

INVER GROVE HEIGHTS CITY COUNCIL AGENDA

Monday, November 27, 2017

8150 BARBARA AVENUE

7:00 P.M.

1. CALL TO ORDER

2. ROLL CALL

3. PRESENTATIONS

- A. Sibley High School Marching Band invitational to America's National Independence Day Parade
- B. Miss Inver Grove Heights Scholarship Program

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 Council member or citizen so requests, in which event the item will be removed from this Agenda and considered in normal sequence.

- A. i. Minutes October 9, 2017 City Council Meeting
 - ii. Minutes October 23, 2017 City Council Meeting
 - iii. Minutes October 25, 2017 Special City Council Meeting
 - iv. Minutes November 2, 2017 Special City Council Meeting
- B. Resolution Approving Disbursements for Period Ending on November 21, 2017
- C. CITY OF INVER GROVE HEIGHTS; Approve a Resolution creating a permanent pedestrian trail easement for Lot 7, Block 1, Blackstone Vista
- D. Approval of the 2018 Election Polling Place Designation
- E. Approval of the 2018 Fee Schedule
- F. Approval of Kristi Smith's Employment Agreement Extension with the City of Inver Grove Heights
- G. Consider Approval of the Five Bugles Design for Architectural and Engineering Services for the Fire Station Site Design and Construction of Fire State #2
- H. Consider Approval of the 2018 Parks and Recreation Department Fees
- I. Consider Pay Request No. 4 – Bid Package 1 – East Rink Floor Project – City Project 2017-05
- J. Consider Approval for Therapeutic Massage Business License for Health 1st Chiropractic and Individual Therapeutic Massage License of Dorina Lynn Costa
- K. Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th St. and Concord Blvd. Wet Extended Detention Basin)
- L. Consider Pay Voucher No. 4 for City Project No. 2016-09E – Bancroft Way Area Reconstruction
- M. Consider Pay Voucher No. 5 for the 2017 Capital Improvement Program, City Project No. 2017-02 – NWA Watermain Improvements, 65th Street Loop

- N. Approve Sidewalk Easement for 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge)
 - O. Release of Improvement Agreement Related to 9735 Robert Trail South owned by Inver Grove Storage, LLC
 - P. Release of Lot 5, Block 1, Blackberry Town Office Park from Development Contract Related to Plat of Blackberry Town Office Park
 - Q. Personnel Actions
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 HEARINGS:**
7. **REGULAR AGENDA:**
- I. **COMMUNITY DEVELOPMENT:**
- A. **KEVIN KNEISL;** Consider a Resolution relating to a Variance to allow two detached accessory structures where one is the maximum allowed for property located at 1847 Upper 55th Street
 - B. **ALAN AND LLONI BEBEL;** Consider a Resolution relating to a Preliminary and Final Plat, development contract and related agreements for a two lot subdivision to be known as Lloni's 2nd Addition located at 8843 Alverno Avenue
 - C. **CITY OF INVER GROVE HEIGHTS;** Consider the Third Reading of an Ordinance to prohibit transient lodging (short-term rentals) of residential property
8. **MAYOR & COUNCIL COMMENTS:**
9. **ADJOURN:**

This document is available upon 3 business day request in alternate formats such as Braille, large print, audio recording, etc. Please contact Michelle Tesser at 651.450.2513 or mtesser@invergroveheights.org

SIBLEY MARCHING BAND

REPRESENTING MINNESOTA AT AMERICA'S NATIONAL INDEPENDENCE DAY PARADE



DONATE 2 WAYS:

1. ONLINE

henrysibleyband.org



2. MAIL A CHECK

PAYABLE TO:

Henry Sibley Marching Arts

ADDRESS:

Sibley Band Department
1897 Delaware Ave
Mendota Heights, MN
55118

This fundraising effort is brought to you by HENRY SIBLEY MARCHING ARTS, a tax-exempt/501(c)(3) organization. Donations are tax deductible.

We are thrilled to inform you that the Henry Sibley High School Marching Band has been invited to perform in America's National Independence Day Parade in Washington, D.C. in 2018, as the official representative of the state of Minnesota!

The invitation was extended by National Independence Day Committee, the United States Department of the Interior, and the National Park Service. Nominations were submitted by Governor Mark Dayton and Senator Amy Klobuchar.

"This is a tremendous honor for our little band, which has worked so hard and had such an exceptional season," said Sibley band director Amy Powers. "It's even more of an accomplishment considering that our band has only 58 members and competes against others with 100 or more, which requires so much extra effort."

The passion and confidence that the Sibley Marching Band displays in performance has earned them the title of *"The Little Band That Could"* among their many fans.

"These kids have an incredible work ethic," says Amy. "They endure 6- to 9-hour practice days on a regular basis, in all kinds of weather. They are 100 percent focused and constantly pushing themselves to be better. Anyone who doubts the work ethic and dedication of teenagers should watch our band rehearse."

The Sibley Warriors will join a variety of other performers, including fife and drum corps, military units, drill teams, national dignitaries, celebrity participants, and other invited bands. The Parade takes place on Constitution Avenue before a street audience of hundreds of thousands and televised to millions more.

"Our staff has worked with many other bands, but none has captured our hearts like the Sibley Marching Band," says Amy. "Seeing the *Little Band That Could* come down the street and perform like a much larger band has been awe-inspiring. Representing Minnesota in the National Independence Day Parade in Washington, D.C., will be the experience of a lifetime for all of us."

To make this trip of a lifetime possible, the band must raise \$91,490 to cover travel, accommodations, and related expenses. We hope you will raise awareness among your constituents of this exciting opportunity to represent our state and local communities on a national basis.

There are a variety of ways to donate, including sponsorships as noted on the attachment. More information about the Sibley Marching Band and the Washington, D.C. trip, is available at www.henrysibleyband.org.

Please help send the Sibley Marching Band to Washington, D.C., to perform in America's National Independence Day Parade in 2018!



SIBLEY MARCHING BAND

REPRESENTING MINNESOTA AT AMERICA'S NATIONAL INDEPENDENCE DAY PARADE

Henry Sibley High School Marching Band *"The Little Band That Could"*



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This fundraising effort is brought to you by HENRY SIBLEY MARCHING ARTS, a tax-exempt/501(c)(3) organization. Donations are tax deductible.

In 2012, Amy Powers was planning her first season as director of the Henry Sibley Marching Band. Like any competitive team, the band had experienced its ups and downs during its long history.

While becoming familiar with the school's program, Amy considered her options. The practical path was to build the band up slowly and compete in "easy" parades where they could at least earn a participation plaque.

"I thought to myself, 'A participation plaque? Easy parades? NO WAY!' If we were going to be a marching band, we were going to learn how to be a marching band of excellence."

From that moment forward, Amy and her staff rehearsed the band as champions. There were challenges to overcome: The band was the smallest in the circuit, often competing with bands that had twice the number of members. Many of the students were new to marching band. And several had to learn new instruments to make the band work. But the goal was clear: Give the students the best possible experience and treat them as champions.

In their first season, the band experienced the growing pains that any organization under new leadership experiences. But the students worked hard, got to know each other, and coalesced as a team.

Their efforts paid off. The little Sibley Marching Band of mostly 8th and 9th graders defeated bands twice their size and experience level. By the end of the season, they accomplished the impossible by winning their class at State.



Since that first season, the Sibley Marching Band has continued to evolve and build on their successes. They learned the value of giving of themselves for the team. They learned how to approach something with the expectation of excellence and they learned the value of being a part of something bigger than themselves.



The passion and confidence that the Sibley Marching Band displays in performance has earned them the title of *"The Little Band That Could"* among their many fans.

Throughout the last five years, *The Little Band That Could* has had many successes. They won class AA at State in both 2013 and 2014. In 2015, they were moved up to class AAA, where they earned the bronze medal. In 2016 and 2017, they were the Class AAA 2nd place winner while moving into the elite position of top 4 in 2016 and top 3 in 2017, their highest finish in over 25 years.

And now the Sibley Marching Band has been invited to perform in the National Independence Day Parade in Washington, D.C., on July 4, 2018, as the official representative of the state of Minnesota.

Along with their competitive success, band members have achieved the more important purpose of marching band. They have learned that they are capable of digging deep and pushing themselves past what they believe is their best. They have learned that "we" is bigger than "me" and that the path to success requires hard work and commitment.

"These kids have an incredible work ethic," says Amy. "They endure 6- to 9-hour practice days on a regular basis, in all kinds of weather. They are 100 percent focused and constantly pushing themselves. Anyone who doubts the work ethic and dedication of teenagers should watch our band rehearse. They also take care of each other. When I see the diversity and unity in our organization, I am in awe of the culture these incredible students have created. Any student who walks through our doors will have friends, will achieve, and will develop self-confidence."

"Our staff has worked with many other bands, but none has captured our hearts like the Sibley Marching Band. They have surpassed every expectation we set for them. Seeing the *Little Band That Could* come down the street and perform like a much larger band has been amazing. Participating in the National Independence Day Parade in Washington will be the experience of a lifetime for all of us."



From: Tina M Neal
To: [Michelle Tesser](#)
Subject: Sibley Marching Band Information
Date: Monday, October 30, 2017 6:28:30 PM

Good evening,

Per our conversation today, I'm sending you more information about the [Sibley Marching Band](#) being nominated by Governor Dayton and Senator Klobuchar to be Minnesota's only representative at the 2018 National Independence Day parade in Washington, D.C. Our band director, Amy Powers, and a few select Marching Band members would be honored to present additional information to the Inver Grove Heights city council regarding the parade and what we are doing to get there. The [Sibley Marching Band](#) (SMB) site has a [GETSMB2DC brochure](#) with a wealth of information regarding the band as well as the journey to D.C.

We will provide an emailed presentation no later than Tuesday, November 21st for inclusion in the Monday, November 27th city council meeting.

Is there anything additional you need from me at this time? I plan to connect with the band director as soon as possible to confirm the date.

Let me know if you have any questions.

Thank you,

Tina M. Neal
Cell: 651-815-7778
Email: tulips4tina@gmail.com

INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, OCTOBER 9, 2017- 8150 BARBARA AVENUE

1. CALL TO ORDER and 2. ROLL CALL

The City Council of Inver Grove Heights met in regular session on Monday, October 9, 2017, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Hark, Perry and Piekarski Krech; City Administrator Lynch, City Attorney Kuntz, Community Development Director Link, City Clerk Tesser, Parks and Recreation Director Carlson, Finance Director Smith, Public Works Director Thureen, and City Engineer Kaldunski.

Mayor Tourville commented that a past firefighter had recently passed away.

3. PRESENTATIONS: None.

4. CONSENT AGENDA:

- A. Approve Minutes September 11, 2017, City Council Meeting
- B. Approve Resolution **17-185** Approving Disbursements for Period Ending on October 4, 2017
- C. Approve Pay Request No 3 – Bid Package 1 – East Rink Floor Project – City Project 2017-05
- D. Approve Pay Request No 3 – Bid Package 2 – East Rink Floor Project – City Project 2017-05
- E. Approve Scheduling of Public Hearing on Development Fees
- F. Approve Scheduling of Special Meeting for Semi-Finalist Police Chief Candidates
- G. Approve Resolution **17-186** Approving Demolition Contract- 6140 Doffing Avenue
- H. Approve Final Compensating Change Order No. 7, Final Pay Voucher No. 10, Engineer's Final Report, and Resolution **17-187** Accepting Work for City Project No. 2015-09E – 47th Street Area Reconstruction and City Project No. 2015-14 – 47th Street Area Water and Sewer Improvements and Rehabilitation
- I. Approve Pay Voucher No. 1 for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th and Concord Wet Extended Detention Basin)
- J. Approve Final Pay Voucher No. 1, Engineer's Final Report and Resolution **17-188** Accepting Work for Emergency Storm Culvert Repair under Upper 55th Street East
- K. Approve Personnel Actions

Motion by Bartholomew, second by Hark, to approve all items on the consent agenda 4A-4K.

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT: None

City Administrator Lynch asked that items 7IIIE and 7IIIF be reversed in order. It was agreed to reverse the order of the items.

6. PUBLIC HEARINGS:

A. Consider Application for Commercial Kennel License at 8365 Delaney Circle, Resolution 17-189

City Clerk Tesser presented the item. She stated Robert Heller, 8365 Delaney Circle, applied for a commercial kennel license. The applicant already has more than four dogs (eight dogs which he breeds and sells) which is against city code (limit of four dogs over the age of six months) without a commercial/noncommercial license. The applicant stated they wanted to have eight dogs. Staff denied the application based on the property not meeting the following requirements:

1. A kennel must be five hundred feet from a residential dwelling and;

2. The property does not comply with the zoning requirement which only allows for a commercial kennel license in an agricultural zoning area of the City. The property of 8365 Delaney Circle is designated in the Estate zone.

An inspection of the kennel and property was completed and was found satisfactory. The applicant stated a six-foot fence would be installed to be in compliance with the ordinance. The City code does allow the applicant to appeal and Council may reverse staff's denial of the license. The applicant requested an appeal and public hearing be held. Notice was sent to properties affected within 1,000 feet. Numerous emails and letters have been received; most have been included in the Council packet. One email has been received that is in support of the license from a neighbor. There is a letter from the Pure-Bred Breeders Association in support of the license for the owner. There was a petition that was handed to the council tonight opposing the license. One additional item has been received opposing the granting of the license. Planning Staff denied the request because the property does not comply with the zoning requirement. There is a resolution before council denying the application. Currently there are no commercial kennel licenses in the city and the last commercial license found was in 2010.

Councilmember Piekarski Krech asked where the commercial kennel was located in 2010. Ms. Tesser could not recall the address. Mayor Tourville commented that he believed the previous commercial kennel was in an agricultural zone.

Councilmember Bartholomew asked if the applicant would be allowed to keep three dogs and sell the offspring is that considered a kennel? Would sales be prohibited if the applicant kept three dogs? Community Development Director Link commented that the definition of a dog is any dog over six months. Councilmember Piekarski Krech said this issue has come up before a number of times and as long as the puppies were sold before they were six months old they did not fall under the commercial kennel category.

Motion by Piekarski Krech second by Perry to receive, the letters, emails, and all correspondence that relate to an Application for Commercial Kennel License at 8365 Delaney Circle

Ayes: 5

Nays: 0 Motion carried.

City Attorney Kuntz stated that the zoning code states you can only have this facility in an agricultural district and Council is not able to appeal the license denial on this zoning requirement. Similarly, the 500 feet cannot be varied for a license application appeal. Typically, the appeal for the denial deals with other provision of the licensing, for example regarding the inspection, and the inspection reveals adequate safeguards and protects the surrounding neighbors from nuisances. There is interpretation and judgement to be applied for the council to review to concur or not concur with the staff's decision. In the instance where the zoning isn't there, you are not able to overturn the appeal in the Zoning Code. The Zoning Code would need to be changed. Right now, the only district that allows a Commercial Kennel is the Agricultural District (lots typically over five acres or more) which may be why there is a 500-foot requirement. The Zoning Code cannot be changed tonight.

Robert Heller, 8365 Delaney Circle, stated he is a breeder. He has a dome house with 18" thick walls which limits the barking sound. There is not a great impact on the neighborhood. He stated he has 25 years of breeding experience.

Mayor Tourville stated that zoning doesn't allow for a commercial kennel license and there is no appeal.

Theresa Baker, applicant's wife, 8365 Delaney Circle, stated she is the applicant. Inver Grove Heights has a great animal hospital for French bulldogs and that is why they moved here. The City Clerk stated we requested we have eight dogs in the application, but we don't have eight dogs. They sometimes do rescues. We currently do not own eight dogs. She stated we don't make a living selling dogs, but we have pets. She thought kennels were allowed with the state zoning and the city zoning of Estate. She

asked that a different definition be considered for what she does so she does not have to give her pets away. Mr. Kuntz read the city code for the definition of a commercial kennel - where there are four or more dogs over the age of six months and are kept for breeding, keeping, harboring or selling of dogs – which is only allowed in Capital A zoning district by Conditional Use Permit subject to the issuance of a valid kennel license.

