexclusive cable television franchise to MediaOne to operate, construct, and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750 MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of the annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7) channels initially available for public, educational and governmental programming with MediaOne to provide grants to support such programming throughout the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter, and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

Persons interested in reviewing a complete copy of the Ordinance may do so at the law offices of LeVander, Gillen & Miller, P.A., 633 South Concord Street, Suite 400, South St. Paul, Minnesota 55075, during the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, or at the office of the Northern Dakota County Cable Communications Commission, 5845 Blaine Avenue, Inver Grove Heights, MN 55078, (651) 450-9891, during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

(South-West Review: March 26, 2000)

Inver Grove Heights, South St. Paul, & West St. Paul
Publication of Franchise Ordinance

Sunday, March 19, 2000

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA
ORDINANCE NO. 971**

**AN ORDINANCE ADOPTING NEW CABLE
TELEVISION FRANCHISE ORDINANCE**

On February 14, 2000 the City of Inver Grove Heights ("City") adopted a Cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a nonexclusive cable television franchise to MediaOne to operate, construct, and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750 MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7) channels initially available for public, educational, and governmental programming with MediaOne to provide grants to support such programming throughout the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter, and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

Persons interested in reviewing a complete copy of the Ordinance may do so at the City Hall at 8150 Barbara Avenue East, Inver Grove Heights, MN 55077 during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, or at the office of the Northern Dakota County Cable Communications Commission, 5845 Blaine Avenue, Inver Grove Heights, MN 55075, (651) 450-9891, during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

/s/ Joseph Atkins
Mayor

ATTEST:

/s/ Catherine Iago
Deputy Clerk

(South-West Review: March 19, 2000)

**CITY OF SOUTH ST. PAUL
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. 1098

**AN ORDINANCE GRANTING A
FRANCHISE TO MEDIAONE OF ST. PAUL,
INC. TO CONSTRUCT, OPERATE, AND
MAINTAIN A CABLE COMMUNICATIONS
SYSTEM IN THE CITY OF SOUTH ST.
PAUL, MINNESOTA SETTING FORTH
CONDITIONS ACCOMPANYING THE
GRANT OF THE FRANCHISE; PROVIDING
FOR REGULATION AND USE OF THE
SYSTEM AND THE PUBLIC RIGHT-OF-
WAY; AND PRESCRIBING PENALTIES
FOR THE VIOLATION OF THE
PROVISION HEREIN**

On March 6, 2000, the City of South St. Paul ("City") adopted a Cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a nonexclusive cable television franchise to MediaOne to operate, construct, and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750 MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7) channels initially available for public, educational, and governmental programming with MediaOne to provide grants to support such programming throughout the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter, and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

Persons interested in reviewing a complete copy of the Ordinance may do so at the City Clerk's Office at the Municipal Building, 125 Third Avenue North, South St. Paul, Minnesota, during the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, or at the office of the Northern Dakota County Cable Communications, 5845 Blaine Avenue, Inver Grove Heights, MN 55076, (651) 450-9891.

/s/ Christy M. Wilcox
City Clerk

(South-West Review: March 19, 2000)

ORDINANCE NO. 00-13

**AN ORDINANCE GRANTING A
FRANCHISE TO MEDIAONE OF ST. PAUL,
INC., ("GRANTEE") TO CONSTRUCT,
OPERATE, AND MAINTAIN A CABLE
COMMUNICATIONS SYSTEM IN THE CITY
OF WEST ST. PAUL, MINNESOTA SETTING
FORTH CONDITIONS ACCOMPANYING
THE GRANT OF THE FRANCHISE;
PROVIDING FOR REGULATION AND USE
OF THE SYSTEM AND THE PUBLIC RIGHT-
OF-WAY; AND PRESCRIBING PENALTIES
FOR THE VIOLATION OF THE
PROVISIONS HEREIN**

On Motion of Clpn. Vitelli

Seconded by Clpn. Walker

On March 13, 2000, the City of West St. Paul ("City") adopted a Cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a nonexclusive cable television franchise to MediaOne to operate, construct, and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750 MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7) channels initially available for public, educational, and governmental programming with MediaOne to provide grants to support such programming throughout the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter, and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

Persons interested in reviewing a complete copy of the Ordinance may do so at the Municipal Center, 1616 Humboldt Avenue, West St. Paul, MN 55118, during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, or at the office of the Northern Dakota County Cable Communications Commission, 5845 Blaine Avenue, Inver Grove Heights, MN 55076, (651) 450-9891, during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

This ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed this 13th day of March, 2000.

Ayes: 6

Nays: 0

/s/ Michael P. Blanz

Mayor

Attest: /s/ Diane K. Meissner

Deputy City Clerk

(South-West Review: March 19, 2000)

Lilydale's Public Notice

South-West Review
March 12, 2000

SUMMARY OF

ORDINANCE NO. 00-1

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE OF ST. PAUL, INC., ("GRANTEE") TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM IN THE CITY OF LILYDALE, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On February 28, 2000, the City of Lilydale ("City") adopted a cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive cable television franchise to MediaOne to operate, construct and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7)

channels initially available for public, educational and governmental programming with MediaOne to provide grants to support such programming through the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance 00-1. A copy of the entire Ordinance shall be posted at the Lilydale City Hall and sent to the Dakota County Library.

It is hereby directed that only the above title and summary of Ordinance 00-1 be published, conforming to Minn. Stat. §331A.01, with the following

NOTICE

Persons interested in reviewing a complete copy of the Ordinance may do so at the City Hall at 855 Sibley Memorial Highway, Lilydale, Minnesota 55118, during regular office hours; or at the office of the Northern Dakota County Cable Communications Commission, 5849 Blaine Avenue, Inver Grove Heights, Minnesota 55076, (651) 450-9891, during the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

	Yes	No
Mayor Edward Mullarky	☒	☐
Councilmember William Hanke	☒	☐
Councilmember Les Blanc	☒	☐
Councilmember Robert Johnson	☒	☐
Councilmember John Barthe	☒	☐

Passed by the Lilydale City Council this 28th day of February, 2000.

/s/ Edward J. Mullarky
Mayor

ATTEST:

/s/ Bernard J. Weltzman
Clerk-Treasurer
(South-West Review: March 12, 2000)

LILLIE SUBURBAN NEWSPAPERS, INC.
Week of March 12, 2000

Mendota Heights Franchise Ordinance

South-West Review
March 5, 2000

CITY OF MENDOTA HEIGHTS DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. 337

AN ORDINANCE GRANTING A
FRANCHISE TO MEDIAONE OF ST. PAUL,
INC., ("GRANTEE") TO CONSTRUCT,
OPERATE, AND MAINTAIN A CABLE
COMMUNICATIONS SYSTEM IN THE CITY
OF MENDOTA HEIGHTS, MINNESOTA
SETTING FORTH CONDITIONS
ACCOMPANYING THE GRANT OF THE
FRANCHISE; PROVIDING FOR
REGULATION AND USE OF THE SYSTEM
AND THE PUBLIC RIGHTS-OF-WAY; AND
PRESCRIBING PENALTIES FOR THE
VIOLATION OF THE PROVISIONS HEREIN
THE FOLLOWING IS A SUMMARY OF THE
ABOVE-REFERENCED ORDINANCE. A
PRINTED COPY OF THE FULL TEXT OF
THE ORDINANCE IS AVAILABLE FOR
INSPECTION BY ANY PERSON DURING
REGULAR OFFICE HOURS AT THE
OFFICE OF THE CITY CLERK.

On February 15, 2000, the City of Mendota Heights ("City") adopted a Cable Television Franchise Ordinance for MediaOne of St. Paul, Inc. ("MediaOne"). The Ordinance serves two purposes. First, it is intended to provide for and specify the means to attain the best possible cable television service for the public by providing requirements for cable television with respect to technical standards, customer service obligations, and related matters. Second, it grants a nonexclusive cable television franchise to MediaOne to operate, construct, and maintain a cable television system within the City and contains specific requirements for MediaOne to do so.

The Ordinance includes the following: requiring MediaOne to maintain a 750 MHz capacity cable system and reserving 200 MHz of that capacity for non-video cable services such as high-speed data transmission, Internet access, and other competitive services; imposing a franchise fee of five percent (5%) of annual gross revenues; establishing a fifteen (15) year franchise term; requiring the provision of service to new developments having a density equivalent of seven (7) dwelling units per one-quarter mile of cable when aerial plant is used and a density equivalent of ten (10) dwelling units per one-quarter mile of cable when underground plant is used; making seven (7) channels initially available for public, educational, and governmental programming with MediaOne to provide grants to support such programming throughout the term of the franchise; and requiring MediaOne to provide a network drop, cable outlet, converter, and the highest level of cable service, excluding pay-per-view and pay-per-channel service, to designated public buildings.

Persons interested in reviewing a complete copy of the Ordinance may do so at the City Hall at 1101 Victoria Curve, Mendota Heights, Minnesota, during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, or at the office of the Northern Dakota County Cable Communications Commission, 5845 Blaine Avenue, Inver Grove Heights, MN 55076, (651) 450-9891, during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.
(South-West Review: March 5, 2000)

[Comcast letterhead]

July 30, 2020

Northern Dakota County Cable Communications Commission
5845 Blaine Avenue
Inver Grove Heights, MN 55076

Dear Northern Dakota County Cable Communications Commission:

The purpose of this letter of agreement is to memorialize commitments between Comcast of St. Paul, Inc. (“Comcast”) and the Northern Dakota County Cable Communications Commission (“Commission”) that are in addition to the obligations contained in the renewal franchise agreement to be adopted by the Commission’s seven member cities (hereinafter collectively, “the Franchise”). These items set forth herein: 1) have been negotiated in good faith and mutually agreed to by the parties as part of the informal franchise renewal process pursuant to 47 U.S.C. 546(h); 2) are provided by Comcast in consideration of the grant of the Franchise by the City; and 3) specifically relate to unique community needs that exist in the Commission and its member cities. This letter of agreement shall become effective upon approval by the Commission.

1. Complimentary Cable Service to Public Buildings/Schools

a. Comcast and the Commission agree that under the FCC Section 621 Order (currently pending appeal), complimentary accounts are not a condition of the renewed franchise. Comcast will itemize fair market value price for all former complimentary service locations (approximately 46 sites in Comcast’s current Franchise effective April 2000, attached as Exhibit A), which shall be at rates at or below the attached Comcast municipal pricing sheet at Exhibit C (*Comcast’s municipal pricing sheet to be attached as Exhibit C*), and shall be subject to Comcast’s regular, nondiscriminatory rate adjustments.

b. Commission/City or former Complimentary Service recipients (schools, libraries, et al) have the right to choose to retain Cable Service at the rates listed on the municipal pricing sheet or terminate Cable Service to their Location.

c. If the FCC Section 621 Order (*Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019*) (herein “621 Order”) is stayed or overturned by action of the FCC or through judicial review, and franchise-mandated complimentary services to public buildings are no longer considered to be “franchise fees” under 47 USC §542, then for the remaining Franchise term Commission/City may require Comcast to provide complimentary basic Cable Service to the former Complimentary Service Locations listed in Exhibit B.

2. Institutional Network – I-Net

a. The I-Net is not a condition of the renewed cable franchise. Comcast will wind down its I-Net obligation as follows:

i. Comcast will provide existing dark fiber connections (former I-Net fiber), at no charge, from the Effective Date of the renewed franchise through the end of calendar year 2020 ("Termination Date"), to the following locations:

(A) Four (4) Inver Grove Heights sites; and

(B) Two (2) West St. Paul sites.

ii. Comcast will provide exactly what is in place today under the former franchise(s) (franchises adopted in the year 2000) to the above six (6) sites – no managed services required by the cities/sites.

iii. In the event the Cities should experience unavoidable fiber construction delays in 2020 (i.e. the COVID-19 crisis, weather, early winter frost, etc.) the Commission shall have the option to extend the Termination Date for any of the above locations. Any such extension of the Termination Date shall not extend beyond October 31, 2021. If such an extension is required, the Commission shall pay Comcast \$330 per location for each additional month beyond the end of calendar year 2020.

iv. But for any unavoidable construction delays for the six sites noted above, Comcast is relieved of the obligation to serve all other existing I-Net sites as of January 1, 2021 and shall have no further obligation to provide I-Net services.

v. The parties agree that Comcast shall not treat any costs incurred in performing under this Paragraph 2 as franchise fees, and agree that this provision is a reasonable way to come into compliance with the 621 Order as contemplated in the FCC's Order on Reconsideration of the 621 Order (¶5)(Released Feb. 11, 2020).

The terms and conditions of this letter agreement are binding upon the Commission and Comcast and their successors and assigns. In the event Comcast seeks to transfer the Franchise to another entity, Comcast agrees to require the new transferee to honor the terms of this side letter agreement as a condition of such transfer. Enforcement of the terms of this letter agreement shall be consistent with the enforcement procedures set forth in the Franchise.

Acknowledged and agreed to this ____ day of _____, 2020.

Comcast of St. Paul, Inc.