Councilmember Piekarski Krech asked how many dogs are allowed. Ms. Tesser answered three dogs are allowed. Councilmember Piekarski Krech asked if there was a provision in the city code to allow more than three dogs with a kennel license and thought one was issued a few years ago. Ms. Tesser stated the difference of the noncommercial license is in the wording of harboring, breeding, or selling of the dogs. Mr. Kuntz said the noncommercial kennel licenses are allowed in the zoning districts of A (agricultural), E (estate), and R-1, subject to the issuance of a valid kennel license. The definition of a noncommercial kennel is any place where four or more dogs over the age of six months are kept but not for the primary purpose of commercial breeding, keeping, harboring or selling of dogs. This is for people that were going to be keeping the same dogs.

Ms. Baker stated she has had the same dogs for the last four years. We do breed dogs to place or show. We don't make money on breeding dogs. This is not a profit venture. The neighbors don't even know that we have as many dogs that we have.

Mayor Tourville stated that neighbors are concerned about allowing a commercial kennel license. He stated the city could be setting a precedence. He stated some residents want to keep the fourth or fifth dog but neighbors do call the city to complain. Mayor Tourville stated the city council is trying to be good stewards but we can't change the zoning requirement. The holdup may be the definition of commercial and/or noncommercial kennel.

Ms. Baker said she would like a multiple animal permit like she had in Minneapolis. Mayor Tourville said that is not in the city codes for Inver Grove Heights.

Mr. Kuntz stated the other hurdle is the distant requirement and the code states that a kennel may not be located within 500 feet of a residential dwelling other than the owner's dwelling. The 500-foot distance requirement cannot be met in this application which applies to all types of kennels.

Mr. Heller stated that he put out a petition and most were in support of their endeavor. Councilmember Perry stated that there were seven signatures for and seven against.

John Armour, 920 Stryker Avenue, West St. Paul, Past President of the Siberian Husky Club and part of the pure-bred dog club stated this is not a typical situation. He stated he doesn't see Ms. Baker and Mr. Heller as commercial breeders. They breed the dogs to keep the quality of the breed. They do a lot of community work on responsible dog ownership.

Councilmember Bartholomew stated we have no choice but to deny this based on what we heard from the attorney.

Motion by Bartholomew, second by Hark, to deny the application for a Commercial Kennel License at 8365 Delaney Circle, Resolution 17-189

Barbara Armour, 920 Stryker Avenue, West Saint Paul, asked if there could be clarification as to when the kennel license was issued to keep more than three dogs that was discussed earlier. Ms. Baker and Mr. Heller (has known them for five years) are wonderful people and hopes the Council would reconsider and not deny the application tonight. Maybe the issues could be looked at to address some of the issues. Mayor Tourville said the information could be looked up to help clarify what happened back in 2010. The problem is they are not going to meet the 500 feet requirement and we can't change the zoning to the property tonight. He appreciated her comments and the issues will be looked at.

Councilmember Hark said the Council's hands are tied on this. He would like the applicants to contact staff about an interim multiple animal license so a solution could be found that would work.

Ms. Tesser stated that in regards to the 500 feet from the residence it is important to note that two of the residents that are opposing this are 48 feet from the residence and the other is 177 feet. They are fairly close to their neighbors' homes.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville suggested the applicants get together with staff to see if there is something that could be done.

Mr. Heller asked how much time he has to get in compliance. Mr. Link said there is no specific answer tonight. This has happened before and we could go back and look at how much time we have given others to get into compliance and apply it to this situation. Mayor Tourville again suggested that the applicants get together with staff. Mr. Link said he should be contacted.

Motion by Piekarski Krech second by Bartholomew to close the public hearing at 7:39 PM for the Commercial Kennel License Application.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville asked if the earlier motion to deny the application still stood. Mr. Kuntz said yes.

B. Consider Change of New Officers for Northern Tier Retail, LLC dba SuperAmerica Stores

Ms. Tesser presented this item stating that SuperAmerica has new corporate officers for all of their locations. There are two locations in Inver Grove Heights at 5728 Bishop Avenue and 7501 Concord Boulevard. This is for 3.2 off sale liquor licenses. The applicant has paid all the necessary fees as required by City code and provided all the necessary documents for the officer changes. The Police Department conducted background investigations for all the new officers and has found no basis for denial. Staff recommends approval of the officer change.

There was no one present from SuperAmerica.

Motion by Piekarski Krech second by Perry to close the public hearing at 7:41 for the officer change for Northern Tier Retail, LLC dba SuperAmerica stores.

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech second by Perry to approve the Change of New Officers for Northern Tier Retail, LLC dba SuperAmerica Stores.

Ayes: 5

Nays: 0 Motion carried.

7. REGULAR AGENDA:

I. FINANCE:**A. CITY OF INVER GROVE HEIGHTS; Consider first reading of an Ordinance Amending City Code Title, 3, Chapter 4, Sections 3-4-2-2- and 3-4-2-3 and 10-308 Adjusting Development Fees for 2018**

Finance Director Smith said this is the first reading of the ordinance and is part of the annual process to update the development fees. They are for sewer and water connection fees and fees associated with planning activities. The public hearing was set for November 13th on tonight's consent agenda. We will keep that open until the third and final reading on December 11th. The sewer and water connections fees are proposed to be increased from 3.5% to 5% which is based on financial projections used in the past from Ehlers and Associates in 2016. If approved tonight, we will put this on the website and send a copy over to the River Heights Chamber for their review.

Councilmember Bartholomew asked which fees were raised to 5%. The water fees are primarily at 3.5%. Water plat connections and core connection fees are 3.5%. The sewer plat connection fees are 5% and the sewer building permit connection fee is 5% and the storm water plat connection fee is 5%.

Councilmember Bartholomew asked if these fee increases are similar to other cities. Ms. Smith stated she did not check with other cities. She stated she will make a comparison to other cities for the second reading.

Councilmember Hark asked if these fees went up a year ago? Ms. Smith said yes and this process is done annually. Councilmember Hark asked if the fees were comparable and Ms. Smith said yes and showed a spreadsheet.

Mr. Lynch stated that there were discussions in the past regarding development and it has not occurred as hoped. The City is seeing more single-family lot developments and not as many multi family or commercial developments. The study done by Ehlers looked at what is happening with our connection fee funds and the recommendation in 2016 was that we would need to look at a short term significant fee increase (a 9% increase in sewer fees). It was decided not to do that but increase the fees over multiple years to make up some of the difference. Council felt dramatically raising the fees would hamper future development. We have gone with the lower increase over four years.

Motion by Piekarski Krech second by Hark to move the first read in an Ordinance Amending City Code Title, 3, Chapter 4, Sections 3-4-2-2- and 3-4-2-3 and 10-308 Adjusting Development Fees for 2018

Ayes: 5

Nays: 0 Motion carried.

Councilmember Bartholomew asked if the spreadsheet could be emailed to the Council. Ms. Smith said yes.

II. COMMUNITY DEVELOPMENT:**B. SEAN WRIGHT; Consider the following resolutions for property located at 6825 Cahill Avenue:**

- a) A Conditional Use Permit to allow expansion of a non-conforming structure up to 30% gross square feet Resolution 17-190**
- b) A Variance to exceed a 30% expansion of a non-conforming structure Resolution 17-191**

c) A Variance to exceed the 25-foot maximum height in the B-1 zoning district.

Mr. Link summarized the item and showed a map of the property. He stated that the property is located on the west side of Cahill Avenue near 70th. There is a house on the property with a gross square footage of 1,600 square feet with two levels. The proposal is for a large addition to the house to expand it to 3,700 square feet. The proposal also includes attached garages totaling another 1,200 square feet. The property is zoned commercial and the existing use is residential. The house was there before the city code and is a legal non-conforming structure. It can be expanded with limitations. What is being proposed is an addition which he illustrated on a map and showed the elevations. Mr. Link stated the Planning Commission recommended approval of all the applicant's requests and recommended the designation change from commercial to residential use in the Comprehensive Plan. He showed a map from the Comprehensive Plan and identified the mixed uses of the properties in the areas. Staff recommendation is slightly different than the Planning Commission. He stated staff supports the Conditional Use Permit for the house up to 30%, but does not support the house addition beyond the 30% because of the extra addition beyond the 30% variance increases the house to 130% but staff does support the garage addition beyond the 30%. Staff does recommend approval of the variance to exceed the 25-foot maximum height. The height would be 35 feet and the standard in a residential zone is 25 feet. Planning Commission recommends approval of all the requests with recommends changes in the zoning for the upcoming Comprehensive Plan. Staff supports the requests but not the increase in the house size.

Councilmember Bartholomew asked if the proposal met setback requirements and all other requirements except for the height in residential? Mr. Link said it does meet setback requirements and impervious requirements. Councilmember Bartholomew asked about the increase of the square footage and if it was permissible if it met the setback back requirements and other requirements. Mr. Link said that was correct. Councilmember Bartholomew asked if the 25-foot height was permissible in a residential area? Mr. Link said it was permissible. Councilmember Bartholomew said the height is being considered because it is permissible in a residential area. Mr. Link said that is correct. Councilmember Bartholomew said the 3,700-square foot addition should be considered since it is allowed in a residential zoning. Mr. Link said staff is concerned about the large square foot addition because the area is designated as commercial use and this large addition is considered a nonconforming use and goes against future commercial designation of the property.

Sean Wright, 6528 Cahill Ave, stated he bought the property for building a large addition and for a lot of garage space. Councilmember Piekarski asked if the house was originally a duplex and if it was going to keep it a duplex? He stated it is kind of set up as a duplex and would like to keep it that way.

Councilmember Perry asked if the intent was to keep the existing structure and build the new addition.

Mr. Wright stated the size of the new addition fits the size of the lot. The building has been there for 65 years and no one has tried to develop the property as a business.

Councilmember Perry stated she knew the former owner and talked to him. There is supposedly a bunker on the north side of the house that is buried on the property. There is also a gas line on the north side that is buried shallow (three to four inches) because of the bunker. She was wondering how this would affect building the addition. He said the grading is weird on the north side and there is some concrete sticking out of the ground. He would like to start building the garages first. Those issues will need to be addressed someday.

Councilmember Bartholomew stated he believes the property is not conducive to be commercial because of the topography and terrain. He stated he supports all the requests for that reason.

Motion by Bartholomew second by Hark to approve:

- a) **A Conditional Use Permit to allow expansion of a non-conforming structure up to 30% gross square feet Resolution 17-190**
- b) **A Variance to exceed a 30% expansion of a non-conforming structure Resolution 17-191**
- c) **A Variance to exceed the 25-foot maximum height in the B-1 zoning district. for 6825 Cahill Avenue**

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville said the area should be looked at for the possibility of rezoning the properties in the Comprehensive Plan and maybe a neighborhood meeting should be held.

C. BITUMINOUS ROADWAYS; Consider an Ordinance Amendment 1343 to renew the five-year Sand and Gravel Overlay zoning for the asphalt plant operation located at 11661 and 11201 Rich Valley Boulevard

Allan Hunting, Community Development introduced the item. He illustrated the location on a map. He stated that this is required to be renewed every five years. There has been mining at the site since 1963. The City first approved this permit in 1974. In 1979, the Council approved a Conditional Use Permit for an asphalt plant. Every five years this renewal has been approved. In 2002, a 130-acre expansion was approved on the southern part of the property. A well appropriation permit was granted by the DNR for the wash water ponds. There is no change to the boundary and they would like to continue with the asphalt plant and the sand and gravel. The City does have several regulations on the site governed by the sand and gravel (30 conditions of approval) and a Conditional Use Permit for the asphalt plant (14 conditions). There are permits from the County and State as well. Tonight, we are focusing on the three requests from the applicant for the renewal:

- 1) hour change to 6:00 am to 7:00 pm Monday – Saturday (currently it's 7:00 am to 7:00 pm Monday – Saturday) they would like the extra hour to start up the asphalt plant and have some of their trucks to leave the site, there would be no loading of trucks or any trucks entering the site,
- 2) pond testing – currently there are three wells and four ponds that are tested that have been required by the permit for a number of years. The three wells that are tested are on the southern part of the property and known on the plan well, the wicker well and the rainbow well. Hunting stated two ponds and two wash water ponds are tested. He pointed out the wells and ponds on the map. The requirements are they are tested every other year. The applicant is proposing a schedule for the testing of the wells and ponds on different years. The applicants have asked to stop testing the ponds in the middle of the area (wash water ponds) because they are infiltration ponds and don't represent what is getting into the ground water.
- 3) southern access point - there is a secondary entrance for the site which has never been addressed in the past, but they would like to add that as a secondary access point. The Environmental Commission reviewed the request and recommended approval of the requests but the secondary access point should be limited to 10% of the truck traffic.

There was concern about the public hearing notices being delayed in their delivery by the post office. Staff did resend the notices to properties within 1,000 feet of the property for the Council meeting. The Planning Commission did recommend approving the request with the condition of the secondary access point.

Councilmember Bartholomew asked if the County weighed in about the second access point? Mr. Hunting stated they did not because it is an existing access point. Councilmember Bartholomew asked how the 10% traffic limit would be monitored? Mr. Hunting stated staff will have to work with the applicant. There is no good answer tonight. Councilmember Bartholomew asked about the wash water ponds and the logic for not testing them because there is not a valid reading? Mr. Hunting said it did not give a valid reading. The ponds silt up with all the fines, which creates a cap that seals the ponds off, which results in not much infiltration of water down into the ground. That is why the well testing is done. Councilmember Bartholomew asked if other agencies looked at the application? Mr. Hunting said no other agency has looked at the application.

Councilmember Piekarski Krech asked if the ponds were dug out periodically? Mr. Hunting answered he believes so. Councilmember Piekarski Krech asked If they are being dug out - how do we know what the infiltration is? Mr. Hunting said the applicant can answer that question.

Mayor Tourville said there may be some confusion on what is being requested as part of the application regarding the wells and there is no new well being requested. Mayor Tourville asked if the secondary road was being used now? Mr. Hunting said it was his understanding that it was not being used.

Councilmember Hark asked when the ponds were last tested? Mr. Hunting responded according to the applicant the wash water ponds were last tested in 2016.

Kent Peterson CEO, Bituminous Roadways, stated the new request for testing of the ponds was to avoid confusion in which ponds to test. The storm water ponds would be a better place to test. The test results from the wash water ponds in 2016 were similar to the water tested out of the storm water ponds previously.

Michaele Whallin, Sunde Engineering, stated there was some confusion on which ponds were being tested. The storm water ponds known as D1 and D2 would better represent the ground water that people are pulling out of their wells versus the wash water ponds. The wash water ponds silt up really fast and occasionally get cleaned out. Councilmember Piekarski Krech asked where that water goes? Mr. Peterson said the water is recycled continuously in their washing operations, some evaporates and water is added from the wells. Councilmember Hark asked if the water testing was expensive? Mr. Peterson stated it is about \$1,000 per test. Mayor Tourville asked about the testing schedule. Mr. Peterson responded the storm water ponds would be tested, no testing of the wash water ponds, and testing of the wells. Ms. Whallin responded that the testing is showing similar results for all the ponds and wells being tested. There are no indications of a red flag anywhere. Mayor Tourville asked for clarification of the application - stating they were not asking to build a new well or pump for more water, just a change to the testing of the wells and ponds. Mr. Peterson said that was correct.

Mr. Peterson said he would like to start an hour earlier in the asphalt plant to get a jump on production and the asphalt would be put into storage silos. We would not be loading trucks or allowing trucks to enter the site until 7:00 am. This would allow us to build up a little surge before we start loading trucks. They would also like to park two or three trucks overnight and if needed they could leave before 7:00 am. Councilmember Piekarski Krech asked how much noise the asphalt the plant made? Mr. Peterson said he did not know, it was not real loud (you can hold a conversation next to it) but it is located down in a bowl. All three front loaders have a quieter back up alarm. Councilmember Bartholomew asked if loading wouldn't start until 7:00 am? Mr. Peterson said that was correct. Councilmember Perry asked of the

loading conditions was written into the conditions? Mr. Peterson said it was written in as part of the conditions. Mayor Tourville said the written conditions are pretty specific.

Councilmember Piekarski Krech asked for the rationale to use the southern secondary entrance. Mr. Peterson said he would like to use it to go in and get some sand and to pull some traffic away from the main entrance. Mr. Petersen stated they would limit the use to 10%. Councilmember Piekarski Krech asked what is considered 10% - all the trucks that come and go out of the site? Mr. Hunting responded the Environmental Commission considered 10% to be all the trucks going in and out of the entire operation. Councilmember Piekarski Krech asked how that would be regulated? Mr. Peterson said they would limit the amount of usage. Mayor Tourville asked if there were neighbors that would be affected by the use of the driveway – maybe we will hear about it tonight from those in attendance?

Joe Maltese, 11618 Akron Avenue, due west of Bituminous Roadways said he has been there for 30 years. He has no opinion on the usage of the southern driveway. He stated there has been a definite change in the last couple of years since the big mining operation started. He did not get a notice for the Planning Commission meeting until it was too late. The trucks are loud and his kids wake up every day at 7:00 am. The noise is still going on Saturday night and you can't be out on the deck even at 1,000 feet away. Councilmember Hark asked if the noise is coming from the trucks? Mr. Maltese stated the noise is from a variety of sources. He stated the asphalt plant is not loud. The trucks, and backhoe, and other equipment are loud. It is not only affecting me but others living around the plant (some from a mile away). He stated he is concerned about the new 6:00 am start. He stated the problem is the "creep" with the businesses in the area getting bigger and bigger and they then play the blame game on who is making the noise. He stated testing of the wells makes sense and it needs to be done efficiently. He stated the conditions of starting at 6:00 am should be conditioned upon making no noise with the loading of the trucks or using other large, loud equipment. The noise issue needs to be thoroughly reviewed and studied because the 7:00 am to 7:00 pm Saturday hours produces a lot of noise for a lot of time.

James Powell, Akron Avenue, Rosemont, stated he does hear the banging from his residence that is a mile and a half away. He stated there are state statues regulating noise and asked if decibel testing had been done recently. Mr. Hunting stated that has not be done recently. Mr. Powell stated he would like the noise levels studied.

William Larson, 11630 Akron Avenue, said he agreed that the noise is loud. He hears the slamming of the gates. He also hears the backing up of the big machinery. It does make it hard to be outside. He would like to not see operations start to 6:00 am. In regard to the wells, since they are asking not to test some ponds he wondered if new wells should be put in where those ponds are to be tested.

Steven Sandberg, 11802 Akron Avenue, complained about the notice he received. The notice was not clear for what they were asking for and they are asking for different things compared to last year. He stated the ponds that they are asking not to test are the closet to other people. The new driveway access usage is closest to most of the neighbors here tonight. He stated the testing of the water needs to stay as it is. The noise is going to get louder as the move the mining to the west.

Troy Stephens, 11808 Akron Avenue, showed a map of his property and stated he is 600 feet from the property. The noise is bad and he is concerned about the water testing. The silting of the ponds being talked about - they must be the first ponds where the rinsing is going on - then there isn't any infiltration going on. If they plan on using the ponds then testing must be done on the ponds. He questioned the

depth and direction of the water flow of the aquifers. There needs to be testing on the first effluent water because that is going to be the most contaminated water. We need to know where the waste is going. He would like to see documentation on past water testing of the ponds and wells. Mr. Hunting stated the water testing results and water flow information is in the file. He believes the water flows primarily from west to east and it has been looked at many times. He stated this has been looked at several times and looked at by the Department of Natural Resources.

Mayor Tourville asked about the testing results - if someone asked for them to be emailed could that be done easily? Mr. Hunting stated they could be sent out by email if someone requested them.

Joe Maltese, 11618 Akron, stated the noise has ramped up this summer. There is a noise that sounds like a cannon going off. The primary noise is the tailgates and large equipment and it is not coming from Schaffer. Bituminous Roadways is making the noise. He stated the noise is a huge quality of life issue even affecting sleeping, and enjoying the outdoors.

Carol Boudinot, 11624 Akron Ave, asked if some of the noises could be identified as to where they are coming from. Recently, a really irritating "drone" like noise has started. She asked if the startup time changed to 6:00 am would they use more water? Mr. Peterson responded no.

Mayor Tourville stated that tracking where the noise is coming from would cost money, then they would have to be tracked down, and there are other noise makers as well in the area.

Councilmember Piekarski Krech said noise is a major issue to her. She understands the 6 am start for the neighborhood is too early. Mayor Tourville asked what are the advantages of the City looking at the starting time of 6:00 am versus 7:00 am? Mr. Link stated the question is how regulated do we want to be on industries in the city? There are several conditions in the permit and it is heavy regulated. How do you protect the surrounding residential properties? This is a heavy industrial use and is designated that way. The properties along Akron are designated as a residential area. Where there are heavy industrial areas and residential areas next to each other there will be conflict. There are difficulties in balancing both of them. There isn't an easy answer especially regarding the noise.

Mayor Tourville asked about the water testing and how often is it required to be done? Mr. Peterson stated water testing is done every year. But the request is to start alternating the testing sites. Councilmember Bartholomew asked why they would like to discontinue testing the wash water ponds? Mr. Petersen stated they are asking for a testing schedule of the ponds and not to exclude the wash ponds. This way the schedule would be put down on paper and then it would be known when to test the ponds. He stated it was confusing on what ponds needed to be tested. Councilmember Bartholomew said it was discussed not to test the wash water ponds. Mayor Tourville suggested that one year the storm water ponds be tested and the next year test the wash ponds. For the south driveway it may alleviate some sound or not, it is going to be difficult to determine 10% usage. Councilmember Piekarski Krech believes that the footprint of where work is being done has changed because it is moving as they are moving. Mr. Peterson said production has not increased at the plant.

Councilmember Bartholomew stated he would like to keep the operating hours at 7:00 am because of the resident's concerns. For the southern access he is willing to try it but does not know how to regulate it to 10%. He would like the testing of the wash ponds back in the schedule. Mr. Peterson stated he has heard loud shooting noises in the area and heard it is from the landfill to scare off the birds. Mr. Link stated

that the landfill in the past has used some sort of noise making devise to get rid of the birds in the working area.

James Powell, Akron Avenue, Rosemont said in regards to the booming noise – it is not the noise he is hearing - but heard the landfill uses some kind of streamers (not guns) to scare the birds away.

Mayor Tourville suggested that staff call the landfill to see what they are doing.

Troy Stephens, 11808 Akron Avenue, asked if the city regulates the amount of decibel noise and how far away those decibels limits can be? Since it has not been done recently he hopes for testing of the decibel noise levels for a baseline moving forward. Mayor Tourville said we are talking of testing the waste water, storm water, wash water ponds and all the wells. It will now be on a schedule. Mr. Stephens asked about the south driveway – is it needed for capacity or access to material? He would also like to know where the mining is taking place, speed of the mining and what direction is it going.

Mr. Lynch stated the city goes by state statute regarding decibel levels -- the limit for residential locations are 10% of the time is monitored over a 60-minute period cannot exceed 65 decibels and the L50 which is 50% of the time during that same time of a 60-minute period or 30 minutes cannot exceed 60 decibels. For reference point, 60 decibels is a normal conversation at a meter and 70 decibels is a vacuum cleaner at 3 meters. That is the noise compliance. They are based on noise area classifications. There is in the statute that states, the noise is from where it is generated and not where it is heard. They give a specific example - the noise from an industrial facility near a residential area is held to any C1 standard which is the lowest (residential).

Mayor Tourville stated decibel limits are not in City Ordinances so the state standard is followed. Decibel limits are not in the list of conditions. Decibel testing has been done through complaints for other areas.

Mayor Tourville summarized that the starting time should stay at 7:00 am, the south entrance can be used on a trial basis, and test all the ponds and wells on a scheduled basis. Council asked that the test of the noise to be examined by staff in regards to cost.

Motion by Bartholomew second by Hark to approve Ordinance Amendment 1343 to renew the five-year Sand and Gravel Overlay zoning for the asphalt plant operation located at 11661 and 11201 Rich Valley Boulevard

Mayor Tourville asked staff if they were clear on direction from the Council? The response was they were.

Mr. Lynch asked if Council wanted to do any testing on the noise problem. Mayor Tourville asked if the city owned a decibel meter? Mr. Lynch responded it does not and that a consultant would need to be hired. Mayor Tourville suggested staff look at the costs of getting decibel readings in the neighborhood. Councilmember Bartholomew asked that it be brought to a Work Session meeting.

Joe Maltese, 11618 Akron Avenue, stated the noise monitoring is long overdue. The noise level is not constant. Timing of the monitoring will be important. Some of the monitoring can be done by collecting the data over multiple dates.

James Powell, Akron Avenue, Rosemont, stated this is a noise nuisance. He commented that the end of the property line should be done to monitor the decibels. He asked if he would see where the testing was done.

Mayor Tourville said that there are companies that do this work. They are qualified to do the testing and will follow state statutes. He also asked if the mining work plans were available to the public. Mr. Hunting responded that it was part of the packet and it includes the phases of the mining plan.

Ayes: 5

Nays: 0 Motion carried.

D. CITY OF INVER GROVE HEIGHTS; CITY OF INVER GROVE HEIGHTS; Consider a Resolution 17-192 to fill a vacancy on the Planning Commission

Mr. Link introduced the resolution memorializing the resignation of Luke Therrien of the Planning Commission per City Ordinance. Staff is also looking for direction from the Council on how to fill the vacancy. There are three options: 1) readvertise via the website and other places 2) work off the applications received in May (he believes there were 14 applications – with 11 left to review) or 3) appoint the next person who got the most points of the remaining 11 applications.

Councilmember Piekarski Krech suggested reaching out the highest vote getter if the information is still available.

It was agreed to take the next person if they are still interested in serving on the Planning Commission.

Motion by Piekarski Krech second by Perry to approve Resolution 17-192 to fill a vacancy on the Planning Commission

Ayes: 5

Nays: 0 Motion carried.

III. PUBLIC WORKS:

E. Resolution 17-193 Receiving Feasibility Study and Scheduling Public Hearing for City Project No. 2017-24 – T.H. 3 Intersection Improvements for the 65th Street Project

Public Works Director Thureen introduced the item of the 65th Street Project that was broken down into components. The project was brought forward to Council last April, and action was withheld. The Council approved to do the preliminary design for the work on Highway 3 to connect 65th Street to it. In addition, the trunk watermain project that is the next item to be talked about is to extend it to the west. We split this into three projects. The work will lower the high point by eight feet vertically to improve sight line standards for Municipal State Aid and to be able to get approvals for the design. That means using a fair amount of retaining walls and minimizing impact that would occur on adjacent properties. He showed a map of the location of the work. An excessive amount of material will need to be moved. This particular project's estimated cost is \$4.4M. The funding will come from Municipal State Aid Funds, Water Funds and Northwest Area Storm Water Fund. Permanent easements, permanent right-of-way, and temporary easements will be needed and appraisals have been initiated. Once the project is ordered we can start the negotiations process with the property owners. He stated pending approval they will meet with

neighbors in regards to the project. The public hearing would be scheduled for November 13th. He recommends that Council adopt the resolution as presented.

Councilmember Piekarski Krech asked where the fill would be placed and does the City own any of the land? Mr. Thureen stated we own some of the land and that is the reason for acquiring the easements and rights-of-way. There is a 40-foot-wide right-of-way the City owns that starts at Trunk Highway 3 and goes to Woodwind Second and there is an additional 10 feet that was picked up when Woodwind was platted. We are trying to get this done at the same time the roundabout is being done.

Motion by Piekarski Krech second by Bartholomew Approving Resolution 17-193 Receiving Feasibility Study and Scheduling Public Hearing for City Project No. 2017-24 – T.H. 3 Intersection Improvements for the 65th Street Project

Ayes: 5

Nays: 0 Motion carried.

F. Resolution 17-194 Receiving Feasibility Study and Scheduling Public Hearing for City Project No. 2017-03– NWA Trunk Watermain Improvements - 65th Street Loop (Phase III of 2015-12) Hwy 3 to Blackstone Ridge

Mr. Thureen stated we will be talking about the trunk watermain and illustrated the project on a map. He stated the 16" trunk watermain would come down the west side of Highway 3. The system would be a looped system with a two-way connection. It will tie in with projects 2017-02 and 2017-03. Staff will be working with the same property owners. This project would be bid with project 2017-24 hopefully. All the work then could be done 2018. We will come forward to Council in the next couple of months with the feasibility study for the 2017-02 project.

Motion by Bartholomew second by Hark at approve Resolution 17-194 Receiving Feasibility Study and Scheduling Public Hearing for City Project No. 2017-03– NWA Trunk Watermain Improvements - 65th Street Loop (Phase III of 2015-12) Hwy 3 to Blackstone Ridge

Ayes: 5

Nays: 0 Motion carried.

IV. ADMINISTRATION:

G. CITY OF INVER GROVE HEIGHTS; Consider Approval of the Purchase Agreements for the William G. Carlson and Muriel J. Carlson Properties

Mr. Kuntz stated that this matter is for the purchase of the site for the new fire station site in the southern part of the City. The site is an 11.7-acre site and located at 9250 Courthouse Boulevard. There is currently a home and an accessory building on the site. In the negotiations of the property it was split into two parts. There is a five-acre tract and a 6.7-acre tract that are contiguous to each other and both are owned by the Carlson's. The purchase price for the 5-acre tract is \$840,000.00 and the purchase price for the 6.7-acre tract is \$1.095 million. The total purchase price is \$1,935,000.00. The closing is scheduled for the final week of October. The City would take possession of the property at that time, subject to a lease back to the Carlson's who would be in the process of building their new home. The lease back would be on the five-acre tract until June 30, 2018. During the lease period, the Carlson's would be in possession of the house and the outbuilding. They would not pay rent, the city would pay the taxes and the Carlson's would be responsible for the utilities, maintenance and upkeep of the property and buildings,

up to \$25,000 per repair or per occurrence. The Carlson's will provide a warranty deed and the property will be free and clear of any mortgages and the City will not be assuming any debt with respect to the real property. The Carlson's were not willing to sell one of the two pieces only. There are two closings that will occur simultaneously. The property is currently Comprehensive Planned RC (Regional Commercial) and zoned B-3 Business District Zoning. The Planning Department is in the process of working on a Comprehensive Plan change for two reasons 1) to place both tracts within the Metropolitan Urban Service Area within the use boundary and 2) to convert the designation of the tracts to RC designation of Institutional (for fire station use) and P Institutional. The survey work on the two parcels has begun for the closing. The purchase of the property is consistent with the Comprehensive Plan for a fire station. A portion of the five-acre parcel was identified on a map so that work for grading, utilities, etc. could start when the City takes possession of the property after the closing. Fund borrowing was suggested for the short-term funding. For long term funding it was suggested using capital improvements bonds. The resolution states that the public purpose is for the fire station and that is what it is being used for. Council made some changes in the wording in a couple of places in the documents and those changes have been made as previously discussed. The Carlson's have signed the purchase agreements.