By: _____
Its: _____
Date: _____

Northern Dakota County Cable
Communications Commission

By: _____
Its: _____
Date: _____

EXHIBIT A

NDC4 COMCAST FRANCHISE EXHIBIT B-1 Effective April 2000 to present

(FORMER) SERVICE TO PUBLIC AND PRIVATE BUILDINGS

Dakota County

IN NDC SYSTEM

Inver Glen Library
8098 Blaine Avenue
Inver Grove Heights, MN 55076

Wentworth Library
199 East Wentworth Avenue
West St. Paul, MN 55118
Northern Service Center
(under construction)
5 West Mendota Road

ISD #199

Inver Grove Elementary School
4100 East 66th Street
Inver Grove Heights, MN 55076

Pine Bend Elementary School
9875 Inver Grove Trail
Inver Grove Heights, MN 55076

Hilltop Elementary School
3201 East 68th Street
Inver Grove Heights, MN 55076

South Grove Elementary School
7650 Clayton Avenue
Inver Grove Heights, MN 55076

Salem Hills Elementary School
5899 East Babcock Trail
Inver Grove Heights, MN 55076

ALL IN ONE COMPLEX

Inver Grove Middle School
8167 Cahill Avenue East
Inver Grove Heights, MN 55076

Simley Senior High School
2920 East 80th Street
Inver Grove Heights, MN 55076

ISD #199 District Office
2990 80th Street East
Inver Grove Heights, MN 55076

Inver Grove Heights

Inver Grove Heights City Hall
8150 Barbara Avenue
Inver Grove Heights, MN 55077

Inver Grove Heights Police Department
8150 Barbara Avenue
Inver Grove Heights, MN 55077

IGH Fire Department
2059 Upper 55th Street E
Inver Grove Heights, MN 55077

IGH Fire Department
7015 Clayton Avenue
Inver Grove Heights, MN 55076

ISD #197

Henry Sibley High School
1897 Delaware Avenue
Mendota Heights, MN 55118

Friendly Hills Middle School
701 Mendota Heights Road
Mendota Heights, MN 55118

Heritage Middle School
121 West Butler Avenue
West St. Paul, MN 55118

Somerset Elementary School
1355 Dodd Road
Mendota Heights, MN 55118

Mendota Heights Elementary School
1979 Summit Lane
Mendota Heights, MN 55118

Moreland Elementary School
217 West Moreland Avenue
West St. Paul, MN 55118

Garlough Elementary School
1740 Charlton Street
West St. Paul, MN 55118

West St. Paul

West St. Paul City Hall
1616 Humboldt Avenue
West St. Paul, MN 55118

South St. Paul

South St. Paul City Hall
125 3rd Avenue
South St. Paul, MN 55075

South St. Paul Public Library
106 3rd Avenue N.
South St. Paul, MN 55075

Wakota Arena (School)
141 East 6th Street
South St. Paul, MN 55075

South St. Paul Municipal
Airport (Fleming Field)
520 Airport Road
South St. Paul, MN 55075
(shall be considered a subsequently designated
building pursuant to Section 6(2) of this Franchise)

Lilydale

Lilydale City Hall
855 Sibley Memorial Hwy
Lilydale, MN 555118

Sunfish Lake

Sites to be determined

Mendota

Sites to be determined

Mendota Heights

Mendota Heights City Hall
1101 Victoria Curve
Mendota Heights, MN 55118

Mendota Heights Police Department
1101 Victoria Curve
Mendota Heights, MN 55118

Mendota Heights Fire Department
2121 Dodd Road
Mendota Heights, MN 55120

South St. Paul Schools

South St. Paul High School
700 2nd St. N.
South St. Paul, MN 55075

District Office
104 5th Ave. So.
South St. Paul, MN 55075

ECFE
1549 5th Ave. So.
South St. Paul, MN 55075

Lincoln Center
357 9th Ave. N.
South St. Paul, MN 55075

Kaposia Education Center
1225 1st Ave. So.
South St. Paul, MN 55075

ALC
151 6th St. E.
South St. Paul, MN 55075

Private Schools

Convent of the Visitation School
2455 Visitation Drive
Mendota Heights, MN 55120

St. Croix Lutheran High School
1200 Oakdale Avenue
West St. Paul, MN 55118

St. Joseph's School
1138 Seminole Avenue
West St. Paul, MN 55118

St. Thomas Academy
949 Mendota Heights Road
Mendota Heights, MN 55120

Emanuel Lutheran School
115 Crusader Avenue
West St. Paul, MN 55118

St. John Vianney School
1815 Bromley Street
South St. Paul, MN 55075

St. Michael's School
335 E. Hurley Street
West St. Paul, MN 55118

Holy Trinity School
745 - 6th Avenue S.
South St. Paul, MN 55075

Colleges

Inver Hills Community College
2500 East 80th Street
Inver Grove Heights, MN 55076

EXHIBIT B

LOCATION	ADDRESS
City of IGH	
FIRE DEPT, INVER GROVE HTS	7015 CLAYTON AVE APT 1
FIRE DEPT, IGH 3	2059 UPPER 55TH ST E
FIRE DEPT, NEW STATION 2	9200 COURTHOUSE BLVD 55077
CITY OF, INVER GROVE	8150 BARBARA AVE
ISD #199	
ELEM SCHOOL, HILLTOP	3201 68TH ST E
MIDDLE SCHOOL, IGH	8167 CAHILL AVE
SCHOOL, SIMLEY HIGH	2920 80TH ST E
SCHOOL, PINE BEN	9875 INVER GROVE TRL
ELEM SCHOOL, SALEM	5899 BABCOCK TRL
LIBRARIES	
LIBRARY, INVER GROVE	8098 BLAINE AVE
LIBRARY, S ST PAUL	106 3RD AVE N
LIBRARY, WEST ST. PAUL	Wentworth Avenue
CABLE COMM, NDC	5845 BLAINE AVE APT 1
CABLE COMM, NDC	5845 BLAINE AVE APT 2
CITY HALL, LILYDALE	1011 SIBLEY MEMORIAL HWY
City of Mendota Heights	
CITY HALL, MENDOTA HEIGHTS	1101 VICTORIA CURV
POLICE DEPT, MENDOTA HGTS	1101 VICTORIA CURV
FIRE DEPT, MENDOTA HGTS	2121 DODD RD
ISD #197	
HIGH SCHOOL, HENRY SIBLEY	1897 DELAWARE AVE APT A
SCHOOL, MENDOTA	1979 SUMMIT LN
MIDDLE SCHO, FRIENDLY HILLS	701 MENDOTA HEIGHTS RD
MIDDLE SCHOOL, HERITAGE	121 BUTLER AVE W
ELEM SCHOOL, PAUL MORELAND	217 MORELAND AVE W
ELEM SCHOOL, GARLOUGH	1740 CHARLTON ST
SOMERSET ELEMENTARY SCHOOL	1355 DODD ROAD
SOUTH ST. PAUL SCHOOLS #6	
SENIOR HIGH, S ST PAUL	700 2ND ST N
CENTER, KAPOsia EDUCATION	1225 1ST AVE S
ELEMENTARY, LINCOLN CENTER	357 9TH AVE N
BUILDING, S ST PAUL ADMIN	104 5TH AVE S
City of SSP	
CITY HALL, SSP	125 3RD AVE N
FIRE, S ST PAUL	310 MARIE AVE
POLICE DEPT, S ST PAUL	125 3RD AVE N APT B
MAINT BUILDING, S ST PAUL	400 RICHMOND ST W

LOCATION	ADDRESS
City of WSP	
CITY HALL, W ST PAUL	1616 HUMBOLDT AVE APT A
FIRE FIGHTERS, INTL ASSN OF	1616 HUMBOLDT AVE APT B
POLICE, WEST ST PAUL	1616 HUMBOLDT AVE
PUBLIC WORKS, W ST PAUL	403 MARIE AVE E

EXHIBIT C

BUSINESS BASIC CABLE PRICING	BUSINESS SELECT CABLE PRICING	BUSINESS SERVICE EQUIPMENT & FEES
Currently \$24.60 - includes BTV Fee.	Currently \$42.65 - includes BTV and RSN Fees.	\$9.95 per piece of equipment (DTA or HD Box). \$5.00 per account for HD Service

CITY OF INVER GROVE HEIGHTS, MINNESOTA
ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE
TO
COMCAST OF ST. PAUL, INC.

September 28, 2020

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ORDINANCE NO. 1390

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF ST. PAUL, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF INVER GROVE HEIGHTS, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; TERMINATING THE PRIOR FRANCHISE

FINDINGS

1. The City of Inver Grove Heights, Minnesota ("City"), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.
2. Comcast of St. Paul, Inc., a Delaware corporation ("Grantee") has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance approved on or about April 1, 2000.
3. Negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. §546).
4. The City has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.
5. The Franchise granted to Grantee by the City is nonexclusive and complies with existing applicable Minnesota Statutes, federal laws and regulations.
6. The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement, and an Amended Joint and Cooperative Agreement, with other cities authorized to grant cable communications franchises, and has delegated authority to the Northern Dakota County Cable Communications Commission to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

NOW, THEREFORE, THE CITY OF INVER GROVE HEIGHTS, MINNESOTA DOES ORDAIN that a franchise is hereby granted to Comcast of St. Paul, Inc., to operate and maintain a Cable System in the City upon the following terms and conditions:

SECTION 1 DEFINITIONS

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

1.1 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

1.2 “Applicable Law(s)” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction.

1.3 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast, as set forth in Applicable Law, currently 47 U.S.C. § 522(3).

1.4 “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

1.5 “Cable Service” means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service, as set forth in Applicable Law, currently 47 U.S.C. § 522(6). For the purposes of this definition, “other programming service” means information that a cable operator makes available to all Subscribers generally.

1.6 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) a facility that serves Subscribers without using any Streets;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with section 47 U.S.C. § 573; or
- (e) any facilities of any electric utility used solely for operating its electric utility system.

Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.

1.7 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation, as set forth in Applicable Law, currently 47 U.S.C. § 522(4).

1.8 “City” means the City of Inver Grove Heights, a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

1.9 “City Code” means the Municipal Code of the City of Inver Grove Heights, Minnesota, as may be amended from time to time.

1.10 “Commission” means the Northern Dakota County Cable Communications Commission or its successors or delegations, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement and Amended Joint and Cooperative Agreement between Member Cities.

1.11 “Converter” means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all Cable Service signals.

1.12 “City Council” means the governing body of the City of Inver Grove Heights, Minnesota.

1.13 “Day” means a calendar day, unless otherwise specified.

1.14 “Drop” means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

1.15 “Effective Date” means the date adopted by the last Member City Council, or the date executed by both parties in accordance with Section 17.6 herein, whichever is later.

1.16 “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

1.17 “Franchise” means the right granted by this Franchise Ordinance and the regulatory and contractual relationship established hereby.

1.18 “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

1.19 “Franchise Fee” means the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

1.20 “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

1.21 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:

- (a) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- (b) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;
- (c) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;
- (d) installation, disconnection, reconnection, change-in service, “snow-bird” fees;
- (e) Advertising Revenues as defined herein;
- (f) late fees, convenience fees, and administrative fees;
- (g) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provisions of Cable Service;
- (h) revenues from program guides and electronic guides;
- (i) Franchise Fees;
- (j) FCC regulatory fees;
- (k) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and
- (l) commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.
 - (i) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Spotlight or their successors associated with sales of advertising on the

Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

(ii) “Gross Revenues” shall not include:

1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Subscriber revenues within the City;
2. Public, Education and Government (PEG) Fees; and
3. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on current published rate card for the packaged services delivered on a stand-alone basis as follows:

(i) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue, on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee’s calculations.

(ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.

(iii) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to GAAP as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the foregoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.22 “Member Cities” means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul.

1.23 “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

1.24 “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1.25 “PEG” means public, education and government.

1.26 “Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

1.27 “Street” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A Street does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

1.28 “Subscriber” means a Person who lawfully receives Cable Service.

1.29 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.30 “Wireline MVPD” means any entity, including the City, that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of Video Programming in the City, which could also include the City. For purposes of this Franchise, the term “Wireline MVPD” shall not be limited to entities defined by the FCC as “multichannel video programming distributors” and shall include entities that provide multiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cell providers, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

SECTION 2 FRANCHISE

2.1 **Grant of Franchise.** The City hereby authorizes Grantee to occupy or use the City’s Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2

herein, this Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Reservation of Authority. The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

2.3 Franchise Term. The term of this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended or extended by mutual written consent in accordance with Section 17.7 or terminated sooner in accordance with this Franchise.

2.4 Franchise Area. This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.7 herein.

2.5 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.18. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

2.6 Periodic Public Review of Franchise. The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee's performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and

other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.7 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

2.7 Transfer of Ownership.

(a) A sale or transfer of this Franchise, including a sale or transfer by means of a “fundamental corporate change,” as defined in Minn. Stat. § 238.083 subd. 1, or the sale or transfer of stock in Grantee so as to create a new “controlling interest,” as defined in Minn. Stat. § 238.083 subd. 6, in the Cable System, shall require the written approval of the City. Grantee shall submit a written request to the City for the City’s approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness. The written approval of the City shall not be required under this section for internal corporate reorganizations involving Affiliates or pledges of the Franchise as collateral or security for any loan or other debt instrument.

(b) City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(c) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.7. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(d) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(e) In accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section. The City shall have thirty (30) days from receipt of an application for consent under this Section 2.7 in which to give notice of its intention to consider exercising such right.

(f) If the City has issued a written notice of franchise violation in accordance with the terms of this Franchise, the transfer may be conditioned upon the transferee agreeing to a mutually acceptable remediation plan. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.

2.8 **Expiration.** Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee's rights under Section 626 of the Cable Act to:

- (a) extend the Franchise, though nothing in this provision shall be construed to require such extension;
- (b) renew the Franchise, in accordance with Applicable Laws;
- (c) invite additional franchise applications or proposals;
- (d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or
- (e) take such other action as the City deems appropriate.

2.9 **Right to Require Removal of Property.** At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

2.10 **Continuity of Service Mandatory.** It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or transfer the system in accordance with Section 2.7, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, revocation/termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

SECTION 3 OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Streets.