Mayor Tourville asked if the Metropolitan Urban Service Area (MUSA) was double checked and if it needed to go forward as a MUSA extension request? Mr. Lynch responded that is our understanding. There is a difference in our Comprehensive Plan and the Zoning Ordinance. According to the Metropolitan Council it is not. So, we need to pursue the request for placing it in the MUSA.

Councilmember Piekarski Krech asked if the records were looked at for Arbor Point development? Mr. Link responded that Mr. Hunting will be looking at that. Councilmember Piekarski Krech thought the property was placed in the MUSA otherwise it would not be zoned B-3. Mr. Link responded the map will be looked at and double checked. It will need to go through the planning process. This will not affect the time frame. If the map is not correct it will be subtracted from the map.

Motion by Piekarski Krech second by Perry to approve the Purchase Agreements for the William G. Carlson and Muriel J. Carlson Properties

Mayor Tourville said as this moves forward the funding may change somewhat by maybe adding a bond. Mr. Lynch stated that according to the attorney a resolution will be brought to Council on October 23, 2017, to set all the financial transaction in place as outlined in the memo. A capital bond will also need Council approval.

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

Mr. Lynch said by prior approval tonight a special meeting was set for Wednesday, October 25th, to discuss semi-finalist Police Chief candidates. Council received a packet this evening with information in it. At that time, we will need to discuss and determine the final candidates going forward. As well as discuss and determine potential and financial considerations as suggested in my Friday e-mail. A determination should be made regarding about the City paying expenses as part of the interview process for candidates outside the state or for candidates traveling great distances outside the Metropolitan area. Also, is the City willing to pay relocation expenses if an out of state candidate is chosen. The candidates should know up front what to expect and they can make a determination if they wish to proceed in the process.

Mr. Lynch continued that the joint meeting that was scheduled with the Parks and Recreation Commission on October 30th, needs to be changed. Alternate dates are November 1st or November 2nd. It was

determined that Thursday, November 2nd at 6:00 pm at the Community Center would be the new meeting date.

Motion by Hark second by Perry to set a joint meeting with the City Council and the Parks and Recreation Commission for November 2, 2017, at 6:00 pm at the Community Center.

Ayes: 5

Nays: 0 Motion carried.

Mr. Lynch said for information and planning purposes staff is looking at the week of November 7th, 8th, and 9th for final interviews for the Police Chief position. Councilmember Perry is not available on the 7th. If the 8th and 9th works please notify me so I can inform the consultant. It should also be discussed, on the 25th who you want involved in the process (community members, staff, department heads, police, etc.). Mayor Tourville asked if it would be a public meeting and if the Council wishes the list could be narrowed down. Mr. Lynch reported that was correct. Information about the candidates is not public now. Mayor Tourville asked if the consultant was going to suggest a process? Mr. Lynch responded, if you mean by the process of interviewing the final candidates, we can have a process put together for Council review.

Councilmember Hark said that an email just came in from Fire Chief Thill saying there is a Fire Department Open House on Sunday, October 14th from 12:00 pm to 3:00 pm at station 3.

Ayes: 5

Nays: 0 Motion carried.

9. ADJOURN:

Motion by Hark second by Perry to adjourn. The meeting was adjourned by a unanimous vote at 9:43 p.m.

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, OCTOBER 23, 2017- 8150 BARBARA AVENUE**

1. CALL TO ORDER and 2. ROLL CALL

The City Council of Inver Grove Heights met in regular session on Monday, October 23, 2017, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Hark, Perry and Piekarski Krech; City Administrator Lynch, City Attorney Kuntz, Community Development Director Link, City Clerk Tesser, Parks and Recreation Director Carlson, Public Works Director Thureen, City Engineer Kaldunski, and Fire Chief Thill.

3. PRESENTATIONS: There were no presentations.

4. CONSENT AGENDA:

- A. i. Minutes September 25, 2017, City Council Meeting
- ii. Minutes October 2, 2017, City Council Work Session
- B. Approve **Resolution 17-195** Approving Disbursements for Period Ending on October 18, 2017
- C. Approve **Resolution 17-196** Certifying Delinquent Utility Bills
- D. Approval of Awarding Contract for Custodial Services
- E. Approve Appointment to Fill Vacant Planning Commission Position
- F. Approve **Resolution No.17-197** to Amend Assessment Roll for 2017 Pavement Management Program, City Project No. 2016-09E – Bancroft Way Area Reconstruction to Reflect Credits for the Residential Driveway Restoration Program Participation
- G. ~~Financing Plan for Project #2014-10 Fire Station #2~~
- H. Approve Letter of Support for Local Road Improvement Program Funding Application
- I. Approve **Resolution 17-198** for Dakota County's 2018-2022 Capital Improvement Program and Approve **Resolution 17-199** Requesting Inclusion of Projects in the List of Projects to be Funded from the Transportation Sales and Use Tax
- J. Approve **Resolution 17-200** Parking Restrictions on Broderick Boulevard between Concord Boulevard and 80th Street East for City Project No. 2015-09D – Broderick Boulevard Reconstruction
- K. Approve **Resolution 17-201** Requesting an Advancement of Municipal State Aid (MSA) Funding from the City's State Aid Construction Account for City Project No. 2016-08 - Trunk Highway 3 / 70th Street Intersection Improvements (Roundabout) and City Project No. 2017-24 – T.H. 3 Intersection Improvements for the 65th Street Project
- L. Approve **Resolution 27-202** Receiving the Feasibility Study for City Project No. 2018-02 - 80th Street Sanitary Sewer Improvements (Robert District) and Scheduling a Public Hearing
- M. Approval for Pay Voucher No. 4 for the 2017 Capital Improvement Program, City Project No. 2017-02 - NWA Watermain Improvements, 65th Street Loop
- N. Accept 2018 Rates for Medical and Dental Insurance and Renewal Rates for the Supplement Insurance Plans
- O. Approve **Resolution 17-203** Calling for a Public Hearing on the Issuance of Capital Improvement Plan Bonds for Fire Station #2
- P. Consider Inver Grove Heights CVB 2018 Work Plan and Budget
- Q. Approval of Personnel Actions

Mayor Tourville stated that item G on the consent calendar was a duplicate item.

Councilmember Piekarski Krech pulled items Ai and Aii - Ai. Minutes September 25, 2017, City Council Meeting and Aii. Minutes October 2, 2017, City Council Work Session. Councilmember Piekarski Krech said she would forward her notes and the minutes would be put on a future council agenda.

Councilmember Hark pulled item P - Consider Inver Grove Heights CVB 2018 Work Plan and Budget. He questioned the work plan about why it did not include any leverage for the new Vikings practice facility for next year to draw in people to the hotels and businesses. This needs to be looked at for the benefit of businesses in Inver Grove Heights.

Motion by Bartholomew, second by Hark, to approve the Consent Agenda Items B through F, H through O and Q on the Consent Agenda

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT: There were no public comments.

6. PUBLIC HEARINGS: There were no public hearings.

7. REGULAR AGENDA:

I. COMMUNITY DEVELOPMENT:

A. FRANK RAUSCHNOT SR.; Consider the following resolutions for property located at 6751 Cahill Avenue: a) A Conditional Use Permit to allow expansion of a non-conforming structure up to 30% gross square feet Resolution 17-204 b) A Variance to exceed a 30% expansion of a non-conforming structure Resolution 17-205

Community Development Director Link presented the item to the council. He stated the property is located on the west side of Cahill just north of 70th. He showed the house on a map. The proposal is to add an attached garage and a mud room to an existing house. The property is zoned B-1 commercial and this is a residential use. The zoning was created in 1965. The house proceeded the zoning ordinance. It is a legal noncomplying structure. The zoning code allows for the expansion up to 30% with a conditional use permit and by a variance to exceed the 30%. This is why there are two requests. It is consistent and compatible with the surrounding uses. Mr. Link stated that the proposal meets the criteria for the Conditional Use Permit, variance and non-conforming uses. The Planning Staff and the Planning Commission unanimously recommends approval of the request.

Jim Rauschnot, 8602 Birch Court was present.

Councilmember Hark said there are conditions attached to this request and wanted to make sure the applicant understood the conditions.

Mr. Rauschnot asked what the conditions were. Councilmember Hark said they are in the resolutions - such as it will be developed in conformance with the site plan, any future additions or expansions will require additional approvals, the grading and erosion control will need to be approved by the City Engineer before issuance of the building permit, along with other boiler plate language.

Motion by Piekarski Krech second by Perry to Approve Resolution 17-204 for property located at 6751 Cahill Avenue: a) A Conditional Use Permit to allow expansion of a non-conforming structure up to 30% gross square feet b) Approve Resolution 17-205 for a Variance to exceed a 30% expansion of a non-conforming structure

.

Ayes: 5

Nays: 0 Motion carried.

B. WASATCH STORAGE; Consider the following resolutions for property located south of 50th Street, east of Hwy 52 and north of I-494:

a) A Resolution relating to a Conditional Use Permit to allow a mini-storage facility with outdoor vehicle storage Resolution 17-206. b) A Resolution relating to a Variance from the minimum landscaping requirements Resolution 17-207

Community Development Director Link introduced the item. He stated this requires a 4th/5th vote by the Council. The property is located on the northwest corner of 494 and Blaine Avenue. He showed a map of the property. What is being proposed is a mini-storage facility with outdoor storage. The proposal is for an 11,000-square foot building on the north side of the property, a two-story 88,000 square foot building on the south side with open storage in the middle of the two buildings. The property is zoned B-3, General Business. The property has two billboards on it one in the southeast and one in the southwest. The proposal is consistent with the Comprehensive Plan. The plan envisions commercial uses here. He stated it is also consistent with the Zoning Ordinance and meets the criteria for a Conditional Use Permit, meets the site plan requirements, and meets the setback requirements.

Mr. Link stated the landscaping is in question, hence the request for a variance. The Planning Commission, at a neighbor's request, added additional landscaping for the north side, which the applicant has complied with. He stated previously there were 12 pieces of landscaping on the north side and it was expanded to 15 trees and eight of those trees are coniferous. The landscape is now consistent with the Planning Commission recommendation. The other issue is the landscaping on the south side of the building along 494. The Zoning Ordinance requires 100 trees (a combination of trees or shrubs). The applicant is proposing 74 plantings including a series of shrubs. Staff is asking for 80 trees including ornamental trees to break up the long 400-foot building. He stated the Planning Commission and Staff are recommending approval of the request.

Councilmember Piekarski Krech asked about the space between the trees and if there is enough room between the trees so the trees mature. Mr. Link responded that the spacing of the plantings is being looked at. This is one of the reasons the developer is asking for the variance. He does not believe there is enough land on the property to meet the landscaping requirements of the code. There is a combination of factors such as the billboard easements, the two storm water ponds and difficult topography.

Mayor Tourville suggested that staff and the developer work on the spacing of the trees and shrubs.

Mr. Link stated that what needs to be discussed by Council - should there be ornamental trees or shrubs on the south side of the property? Councilmember Piekarski Krech suggested that a professional landscaper develop a plan so that the trees or shrubs would survive on the property. Mr. Link stated that the question is - does the Council want ornamental trees – which is what staff is recommending (so it would break up the large building) or the shrubbery that the developer is suggesting. The developer is concerned about the visibility of the billboards.

Councilmember Perry asked if a traffic study was ever done at the intersection. Mr. Link stated that one has not been done that he is aware of. She suggested that a study be done because stops signs should be added to Blaine Avenue. There are a lot of walkers in the area and it is unsafe.

Applicant Scott Wychoth, Wasatch Partners, stated there are a couple of constraints on the property. One is the detention ponds already have existing trees. He showed the design that included the 74 trees. A landscape architect has drawn up a plan that would be appropriate for the area. The number of required trees would not fit if appropriately spaced for survival and that is why we are asking for the variance. We also cannot plant trees that would obstruct the views of the billboards. That was our objection to the ornamental trees along 494. Included is a dense number of shrubs to make up for the lack of ornamental trees to accommodate for the requirements. We also want people to be able to see the building. We agree with all of staff's recommendations except the planting of the 23 ornamental trees on the south side. The Planning Commission agreed with us when it was discussed. We added eight coniferous trees that the neighbors suggested.

Councilmember Piekarski Krech said she is willing to accept the plan with the 74 trees as the plan was done by a landscape architect. It seems reasonable. They added extra things for the neighbors.

Councilmember Bartholomew stated he is in agreement. The plan has been designed by a professional. It will work on the site even though it does not meet the exact code.

Mayor Tourville said that stop signs need to be looked at, but they do not always make the streets safer.

Public Work Director Thureen said Blaine is the primary, higher volume street. Before any changes are made a study would need to be done. Councilmember Perry stated the curve by the town houses are a concern and would like to see a study done. Thureen stated stop signs are not used to control speed and that is why studies are done.

Mr. Wychoth stated that the proposed mini-storage has a low traffic impact.

Councilmember Piekarski Krech asked how much outdoor storage would be there? Mr. Wychoth responded 17 vehicle spaces and they would be screened.

David Langer with Langer Real Estate Services, stated he is marketing the property adjacent to the site on 50th Street. Direct neighbors are not opposed to the project. The bigger issue for the adjacent site is - it is being marketed as an office zoning use/office park and building an office park would bring up a traffic issues. He also discussed the billboard locations and the zoning of the properties. Mr. Link stated the billboards are non-conforming and were built before the zoning regulations. It is believed that the billboards could not be moved. He stated the south side of the proposed building has the greatest elevation, lower story trees will not do much to break up the building. It was suggested that Mr. Langer attend the comprehensive planning meetings that are currently being held if he is interested in getting the zoning changed on the adjacent property.

Shannon Bagon, 4923 Bisset Lane, asked if her letter was submitted through Associate Planner Botten. She said pine trees should be a part of the landscaping plans on the north side because that is what is currently on the property. She has pine trees in her yard. It would fit in perfectly.

Dave Mrozinski, 2412 50th Street, is on the west side of the development. He discussed the traffic and stated it is bad and that a traffic study should be done. He stated that planting pine trees on the north side of the property could be a problem because that is where the power lines are located. There can't be large trees on the north side. The other property available should not be office park. Mayor Tourville stated that the zoning can be reevaluated during the comprehensive plan process.

Mr. Link stated that the resolution has a condition that talks about site plans and that references the landscape plan. He showed the landscape plan that references 15 trees along the north side of the property (along 50th Street) and eight of those are coniferous trees. If the Council were to approve it now as it stands, that would be the landscaping that would go in along the north side of the property. Councilmember Piekarski Krech asked where the conifer trees were located. Mr. Link pointed them out on the plan.

Mr. Wychoth stated that the property line on the north side does have 4 conifer trees. He did ask the landscape architect to draw a plan that was consistent with the City of Inver Grove Heights requirements. The neighbors were talked to about the landscape plan. We then went back to the landscape architect to make the plan aesthetically appealing with a minimum of 60% coniferous trees. That is where the current landscaping plan came from to provide buffering and screening for the town houses.

Mayor Trouville asked what kind of fencing was being used. Mr. Wychoth stated that the fencing that would be visible from 50th Street is a black pinch picket aluminum fence, with a baked enamel, that is six

feet tall with a gate. The fencing that is not visible is a black, vinyl coated, chain link fence. He stated the fencing would go around the perimeter of the building.

Councilmember Bartholomew asked to see a map of the elevation of the north side of the property. He pointed out that there were eight coniferous trees and the balance would be leaf trees in that area and it looks like it is a good plan.

Councilmember Piekarski Krech asked if the landscape architect thought that all conifer trees in the front of the property wouldn't be aesthetically pleasing. Mr. Wychoth stated that was correct. The trees are for buffering for the neighbors. Councilmember Piekarski Krech asked if the trees would block the neighbor's windows (there are two with windows that face the site). Mr. Wychoth stated that is what the landscaping plan is trying to do.

Mr. Kuntz, City Attorney, asked if the billboard owner approved the site plan. Mr. Wychoth stated yes and said there was an amendment to the billboard easement for the storage site plan and the plan is consistent with the amendment.

Councilmember Piekarski Krech said on the point of the trees she would like to see that coniferous trees be planted across from Ms. Bagon's property and the other town houses that directly face the development.

Motion by Piekarski Krech second by Bartholomew to approve a) Resolution 17-206 for a Conditional Use Permit to allow a mini-storage facility with outdoor vehicle storage. b) Resolution 17-207 relating to a Variance from the minimum landscaping requirements – with the applicant site plan, and not the extra trees, Councilmember Bartholomew added with the focus on putting in the coniferous trees where they would be an advantage to the town homes.

Mayor Tourville said staff, the applicant, and the town home owners could work together for the planting of the evergreen trees by the town homes.

Mr. Link asked for clarification- that along the northside there would be a mixture of coniferous and deciduous trees as recommended by the applicant and the coniferous would be planted directly across from the town homes that face most directly onto the site. It was confirmed that that was correct.

Mayor Tourville identified an email was accepted from Carol Stokey, regarding the landscaping plan and it will be added to the file and record.

Motion by Piekarski Krech second by Bartholomew to approve a) Resolution 17-206 for a Conditional Use Permit to allow a mini-storage facility with outdoor vehicle storage. b) Resolution 17-207 relating to a Variance from the minimum landscaping requirements – with the applicant site plan, and not the extra trees, Councilmember Bartholomew added with the focus on putting in the coniferous trees where they would be an advantage to the town homes. Council Piekarski Krech added to accept an email that was received into the record from Carol Stokey

Ayes: 5

Nays: 0 Motion carried.

C. WIDSETH SMITH NOLTING (River Heights Vineyard Church); Consider a Resolution relating to a Major Site Plan review and related improvement agreements to construct a building addition on property located at 6070 Cahill Avenue.

Mr. Link introduced the item and stated the property is on the east side of Cahill. He showed a map of the area. The proposal is to construct an addition onto the River Heights Vineyard Church. It is a two-story building with 10,000 square feet. The addition extends west towards Cahill Avenue. Council granted a

variance a couple of months ago to allow for a setback of 50 feet and the addition is consistent with the recently granted variance. It meets all other setback requirements. It conforms to the maximum lot coverage, building floor ratio, and has sufficient parking. Planning Staff and the Planning Commission recommends approval of the request. There is a need for one minor change to the improvement agreement.

Mr. Kuntz stated the improvement agreement is a list of various improvements and a conditions or date in which they need to be completed. In 2016, the church came before Council for a site plan approval and a storm facilities agreement. As part of that action, the parking lot identified on the sketch to the north was part of the storm facilities plan and other storm water improvements. In the improvement agreement in exhibit C and D there is the requirement that the parking lot and the 2016 storm water improvements be completed either by December 31, 2018, or before a certificate of occupancy is issued for the building. The church came forward this past week and indicated that tying the completion of the parking lot and the storm water facilities to a certificate of occupancy for the new church expansion would not work. They are hoping to sell the land to the north and then tie their parking lot on the church grounds to a new use to the north. They do not want to pave the parking lot twice. They brought their concerns to the Planning Commission and Engineering (Alan Hunting and Tom Kaldunski) and they have agreed to remove the condition that the parking lot be done before the certificate of occupancy be removed but keep the December 31, 2018, completion date. There would be a definite date in which it would have to be completed. They want to move into the church before the parking lot is done. It would be the same for the storm water facilities improvements that the completed work not be tied to the certificate of occupancy but to the completion date of December 31, 2018.

The plan for selling the property to the north is dependent on some funding mechanism that is being put together. There may be the possibility that they won't have construction done on the northern site until 2019. Both the Planning Staff and Engineering have made it known to the developer that if they have plans for the north property they would be willing to set a completion date for the work.

Mr. Link stated the Planning Commission and Planning staff recommends approval with the change pertaining to the completion date.

Peter Benedict, Pastor of River Heights Vineyard Church, stated he is excited about the expansion. They are trying to sell the northern property to a developer, it would require major regrading of the parking lot and there would be a shared agreement for the parking lot. He is hoping to avoid repaving the parking lot twice.

Motion by Bartholomew second by Piekarski Krech to approve Resolution 17-208 relating to a Major Site Plan review and related improvement agreements, with changes, to construct a building addition on property located at 6070 Cahill Avenue.

Ayes: 5

Nays: 0 Motion carried.

II. ADMINISTRATION:

D. CITY OF INVER GROVE HEIGHTS; Request for Name Change of Hornbean Lake to Hornbeam Lake

Mr. Kuntz stated there is a body of water on the border between Sunfish Lake and Inver Grove Heights, technically known as basin 19-47. He stated on the records of the DNR (which is the official keeper of the names of bodies of water) the lake is spelled Hornbean but the name of the lake was intended to be Hornbeam and it has been named that way in ordinances and other official documents. The belief is that the name was intended to be Hornbeam to identify the Hornbeam trees by the lake. Somehow the name was changed to Hornbean. A group of citizens petitioned the county to change the name. A hearing is coming up before the county board at the end of October. The city needs to make their position known at

or before October 31, 2017. The City of Sunfish Lake passed a resolution supporting the name change of the lake.

Motion by Hark second by Perry Approval of Resolution No. 17-209 for the Name Change of Hornbean Lake to Hornbeam Lake

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

Mayor Tourville stated that the Police Chief update meeting is Wednesday, October 25, 2017, at 6:00 pm.

9. ADJOURN:

Motion by Perry second by Hark to adjourn. The meeting was adjourned by a unanimous vote at 8:08pm.

**INVER GROVE HEIGHTS SPECIAL CITY COUNCIL MEETING
MONDAY, OCTOBER 25, 2017- 8150 BARBARA AVENUE**

1. CALL TO ORDER and 2. ROLL CALL

The City Council of Inver Grove Heights met in a special session on Monday, October 25, 2017, in the City Council Chambers. Mayor Tourville called the meeting to order at 6:00 p.m. Present were Council members Bartholomew, Hark, Perry and Piekarski Krech; City Administrator Lynch, City Attorney Tim Kuntz, Springsted Waters Representatives Sharon Klumpp and Patty Heminover.

3. COUNCIL DISCUSSION ON POLICE CHIEF SEMI-FINALISTS

Springsted Waters representative Sharon Klumpp introduced the topic of discussion on the Police Chief Candidates and the process used to determine the 9 candidates being reviewed by the Council. The City conducted a survey, which received over 300 responses, on characteristics of the next Police Chief. This is the best response Klumpp has ever seen. Klumpp advised that Council should refer to candidates by number and not by name, title or current position. She updated Council on the fact that 3 candidates have withdrawn due to different circumstances. Candidate number 3, candidate number 4 and candidate number 9 are no longer in the process. This leaves 6 candidates for consideration.

Council began discussions about candidates. Mayor Tourville quickly gave some comments about candidate #8 and possible length of time of service. Council Member Piekarski-Krech commented about having someone who could serve as a mentor and coach for our department members to help prepare them to take such a job in the future. Hark commented that he thinks the next Chief should be an agent of change for the Department.

Klumpp asked Council if there was agreement on candidates, and then asked if there was agreement on candidates not to bring forward for further consideration. All Council Members indicated that candidate # 6 was one that should not continue in the process.

Council was in agreement that all five other candidates should continue in the process. Council then discussed what information would be provided or followed-up on with these candidates. Klumpp indicated that she would do what she could to get further information on any candidates that indicated there had been discipline in their careers. Klumpp would not go to great lengths to get information unless it was public. Lynch clarified that the City/Springsted was not running full legal, financial, psychological backgrounds on these candidates at this time. Klumpp responded that they would only do that if Council could reach agreement on two to consider further.

City Administrator Lynch advised Council to consider meetings to extend timeframes if Council could not reach agreement on a final candidate or wanting to bring a smaller group back for further consideration. Mayor Tourville urged the Council to consider the fact that they may not be able or at a point to decide a single final candidate and not to rush to set a meeting date

when the candidate might not be available for further discussion and this was not a race to get someone named to the position just to do so. Piekarski-Krech moved to direct staff to advertise that the Council would meet to interview candidates on Wednesday, November 8th from 8:00 a.m. to 7:30 p.m., concluding with a public meet-and-greet of candidates from 6:00 – 7:30 p.m. at the VMCC. The motion further directed staff to post notice that they would meet in a Special Session on Thursday, November 9th starting at 6:00 p.m. to discuss and deliberate on the possibility of reaching agreement on naming a selected candidate as Police Chief.

Motion by Piekarski Krech second by Hark to adjourn.

Ayes: 5

Nays: 0 Motion carried.

The Council urged Springsted to be sure to contact and ask the School Superintendents from all three School Districts 196, 197 and 199 if they were interested in being a member of the interview panels for this position.

4. ADJOURN

Motion by Bartholomew second by Hark to adjourn. The meeting was adjourned by a unanimous vote at 7:35pm.

**INVER GROVE HEIGHTS CITY COUNCIL SPECIAL MEETING
Thursday, November 2, 2017 - 8055 BARBARA AVENUE**

1. CALL TO ORDER/ROLL CALL

The City Council of Inver Grove Heights met in a special meeting on Thursday, November 2, 2017, in Veterans Memorial Community Center, Community Room 1. Mayor Tourville called the meeting to order at 6:00 p.m. Present were Council members Bartholomew, Hark, Perry and Piekarski Krech; City Administrator Lynch, Parks and Recreation Director Carlson, Recreation Superintendent Tracy Petersen, City Attorney Tim Kuntz. Also in attendance were members of the Parks and Recreation Advisory Commission Willy Krech, Deb Tix, Mary Gerhardt, Pat Farley, Al Eiden, and Mark Freer. Absent was Commissioners Boehmer and Sethre.

2. Splash Park and East Rink Tour

The City Council and PRAC toured the improvements made to the Grove Aquatic Center splash park and VMCC east rink.

3. Parks Capital Improvement Plan

Director Carlson presented a PowerPoint presentation outlining the Proposed Park Capital Improvement Plan that included a Level of Service analysis. The Council and Commission discussed the plan and the request of the Commission for additional funding. Both the Council and PRAC feel parks are important and the Council is weighing all the needs of the community related to necessary funding. The Council will be making final 2018 budget decisions in the coming weeks before approving the final budget in early December.

4. Heritage Village Park

Director Carlson presented a PowerPoint presentation outlining the master planning history of HVP and the proposed phased improvements to the park. Currently, the emphasis is on acquiring the final four pieces of property, preparing the site for future park development, and implementing associated dog park improvements and regional trail connections. If there are additional grant funds available, the next phase of improvements would be those found in the SE corner of the proposed master plan (playground and associated improvements). There was discussion about making sure the "Heritage" of the City was including in any future park plans.

5. ADJOURN

Motion by Bartholomew, seconded by Hark to adjourn the meeting. Motion was carried unanimously.

Meeting adjourned at 8:00p.m.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Meeting Date: November 27, 2017
 Item Type: Consent
 Contact: Kristi Smith 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 November 9, 2017 to November 21, 2017.

SUMMARY

Shown below is a listing of the disbursements for the various funds for the period ending November 21, 2017. The detail of these disbursements is attached to this memo.

General & Special Revenue	\$657,882.79
Debt Service & Capital Projects	69,476.50
Enterprise & Internal Service	348,064.33
Escrows	18,593.25
Grand Total for All Funds	<u><u>\$1,094,016.87</u></u>

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

Attached to this summary for your action is a resolution approving the disbursements for the period November 9, 2017 to November 21, 2017 and the listing of disbursements requested for approval.

DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

**RESOLUTION APPROVING DISBURSEMENTS FOR THE
PERIOD ENDING November 21, 2017**

WHEREAS, a list of disbursements for the period ending November 21, 2017 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	\$657,882.79
Debt Service & Capital Projects	69,476.50
Enterprise & Internal Service	348,064.33
Escrows	18,593.25
 Grand Total for All Funds	 <u><u>\$1,094,016.87</u></u>

Adopted by the City Council of Inver Grove Heights this 27th day of November, 2017.

Ayes:

Nays:

George Tourville, Mayor

ATTEST:

Michelle Tesser, City Clerk



City of Inver Grove Heights

Expense Approval Report

By Fund

Payment Dates 11/09/2017 - 11/21/2017

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
AFSCME COUNCIL 5	INV0068632	11/10/2017	UNION DUES (AFSCME FAIR SHARE)	101.203.2031000	88.15
AFSCME COUNCIL 5	INV0068633	11/10/2017	UNION DUES (AFSCME FULL SHARE)	101.203.2031000	884.30
AFSCME COUNCIL 5	INV0068634	11/10/2017	UNION DUES (AFSCME PT FAIR SHAR	101.203.2031000	26.44
AFSCME COUNCIL 5	INV0068635	11/10/2017	UNION DUES (AFSCME FULL SHARE-F	101.203.2031000	89.65
AT & T MOBILITY	287237771092X11122017	11/21/2017	287237771092	101.41.1000.413.50020	33.02
AT & T MOBILITY	287237771092X11122017	11/21/2017	287237771092	101.43.5100.442.50020	33.02
CALVERT, MICHELLE	11/8/17	11/15/2017	REIMBURSE - MILEAGE	101.41.1000.413.50065	80.26
CITY OF WEST ST. PAUL	20170242	11/15/2017	10/23/17	101.42.4000.421.60018	1,900.00
CLAREY'S SAFETY EQUIPMENT	173924	11/15/2017	090500	101.42.4200.423.60065	14,862.00
COLLINS ELECTRICAL CONST.	1731763.01	11/15/2017	10/26/17	101.43.5200.443.40046	365.13
COLLINS ELECTRICAL CONST.	1731971.01	11/15/2017	10/31/17	101.43.5200.443.40046	567.50
COMCAST	11/5/17 8772 10 591 03595	11/21/2017	8772 10 591 0359526	101.42.4200.423.30700	10.54
CULLIGAN	10/31/17 157-98459100-6	11/15/2017	157-98459100-6	101.42.4200.423.60065	(1.70)
DAKOTA COMMUNICATIONS CENTER	IG2017-12	11/15/2017	DECEMBER 2017	101.42.4000.421.70502	43,934.40
DAKOTA COMMUNICATIONS CENTER	IG2017-12	11/15/2017	DECEMBER 2017	101.42.4200.423.70502	5,905.60
EFTPS	INV0068656	11/10/2017	FEDERAL WITHHOLDING	101.203.2030200	52,060.09
EFTPS	INV0068658	11/10/2017	MEDICARE WITHHOLDING	101.203.2030500	12,936.50
EFTPS	INV0068659	11/10/2017	SOCIAL SECURITY WITHHOLDING	101.203.2030400	36,710.88
EFTPS	INV0068661	11/10/2017	FEDERAL WITHHOLDING	101.203.2030200	28.21
EFTPS	INV0068663	11/10/2017	MEDICARE WITHHOLDING	101.203.2030500	10.74
EFTPS	INV0068664	11/10/2017	SOCIAL SECURITY WITHHOLDING	101.203.2030400	45.96
EYEMED	163314420	11/15/2017	NOVEMBER 2017	101.203.2032700	268.62
FAST ATTACK INC.	001048	11/15/2017	INVER	101.42.4200.423.40041	714.92
GALLS INC	007845662	11/15/2017	1001727847	101.42.4000.421.60045	120.99
GENESIS EMPLOYEE BENEFITS ACH ONLY	INV0068638	11/10/2017	HSA ELECTION-FAMILY	101.203.2032500	2,239.91
GENESIS EMPLOYEE BENEFITS ACH ONLY	INV0068639	11/10/2017	HSA ELECTION-SINGLE	101.203.2032500	3,721.85
ICMA RETIREMENT TRUST - 457	INV0068640	11/10/2017	ICMA-AGE <49 %	101.203.2031400	5,497.70
ICMA RETIREMENT TRUST - 457	INV0068641	11/10/2017	ICMA-AGE <49	101.203.2031400	5,227.30
ICMA RETIREMENT TRUST - 457	INV0068642	11/10/2017	ICMA-AGE 50+ %	101.203.2031400	1,660.39
ICMA RETIREMENT TRUST - 457	INV0068643	11/10/2017	ICMA-AGE 50+	101.203.2031400	5,069.36
ICMA RETIREMENT TRUST - 457	INV0068644	11/10/2017	ICMA (EMPLOYER SHARE ADMIN)	101.203.2031400	81.29
ICMA RETIREMENT TRUST - 457	INV0068653	11/10/2017	ROTH IRA (AGE 49 & UNDER)	101.203.2032400	1,643.07
ICMA RETIREMENT TRUST - 457	INV0068654	11/10/2017	ROTH IRA (AGE 50 & OVER)	101.203.2032400	275.00
ING DIRECT	INV0068665	11/10/2017	MSRS-HCSP	101.203.2032200	35.17
INNOVATIVE OFFICE SOLUTIONS	SUM-035856	11/15/2017	S28777	101.45.3000.419.60010	2.01
INNOVATIVE OFFICE SOLUTIONS	SUM-035856	11/15/2017	S28777	101.45.3300.419.60040	37.98
IUOE	INV0068645	11/10/2017	UNION DUES IUOE	101.203.2031000	1,323.84
KENISON, TERRI	OCTOBER 2017	11/15/2017	OCTOBER 2017	101.42.4200.423.30700	850.00
LANGUAGE LINE SERVICES	4192169	11/21/2017	9020909043	101.42.4000.421.50020	89.22
LEAGUE OF MN CITIES	265142	11/15/2017	10/31/17	101.41.1000.413.50080	45.00
LELS	INV0068646	11/10/2017	UNION DUES (LELS)	101.203.2031000	1,620.00
LELS SERGEANTS	INV0068655	11/10/2017	UNION DUES (LELS SGT)	101.203.2031000	294.00
LEVANDER, GILLEN & MILLER P.A.	10/31/17 92000E	11/21/2017	92000E	101.42.4000.421.30410	19,515.77
M & J SERVICES, LLC	1743	11/15/2017	10/30/17	101.43.5200.443.40046	1,680.00
MARTIN-MCALLISTER	11303	11/15/2017	INV001	101.41.1100.413.30500	500.00
MINNEAPOLIS OXYGEN CO.	00016594	11/21/2017	01910	101.42.4200.423.30700	64.79
MINNEAPOLIS OXYGEN CO.	00016595	11/21/2017	01915	101.42.4200.423.30700	64.79
MINNESOTA DEPARTMENT OF HUMAN SER	INV0068636	11/10/2017	STEVE HER FEIN/TAXPAYER ID: 41600	101.203.2032100	427.04
MINNESOTA DEPARTMENT OF HUMAN SER	INV0068637	11/10/2017	JOEL JACKSON FEIN/TAXPAYER ID: 4	101.203.2032100	432.57
MN DEPT OF LABOR & INDUSTRY	OCTOBER 2017	11/17/2017	OCTOBER 2017 SURCHARGE	101.207.2070100	3,593.85
MN DEPT OF LABOR & INDUSTRY	OCTOBER 2017	11/17/2017	OCTOBER 2017 SURCHARGE	101.41.0000.3414000	(71.88)
MN DEPT OF REVENUE	INV0068657	11/10/2017	STATE WITHHOLDING	101.203.2030300	20,220.94
MN DEPT OF REVENUE	INV0068662	11/10/2017	STATE WITHHOLDING	101.203.2030300	15.09
MN FIRE SERVICE CERT BOARD	5219	11/21/2017	11/14/17	101.42.4200.423.30700	980.00
MOORE MEDICAL LLC	99680465	11/15/2017	21185816	101.42.4200.423.60065	260.00
MOORE MEDICAL LLC	99686899	11/21/2017	21185816	101.42.4200.423.60065	198.86
OXYGEN SERVICE COMPANY, INC	03388724	11/21/2017	04394	101.42.4000.421.60065	32.61
PERA	INV0068647	11/10/2017	PERA COORDINATED PLAN	101.203.2030600	36,135.60
PERA	INV0068648	11/10/2017	EMPLOYER SHARE (EXTRA PERA)	101.203.2030600	2,779.72
PERA	INV0068649	11/10/2017	PERA DEFINED PLAN	101.203.2030600	69.23
PERA	INV0068650	11/10/2017	EMPLOYER SHARE (PERA DEFINED P	101.203.2030600	69.23
PERA	INV0068651	11/10/2017	PERA POLICE & FIRE PLAN	101.203.2030600	15,425.62
PERA	INV0068652	11/10/2017	EMPLOYER SHARE (POLICE & FIRE PI	101.203.2030600	23,138.42
PETE'S WATER & SEWER	11/6/17	11/15/2017	REFUND - INCORRECT FEE	101.45.0000.3222000	125.00
PETTY CASH	11/17/17	11/22/2017	PETTY CASH REQUEST	101.45.3300.419.50075	14.45
PETTY CASH	11/17/17	11/22/2017	PETTY CASH REQUEST	101.45.3300.419.50080	12.20
PETTY CASH - POLICE	11/15/17	11/15/2017	PETTY CASH REQUEST	101.42.4000.421.50075	14.56
PETTY CASH - POLICE	11/15/17	11/15/2017	PETTY CASH REQUEST	101.42.4000.421.60006	62.77

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
PETTY CASH - POLICE	11/15/17	11/15/2017	PETTY CASH REQUEST	101.42.4000.421.60065	3.48
PETTY CASH-WF PURCHASE CARD FEES	OCTOBER 2017	11/13/2017	OCTOBER 2017	101.41.2000.415.70440	133.65
SCHLOMKA'S VAC TRUCK SERVICE, INC.	7565	11/15/2017	11/1/17	101.43.5200.443.60016	2,400.00
SETS DESIGN INC.	15720	11/21/2017	11/14/17	101.42.4000.421.60006	1,937.00
SHAPCO PRINTING	330520	11/15/2017	0585	101.41.1100.413.50032	7,480.00
SIMPLEXGRINNELL	79777598	11/15/2017	148288	101.42.4200.423.30700	697.24
SOUTH ST PAUL, CITY OF	7/10/17-10/2/17	11/21/2017	053446	101.207.2070900	35.70
STREICHER'S	11287618	11/21/2017	285	101.42.4000.421.60010	145.98
THOMSON REUTER - WEST	837088336	11/21/2017	10/1/17	101.42.4000.421.30700	199.56
TOTAL CONSTRUCTION & EQUIP.	72851	11/15/2017	CIT001	101.43.5400.445.40042	152.93
TOTAL CONSTRUCTION & EQUIP.	72854	11/15/2017	CIT001	101.43.5400.445.40042	203.90
TOTAL CONSTRUCTION & EQUIP.	72855	11/15/2017	CIT001	101.43.5400.445.40042	101.95
TOURVILLE, GEORGE	11/6/17	11/15/2017	IPAD KEYPAD REIMBURSEMENT	101.41.1000.413.50025	182.53
U.S. HEALTHWORKS	0076546-MN	11/15/2017	006745	101.41.1100.413.30500	510.00
U.S. HEALTHWORKS	0076807-MN	11/15/2017	006745	101.41.1100.413.30500	460.00
UNIFIRST CORPORATION	090-0389581	11/15/2017	1051948	101.43.5200.443.60045	45.99
UNIFIRST CORPORATION	090-0389581	11/15/2017	1051948	101.44.6000.451.60045	24.47
Fund: 101 - GENERAL FUND					341,863.92
IGH CONVENTION & VISITORS BUREAU	IGHCVB2017	11/15/2017	12/1/17	201.44.1600.465.50025	500.00
PIONEER PRESS	1017563204	11/15/2017	563204	201.44.1600.465.50025	4,750.00
RIVER HEIGHTS CHAMBER OF COMMERCE	8295	11/15/2017	OCTOBER 2017	201.44.1600.465.30700	3,881.15
RIVER HEIGHTS CHAMBER OF COMMERCE	8295	11/15/2017	OCTOBER 2017	201.44.1600.465.40065	250.00
TOUR MINNESOTA ASSOCIATION	11/6/17	11/15/2017	HOLIDAY MINGLE MEETING	201.44.1600.465.50075	25.00
Fund: 201 - C.V.B. FUND					9,406.15
LACROSSE CONNECTIONS MINNESOTA LLC		11/15/2017	10/30/17	204.44.6100.452.30700	100.00
Fund: 204 - RECREATION FUND					100.00
AEP ONSITE PARTNERS, LLC	419-21092505	11/21/2017	11/6/17	205.44.6200.453.40010	2,613.63
AEP ONSITE PARTNERS, LLC	419-21092505	11/21/2017	11/6/17	205.44.6200.453.40010	2,495.74
HUEBSCH SERVICES	3972413	11/21/2017	92965	205.44.6200.453.40040	282.01
HUEBSCH SERVICES	3972413	11/21/2017	92965	205.44.6200.453.40040	66.14
M & E ENGINEERING INC	7191	11/15/2017	10/27/17	205.44.6200.453.30300	1,580.20
RECREATION SUPPLY COMPANY	331027	11/21/2017	WS231900	205.44.6200.453.60040	67.95
SIMLEY GIRLS BOOSTER CLUB	11/14/17	11/15/2017	REFUND - DUPLICATE PAYMENT	205.44.0000.3492001	2,100.00
Fund: 205 - COMMUNITY CENTER					9,205.67
DCA TITLE MENDOTA HEIGHTS	11/15/17	11/15/2017	6940 & 6950 DIXIE AVE - MCPHILLIPS	291.45.3000.419.80100	277,707.05
SCHUSTER DIANE & DOUG	11/20/17	11/21/2017	RELOCATION COSTS 1 YEAR	291.45.3000.419.80100	19,600.00
Fund: 291 - EDA ACQUISITIONS					297,307.05
EHLERS AND ASSOCIATES, INC.	75350	11/21/2017	11/14/17	434.42.4200.423.30150	1,375.00
Fund: 434 - 2014 IMPROVEMENT FUND					1,375.00
HOISINGTON KOEGLER GROUP INC.	016-062-8	11/15/2017	016-062	436.73.5900.736.30700	8,974.74
HOISINGTON KOEGLER GROUP INC.	016-062-11	11/15/2017	016-062	436.73.5900.736.30700	16,658.00
Fund: 436 - 2016 IMPROVEMENT FUND					25,632.74
CIMCO REFRIGERATION INC	PAY REQUEST NO. 4	11/21/2017	CITY PROJECT NO. 2017-05	437.44.5900.737.80200	28,025.00
WENCK ASSOCIATES, INC.	11707678	11/21/2017	B3619-0002	437.73.5900.737.30700	427.70
Fund: 437 - 2017 IMPROVEMENT FUND					28,452.70
DCA TITLE	11/1/17	11/21/2017	2015-09D BRODERICK BLVD	440.74.5900.740.30700	6,900.00
DCA TITLE	11/1/17 93RD ST & ABIGA	11/21/2017	93RD & ABIGAIL COURT	440.74.5900.740.30700	5,175.00
Fund: 440 - PAVEMENT MANAGEMENT PROJ					12,075.00
SOUTH ST PAUL, CITY OF	7/10/17-10/2/17	11/21/2017	053446	441.207.2070800	63.06
Fund: 441 - STORM WATER MANAGEMENT					63.06
GLENLIN PROPERTIES LLC	SETTLEMENT 2015-13 BC	11/10/2017	SETTLEMENT 2015-13 BOULDER CLAI	446.74.5900.746.70600	1,500.00
Fund: 446 - NW AREA					1,500.00
BRO-TEX INC.	499209	11/21/2017	0001	454.43.5500.446.40025	378.00
Fund: 454 - LANDFILL ABATEMENT					378.00
AUTOMATIC SYSTEMS CO.	32193	11/15/2017	INVE01	501.50.7100.512.40040	3,678.00
CHAMPION COATINGS	866-2	11/15/2017	866	501.50.7100.512.40043	18,920.00
HAWKINS, INC.	4161087	11/15/2017	108816	501.50.7100.512.60019	639.40
LUBE-TECH ESI	1045227	11/15/2017	10/26/17	501.50.7100.512.60022	371.64
LUBE-TECH ESI	1049559	11/15/2017	11/2/17	501.50.7100.512.60022	189.80
MN GLOVE & SAFETY, INC.	304548	11/15/2017	CTINVE	501.50.7100.512.60045	39.95
SOUTH ST PAUL, CITY OF	7/10/17-10/2/17	11/21/2017	053446	501.50.7100.512.40005	300.25
USABBLUEBOOK	401855	11/15/2017	656648	501.50.7100.512.40040	80.19
WATER CONSERVATION SERVICES INC	7962	11/15/2017	11/6/17	501.50.7100.512.40046	288.73
Fund: 501 - WATER UTILITY FUND					24,507.96