- (a) Grantee may, subject to the terms of this Franchise and the City Code, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code,

including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain, pay for and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of the Streets of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and professional manner in accordance with all applicable requirements of the City Code and Applicable Law. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(d) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

3.2 Construction or Alteration. Grantee shall in all cases comply with applicable sections of the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

3.3 Non-Interference. Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

3.4 Consistency with Designated Use. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.

3.5 Undergrounding.

(a) Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:

- (i) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (ii) Grantee is unable to get pole clearance;
- (iii) underground easements are obtained from developers of new residential areas; or
- (iv) utilities are overhead but residents prefer underground (undergrounding provided at cost paid by benefitted residents).

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

(c) Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration.

(a) Restoration. In case of disturbance of any Street, public way, paved area or public improvement, Grantee shall, at its own cost and expense and in accordance with the requirements of the City Code restore such Street, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. All requirements of this section pertaining to public property shall also apply to the restoration of private easements and other private property. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions. If Grantee fails, neglects or refuses to make restorations as required under this section and any applicable City Code provision, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee

causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) **Maintenance.** Grantee shall maintain all above ground improvements that it places on City Streets pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City's ability to maintain the Streets, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision, and by its failure, property is damaged, Grantee shall be responsible for all damages caused thereby.

(c) **Disputes.** In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City, Department of Public Works and consistent with the City Code and any permit issued by the City.

3.7 Work on Private Property. Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

3.8 Relocation.

(a) **Public Property.** Grantee shall relocate its System and facilities in accordance with the City Code. In addition, if, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that the City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

(b) **Utilities and Other Franchisees.** If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities,

or their more efficient use, or to “make ready” the requesting party’s facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) Days’ advance written notice advising Grantee of the date or dates removal or relocation is to be undertaken, provided that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(f) Movement of Buildings. Grantee shall, upon request by any Person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) Days’ notice to the Grantee to arrange for such temporary wire changes.

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise or the City

Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Street to a condition as nearly as possible to its prior condition or other public places in the City from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Street, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

4.2 Abandonment of Cable System. In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to comply with the state right-of-way rules, Minn. Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within thirty (30) Days after written notice of the City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Bond toward removal and/or declare all right, title, and interest to the Cable System for the City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

4.4 City Options for Failure to Remove Cable System. If Grantee has failed to complete such removal within the time given after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

- (a) Declare all right, title and interest to the System for the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or
- (b) Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.
- (c) Upon termination of service to any Subscriber, Grantee shall promptly remove all facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

4.5 System Construction and Equipment Standards. The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform, when

applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC's Rules and Regulations.

4.6 System Maps and Layout. In addition to any generally applicable mapping requirements included in the City Code and required of other utilities, Grantee shall maintain complete and accurate system maps, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Streets. Grantee shall make all maps available for review by the appropriate City personnel.

SECTION 5 SYSTEM DESIGN AND CAPACITY

5.1 Availability of Signals and Equipment.

(a) The Cable System utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers. The System shall pass a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be maintained to provide to Subscribers a minimum of at least two hundred (200) or more activated downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution practices in the future.

(b) The entire System shall be technically capable of transmitting industry-standard digital television signals in a manner and quality consistent with applicable FCC regulations.

(c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a) and (b) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

5.2 Equal and Uniform Service. Grantee shall provide access to equal and uniform Cable Service throughout the City consistent with Applicable Law.

5.3 System Specifications.

(a) **System Maintenance.** In all construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise.

(b) **Emergency Alert Capability.** At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS insofar as the City's process is consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan

containing methods of EAS message distribution, insofar as the local plan is consistent with Applicable Laws and the EAS Plan.

(c) **Standby Power.** Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power system supplies, rated for at least two (2) hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) **Technical Standards.** The technical standards used in the operation of the Cable System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System.

5.4 Performance Testing. Grantee shall perform all system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests may include, at a minimum:

- (a) Initial proof of performance for any construction;
- (b) Tests in response to Subscriber complaints; and
- (c) Tests reasonably requested by the City to demonstrate Franchise compliance.
- (d) Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

5.5 Special Testing.

(a) Throughout the term of this Franchise, City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers impacted by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests

to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by Grantee's qualified engineer. The City shall have a right to participate in such testing by having an engineer of City's choosing, and at City's expense, observe and monitor said testing.

SECTION 6 PROGRAMMING AND SERVICES

6.1 Categories of Programming Service. Grantee shall provide video programming services in at least the following broad categories subject to Applicable Law:

- Local Broadcast (subject to federal carriage requirements)
- Public Broadcast
- News and Information
- Sports
- General Entertainment
- Arts/Performance/Humanities
- Science/Technology
- Children/Family/Seniors
- Foreign Language/Ethnic Programming
- PEG Programming (to the extent required by the Franchise)
- Movies
- Leased Access

6.2 Changes in Programming Services. Grantee shall provide at least thirty (30) Days' prior written notice to Subscribers and to the City of Grantee's request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

6.3 Parental Control Device or Capability. Upon request by any Subscriber, Grantee shall make available a parental control or lockout device or functionality that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device or functionality at the time of original subscription and annually thereafter.

6.4 FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the date of the tests.

6.5 Annexation. Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchise to provide multichannel video programming.

6.6 **Line Extension.**

(a) Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of seven (7) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using aerial plant, and nine (9) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) Days advance notice of an available open trench for the placement of necessary cable.

(b) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, within fifteen (15) Days request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, provide a quote identifying the costs and construction schedule associated with extending service to such Subscriber. Grantee shall perform the extension of service as soon as reasonably possible and in no event later than the date committed in the quote, excluding events covered by Section 17.9 herein. The Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

6.7 **Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

SECTION 7 LOCAL PEG PROGRAMMING

7.1 **Number of PEG Channels.**

(a) Upon the Effective Date of this Franchise, Grantee will continue to make available a minimum of seven (7) PEG Channels in Standard Definition (“SD”). Throughout the term of this Franchise Grantee shall provide the PEG Channels on the Basic Cable Service tier or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee in accordance with Applicable Law.

(b) For purposes of this Franchise, a high definition (“HD”) signal refers to a television signal delivering picture resolution of either 720p or greater, or such other resolution in the same range that Grantee commonly utilizes for other similar programming Channels.

7.2 **HD PEG Channels.**

(a) Within ninety (90) Days of the Effective Date of this Franchise, Grantee shall provide five (5) SD PEG Channels and two (2) HD PEG Channels to be shared by the Commission’s seven (7) Member Cities.

(b) By January 1, 2022, and after ninety (90) Days written notice to the Grantee, which notice Commission may send on or before October 1, 2021, Grantee shall provide five (5) SD PEG Channels and three (3) HD PEG Channels to be shared by the Commission's seven (7) Member Cities. Following implementation of this Section 7.2(b), the Grantee shall provide a total of eight (8) PEG Channels ((5) SD / (3) HD).

(c) The HD PEG Channels may duplicate the SD PEG Channels or may be programmed with different "best of" content, based on Commission's sole discretion.

(d) On or after the fifth (5th) anniversary of the Effective Date of this Franchise and after ninety (90) Days written notice to the Commission, Grantee may require that the Commission give back one (1) SD PEG Channel. Following implementation of this Section 7.2(d), the Commission will have four (4) SD PEG Channels and three (3) HD PEG Channels to be shared by the Commission's seven (7) Member Cities.

(e) If Grantee terminates all SD Channels and SD Cable Services and provides all Cable Services to all Subscribers in HD only, and after ninety (90) Days written notice to the Commission, Grantee shall provide four (4) HD PEG Channels to be shared by the Commission's seven (7) Member Cities.

(f) The City acknowledges that receipt of an HD format PEG Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.

(g) The Commission shall pay for and be responsible for all HD playback servers to be located at 5845 Blaine Avenue, Inver Grove Heights, MN ("Playback Facility"). Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties.

7.3 Control of PEG Channels. The control and administration of the PEG Channels shall rest with the City. The City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion. As of the Effective Date of this Franchise the City has delegated control of the PEG Channels to the Commission.

7.4 Transmission of PEG Channels. PEG Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.

7.5 PEG Channel Locations.

(a) Grantee shall continue cablecasting PEG programming on the Cable System on the same Channel locations as such programming is cablecast within the City as of the Effective Date. Current SD PEG Channel locations as of the Effective Date as well as the location of the first two (2) HD PEG Channels to be provided under Section 7.2 are listed

on Exhibit A. Grantee agrees not to change these PEG Channel locations more than two (2) times during the term of this Franchise unless required by law for other programmers with specific Channel number rights or pursuant to an overall Channel reorganization of the entire Channel lineup. In no event shall any PEG Channel relocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee's control. If relocated, Grantee will work in good faith with the City to identify new Channel locations such that the PEG Channels will be located within reasonable proximity to other broadcast or news Channels where available Channel numbers allow.

(b) Grantee agrees not to encrypt the PEG Channels differently than other commercial Channels available on the Cable System.

(c) In the event Grantee requires relocation of a PEG Channel pursuant to Section 7.5(a), Grantee shall provide a rebranding reimbursement grant of One Thousand Five Hundred and No/100 Dollars (\$1,500) per relocated Channel.

7.6 Navigation to PEG Channels and Electronic Programming Guide. Grantee agrees that if it utilizes any navigation interfaces under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Channels. Grantee will maintain the existing ability of the City to place PEG Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the PEG Channels to appear on the EPG. All costs and operational requirements of the EPG provider shall be the responsibility of the City. City acknowledges that the EPG may not be technically possible for all PEG programming, and that Grantee is not responsible for operations of the EPG provider.

7.7 Ownership of PEG Channels. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, education or government user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, education, or government use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

7.8 PEG Monitoring. Grantee shall continue to provide the capability, without charge, for Commission representatives at the four (4) City Hall locations and the Commission's master control facility listed in Exhibit C, to monitor and verify the audio and visual quality of PEG Channels received by Subscribers as well as the existing connections and equipment at the Commission's master control facility. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the Commission to verify the accuracy of EPG listings for the PEG Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the Commission office to provide the ability to monitor Subscriber services and address Subscriber concerns which feed shall include all cable boxes and platforms (i.e. Xfinity X1).

7.9 PEG Transport. During the term of this Franchise, Grantee will provide PEG transport as follows:

(a) The Commission may transmit signals for the PEG Channels in “real time” upstream from the four (4) City Hall locations listed in Exhibit C to the Commission’s playback facility currently located at 5845 Blaine Avenue, Inver Grove Heights, MN (“Playback Facility”) to Grantee’s hub and head-end using existing fiber connections without additional charge or offsets from Grantee. Grantee shall continue to provide without charge or offsets, fiber backhaul and transmitter/receiver equipment for live PEG programming from City Halls as is the practice on the Effective Date of this Franchise.

(b) Grantee shall provide the capability for the Commission, either through a fiber connection, DOCSIS cable modem solution, or other technology of Grantee’s choosing, to transmit live programming from additional locations of the Commission’s choosing, subject to the Commission providing or renting necessary modems, encoders, decoders or similar devices, configuring such equipment, and removing such equipment in the event of interference with Grantee’s delivery of Cable Service. To the extent a set of mobile DOCSIS cable modems (or such other devices as may replace DOCSIS modems during the term of this Franchise) are utilized, such modems shall be able to connect to the Subscriber network at permanent or temporary Drops, subject to two (2) weeks prior written notice to Grantee and use upstream capacity on the Subscriber network to transmit programming via the Subscriber network and the connections to the Playback Facility equal to or of better quality than the PEG signals transmitted to Subscribers.

(i) The Commission shall be responsible for purchasing high speed internet service for the transmission of live programming at market rates.

(ii) The Commission shall provide any necessary encoders, decoders or similar devices and shall configure equipment and connections so that signals can be transmitted to the Playback Facility.

(iii) Grantee may request that the Commission remove an encoder, or similar device if it technically interferes with Grantee’s delivery of Cable Service.

(c) Grantee shall maintain the existing fiber paths/equipment and existing PEG connectivity to the locations listed in Exhibit C during the term of this Franchise, without additional charge (with no recurring, monthly costs or offsets, except that Grantee may invoice the Commission for any actual repair or maintenance costs which shall not exceed Five Thousand and No/100 Dollars (\$5,000) per year and which shall be estimated to the Commission in advance whenever possible, and shall be documented and invoiced to the Commission for payment) to permit the Commission/City to transport PEG programming. This will allow the Commission to continue cablecasting PEG programming from the locations listed in Exhibit C and will maintain connections from the Commission’s master control to Grantee’s hub and head-end without additional charge or offsets.

7.10 Interconnection with other Twin Cities PEG Stations. Grantee shall continue to make the metro area fiber ring known as the PRISMA Ring available to the City, without charge, as long

as the PRISMA Ring remains serviceable. The City may use the PRISMA Ring (or its equivalent) to send and receive live and recorded programming to/from other Twin Cities PEG stations for as long as the network remains viable. Grantee shall provide City access to the PRISMA Ring at an agreed upon demarcation point. Grantee will provide use of and maintain the PRISMA Ring without charge, but Grantee will not be obligated to replace network equipment on the PRISMA Ring or for any equipment on the City's side of the demarcation point. Grantee agrees to continue to provide, without charge or offsets, use of Grantee's Converged Regional Area Network (C-RAN) for delivery of live and recorded programming to and from the entities listed on Exhibit B, limited to six (6) multi-cast IP Channels. This obligation shall terminate if Grantee no longer utilizes the C-RAN for its own business purposes. Grantee shall have no obligation to replace any network equipment currently located in its headend facility or at the City or Commission facility necessary to deliver or receive such programming over the C-RAN. Replacement of any decoding equipment necessary to receive the programming via the C-RAN will be the responsibility of the City and will require Grantee's approval to ensure equipment compatibility. If there are incremental equipment and maintenance costs specific to the PEG use of the C-RAN, Grantee will notify the City of such costs and allow the City the option of reimbursing Grantee for such costs or to cease using the C-RAN. Grantee shall not be responsible for providing a specific performance level over the C-RAN or resolving any transmission issues caused by incompatibility of audio or video file formats with interconnected equipment.