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
SOUTH ST PAUL, CITY OF	7/10/17-10/2/17	11/21/2017	053446	502.51.7200.514.40015	497.94
TOTAL CONSTRUCTION & EQUIP.	72146	11/15/2017	CIT001	502.51.7200.514.40043	152.93
Fund: 502 - SEWER UTILITY FUND					650.87
IVERIFY.US	94576758	11/15/2017	64035	503.52.8500.526.50055	267.81
TWIN CITY SAW	A22859	11/15/2017	11/3/17	503.52.8600.527.40042	62.97
UNIFIRST CORPORATION	090 0390768	11/15/2017	1258268	503.52.8600.527.60045	69.94
WINFIELD SOLUTIONS, LLC	000061981031	11/15/2017	442575	503.52.8600.527.60035	699.48
WINFIELD SOLUTIONS, LLC	000061981032	11/15/2017	442575	503.52.8600.527.60035	10,722.99
Fund: 503 - INVER WOOD GOLF COURSE					11,823.19
LEAGUE OF MN CITIES INS TRUST	11/6/17	11/21/2017	40001322	602.00.2100.415.50009	119,461.00
LEAGUE OF MN CITIES INS TRUST	3063	11/21/2017	LMCIT 3063 DEDUCTIBLE	602.00.2100.415.70200	3,583.75
LEAGUE OF MN CITIES INS TRUST	CMC 1004123	11/15/2017	2017-2018 PREMIUM	602.00.2100.415.50010	68,952.50
LEAGUE OF MN CITIES INS TRUST	CMC 1004123	11/15/2017	2017-2018 PREMIUM	602.00.2100.415.50010	8,235.50
LEAGUE OF MN CITIES INS TRUST	CMC 1004123	11/15/2017	2017-2018 PREMIUM	602.00.2100.415.50011	54,111.00
LEAGUE OF MN CITIES INS TRUST	CMC 1004123	11/15/2017	2017-2018 PREMIUM	602.00.2100.415.50012	18,625.50
LEAGUE OF MN CITIES INS TRUST	CMC 1004123	11/15/2017	2017-2018 PREMIUM	602.00.2100.415.50015	1,043.00
LEAGUE OF MN CITIES INS TRUST	CMC 1004123	11/15/2017	2017-2018 PREMIUM	602.00.2100.415.50016	4,006.50
Fund: 602 - RISK MANAGEMENT					278,018.75
ALLSTATE PETERBILT OF SOUTH ST. PAUL	3004101001	11/15/2017	14649	603.140.1450050	150.56
ASTLEFORD INT'L & ISUZU	T406575	11/15/2017	13912	603.00.5300.444.40041	167.62
ASTLEFORD INT'L & ISUZU	T406620	11/15/2017	13912	603.00.5300.444.40041	(167.62)
ASTLEFORD INT'L & ISUZU	T406624	11/15/2017	13912	603.00.5300.444.40041	156.84
BOYER TRUCKS - MINNEAPOLIS	298249	11/15/2017	C20390	603.00.5300.444.40041	6,960.12
ELECTRIC FIRE & SECURITY	C680	11/15/2017	CIT800	603.00.5300.444.40040	198.00
EMERGENCY APPARATUS MAINTENANCE	95993	11/15/2017	9/11/17	603.00.5300.444.40041	1,777.67
EMERGENCY APPARATUS MAINTENANCE	95995	11/15/2017	9/11/17	603.00.5300.444.40041	848.23
EMERGENCY APPARATUS MAINTENANCE	96517	11/15/2017	10/10/17	603.00.5300.444.40041	896.04
FERRELLGAS	1098343040	11/15/2017	7754787	603.00.5300.444.40041	53.00
HANCO CORPORATION	904935	11/15/2017	332660	603.00.5300.444.40041	85.83
HANCO CORPORATION	905467	10/31/2017	332660	603.00.5300.444.40041	69.85
HANCO CORPORATION	905746	10/31/2017	332660	603.00.5300.444.40041	(80.12)
INVER GROVE FORD	6241730/2	11/15/2017	10/23/17	603.00.5300.444.40041	193.08
MANSFIELD OIL COMPANY	20488601	11/15/2017	23866	603.140.1450060	4,403.85
MID CITY SERIVCES, INC.	68158	11/15/2017	10/27/17	603.00.5300.444.40065	45.75
MN GLOVE & SAFETY, INC.	304405	11/15/2017	CTINVE	603.00.5300.444.60045	39.99
MN GLOVE & SAFETY, INC.	304406	11/15/2017	CTINVE	603.00.5300.444.60045	99.99
MN GLOVE & SAFETY, INC.	304413	11/15/2017	CTINVE	603.00.5300.444.60045	96.94
MTI DISTRIBUTING CO	1136935-00	11/15/2017	91180	603.00.5300.444.40041	388.58
NORTH AMERICAN TRAILER SALES	0304122843	11/15/2017	10095	603.140.1450050	22.60
NORTH AMERICAN TRAILER SALES	0304122844	11/15/2017	10095	603.00.5300.444.60040	260.11
NORTH AMERICAN TRAILER SALES	0304122904	11/15/2017	10095	603.00.5300.444.40041	166.40
NUSS TRUCK AND EQUIPMENT	4001767	11/15/2017	38679B	603.00.5300.444.40041	2,542.52
NUSS TRUCK AND EQUIPMENT	4533301P	11/15/2017	38679B	603.00.5300.444.40041	485.00
O' REILLY AUTO PARTS	1767-296052	11/15/2017	1578028	603.00.5300.444.40041	239.68
O' REILLY AUTO PARTS	1767-296104	11/15/2017	1578028	603.00.5300.444.60012	19.98
O' REILLY AUTO PARTS	1767-296305	11/15/2017	1578028	603.00.5300.444.40041	10.63
O' REILLY AUTO PARTS	1767-296415	11/15/2017	1578028	603.00.5300.444.60012	12.99
O' REILLY AUTO PARTS	1767-296427	11/15/2017	1578028	603.00.5300.444.60012	22.33
O' REILLY AUTO PARTS	1767-296576	11/15/2017	1578028	603.00.5300.444.40041	6.83
O' REILLY AUTO PARTS	1767-297057	11/15/2017	1578028	603.140.1450050	58.31
O' REILLY AUTO PARTS	1767-297368	11/15/2017	1578028	603.00.5300.444.40041	7.18
O' REILLY AUTO PARTS	1767-297607	11/15/2017	1578028	603.00.5300.444.40041	35.72
POMP'S TIRE SERVICE, INC.	980042998	11/15/2017	4502557	603.140.1450050	544.08
POMP'S TIRE SERVICE, INC.	980043310	11/15/2017	4502557	603.00.5300.444.60014	458.00
RUFFRIDGE-JOHNSON	WA01044	11/15/2017	INVE01	603.00.5300.444.40041	395.20
SNAP-ON INDUSTRIAL	ARV/34029925	11/15/2017	200100474	603.00.5300.444.60040	783.52
SUNSOURCE	4880973-00	11/21/2017	49491266	603.00.5300.444.40041	1,518.15
TRUCK UTILITIES, INC.	0316607	11/15/2017	0328809	603.00.5300.444.40041	481.59
UNIFIRST CORPORATION	090-0389581	11/15/2017	1051948	603.00.5300.444.40065	173.89
UNIFIRST CORPORATION	090-0389581	11/15/2017	1051948	603.00.5300.444.60045	39.67
ZIEGLER INC	SW060063731	11/15/2017	4069900	603.00.5300.444.40041	266.39
Fund: 603 - CENTRAL EQUIPMENT					25,034.97
INNOVATIVE OFFICE SOLUTIONS	SUM-035856	11/15/2017	S28777	604.00.2200.416.60010	1,921.94
INNOVATIVE OFFICE SOLUTIONS	SUM-035856	11/15/2017	S28777	604.00.2200.416.60010	155.77
US BANCORP EQUIPMENT FINANCE, INC.	342962172	11/21/2017	923425	604.00.2200.416.40050	2,555.00
Fund: 604 - CENTRAL STORES					4,632.71
AEP ONSITE PARTNERS, LLC	419-21092505	11/21/2017	11/6/17	605.00.7500.460.40010	1,387.97
CULLIGAN	10/31/17 157-984503022-8	11/15/2017	157-98503022-8	605.00.7500.460.60011	69.05
LONE OAK COMPANIES	76503	11/21/2017	10/31/17	605.00.7500.460.50035	485.28
LONE OAK COMPANIES	11/17/17	11/21/2017	UTILITY BILLING POSTAGE	605.00.7500.460.50035	1,449.00
SPOK, INC.	A0317493W	11/21/2017	0317493-5	605.00.7500.460.40065	4.58
Fund: 605 - CITY FACILITIES					3,395.88

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
CALATLANTIC HOMES	11/6/17	11/21/2017	ESCROW REFUNDS	702.229.2283502	9,142.51
CALATLANTIC HOMES	11/6/17	11/21/2017	ESCROW REFUNDS	702.229.2286101	1,918.60
CLASSIC CONSTRUCTION	10/21/17	11/21/2017	IRREVOCABLE LETTER OF CREDIT	702.229.2293702	3,864.82
CULLIGAN	10/31/17 157-98473242-8	11/15/2017	157-98473242-8	702.229.2286300	49.45
MAX STEININGER, INC.	11/6/17	11/21/2017	ESCROW REFUND	702.229.2292201	2,433.37
PETTY CASH - POLICE	11/15/17	11/15/2017	PETTY CASH REQUEST	702.229.2291000	56.00
RAMSEY COUNTY SHERIFF'S DEPT	62VB15881503620	11/22/2017	ORLANDO JUNIOR ORTIZ	702.229.2291000	300.00
ROSEMOUNT STORAGE	10/30/17	11/21/2017	PLANNING FEE REIMBURSEMENT	702.229.2288601	828.50
Fund: 702 - ESCROW FUND					18,593.25
Grand Total					1,094,016.87

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

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
◊STEPHEN H. FOCHLER
◊JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
◊DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
*BRIDGET McCAULEY NASON
TONA T. DOVE
AARON S. PRICE
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
ROGER C. MILLER
1924-2009
•
*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◊ALSO ADMITTED IN OKLAHOMA
◊ALSO ADMITTED IN ARIZONA

MEMO

TO: Inver Grove Heights Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: November 16, 2017
RE: Trail Easement for Lot 7, Block 1, Blackstone Vista
November 27, 2017 Council Meeting Consent Agenda

Section 1. Background. Upon reviewing an as-built certificate of survey for Lot 7, Block 1, Blackstone Vista, the Developer (CalAtlantic Homes) discovered that approximately 3.5 feet of the constructed pedestrian trail encroaches onto Lot 7, Block 1, Blackstone Vista.

Before Developer conveys Lot 7, Block 1, Blackstone Vista to a new homeowner, Developer would like to enter into a trail easement with the City for the 3.5 feet of trail that encroaches onto Lot 7, Block 1.

Section 2. Council Action. The Council is asked to consider the attached Permanent Pedestrian Trail Easement for Lot 7, Block 1, Blackstone Vista between the City and CalAtlantic Group, Inc. at the November 27, 2017 Council meeting.

Attachment

PERMANENT PEDESTRIAN TRAIL EASEMENT FOR
LOT 7, BLOCK 1, BLACKSTONE VISTA,
DAKOTA COUNTY, MINNESOTA

THIS PERMANENT PEDESTRIAN TRAIL EASEMENT (Easement) is made, granted and conveyed this 27th day of November, 2017, between CalAtlantic Group, Inc., a Delaware corporation, as successor by merger to The Ryland Group, Inc., a Maryland corporation, hereinafter referred to as the "Landowner" and the City of Inver Grove Heights, a municipal corporation organized under the laws of the State of Minnesota, hereinafter referred to as the "City".

The 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 A**, incorporated herein by reference.

The Easement Area shall be for use as a pedestrian and non-motorized recreational trail 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 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:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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:
CALATLANTIC GROUP, INC., SUCCESSOR
BY MERGER TO THE RYLAND GROUP, INC.**

By: _____
Michael W. DeVoe
Its Operational Vice President

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of November, 2017, before me a Notary Public within and for said County, personally appeared Michael W. DeVoe, to me personally known, who being by me duly sworn, did say that he is the Operational Vice President of CalAtlantic Group, Inc., a Delaware corporation, successor by merger to The Ryland Group, Inc., a Maryland corporation, and that the foregoing instrument was executed on behalf of CalAtlantic Group, Inc., successor by merger to The Ryland Group, Inc. by authority of the Boards of Directors of CalAtlantic Group, Inc., successor by merger to The Ryland Group, Inc.

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 AND DEPICTION OF EASEMENT AREA

A permanent easement for trail purposes over, under, through and across the following:

All that part of Lot 7, Block 1, BLACKSTONE VISTA, Dakota County, Minnesota, lying 3.5 feet northerly of the northerly Right of Way of 71st Street, as delineated and dedicated on said BLACKSTONE VISTA, Dakota County, Minnesota.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Designate 2018 Polling Locations for State Primary and General Election

Meeting Date: November 27, 2017
 Item Type: Consent
 Contact: 651.450.2513
 Prepared by: Michelle Tesser
 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:

Consider Resolution Designating 2018 Polling Locations for State Primary and General Election

SUMMARY:

Per 2017 statute changes, M.S. 204B.16 subd. 1, it is required that the governing body of a municipality make the polling place designation by ordinance or resolution for the following calendar year by December 31. The polling place designation remains in effect until the governing body makes a new designation. Changes cannot be made less than 90 days before the next election.

The City Clerk asks that the Council approve the Resolution Designating 2018 Polling Locations for State Primary and General Election.

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

RESOLUTION NO. _____

**RESOLUTION DESIGNATING 2018 POLLING LOCATIONS FOR
STATE PRIMARY AND GENERAL ELECTION**

WHEREAS, The City Council of Inver Grove Heights on November 27, 2017, designate the 2018 Polling Locations within the City of Inver Grove Heights, and;

WHEREAS, pursuant to M.S. 204B.16 subd. 1, it is required that the governing body of a municipality make the polling place designation by ordinance or resolution, the designation of a polling place shall remain effective until the governing body makes a new designation and;

WHEREAS, the polling locations designations have been approved by the County Auditor and the polling locations comply with Election Law M.S. 144.414; 200.02 subd. 24, 204B.16 subd. 1. and;

NOW, THEREFORE BE IT RESOLVED that the polling place designations will be as follows:

- Precinct 1 – Amazing Grace Lutheran Church, 7160 South Robert Trail
- Precinct 2 – Inverhills Church, 8265 Babcock Trail
- Precinct 3 – National Guard Armory, 8076 Babcock Trail
- Precinct 4 – Inver Grove Heights City Hall, 8150 Barbara Ave.
- Precinct 5 – Emanuel Lutheran Church, 2075 70th St. E.
- Precinct 6 – Good Shepherd Lutheran Church, 7600 Cahill Ave E.
- Precinct 7 – St. Patrick's Catholic Church, 3535 72nd St. E.
- Precinct 8 – River Heights Vineyard Church, 6070 Cahill Ave. E.
- Precinct 9 – Crossroads Church, 5590 Babcock Trail
- Precinct 10 – Bethesda Lutheran Church, 2855 47th St. E.

Adopted by the City Council of the City of Inver Grove Heights on this 27th day of November 2017.

Ayes:

Nays:

George Tourville, Mayor

Attest:

Michelle Tesser, City Clerk

CITY OF INVER GROVE HEIGHTS**REQUEST FOR COUNCIL ACTION**

Consider Resolution to Adopt the 2018 Fee Schedule

Meeting Date: November 27, 2017

Item Type: Consent

Contact: 651-450-2513

Prepared by: Michelle Tesser, Clerk Clerk

Reviewed by: Department Heads & Supervisors

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 approval of the attached resolution and fee schedule setting forth license and permit fees and administrative service fees for 2018 Fee Schedule.

SUMMARY Staff annually submits recommendations to the Council on various license fees, administrative service fees and permit fees. The recommendations are based on an internal review of actual costs and a comparative analysis of what other metro area cities are charging for the similar products and services.

There are small amendments and corrections to the fees schedule. Those changes and fee amendments are noted in red on the attached spreadsheet. Staff is available to answer questions in regard to the fees.

Administration

The City Council set the Body Art and Tattoo Parlor fees at the April 24, 2017 City Council meeting by Resolution.

- \$500.00 for initial background investigation
- \$50.00 initial application
- \$50.00 for renewal application
- \$50.00 for the renewal background investigation

Rental License

- Single Family, Condominium Unit, Townhome Unit - \$50.00
- Duplex, Triplex, Fourplex, Apartment Buildings - \$150.00 per building and an additional \$15.00 per unit
- Investigation Fee - \$25.00 per license

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

RESOLUTION NO. _____

**RESOLUTION ESTABLISHING 2018 LICENSE, PERMIT AND ADMINISTRATIVE FEE
SCHEDULE**

WHEREAS, the Inver Grove Heights City Council recognizes the need to review the fees charged by the City for licenses, administrative services and permits on an annual basis, and

WHEREAS, any changes to these fees shall be set by resolution by the City Council of the City of Inver Grove Heights City Code;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Inver Grove Heights, Minnesota, approves the attached Fee Schedule. Said schedule shall be effective January 1, 2018.

Adopted by the City Council of Inver Grove Heights this 27th day of November, 2017.

Ayes:

Nays:

George Tourville, Mayor

ATTEST:

Michelle Tesser, City Clerk

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Meeting Date: November 27, 2017
 Item Type: Consent
 Contact:
 Prepared by: Joe Lynch, City Administrator
 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

Council is asked to extend the Employment Agreement with Finance Director Kristi Smith to June 1, 2018.

SUMMARY

The City of Inver Grove Heights has signed an employment agreement with Finance Director Kristi Smith to outline particulars for her continued employment with the City. In the Agreement it calls for the City and Ms. Smith to mutually agree to extend her agreement prior to December 1, 2017. Enclosed within is a copy of the Employment Agreement for your review. Based upon conversation I had with all Council Members, you are willing to extend her agreement with the City to June 1st to help the City complete the 2017 Financial Audit.

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made, entered into, approved and ratified this 10th day of April, 2017 by and between Kristi Smith ("Kristi") and the City of Inver Grove Heights, a Minnesota municipal corporation ("City"). Based on the covenants, agreements, recitals and consideration hereafter stated, Kristi and the City do hereby agree as follows:

ARTICLE 1 RECITALS

Recital No. 1. Kristi is the Finance Director for the City.