7.11 Future PEG Transport. At such time that the City determines:

- (a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 7.9); or
- (b) that the City desires to establish or change a location from which PEG programming is originated; or
- (c) that the City desires to upgrade the connection to Grantee from an existing signal point of origination,

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. After receipt of such notice by Grantee, Grantee and the City may enter into an agreement which compensates Grantee in accordance with Applicable Law, for new sites added or upgraded connections. After such an agreement has been executed, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said connection, as long as such connection does not interconnect with Grantee's Cable System without Grantee's consent or interfere with Grantee's Cable System.

7.12 PEG Channel Carriage.

- (a) The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Channel use.

(b) The Grantee shall monitor the PEG Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG programming. Grantee shall carry all components of the SD/HD PEG Channel(s) including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

7.13 PEG Programming Financial Support.

(a) During the term of the Franchise, Grantee shall pay quarterly to the Commission a PEG Fee in an amount equal to two and one-quarter percent (2.25%) of its quarterly Gross Revenues, for the duration of this Franchise. Payments pursuant to this subsection shall be paid to the Commission on the same schedule and including the same payment worksheets as the Franchise Fee payments set forth in Section 16.1(a-c) of this Franchise.

(b) The PEG Fee may be used by City and Commission to fund PEG expenditures in accordance with Applicable Law.

(c) The PEG Fee is not part of the Franchise Fee and instead falls within one or more of the exceptions in 47 U.S.C. § 542, unless the PEG Fee is used by City or Commission in violation of Applicable Law. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws.

7.14 PEG Technical Quality and Support.

(a) Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering PEG Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in a PEG Channel signal from the point of origination upstream to the point of reception (hub or head-end) or downstream to the Subscriber on the Cable System.

(b) Grantee shall provide a local (Twin Cities) response phone number, cell number, and e-mail address for local (Twin Cities) technical support staff who are trained to effectively respond to and resolve PEG related issues. For urgent issues (such as signal problems during live programs) the Grantee will respond as soon as possible. For non-urgent tech support requests the Grantee will respond within three (3) hours or forty-eight (48) hours, depending upon the response time needed. Commission technical staff will determine what requests are urgent or non-urgent. The Commission agrees to use best efforts to verify that the issue is not on the Commission's side of the demarcation point before a call is made to Grantee.

(c) Grantee agrees to continue its practice of providing to the Commission three (3) satellite feeds from Grantee's headend facility and/or hub site locations directly to the Commission's Playback Facility without charge to Commission. The Commission shall be responsible for obtaining any necessary carriage and license agreements for the programming aired on its PEG Channels to the extent the content providers require such agreements. The Commission shall pay any license fees, copyright fees and other costs of the programming provider. If Grantee receives a demand to cease and desist from providing any programming content to the Commission under this section or the source of the programming ceases to operate, Grantee may terminate such programming immediately without prior notice, but will provide notice that such programming has been terminated as soon as possible. If Grantee ceases to maintain the satellite reception facility through which the programming is received, Grantee will give the Commission sixty (60) days prior notice of the discontinuation to allow the Commission to obtain the programming from another source.

7.15 Change in Technology. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the PEG Channels, Grantee shall, at its own expense and without charge to the City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the PEG Channels in accordance with the requirements of the Franchise.

7.16 Relocation of Grantee's Headend. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise without charge to the City or its designated entities.

7.17 Regional Channel Six. Grantee shall make available Regional Channel Six as long as it is required to do so by Applicable Law.

7.18 Compliance with Minnesota Statutes Chapter 238. In addition to the requirements contained in this Section 7 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat. § 238.084.

SECTION 8 REGULATORY PROVISIONS

8.1 Intent. The City shall have the right to administer and regulate activities under the Franchise to the full extent permitted by Applicable Law. The City may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of the City.

8.2 Delegation of Authority to Regulate. The City reserves the right to delegate its regulatory authority wholly or in part to another governmental entity, including, but not limited to, an entity which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. As of the Effective Date of this Franchise, the Commission shall have

continuing regulatory jurisdiction and supervision over the Cable System and Grantee's operation under the Franchise.

8.3 Regulation of Rates and Charges.

(a) **Right to Regulate.** The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.

(b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days' notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or (except as allowed by Applicable Law) neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, disabled, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

SECTION 9 BOND

9.1 Performance Bond.

(a) Upon the Effective Date of this Franchise and at all times thereafter until the Grantee has liquidated all of its obligations under this Franchise, the Grantee shall furnish and file with Commission, on behalf of all Member Cities, a bond in the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) in such form and with such sureties as shall be acceptable to the Commission ("Bond"). The Bond shall be conditioned upon the faithful performance by Grantee of this Franchise and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the Bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys' fees and costs (with interest at prime rate plus two percent (2%)), up to the full amount of the Bond, and which Bond shall further guarantee payment by Grantee of all claims and liens against City, or any public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System.

9.2 Rights. The rights reserved by City with respect to the Bond are in addition to all other rights the City may have under this Franchise or any other law.

9.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the Bond.

9.4 **Procedure to Draw on Bond.**

(a) The parties shall follow the procedure set forth in Section 11.1 of this Franchise regarding any draw on the Bond.

(b) In the event this Franchise is terminated in accordance with the procedure set forth in Section 11, the City shall be entitled to collect from the Bond that amount which is attributable to any damages sustained by the City as a result of said violation.

(c) Grantee shall be entitled to the return of the Bond, or portion thereof, as remains one hundred and twenty (120) Days after the expiration of the term of the Franchise or termination for violation thereof, provided the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said violation.

(d) The rights reserved to the City with respect to the Bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the Bond shall affect any other right the City may have.

SECTION 10 SECURITY FUND

10.1 **Security Fund.** Within thirty (30) Days of the Effective Date, Grantee shall establish and provide to the City or the Commission, on behalf of the City, as security for the faithful performance by Grantee of all provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City or the Commission in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) ("Security Fund"). Failure to post the Security Fund shall constitute a material violation of this Franchise. The Security Fund shall serve as security for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. The obligation to establish the Security Fund required by this paragraph is unconditional. If Grantee fails to establish the Security Fund as required, the City may take whatever action is appropriate to require the establishment of that Security Fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Five Thousand Dollars (\$5,000) in that action.

10.2 **Withdrawal of Funds.** The Security Fund shall permit the City to withdraw funds upon demand (sight draft). Grantee shall not use the Security Fund for other purposes and shall not assign, pledge or otherwise use this Security Fund as security for any other purpose.

10.3 **Liquidated Damages.** In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Security Fund the following liquidated damages:

(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Section 10.3, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Five Hundred Dollars (\$500.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the PEG Channels, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

10.4 Each Violation a Separate Violation. Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. However, to the extent City remains a Member City of Commission, liquidated damages under Section 10.3 for a violation of each Member City franchise shall be calculated by the Commission as one violation, and not as multiple violations (one violation for each individual Member City franchise). For example, liquidated damages per Day under section 10.3(a) would equal Two Hundred Fifty Dollars (\$250.00), not One Thousand Seven Hundred Fifty Dollars (\$1,750) (seven times the per Day liquidated damages amount).

10.5 Maximum Draw Per Violation. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). If after that amount of draw from the Security Fund Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

10.6 Withdrawal of Funds to Pay Taxes. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days' notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the Security Fund, the City may then draw from the Security Fund. Payments are not Franchise Fees as defined in Section 16 of this Franchise.

10.7 Procedure for Draw on Security Fund. The parties shall follow the procedure set forth in Section 11.1 of this Franchise regarding any withdrawal from the Security Fund.

10.8 Grantee's Right to Pay Prior to Security Fund Draw. Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to

promptly remit payment to the City, the City may resort to a draw from the Security Fund in accordance with the terms of this Franchise.

10.9 Failure to Establish Security Fund. City may draw on said Security Fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys' fees incurred by the City in so performing and paying. The failure to establish a Security Fund under section 10.1 may also, at the option of City, be deemed a violation by Grantee under this Franchise. The drawing on the Security Fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such violation.

10.10 Replenishment of Security Fund. If Commission or City exhaust the Security Fund under Section 10.5 during a given violation proceeding, Grantee shall have no obligation to replenish the Security Fund for such violation proceeding. However, Grantee must replenish the Security Fund as security for any future franchise violation. If the amount of the Security Fund established under Section 10.1 is not enough to secure the performance of the obligations described in Section 10.1, then the City or the Commission must resort to the Bond provided in Section 9 or other enforcement mechanisms provided under Section 11.

10.11 Collection of Funds Not Exclusive Remedy. The collection by City of any damages or monies from the Security Fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Security Fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages, that remedy shall remain the City's exclusive remedy for the one hundred twenty (120) Day period set forth in Section 10.5.

SECTION 11 VIOLATION PROCEDURE

11.1 Basis for Violation. City or Commission shall give written notice to Grantee if City, in its sole discretion, determines that Grantee has:

- (a) Violated any material provision of this Franchise or the acceptance hereto;
- (b) Violated any law, ordinance, rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;
- (c) Attempted to evade any provision of this Franchise or the acceptance hereof;
- (d) Practiced any fraud or deceit upon City or Subscribers;
- (e) Made a material misrepresentation of fact in the application for or negotiation of this Franchise; or

11.2 Violation Procedure. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation.

- (a) Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation (or if such violation is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City's sole opinion, to cure such violation as soon as possible).
- (b) Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time until the Commission or City issues final findings of fact with respect to the violation. However, all penalties shall accrue from the date of the notice of violation until the Commission or City issues final findings of fact with respect to the violation.
- (c) The City or Commission shall hear Grantee's dispute at the next regularly scheduled or specially scheduled meeting. Grantee shall have the right to speak and introduce evidence. The City or Commission shall determine whether Grantee has committed a violation and shall make written findings of fact relative to its determination.
- (d) If after hearing the dispute, the violation is upheld by the City or Commission, then Grantee shall have thirty (30) Days within which to remedy the violation.
- (e) If Grantee fails to cure the violation within thirty (30) Days, such violation shall be a substantial breach and City may elect to terminate the Franchise, or establish and draw on the Bond or Security Fund as provided in Sections 9 or 10.
- (f) The City may place the issue of termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:
 - (i) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the violation.
 - (ii) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.
 - (iii) If, after notice is given and an opportunity to cure, at Grantee's option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise terminated and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days. No opportunity for compliance need be granted for fraud or misrepresentation.

11.3 Failure to Enforce. Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

11.4 Compliance with the Laws.

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with, provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

SECTION 12 FORECLOSURE AND RECEIVERSHIP

12.1 **Foreclosure.** Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

12.2 **Receivership.** The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 13 REPORTING REQUIREMENTS

13.1 Quarterly Reports. Within thirty (30) Days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment, a report showing the basis for computation of the Franchise Fee and PEG Fee payments signed by an authorized representative of Grantee in form and substance substantially equivalent to Exhibit D attached hereto. This report shall separately indicate Grantee's Gross Revenues within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.22 of this Franchise. Nothing in the Franchise Fee payment worksheet form set forth in Exhibit D shall be construed to modify the definition of "Gross Revenues" set forth in Section 1.21 of this Franchise.

13.2 Monitoring and Compliance Reports. Upon request, but no more than once a year, Grantee shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted.

13.3 Monthly Subscriber Data Report. Every other month starting in January, Grantee shall provide the City with a Subscriber data report consistent with the format set forth in Exhibit E attached hereto. In the event technical or programming changes require changes to the format of the report, the City and Grantee shall work in good faith to make such changes without the need to amend this Franchise.

13.4 Other Reports. Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, without charge, prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee's need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.5 Confidential and Trade Secret Information. Grantee acknowledges that information submitted by Grantee to the City may be subject to the Minnesota Government Data Practices Act ("MGDPA") pursuant to Minn. Stat. Chapter 13. The Commission shall follow all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to Commission. Grantee acknowledges that the Commission shall at all times comply with the Minnesota Data Practices Act ("MDPA") related to the release of information and nothing herein shall be read to modify the Commission's obligations under the MDPA.

13.6 Communications with Regulatory Agencies.

- (a) Upon written request (unless service of copies is otherwise mandated by Applicable Law) Grantee shall submit to City copies or online links to copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, state or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City's request. Grantee and City shall comply with

all Applicable Law governing confidential, privileged or proprietary rights to such documents.

(b) In addition, Grantee and its Affiliates, City and Commission shall, within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the other party a copy of the communication, whether or not specifically requested to do so.

SECTION 14 CUSTOMER SERVICE POLICIES

14.1 Response to Customers and Cooperation with City and Commission. Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints. Grantee shall provide the Commission and the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. Grantee will maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City and the Commission via email and telephone for reporting issues. These specifically identified employees of Grantee will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City or the Commission in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

14.2 Customer Service Agreement and Written Information. Grantee shall provide to Subscribers access to their service agreement and the following information if not included in the service agreement:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Converter/Subscriber terminal equipment policy.
- (f) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (g) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements. A

copy of the written information shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection.

14.3 **Customer Service Standards.**

- (a) The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.
- (b) Grantee shall provide City with information demonstrating Grantee's compliance with each and every term and provision of Section 14.5.
- (c) Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. The City reserves the right to enact additional consumer protection laws or requirements to the extent such requirements are not inconsistent with, and preempted by, the FCC's customer service standards.

14.4 **Local Office.** Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

14.5 **Cable System office hours and telephone availability.** Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

- (a) Grantee will maintain a local, toll-free telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) days a week.
 - (i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (ii) The access line may be initially answered by an interactive voice response system but a Subscriber, under Normal Operating Conditions, shall have the option to speak to a trained Grantee representative during Normal Business Hours. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- (b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- (c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- (d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(f) The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City and Commission to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time. The Grantee shall provide the Commission with a quarterly report documenting Grantee's compliance with this Section 14.5 as is the current practice.

14.6 Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.7(b).

(b) Excluding conditions beyond the control of Grantee, Grantee will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(c) The "appointment window" alternatives for installations, Service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.)

(d) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(e) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

14.7 Communications between Grantee and Subscribers.

(a) Refunds. Refund checks will be issued promptly, but no later than either:

(i) The customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or

(ii) The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

14.8 Billing:

(a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.

14.9 Subscriber Information.

(a) Grantee will provide Subscribers access to the following information at any time:

- (i) Products and Services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and Service maintenance policies;
- (iv) Instructions on how to use the Cable Service;
- (v) How to find or purchase programming carried on the System;
- (vi) Billing and complaint procedures, including the address and telephone number of the Commission's office; and
- (vii) A copy of its refund policy for Cable Services.

(b) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including contact information for the City and the Commission. Subscribers will be notified of any changes in rates or programming or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.9.

14.10 Notice of Rate or Programming Changes. Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change within the control of Grantee. For the purpose of this section a "Service change" shall not include channel additions or moves that do not impact rates. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change. When the change involves the deletion of Channels, each Channel deleted must be separately identified.

14.11 Subscriber Contracts. Grantee shall, upon written request, provide the Commission with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. Grantee shall provide City a list of Grantee's current Subscriber rates and charges for Cable Service and a current Channel line-up showing all Channels available in the City. Grantee shall also provide on a monthly basis a copy of a sample Subscriber Bill to the Commission.

14.12 Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

14.13 Late Fees. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

14.14 Disputes. All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or a commission of the City.

14.15 Subscriber Bills. Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

14.16 Failure to Resolve Complaints. Grantee shall resolve a complaint within thirty (30) Days in a manner deemed reasonable by the City under the terms of the Franchise.

14.17 Notification of Complaint Procedure. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.2, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.18 Subscriber Privacy.

(a) To the extent required by Minn. Stat. § 238.084 Subd. 1(s) Grantee shall comply with the following:

(i) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for

permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(ii) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(iii) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (ii) of this section.

14.19 Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 15 SUBSCRIBER PRACTICES

15.1 Subscriber Rates. There shall be no charge for disconnection of any installation or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber's service outlet, provided, however, that such disconnection shall not occur until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber's Cable Service.

15.2 Refunds to Subscribers shall be made or determined in the following manner:

- (a) If Grantee fails, upon request by a Subscriber, to provide any service then being provided to the Subscriber, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability that may be available under Applicable Law.
- (b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS

16.1 Franchise Fees. During the term of the Franchise, Grantee shall pay quarterly to the City or its delegate a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling established by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law.

- (a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of each quarter. Grantee shall include with each quarterly payment a Franchise Fee payment worksheet, in form and substance substantially similar to Exhibit D, signed by an authorized representative of Grantee. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.
- (b) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.
- (c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid after the due dates specified herein shall be delinquent and shall immediately begin to accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

16.2 Auditing and Financial Records. Throughout the term of this Franchise, the Grantee agrees that the City or its designee, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than twenty (20) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information

will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of seven (7) years, pursuant to Minn. Stat. § 541.05. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

16.3 Review of Record Keeping Methodology. Upon request, Grantee agrees to meet with a representative of the City or its designee to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

16.4 Audit of Records. The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees or PEG Fees paid to the City. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire cost of the audit within thirty (30) Days of the completion and acceptance of the audit by the City.

16.5 Records to be reviewed. The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of the Franchise.

16.6 Indemnification by Grantee. Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City and Commission, and in their capacity as such, the officers, agents and employees thereof (collectively the "Indemnified Parties"), from and against any and all claims, suits, actions, demands, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the Indemnified Parties; for actual or alleged injury to Persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or

of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the Indemnified Parties from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the Indemnified Parties.

16.7 Grantee Insurance. Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars (\$3,000,000). The liability policy shall include:

- (a) The policy shall provide coverage on an "occurrence" basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) City and Commission shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) Days' notice of such cancellation given to City.
- (i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.
- (j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The

certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City's right to enforce the terms of Grantee's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee's insurance coverage.

SECTION 17 MISCELLANEOUS PROVISIONS

17.1 Posting and Publication. Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

17.2 Guarantee of Performance. Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

17.3 Entire Agreement. This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein.

17.4 Consent. Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

17.5 Prior Franchise Terminated. The cable television franchise originally granted by Ordinance No. 971 is hereby terminated. Nothing herein shall serve to waive any rights the parties may have under Ordinance No. 971 regarding: 1) the payment of franchise fees and PEG fees; and 2) Grantee's compliance with all applicable City Code obligations governing Grantee's facilities in Streets.

17.6 Franchise Acceptance. No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to provide the required executed Franchise, insurance certificate as required by Section 16(j) and the Bond, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.7 Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 2.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

17.8 **Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Administrator
 City of Inver Grove Heights
 8150 Barbara Avenue
 Inver Grove Heights, MN 55077

If to Commission: Executive Director
 Northern Dakota County Cable Communications Commission
 5845 Blaine Avenue
 Inver Grove Heights, MN 55076

If to Grantee: General Manager
 Comcast
 10 River Park Plaza
 St. Paul, MN 55107

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications required under section 14.12. Such communication should be addressed and directed to the Person of record as specified above.

17.9 **Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

17.10 **Work of Contractors and Subcontractors.** Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons

performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

17.11 Governing Law. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

17.12 Commission. In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City and the rights and obligations related thereto shall, where possible, accrue to the City unless or until a new franchise is executed between Grantee and City. Nothing herein shall in any way modify or alter any rights or obligations the City or Commission may have under the Amended Joint and Cooperative Agreement between the parties.

17.13 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

17.14 Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

17.15 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

17.16 No Waiver. All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.17 Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

17.18 Survival of Terms. Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However,

Grantee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

17.19 Competitive Equity.

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.21 will apply.

(b) As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a significant competitive disadvantage if not required of a Wireline MVPD: the obligation to pay to the City a Franchise Fee, Gross Revenues as provided for and defined in this Franchise, and the obligation to comply with the requirements in this Franchise regarding PEG funding, PEG Channels, records and reports, security instruments, audits, dispute resolution, remedies, notice and opportunity to cure, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are materially equivalent.

(c) Within one (1) year of the adoption of a Wireline MVPD franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications. If the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another Wireline MVPD (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to ensure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Wireline MVPD. Notwithstanding anything contained in this section to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar downstream video programming service available for purchase by Subscribers or customers under its franchise agreement with or similar authorization from the City.

(d) In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

(e) Nothing in this Section 17.21 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to grant a franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City's legal authority, Grantee shall have the burden to demonstrate that such authority exists.

17.20 Treatment of negotiated provisions.

In consideration of the City and the Commission relinquishing any claim, title or right to certain obligations set forth in the cable television franchise originally granted by Ordinance No. 971, Grantee agrees that for the term of this Franchise any costs incurred by Grantee pursuant to Sections 7.2(g), 7.5(c), 7.8, 7.9, 7.10, 7.12, 7.14, 7.15, 7.16, 13.1, 13.2, 13.3, and 13.4 shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 1.19 and 16.1 of this Franchise or as a PEG Fee under Section 7.13 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 7.13 of this Franchise, any PEG capital costs set forth in Section 7.2(g), 7.8, 7.9, 7.10, 7.11, 7.15 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Section Two. Effective Date. This Ordinance shall be in full force and effect upon its publication as provided by law.

Passed and adopted in regular session of the City Council on the ____ day of _____, 2020.

ATTEST

CITY OF INVER GROVE HEIGHTS,
MINNESOTA

By: _____
Rebecca Kiernan
Its: City Clerk

By: _____
George Tourville
Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

COMCAST OF ST. PAUL, INC.

Date: _____

By: _____

Its: _____

SWORN TO BEFORE ME this
___ day of _____, 2020.

NOTARY PUBLIC

Exhibit A
SD/HD PEG Channel Numbers

	Channel Name	SD Channel #	HD Channel #
1.	Community	14	
2.	Public Access	15	
3.	Multifaith Access	16	
4.	Government	18	799
5.	Government	19	859
6.	Education	20	
7.	Community Bulletin Board	21	

Exhibit B

Delivery of live and recorded programming to and from below listed entities on C-RAN

1. MCN 6 (1 receive ch and 1 send ch)
2. St. Paul (2 receive ch and 1 send ch)
3. Eagan (3 receive ch and 1 send ch)
4. Burnsville (1 receive ch)
5. Bloomington (1 receive ch)
6. CCX (1 receive ch)

Exhibit C
PEG Monitoring

	NAME	ADDRESS
1.	Inver Grove Heights City Hall	8150 Barbara Avenue, Inver Grove Heights, MN 55077
2.	Mendota Heights City Hall	1101 Victoria Curve, Mendota Heights, MN 55118
3.	NDC4 Commission and Town Square TV	5845 Blaine Avenue, Inver Grove Heights, MN 55076
4.	South St. Paul City Hall	125 3 rd Avenue, South St. Paul, MN 55075
5.	West St. Paul City Hall	1616 Humboldt Avenue, West St. Paul, MN 55118

PEG Transport

	NAME	ADDRESS
1.	Inver Grove Heights City Hall	8150 Barbara Avenue, Inver Grove Heights, MN 55077
2.	Mendota Heights City Hall	1101 Victoria Curve, Mendota Heights, MN 55118
3.	NDC4 Commission and Town Square TV	5845 Blaine Avenue, Inver Grove Heights, MN 55076
4.	South St. Paul City Hall	125 3 rd Avenue, South St. Paul, MN 55075
5.	West St. Paul City Hall	1616 Humboldt Avenue, West St. Paul, MN 55118

Exhibit D
Franchise Fee Payment Worksheet

TRADE SECRET – CONFIDENTIAL

*****CONFIDENTIAL*****



System Name: Comcast of Minnesota, Inc.
Email: Prasant_Nadella@cable.comcast.com
Phone: 610-665-2579

Vendor ID:	XXXXX
Contract Name:	X
Statement Period:	Jan - Mar, 2020
Payment Amount:	\$X
Statement Number:	XXXXXX
CUID:	XXXXXX
System ID:	XXXX-XXXX-XXXX

This statement represents your payment for the period listed above.

Revenue Category	Amount
Expanded Basic Video Service	\$
Limited Basic Video Service	\$
Digital Video Service	\$
Pay	\$
PPV / VOD	\$
Digital Video Equipment	\$
Video Installation / Activation	\$
Franchise Fees	\$
Guide	\$
Other	\$
Late Fees	\$
Write-offs / Recoveries	\$
Ad Sales	\$
Home Shopping Commissions	\$
Total	\$
Franchise Fee %	%
Franchise Fee	\$

Nothing in this Franchise Fee Payment Worksheet shall serve to modify the definition of “Gross Revenues” set forth in the Franchise.

Exhibit E
MONTHLY SUBSCRIBER DATA REPORT

Twin Cities NDC

Data is for fiscal month ending x/x/xxxx

House Data

Marketable Homes	xxx
Penetration %	x%

Subscriber Data

Basic 1 (residential, includes EBUs)	xxx
Basic 2 (residential, includes EBUs)	xxx

Other Video Services

Digital Economy (Residential)	xxx
Digital Preferred	xxx
Multilatio	xxx
Sports Tier	xxx
HBO	xxx
Cinemax	xxx
Showtime	xxx
Starz	xxx
TMC	xxx

Equipment

Households with DVR Equipment	xxx
Households with HD Equipment	xxx
Households with DTA Equipment	xxx

Pay Per View

Total # PPV Purchases	xxx
-----------------------	-----

Connects

Basic 1 Connects (Residential)	xxx
Basic 1 Disconnects (residential)	xxx
Net Gain/Loss	xxx

*EBUs - Equivalent Business Units

CONFIDENTIAL

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY MINNESOTA
RESOLUTION NO. 2020-205**

**A RESOLUTION APPROVING THE PUBLICATION OF A SUMMARY OF
ORDINANCE NO. 1390 RENEWING THE CABLE TELEVISION FRANCHISE WITH
COMCAST OF ST. PAUL, INC.**

WHEREAS, on or about September 28, 2020, the City of Inver Grove Heights, Dakota County, Minnesota (“City”) adopted Ordinance No. 1390, Inc. (“Comcast”); and

WHEREAS, State law requires that all ordinances adopted be published prior to becoming effective; and

WHEREAS, pursuant to Minn. Stat. Sec. 412.191, subd. 4, the Council may, by a 4/5 vote, direct that only the title and a summary be published; and

WHEREAS, the City Council for the City of Inver Grove Heights has reviewed the summary of Ordinance No. 1390 attached hereto as Exhibit A; and

WHEREAS, the City Council for the City of Inver Grove Heights has determined that publication of the title and a summary of Ordinance No. 1390 would clearly inform the public of the intent and effect of the Ordinance; and

WHEREAS, due to the length of the Franchise Ordinance the City desires to publish a summary of the Ordinance.

NOW THEREFORE BE IT RESOLVED, by a vote of at least four-fifths of its members, the City Council for the City of Inver Grove Heights hereby:

1. Approves the text of the summary of Ordinance No. 1390 attached as Exhibit A and authorizes the publication of the summary shown in Exhibit A in lieu of publication of the entirety of Ordinance No. 1390 in the City’s official newspaper.
2. Directs the City Clerk to ensure that a full and complete copy of Ordinance 1390 is available for inspection during regular business hours at the office of the City Clerk, by standard mail, or by electronic mail.
3. Directs the City Clerk to file the executed Ordinance upon the books and records of the City along with proof of publication.

This resolution is passed and adopted by the City of Inver Grove Heights, Dakota County, Minnesota this 28th day of September 2020.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

Attested:

By: _____
Rebecca Kiernan
Its: City Clerk

(Published in the _____ on _____, 2020.)

EXHIBIT A**CITY OF INVER GROVE HEIGHTS, DAKOTA COUNTY, MINNESOTA, ORDINANCE NO. 1390, AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF ST. PAUL, INC. (“COMCAST”) TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF INVER GROVE HEIGHTS, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.**

On September 28, 2020, the City of Inver Grove Heights, Dakota County, Minnesota (“City”) adopted Ordinance No. 1390 granting a Cable Television Franchise to Comcast. The Ordinance serves two purposes. First, it grants a non-exclusive cable franchise to Comcast to operate and maintain a cable system within the City. Second, it provides requirements for the provision of cable television services including technical standards, customer service obligations, and related matters.

The Ordinance includes the following key terms: 1) establishes a franchise term of ten (10) years; 2) imposes on Comcast a franchise fee of five percent (5%) of Comcast’s annual gross revenues; 3) incorporates the City Code regarding right-of-way protections; 4) requires Comcast to dedicate channel capacity for public, education and government (“PEG”) programming; 5) establishes a PEG Fee of two and one-quarter percent (2.25%) of Comcast’s annual gross revenues; 5) imposes strong customer service standards regarding Comcast’s provision of cable services; and 8) requires a performance bond and letter of credit to enforce Comcast’s compliance with the Ordinance.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. 1390. A copy of the entire Ordinance shall be posted at the Inver Grove Heights City Hall.

It is hereby directed that only the above title and summary of Ordinance No. 1390 be published, conforming to Minn. Stat. §331A.01, with the following:

NOTICE

A printed copy of the full text of Ordinance No. 1390 is available for inspection by any person during regular office hours at the office of the Inver Grove Heights City Clerk, Inver Grove Heights City Hall, 8150 Barbara Avenue, Inver Grove Heights, MN 55077.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

JAMES POLAK– CASE NO. 20-26V

Meeting Date: September 28, 2020 Item Type: Regular Contact: Heather Botten 651.450.2569 Prepared by: Heather Botten, Associate Planner Reviewed by:	Fiscal/FTE Impact: <table border="0"> <tr> <td style="border: 1px solid black; text-align: center; width: 30px;">X</td> <td>None</td> </tr> <tr> <td style="border: 1px solid black; text-align: center;"> </td> <td>Amount included in current budget</td> </tr> <tr> <td style="border: 1px solid black; text-align: center;"> </td> <td>Budget amendment requested</td> </tr> <tr> <td style="border: 1px solid black; text-align: center;"> </td> <td>FTE included in current complement</td> </tr> <tr> <td style="border: 1px solid black; text-align: center;"> </td> <td>Other</td> </tr> </table>	X	None		Amount included in current budget		Budget amendment requested		FTE included in current complement		Other
X	None										
	Amount included in current budget										
	Budget amendment requested										
	FTE included in current complement										
	Other										

PURPOSE/ACTION REQUESTED

Consider a Resolution relating to a Variance to allow an accessory dwelling unit 1,312 square feet in size whereas 1,000 square feet is maximum allowed. Property located at 7346 Bancroft Way.

- Requires a 3/5th's vote
- 60-day deadline: October 16, 2020 (first 60-days)

SUMMARY

The applicant is requesting an accessory dwelling unit (ADU) to be located in the lower level of an existing house on a property zoned R-1C, Single-family Residential. The proposed ADU would be 1,312 square feet in size whereas 1,000 square feet is the maximum allowed.

The ADU ordinance was adopted in 2015 and was created to provide a secondary living space for a family member or a potential rental space. The City created the ordinance with a list of standard conditions, one being a minimum and maximum size to help keep the units subordinate and accessory to the principle use while providing a reasonable living space. In this case, the ADU would not have its own access, and would use the shared access on the main level of the house. The house was built in 1993 and has a footprint of 2,000 square feet. The applicant recently finished the lower level of the home after the ADU ordinance was created.

Staff does not believe there is sufficient rationale to support the variance criteria as when they finished the lower level of the house it could have been designed to comply with the 1,000 square foot maximum for the ADU while providing space for the homeowner. Additionally, approving the variance to increase the size by 30% could set a precedent for future ADU's in the City.

Planning Staff: Staff recommends **denial** of the variance request as the conditions of the property are not unique and approval of the variance could set a precedent for other requests to exceed the size of ADU's on a property. The facts presented did not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance.

Planning Commission: At the September 15, 2020 public hearing, the Planning Commission recommended **denial** of the variance request based on the lack of a practical difficulty and concern regarding precedent. The Planning Commission suggested that Council look at this in case it is a situation not adequately covered by code (9-0).

Attachments: Denial resolution
 Planning Commission recommendation
 Planning staff report

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 2020-206

**RESOLUTION DENYING A VARIANCE TO ALLOW AN ACCESSORY DWELLING
UNIT LARGER THAN 1,000 GROSS SQUARE FEET**

**CASE NO. 20-26V
Polak**

Property located at 7346 Bancroft Way and legally described as follows:

Lot 9, Block 3, Inverwood Estates, according to the recorded plat, Dakota County, Minnesota

WHEREAS, an application has been received for a Variance to allow an accessory dwelling unit 1,312 square feet in size;

WHEREAS, the afore described property is zoned R-1C, single-family residential;

WHEREAS, a Variance may be granted by the City Council from the strict application of the provisions of the City Code Title 10, Chapter 3-4 and conditions and safeguards imposed in the variance so granted where practical difficulties or particular hardships result from carrying out the strict letter of the regulations of the Zoning Code, as per City Code 10-3-4 D;

WHEREAS, the City of Inver Grove Heights Planning Commission reviewed the request on September 15, 2020 in accordance with City Code Section City Code 10-3-3:C;

WHEREAS, a practical difficulty or uniqueness was not found to exist based on the following findings:

1. The conditions of the property were not so limiting or unique that the property could not be used in a reasonable manner without the variance. The property would still function as a residential lot that would allow an ADU up to 1,000 gross square feet.
2. Approval of the variance to allow an ADU 30% +/- larger than the 1,000 square feet maximum could set a precedent for other large ADU requests.
3. The facts presented do not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance; the size of the dwelling unit may be considered a convenience to the applicant, not a practical difficulty.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, that the variance to allow an accessory building larger than 1,000 square feet is hereby denied.

Adopted by the City Council of Inver Grove Heights this 28th day of September, 2020.

George Tourville, Mayor

Ayes:

Nays:

ATTEST:

Rebecca Kiernan, City Clerk

**RECOMMENDATION TO
CITY OF INVER GROVE HEIGHTS**

TO: Mayor and City Council of Inver Grove Heights

FROM: Planning Commission

DATE: September 15, 2020

SUBJECT: **JAMES POLAK – CASE NO. 20-26V**

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance to allow an accessory dwelling unit (ADU) to be 1,312 square feet whereas 1,000 square feet is the maximum size allowed, for the property located at 7346 Bancroft Way. 3 notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the applicant is requesting an accessory dwelling unit to be located in the lower level of an existing house on a property zoned R-1C, Single-family Residential. The proposed ADU would be 1,312 square feet in size whereas 1,000 square feet is the maximum allowed. The ADU ordinance was adopted in 2015 and was created to provide a secondary living space for a family member or a potential rental space. The City created the ordinance with a list of standard conditions, one being a minimum and maximum size to help keep the units subordinate and accessory to the principle use while providing a reasonable living space. In this case, the ADU would not have its own access, and would use the shared access on the main level of the house. The house was built in 1993 and has a footprint of 2,000 square feet. The applicant recently finished the lower level of the home after the ADU ordinance was created. Staff does not believe there is sufficient rationale to support the variance criteria as when they finished the lower level of the house it could have been finished off to comply with the 1,000 square foot maximum and approving the variance could set a precedent for other ADU's in the City. Staff therefore recommends denial. Staff did not hear from any neighbors.

Chair Maggi asked if it was true that ADU's are not required to have a separate entrance.

Ms. Botten replied in the affirmative.

Chair Maggi asked what the impact would be if this variance was denied.

Ms. Botten replied they would not be able to have a complete kitchen.

Commissioner Robertson asked if it would be considered an ADU if there were no kitchen.

Ms. Botten replied it would not. She advised they would be allowed to have a sink, dishwasher, refrigerator, etc. A second stove/oven is what the City believes makes it a complete kitchen.

Commissioner Kramer asked if a rental license was required if an immediate family member was living in the accessory dwelling.

Ms. Botten replied that a rental license was not required if a family member lived in the ADU. An ADU application would still be required; however, there are no fees associated with that.

Commissioner Simon advised that the wording in the ordinance strongly states that in no case shall an ADU be more than 1,000 square feet in size. She felt it important that there was a second way out of the lower level, such as an egress window.

Commissioner Weber asked how the ADU's square footage was calculated.

Ms. Botten replied it was based on the applicant's measurements.

Commissioner Weber asked if the homeowner would still have use of the lower level.

Ms. Botten stated that could be better answered by the applicant.

Commissioner Challeen asked if a variance of this type had been granted in the past.

Ms. Botten replied this was the first request received for a variance for an ADU.

Opening of Public Hearing

James Polak, 7346 Bancroft Way, advised that his daughter and her husband reside in the lower level of his home. He addressed each of the five variance review criteria listed in the report. 1) He disagrees with staff and believes the request is in harmony with the zoning ordinance and comprehensive plan as it is not going to be a rental property, it would still be single-family residential as his daughter is still part of his family, and he does not understand why adding a stove would make this inconsistent with the zoning code; 2) he does not agree that the livable finished space of the basement could be configured to accommodate the maximum size allowed. He stated that he used the outside walls as the perimeter, removed the storage areas, and questioned how it could be reconfigured without creating a dead space within the 1,312 square foot area and retain the integrity of the original architect's intent; 3) he advised that there was no such thing as an ADU in 1993 when he built his home; however, he disagrees that there was no intent of having an ADU in the lower level because they had plumbing for a bathroom and a fireplace stubbed in with the original construction of the house, 4) he agrees with staff's conclusion on this point as it will not alter the character of the neighborhood. It is not going to be, nor could it be, a duplex without a separate entrance. 5) he stated that economic considerations are not the basis for this request. He asked for an explanation of the proposed condition that the site be developed in substantial conformance with the site plan on file with the Planning Division except as modified herein.

Ms. Botten clarified that would be the site plan submitted by Mr. Polak if this was approved, unless there was some type of change or condition added that would affect the layout.

Mr. Polak stated that underneath that condition in the report it states 'Practical difficulty' with nothing after the colon.

Chair Maggi replied that being blank indicates that staff was not able to define a specific practical difficulty. If the Planning Commission were to recommend approval, they would have to identify a practical difficulty.

Mr. Polak stated in his opinion the practical difficulty is that given the layout and the original architect's layout there is no way to unfinish 300 square feet. He does not understand how he could reconfigure the space down to 1,000 square feet. It would be unfortunate if that was the only reason to deny his request. He does not think this would set a precedent because this property is unique in the way it was constructed and finished and should therefore stand on its own merit as a unique situation. He disagrees with staff's statement that a larger ADU appears

to be a convenience to the landowner and not dictated by unique circumstances of the property. He believes it is unique, it was built and designed that way, and he is just trying to use it in the manner that it was originally intended. He also finds it difficult to understand why it is acceptable to have a microwave and a hot plate, but not a stove. Unfortunately, he was halfway into his project before he was told he could not have a stove.

Commissioner Weber asked the applicant how he calculated the square footage.

Mr. Polak replied that he submitted the original architects drawing with his building permit. It was extremely detailed, and staff thought it could be confusing. So he and his daughter did their best to scale a rough estimate for the site plan. He also took specific measurements of the spaces and added it up by hand.

Commissioner Kramer stated since the primary occupant upstairs would still have access to the furnace room and storage areas, you could argue that portions of the living room were not designated solely to the ADU, but rather it would be mutual space to the primary and secondary occupant in the ADU.

Mr. Polak agreed that the homeowner would need access to the furnace room which houses the water softener, electrical box, furnace, etc.

Commissioner Robertson asked if the work in the lower level was being done in 2019 and 2020.

Mr. Polak replied in the affirmative, stating the original permit was pulled in April 2019.

Commissioner Robertson noted that at the time the applicant applied for the permit all the documentation regarding ADU's was readily available to him because the requirements had been in effect since 2015.

Mr. Polak replied it might have been available, but it was never communicated to him.

Chair Maggi stated the question might be if the applicant indicated they were planning to create an ADU at the time the permit was pulled.

Mr. Polak stated he did not even know what an ADU was when he applied for his permits. The Commission is presupposing he knew he was creating an ADU but that was not the case.

Commissioner Robertson appreciated that the applicant followed the proper process by pulling permits. What changes this from a very well-designed lower level space to an ADU is the complete kitchen. To be in compliance he could omit the stove.

Mr. Polak stated that seems like throwing out the baby with the bath water. He questioned why having a stove invalidates it, but it is okay to have a hot plate.

Chair Maggi stated that during the extensive discussions regarding the ADU guidelines she believes the presence of a kitchen was deemed to signify it as being a separate dwelling unit.

Commissioner Simon asked if there were any egress windows in the lower level.

Mr. Polak replied in the affirmative. He stated he could never turn this into a duplex, and he believes this situation is unique and does not fit the normal boxes that the ordinance pertains to.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Chair Maggi stated this is the variance request they have had in regard to an ADU and the challenge will be to find a practical difficulty.

Commissioner Niemioja stated she is an advocate for ADU's and likes the concept of having a more affordable option for younger people to stay with their parents. She is not concerned so much about the absolute ordinance language regarding the maximum size of 1,000 square feet, since all variances are in opposition of absolute language. She is more concerned about setting a precedent and cannot see a practical difficulty. However, in this case she does not think the next homeowner would ever create a duplex and she would like City Council to consider this as an exception to the code and that if a separate entrance is not available perhaps these requirements would not apply.

Commissioner Weber stated if he chose to have one of his parents live in his lower level and he if chose to build a kitchen, he would not be allowed to because his space is over 1,000 square feet. It all seems to boil down to the square footage of someone's house. His understanding of the 2015 ADU discussions was that the ADU is the space utilized by just the individuals in that ADU. He would not have considered the common space to be included in the square footage used, such as a theater room, family room, etc. that his family would continue to use. He asked if the applicant could just say that the living room is used by the general population of the house.

Chair Maggi stated the word accessory means it is not the main usage, and perhaps that was part of the spirit of the decision around the square footage. However, if the lower level of your house is the same square footage as the main level then is it really accessory or is it kind of a duplex without a separate entrance.

Commissioner Weber asked for clarity from staff as to why the entire basement is included in the ADU size calculations, including the common space.

Mr. Hunting replied that he did not recall common space being included in the original discussions. The idea was to be creating a separate unique area, and he thinks you could never come to a conclusion if you are trying to use common space because then everybody who has a finished basement could then put a kitchen in, call it an ADU, and claim only a portion of the space is where somebody lives. The intent of the ADU ordinance was to minimize the area of wherever it was going to be located and have all the components of a dwelling space be separately defined (bedroom, bathroom, kitchen, and living space).

Commissioner Robertson stated that common space means that it is not dedicated to anyone and the homeowner would be allowed to go into that space at any point in time, even if it was inconvenient for the people who live downstairs or was an invasion of privacy. She does not think that was the intent of an ADU; rather it is a dedicated space designed specifically for an individual or set of individuals and is secondary in every way to the primary space.

Chair Maggi asked if there was discussion regarding ADU's having a separate entrance.

Mr. Hunting stated the ordinance intentionally did not require a separate entrance because it was known that ADU's would primarily be used by family members.

Chair Maggi asked if anyone could define a practical difficulty.

Commissioner Challeen suggested the practical difficulty being that the home basement as it is constructed does not easily accommodate a limitation of 1,000 square feet and in dealing with the footprint available it is hard to comply unless the applicant falsely carves out 300 square feet.

Chair Maggi replied that she could not support that practical difficulty because the permits were pulled after the ADU requirements were in place.

Commissioner Niemioja questioned why more discussion around this issue did not take place in 2015 but she believes it was because they were more focused on detached structures. In her opinion having only one entrance creates a family accessory dwelling unit, which in her mind is different from a regular ADU. She would like to recommend that City Council address this situation as an exception. She does not think they can define a practical difficulty; however, it prevents the concern of having too many people living there and the associated increased traffic.

Commissioner Robertson stated in her recollection there was significant discussion in 2015 about the differences between an ADU that was detached versus part of the house. She is greatly concerned about precedent. Historically when the City has granted variances for various requests it creates a precedent and it is not long before someone comes in with an even greater request.

Commissioner Kramer stated in his opinion the Planning Commission will likely vote to deny due to lack of a practical difficulty but recommend to City Council that they look at this as an exception. Hopefully they can assist the homeowner because he is doing everything by the book with the exception of wanting to put a stove in his remodeled basement that his family member is going to live in.

Chair Maggi agreed that City Council had additional latitude and may vote in a different direction.

Planning Commission Recommendation

Motion by Commissioner Robertson, second by Commissioner Simon, to deny the request for a variance to allow an accessory dwelling unit (ADU) to be 1,312 square feet whereas 1,000 square feet is the maximum size allowed, for the property located at 7346 Bancroft Way based on the lack of a practical difficulty and concern regarding precedent, and a suggestion that Council look at this in case it is a situation not adequately covered by code.

Motion carried (9/0). This item goes to the City Council on September 28, 2020.

Commissioner Simon commented that she did not recall any single dwelling having two kitchens in it.

Mr. Polak asked what the next steps were.

Chair Maggi advised that the Planning Commission, which is an advisory board, recommended denial of the request. This item will now go to City Council, who will make the ultimate decision. She advised that the City Council has more latitude than the Planning Commission.

Commissioner Niemioja noted that the Planning Commission also recommended that Council take a look at this as an exceptional property with only one entrance.

Mr. Polak asked if that comment would be put into the record.

Chair Maggi replied in the affirmative, stating it would be reflected in the minutes.

P L A N N I N G R E P O R T
CITY OF INVER GROVE HEIGHTS

HEARING DATE: September 15, 2020

CASE NO: 20-26V

APPLICANT/PROPERTY OWNER: James Polak

REQUEST: Variance to allow an accessory dwelling unit (ADU) 1,312 square feet in size

LOCATION: 7346 Bancroft Way

COMPREHENSIVE PLAN: LDR, Low Density Residential

ZONING: R-1C, Single-family Residential

REVIEWING DIVISIONS: Planning

PREPARED BY: Heather Botten
Associate Planner

BACKGROUND

The applicant is proposing an accessory dwelling unit (ADU) in the lower level of an existing home that would be greater than 1,000 square feet. The owners recently finished their basement and would like to add a stove to the lower level to complete the kitchen. The total square footage of the ADU would be 1,312 square feet in size. The lower level of the home does not have its own access, it is shared through the main level of the home.

The intent of the ADU ordinance, adopted in 2015, is to provide a modest, secondary living space for a family member or potential rental. An ADU would have its own kitchen, bath and sleeping and living space which constitute a dwelling unit. The City created the ordinance with a list of standard conditions, one being a minimum and maximum size to help keep the units subordinate and accessory to the principle use while providing a reasonable living space.

Prior to the adoption of the ADU ordinance, the zoning code allowed only one single family dwelling unit per lot. A dwelling unit has its own kitchen, bath, living and sleeping spaces. A resident could create a separate area for living, bath and sleeping spaces, but a full kitchen was not allowed.

SPECIFIC REQUESTS

The variance request consists of the following:

1. Variance to allow an accessory dwelling unit greater than 1,000 square feet

EVALUATION OF THE REQUEST

The following land uses, zoning districts, and comprehensive plan designations surround the property:

North, West, and East – Single family residential; zoned R-1C, single-family; guided LDR, Low Density Residential
South – Water Treatment facility; zoned P, Institutional; guided P, Public/Institutional

VARIANCE REVIEW

City Code Title 10, Chapter 3. Variances, states that the City Council may grant variances when they are in harmony with the general purposes and intent of the zoning ordinance and consistent with the comprehensive plan and establishes that there are practical difficulties in complying with the official control. In order to grant the requested variances, City Code identifies criteria which are to be considered practical difficulties. The applicant's request is reviewed below against those criteria.

1. *The variance request is in harmony with the general purpose and intent of the city code and consistent with the comprehensive plan.*

The City Council adopted the ADU ordinance in 2015. The ordinance allows for an ADU to be in the lower level of a home. The ordinance states that an accessory dwelling unit shall be clearly a subordinate part of the single-family dwelling. In no case shall the ADU be more than 1,000 square feet, nor less than 250 square feet. The applicant is asking for a 30% increase in size, staff does not believe the variance request is consistent with, or in harmony with the zoning ordinance and comprehensive plan.

2. *The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.*

The intent of the ADU ordinance is to provide a unit that is accessory and subordinate to the main dwelling unit. The applicant lives in a single-family neighborhood, a specific size was created to keep the ADU's small so single-family homes do not become duplexes. The livable finished space of the basement could be configured to accommodate the maximum size.

3. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The applicant's home, built in 1993, has a foundation footprint of about 2,000 square feet. The home was not built with the intent of having an ADU in the lower level. The applicant recently finished the lower level of the home in 2019/early 2020 after the ADU ordinance was created.

4. *The variance will not alter the essential character of the locality.*

Overall, this specific request for a larger ADU does not appear to alter the essential character of the neighborhood. The applicant is requesting a variance for an ADU in the lower level of the existing home. No building additions are being requested and the access is shared with the main entrance for the home. The property has a three-car attached garage with plenty of off-street parking, complying with the parking requirements for an ADU. The applicant has stated that his daughter and son-in-law reside in the lower level, complying with the maximum number of occupants allowed in an ADU.

5. *Economic considerations alone do not constitute an undue hardship.*
Economic considerations do appear to be a basis for this request as there would be a cost to add walls or reconfigure the existing layout of the lower level of the home.

ALTERNATIVES

- A. **Approval:** If the Planning Commission finds the application acceptable, the request should be recommended for approval subject to the following conditions:

- a. The site shall be developed in substantial conformance with the Site Plan on file with the Planning Division except as modified herein.

Practical difficulty:

- B. **Denial.** If the Planning Commission does not favor the proposed request, it should be recommended for denial, which could be based on the following rationale:

1. Denying the variance request does not preclude the applicant from reasonable use of the property.
2. Approval of the variance could set a precedent for other accessory dwelling unit size variances.
3. The facts presented did not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance. A larger ADU appears to be a convenience to the landowner and not dictated by unique circumstances of the property.

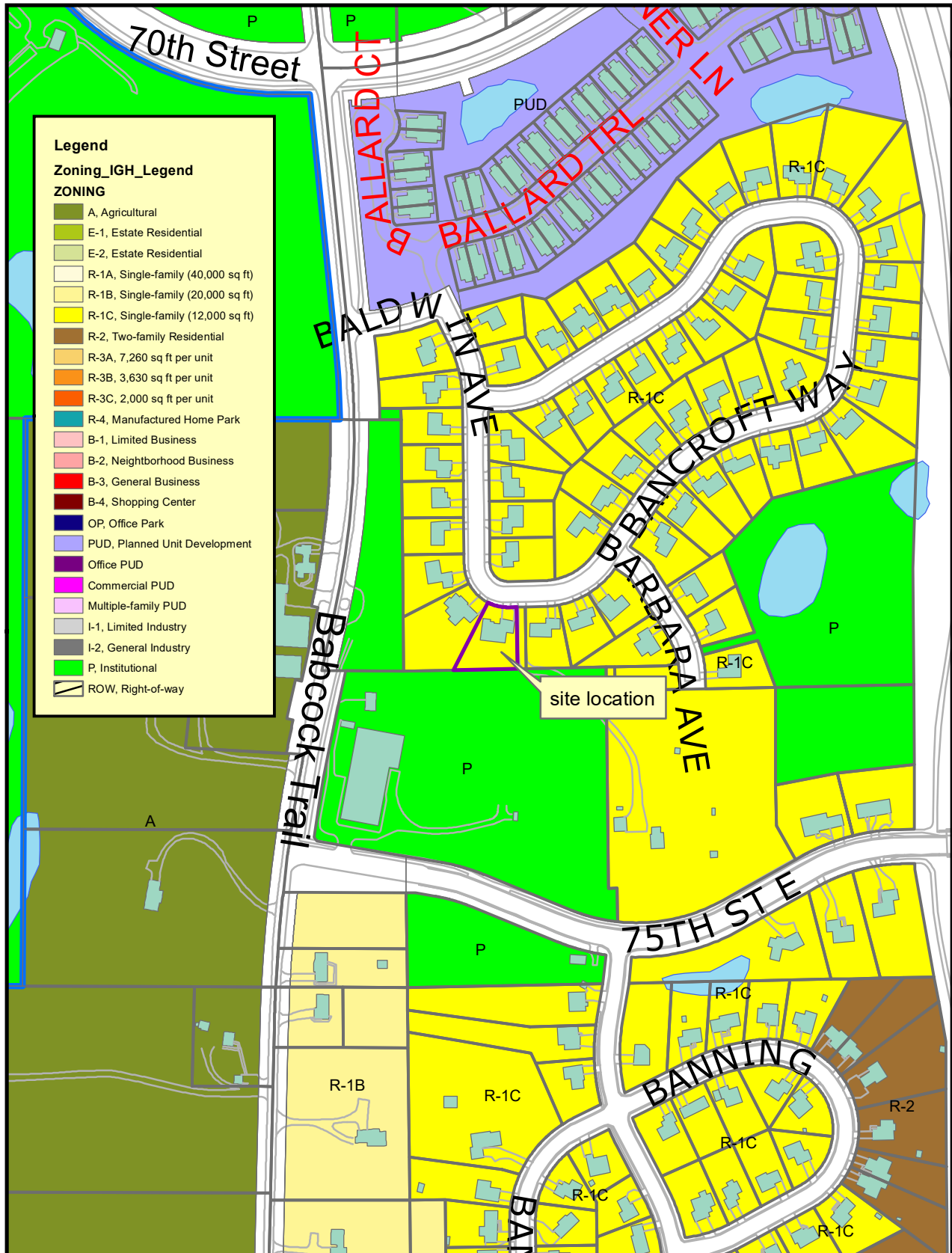
RECOMMENDATION

The intent of the ADU ordinance is to provide a unit that is accessory and subordinate to the main dwelling unit. The applicant lives in a single-family neighborhood, a specific size was created to keep the ADU's small so single-family homes do not turn into duplexes. Staff does not believe there is sufficient rationale to support all criteria of a variance review and therefore recommends denial of the request as proposed.

Attachments: Exhibit A –Location Map
Exhibit B –Narrative
Exhibit C – Site Plan
Exhibit D – ADU Criteria



7346 Bancroft Way Case No. 20-26V



THIS DRAWING IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS ONE. THIS DRAWING IS A COMPILED OF RECORDS, INFORMATION AND DATA LOCATED IN VARIOUS CITY, COUNTY AND STATE OFFICES AND OTHER SOURCES AND IS TO BE USED FOR REFERENCE PURPOSES ONLY. THE CITY OF INVER GROVE HEIGHTS IS NOT RESPONSIBLE FOR ANY INACCURACIES HEREIN CONTAINED.

Map produced by the City of Inver Grove Heights GIS Dept.
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Exhibit A
Zoning and Location Map

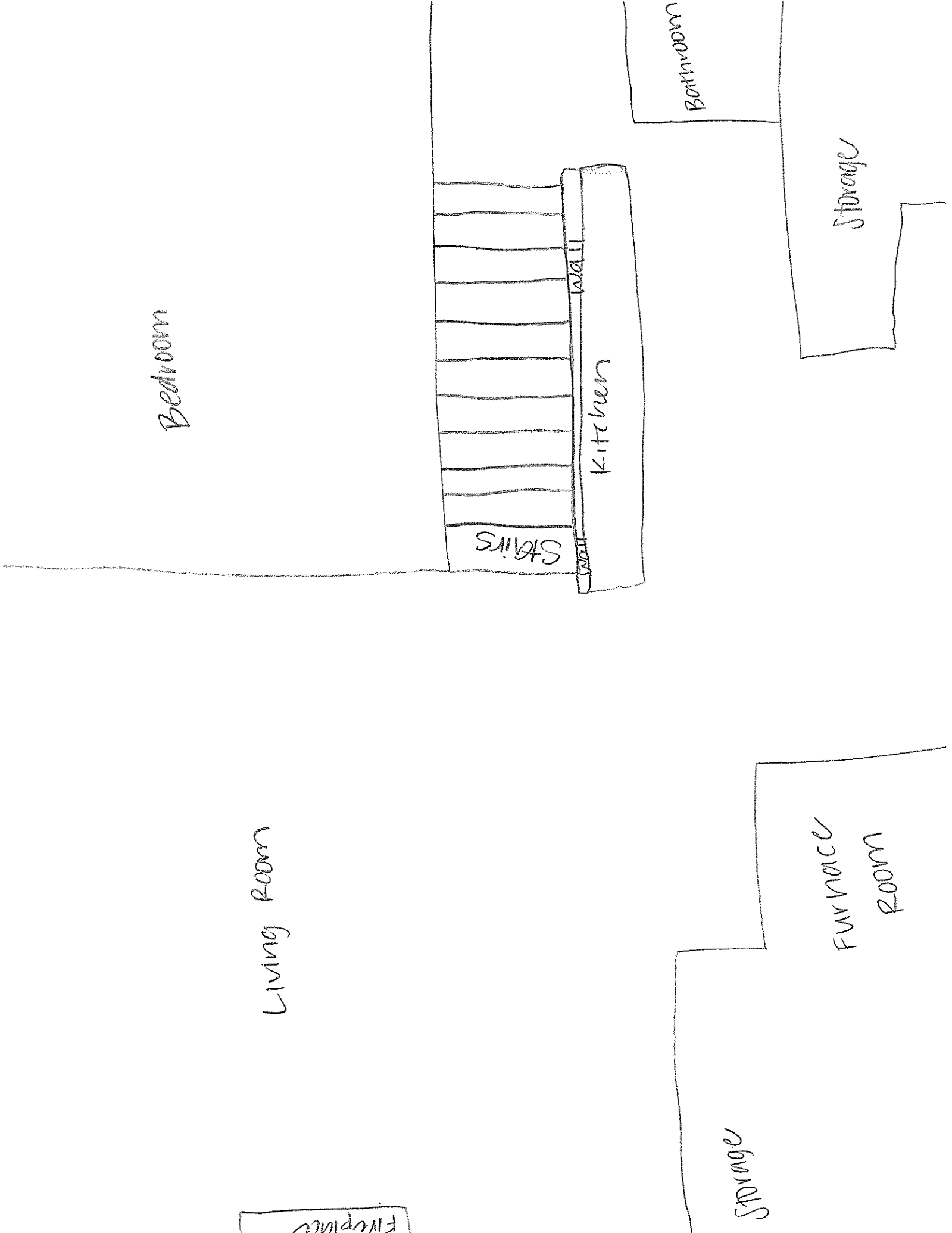
Map not to scale

I, James G Polak along with my wife Christine C Polak are seeking a variance at 7346 Bancroft Way, Inver Grove Heights, MN 55077. The variance falls under IGH Code, Title 10, chapters 3-4 that deals with zoning and land restrictions. The variance requested is actually 10-18-1 the Accessory Dwelling Units part. That section says the size must be under 1,000 feet of livable and usable space. We satisfy all the other parts 1-13 except for number 3.

We have recently remodeled our basement which is 1,312 square feet in size not counting two storage/utility rooms and the under stairway space for storage. The storage/utility rooms contain the furnace, electrical, water and gas accesses to the home. The remodeling is on file with the City of Inver Grove. Final approval has been obtained from the city.

We would like a variance which would allow us to put an electric cooking stove in our remodeled basement. We did not increase or decrease the available square footage in our remodeling, we used what the original builder gave us in design back in 1993, the year in which the house was built and well before Title 10 was adopted. We did not finish the basement until 2019-2020 because of money and absence of need. My only daughter and her husband are living in the basement since their marriage in 2019.

It would be practically impossible to use the space as originally designed to bring the square footage under 1,000 square feet and still use the basement in the manner in which it was originally intended. We cannot unfinish 313 square feet to get to 1,000 square feet. It is already finished. The variance will be consistent with the original intent of the city and will not be used as rental property to the general public. All neighbors will not be affected in any way.



Bedroom

Living Room

Stairs

Wall

Kitchen

Bathroom

Storage

Furnace Room

Storage

Furnace

CHAPTER 18

ACCESSORY DWELLING UNITS

SECTION:

10-18-1: Accessory Dwelling Unit Requirements

10-18-1: ACCESSORY DWELLING UNIT REQUIREMENTS:

A. Accessory dwelling units (ADU) may be permitted as an accessory use to a single family dwelling in the A, E-1, E-2, R-1A, R-1B and R-1C Zoning Districts subject to the following:

1. A rental license for the non-owner-occupied unit shall be obtained if required by this Code.
2. Each accessory dwelling unit shall require a City registration.
3. An accessory dwelling unit shall be clearly a subordinate part of the single-family dwelling. In no case shall the ADU be more than one thousand (1,000) square feet, nor less than two hundred fifty (250) square feet.
4. An accessory dwelling unit may be permitted within a detached accessory structure provided the lot size on which the unit would be located is one acre or greater and provided the ADU shares the same septic system and well as the principal unit in areas not served by Municipal sewer and water. The ADU is not allowed its own private septic system and well.
5. No more than one accessory dwelling unit shall be allowed on a lot.
6. The property owner must reside in either the primary residence or the ADU as their permanent residence.
7. An ADU may not be subdivided or otherwise segregated in ownership from the primary residence structure.
8. The exterior design of an accessory dwelling unit shall incorporate a similar architectural style, roof pitch, colors, and materials as the principal building on the lot, and shall be compatible with the character of the surrounding residential buildings.
9. The total number of occupants in the accessory dwelling unit shall not exceed three (3) persons.
10. Lots with accessory dwelling units shall provide at least two (2) off-street parking spaces in addition to the one off-street parking space required for the primary residence.
11. Accessory dwelling units in combination with their associated single family dwelling unit must conform to all City Code requirements for single family dwellings, including but not limited to setback, height, impervious surface and accessory structure standards.
12. The accessory dwelling unit and the associated single-family dwelling unit must meet current State Building, Plumbing, Electrical, Mechanical and Fire Code provisions including fire emergency vehicle access to any accessory dwelling unit.
13. An accessory dwelling unit in a detached accessory structure shall have a separate address from the principal dwelling unit on the lot and shall be identified with address numbers assigned by the City and pursuant to size and location regulations of this Code. (Ord. 1358, 10-8-2018)

JEFFREY S. JOHNSON
 RUSSELL H. CROWDER
 MICHAEL F. HURLEY
 DOUGLAS G. SAUTER
 HERMAN L. TALLE
 CHARLES M. SEYKORA
 DANIEL D. GANTER, JR.
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MEMORANDUM

TO: Inver Grove Heights City Council
 FROM: Scott Lepak, Labor and Employment Counsel
 RE: Process Suggestions for agenda items on September 28, 2020
 DATED: September 24, 2020

The September 28, 2020 agenda has noticed the following:

- 1) Meeting pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to council authority.
- 2) Consider acceptance of Investigative Report.
- 3) Consider discipline against employee.

The subject of the meeting for preliminary consideration of allegations or charges has exercised their right to request that this meeting be open. This memo is intended to outline a process by which the council and parties can best accomplish their business in an open meeting while safeguarding and limiting disclosure of nonpublic data to the extent necessary to conduct the business at hand.

As a preliminary matter, the statutory provision applicable to this situation is:

13D.05 MEETINGS HAVING DATA CLASSIFIED AS NOT PUBLIC.

Subdivision 1. General principles.

(b) Data that are not public data may be discussed at a meeting subject to this chapter without liability or penalty, if the disclosure relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda item before the public body.

(c) Data discussed at an open meeting retain the data's original classification; however, a record of the meeting, regardless of form, shall be public.

The process proposed is as follows:

Preliminary consideration/permitting due process:

1. The Mayor will identify the agenda item and refer it to labor and employment counsel.
2. Labor and employment counsel will provide an overview from the podium.
 - a. This will include a request that council utilize the next portion of the agenda (where the employee is presenting) as a listening session and reserve active questioning and discussion for later in its decision making.
3. Labor and employment counsel will invite the employee or employee's representative to speak at the podium.
 - a. Per social distancing protocol, labor and employment counsel will then be seated while the employee or employee representative presents on matters relevant to the agenda item.
4. At the conclusion of the presentation by the employee/representative, the employee/representative of the employee will leave the podium and labor and employment counsel will return to the podium in order to assist the council on next steps.
 - a. Council will ask questions, if any, of the labor and employment counsel
 - b. Labor and employment counsel will note that the next two agenda items will be now addressed based on what council has in their packets and what was presented by the employee.
5. It is important to note that the matter at this point and for the remainder of the agenda items is before the council and does not represent a back and forth between audience members and council or resumption of presentations.
 - a. It is not recommended that public speakers be recognized during this consideration period so that the record on which council is considering it can be deemed complete at the conclusion of the employee's presentation.

Consider acceptance of report:

1. The Mayor will then ask the City Attorney to address the next agenda item: consider acceptance of the report.
2. The City Attorney will ask the Council to consider making a motion relative to the report.
3. Council will deliberate on the matter.
4. In the event that council decides what to do, a motion would be in order. For example:

Motion to accept Investigative Report.

Motion to accept modified Investigative Report with the following modifications:
(add in whatever needs to be modified as determined by council)

Consider discipline against employee

1. The Mayor will then ask the labor and employment counsel to address the next agenda item: consider acceptance of the report.
2. The labor and employment counsel will ask the Council to consider making a motion relative to whether to issue discipline to the employee and, if so, what level of discipline.

3. Council will deliberate on the matter.
4. In the event that council decides what to do, a motion may or may not be in order. For example:

Motion to issue discipline against the employee at the level of written reprimand/suspension for X days/termination.

Motion to take no further action related to imposition of discipline.

No Motion. In such an instance, no discipline would be issued.

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JEFFREY S. JOHNSON
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HERMAN L. TALLE
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MEMORANDUM

TO: Inver Grove Heights City Council
FROM: Scott Lepak, Labor and Employment Counsel
RE: Closed Meeting Pursuant to Minn. Stat. Sec. 13D.05, subdivision 2(b)
DATED: September 22, 2020

The September 28, 2020 agenda has noticed the following:

- 1) Closed Meeting pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to council authority. Note this may be open at the request of the individual subject.
- 2) Consider acceptance of Investigative Report.
- 3) Consider discipline against employee.

This memorandum is in response to an identified need to discuss an investigative report and request further direction on whether discipline should be imposed.

Item #1:

The relevant statute for the first item is as follows:

Subd. 2. When meeting must be closed.

(b) A public body shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting must also be open at the request of the individual who is the subject of the meeting.

The subject of the meeting may request that the meeting be open. In that instance, the council will have the same substantive meeting however it will be open to the public rather than in a closed session. Please note that if the individual requests that this meeting remain open, the requested motion will not be needed.

Requested Motion prior to Closed meeting:

Motion to go into Closed Session pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to council authority.

If approved, the Council should adjourn to the closed session.

Item #2:

Consideration of this matter will be in an open meeting. Council will accept, reject or modify the report.

Item #3:

Consideration of this matter will be in an open meeting. Council will act on any discipline deemed appropriate. Because the matter is not public at this point, the action should be simply a motion, second and vote without discussion except as necessary for the action, if any.

Options for Motions Following Preliminary Consideration of Allegations or Charges:

As noted at the September 14, 2020 meeting, council is being requested to perform 2 tasks:

- 1) Determine whether to accept the Investigative Report
- 2) Determine whether discipline should be issued and, if so, at what level; and

As a result, here are some potential Motions related to these 2 tasks:

Motion to accept Investigative Report.

Motion to reject Investigative Report.

Motion to accept modified Investigative Report with the following modifications:

No Motion*

*In such an instance, the City Attorney's office would need to opinion on the effect of no Council action.

Motion to terminate/suspend for X days/issue a written reprimand/issue an oral reprimand to the Human Resources Manager for the reasons outlined in the September 22, 2020 letter to the individual.

No Motion*

*In such an instance, no discipline would be issued.