Recital No. 2. Kristi is a full-time, exempt employee of the City within the meaning of Section 1-6A-2 of the City Code.

Recital No. 3. Kristi is a supervisory employee and not subject to a collective bargaining agreement.

Recital No. 4. Kristi is not a veteran within the meaning of Minnesota Statutes, Sections 197.447 and 197.46.

Recital No. 5. The City and Kristi have mutually determined to cease the employment relationship between Kristi and the City effective at 4:30 p.m. on December 29, 2017 ("Resignation Date").

Recital No. 6. From the date hereof until the Resignation Date, Kristi will continue her employment as Finance Director with the City subject to the terms and conditions of this Agreement and subject to the provisions of the City's Personnel Policy found in Section 1-6A-1 through Section 1-6A-28 of the City Code.

Recital No. 7. Kristi is moving from the State of Minnesota to State of Arizona. The City wishes to retain Kristi as an employee through the Resignation Date, at which time the resignation of Kristi will become effective and Kristi will no longer be an employee of the City.

ARTICLE 2 RESIGNATION

2.1. **Resignation.** Kristi hereby resigns as Finance Director and resigns as an employee with the City effective 4:30 p.m. on December 29, 2017 ("Resignation Date"). The City hereby accepts the resignation.

Kristi may resign earlier than December 29, 2017 provided Kristi gives the City 14 days advance written notice of the earlier Resignation Date. The earlier date shall then become the Resignation Date under this Agreement.

Upon 14 days advance written notice to Kristi, the City, without the consent of Kristi, may set a Resignation Date earlier than that provided in paragraph 1 or in paragraph 2 of this

Section 2.1; in such case, the earlier date set by the City shall become the Resignation Date under this Agreement.

If the City and Kristi mutually determine that they want to extend the Resignation Date, then on or before December 1, 2017, the City and Kristi shall enter into an amendment to this Agreement that extends the Resignation Date to a mutually agreeable date.

2.2. **Status as Employee.** From the date of this Agreement until the Resignation Date, Kristi shall continue to be the Finance Director and an employee of the City, subject to the terms of this Agreement and subject to the provisions of the City's Personnel Policy found in Section 1-6A-1 through Section 1-6A-28 of the City Code.

2.3. **Vacation Leave.** From the date of this Agreement until the Resignation Date, Kristi shall continue to accrue vacation leave at the accrual rates established by Inver Grove Heights City Code, Section 1-6A-12-1(A) (2016).

Pursuant to Inver Grove Heights City Code, Section 1-6A-12-1(F) (2016), Kristi shall be compensated for any accrued but unused vacation leave remaining as of the Resignation Date. Compensation for Kristi's accrued but unused vacation leave shall be paid by City to Kristi by the next regularly scheduled payroll following the Resignation Date. The City shall not make any contribution to the Public Employees' Retirement Association (PERA) as a result of any lump sum payment for accrued but unused vacation leave, pursuant to Minn. Stat. § 353.01, subd. 10(b)(2).

2.4. **Personal Leave.** From the date of this Agreement until the Resignation Date, Kristi shall continue to accrue personal leave at the accrual rates established by Inver Grove Heights City Code, Section 1-6A-12-2(B) (2016). Kristi understands that the maximum accrual of personal leave hours is 480 hours, but that up to an additional 80 hours of personal leave can be transferred to the employee's health care savings plan.

Pursuant to Inver Grove Heights City Code, Section 1-6A-12-2(F) (2016), Kristi shall be compensated for any accrued but unused personal leave remaining as of Resignation Date. Compensation for Kristi's accrued but unused personal leave shall be paid by City to Kristi by the next regularly scheduled payroll following the Resignation Date. The City shall not make any contribution to the Public Employees' Retirement Association (PERA) as a result of any lump sum payment for accrued but unused personal leave, pursuant to Minn. Stat. § 353.01, subd. 10(b)(2).

2.5. **Holidays.** From the date of this Agreement until the Resignation Date, Kristi shall be entitled to the recognized Holidays, as established by Inver Grove Heights City Code, Section 1-6A-15-1(A).

2.6. **Retirement Benefits.** From the date of this Agreement until the Resignation Date, the City shall contribute to PERA the City's regular portion of retirement benefits to which Kristi is entitled.

2.7. **Health and Other Insurance/Continuation Rights.** From the date of this Agreement until the Resignation Date, the City shall continue to contribute the City's regular portion of Kristi's health care and other benefits (e.g. life insurance and disability insurance), at the same rate as the City does for other employees. The City will continue to take payroll deductions for Kristi's portion of existing benefits.

Kristi also understands and acknowledges that it is intended that she will receive a notice of her right to extend her health insurance at her own expense pursuant to state and federal law after the Resignation Date. This Agreement does not limit Kristi's health insurance continuation rights under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") or Minnesota law.

ARTICLE 3 WAGES

3.1. **Wages.** From the date hereof through the Resignation Date, the City shall pay Kristi wages proratable for that period of time based on an annual salary of \$128,000. Such wages shall be paid at the customary intervals that wages are paid to other employees, subject the usually and customary withholdings and deductions. Once the City adopts the "non-union wage scale" for 2017, the City shall retroactively adjust the base annual salary retroactive to January 1, 2017 by the same percentage increase that the City applies for other non-union employees for 2017 under the "non-union wage scale."

3.2. **Technology Equipment.** At the Arizona site Kristi must provide her own laptop computer, sufficient internet connectivity and other electronic technology devices to effectively perform her duties and establish communication channels. In exchange for Kristi undertaking the obligation stated in this Section 3.2, the City, beginning May 2017, shall pay Kristi \$50 per month at the end of each month to partially defray the cost of the obligation undertaken by Kristi under this Section 3.2.

ARTICLE 4 DUTIES, RESPONSIBILITIES AND EXPECTATIONS

4.1. **Duties, Responsibilities and Expectations.** From the date hereof through the Resignation Date, Kristi as an employee shall perform and meet the duties, responsibilities and expectations set forth on Exhibit A attached hereto, and such other duties and responsibilities as assigned by the City Administrator.

ARTICLE 5 DELIVERY OF SERVICES

5.1. **Manner of Performing Duties, Responsibilities and Expectations.** Kristi and the City shall cooperate to achieve the best practices for Kristi to perform the duties, responsibilities and expectations in light of the fact that Kristi may be offsite for substantial periods of time. Notwithstanding the foregoing, Kristi, as a minimum requirement, shall perform duties, responsibilities and expectations in the manner and at the times and by the means set forth on the attached Exhibit B.

ARTICLE 6 MISCELLANEOUS

6.1. **Data Practices Act.** Kristi and the City agree that this Agreement is a public document under the Minnesota Government Data Practices Act and will not be protected as private, confidential, or non-public information. This Agreement will be treated as public data within the meaning of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

6.2. **Complete Agreement.** Kristi and the City acknowledge and represent that no promise or representation not contained in this Agreement has been made to them, and acknowledge and represent that this Agreement contains the entire understanding between them and contains all terms and conditions pertaining to employment of Kristi to Resignation Date. This Agreement supersedes all previous agreements, whether oral or written, between Kristi and the City.

6.3. **Waiver.** No waiver of any provision of this Agreement shall be binding unless it is in writing and executed by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

6.4. **Binding Effect.** This Agreement and all covenants and releases set forth herein shall be binding upon and shall inure to the benefit of the respective parties hereto. The terms of this Agreement constitute a valid and binding contract.

6.5. **Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provision. The parties agree that any action arising out of this Agreement or with respect to the enforcement of this Agreement shall be venued in the Dakota County District Court, State of Minnesota.

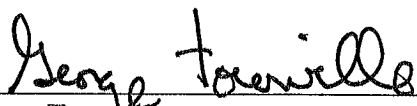
6.6. **Severability.** If any provision of this Agreement or application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable.

6.7. **Assignment.** Kristi may not assign this Agreement or any rights she may have under it to any other person or entity without prior written consent of the City.

6.8. **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 the counterparts shall together constitute one and the same agreement.

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

CITY OF INVER GROVE HEIGHTS

By: 
George Tourville
Its: Mayor

Attested:

By: 
Michelle Tesser
Its: City Clerk

Kristi Smith

A stylized, cursive handwritten signature of Kristi Smith in black ink.

Kristi Smith

EXHIBIT A

DUTIES, RESPONSIBILITIES AND EXPECTATIONS

The Finance Director position description includes the essential accountabilities and expected outcomes enumerated below. In addition to these, the City requested a written response from Ms. Smith documenting the manner and/or method in which she plans to address these overall functions, as well as the specific expectations detailed below:

- 1) Direct, supervise, and maintain financial operations of the City by establishing appropriate administrative and internal procedures to effectively manage the financial operations of the City.
- 2) Plan, develop, maintain and evaluate fiscal policies, systems and procedures that will provide the City Administrator and the City Council with salient data and records for sound fiscal decision-making.
- 3) Coordinate, evaluate and record all aspects of initial budget preparation for submission to the City Administrator and the execution of adopted budgets.
- 4) Supervise City purchasing by reviewing, analyzing and approving purchases which are in accordance with adopted budget appropriations.
- 5) Effectively motivates employees, establishes performance goals to ensure job performance standards are clearly specified, deals with employee conflict, provides feedback to employees, disciplines when necessary, develops and coordinates employees training and professional development.
- 6) Effectively manages and directs the City's risk management program, including all City insurance and loss control/prevention activities.
- 7) Keeps the City Administrator, co-workers, and subordinates informed in regard to finance issues as necessary.

Specific expectations:

- Participate in Sr. Management Meetings as scheduled (typically weekly)
- Provide periodic (monthly, quarterly, and bi-annual) financial data to the Sr. Management Team and Council to enable sound financial decisions
- Respond to questions from each of the following: Council, Department Heads, Finance staff, City staff, Contractors
- Oversee staff operations and supervise Finance Department staff, including meeting at least once monthly with each staff member
- Provide city staff and others with contact information for the various functions within the Finance Department, to address emergencies or issues requiring an immediate response
- Review financial data to ensure accuracy, compliance, and adherence to budget (e.g. payroll, purchasing, billing, loss control)
- Prepare and present preliminary and final budgets before Council
- Attend Council meetings as directed in regard to other finance related agenda items, or to address significant financial matters
- Be physically in the office (i.e. work from City Hall) during normal office hours and to attend corresponding Council meetings as required, generally from the first Monday of each month through the end of the second Tuesday of the month, or similar schedule as agreed upon by the City Administrator.

EXHIBIT B
MANNER, TIMES AND MEANS FOR DELIVERY
OF DUTIES, RESPONSIBILITIES AND EXPECTATIONS

Responses to Exhibit A

- 1) Direct, supervise, and maintain financial operations of the City by establishing appropriate administrative and internal procedures to effectively manage the financial operations of the City.

There are no anticipated or pending procedure changes anticipated at this time. Procedures are already well established and any changes would likely be an extraordinary circumstance. Should something arise while I am working remotely I will be responsible for any changes and communication to appropriate staff. I will be available to assist the City Administrator and/or staff with any issues that may arise.

- 2) Plan, develop, maintain and evaluate fiscal policies, systems and procedures that will provide the City Administrator and the City Council with salient data and records for sound fiscal decision-making.

There will be no change to the methods used to plan, develop, maintain and evaluate fiscal policies, systems and procedures.

- 3) Coordinate, evaluate and record all aspects of initial budget preparation for submission to the City Administrator and the execution of adopted budgets.

The 2018 budget calendar is below and meetings will be set to accommodate my in the office dates. From a council perspective, I will be in attendance at work sessions scheduled for the first Monday of the month. From a department head perspective, Budget Committee meetings will be scheduled when I am in the office. The preliminary levy will be scheduled for the first council meeting in September and the final levy will be scheduled for the first council meeting in December. I can be contacted via phone, e-mail or Skype for any unanticipated meetings or general questions.

- 4) Supervise City purchasing by reviewing, analyzing and approving purchases which are in accordance with adopted budget appropriations.

Currently I randomly review invoices processed through accounts payable and review 100% of invoices paid by Wells Fargo credit card or submitted as an out-of-pocket transaction. Access to Tyler from outside City Hall will be required to review invoices. Wells Fargo transactions can be reviewed from anywhere as access is internet based.

With access to Finance department files and Tyler outside City Hall will allow monthly Treasurer Reports, golf course reports (in season) to continue. With access to Tyler quarterly financial reports will continue to be sent to council and department heads.

- 5) Effectively motivates employees, establishes performance goals to ensure job performance standards are clearly specified, deals with employee conflict, provides feedback to employees, disciplines when necessary, develops and coordinates employees training and professional development.

Annual performance evaluations will be completed by me with Mrs. Battles input. Training and professional development will continue as planned per the 2017 budget. A copy of which has been provided to the Human Resources Manager. Currently I hold a monthly department-wide meeting and meet individually with staff every four to six weeks. These meetings will continue to occur monthly and will be held while I am in the office. A summary of meeting topics will be shared with the City Administrator. While working remotely I will be available to answer any questions and address any issues.

- 6) Effectively manages and directs the City's risk management program, including all City insurance and loss control/prevention activities.

Currently the Accountant job description #4 states "Assists with risk management and insurance functions of the City. Prepares property schedules for insurance renewal application. Files and monitors all insurance claims, other than workers compensation." Bill Schroepfer, Accountant is tasked with this and keeps me apprised of any non-routine insurance claims. While I am working remotely I will be available to Mr. Schroepfer for any questions or updates.

As part of the upcoming renewal process staff will be having discussions with departments on what equipment should be listed on the insurance cost replacement schedule. These meetings will likely be scheduled with department heads (or delegates) while I am in the office. Follow-up communication may be via e-mail or phone.

- 7) Keeps the City Administrator, co-workers, and subordinates informed in regard to finance issues as necessary.

While working remotely communication may be primarily e-mail related, however, messages will be related in the best communication method available (e-mail, phone, Skype, etc.). Sr. Management meetings and Council meetings will be attended as outlined below.

Specific expectations:

- Participate in Sr. Management Meetings as scheduled (typically weekly)
- Provide periodic (monthly, quarterly, and bi-annual) financial data to the Sr. Management Team and Council to enable sound financial decisions
- Respond to questions from each of the following: Council, Department Heads, Finance staff, City staff, Contractors
- Oversee staff operations and supervise Finance Department staff, including meeting at least once monthly with each staff member
- Provide city staff and others with contact information for the various functions within the Finance Department, to address emergencies or issues requiring an immediate response
- Review financial data to ensure accuracy, compliance, and adherence to budget (e.g. payroll, purchasing, billing, loss control)
- Prepare and present preliminary and final budgets before Council
- Attend Council meetings as directed in regard to other finance related agenda items, or to address significant financial matters
- Be physically in the office (i.e. work from City Hall) during normal office hours and to attend corresponding Council meetings as required, generally from the first Monday of each month through the end of the second Tuesday of the month, or similar schedule as agreed upon by the City Administrator.

General response to specific expectations:

Generally, I would be in the office about one-third of the work days each month. I would arrive prior to the monthly work session and attend the first council meeting each month. I would attend the first two Sr. Management meetings in person and be available via Skype or phone for all other meetings. I will meet with the City Administrator once while in the office and via Skype or phone at least once while working remotely. I currently have regular meetings with each staff member and with the department as a whole. These meetings will occur while I am in the office.

I believe the use of technology will allow me to work remotely and be available and work effectively. I will need access to Tyler as well as files located on the H and Y (Finance and Shared) drives. I will access these remotely from my personal devices.

Currently my Outlook calendar includes the dates I will be in the office, staff leave time, as well as my leave time. If I work less than 40 hours per week I will utilize leave time (same as I have in the past).

My in the office schedule would be as follows for 2017:

April 3 – 11

May 1 – 9

June 5 – 13

July 10 – 14 (no work session so Budget Committee meetings would be held this week)

August 7 – 15

September 5 (Tuesday) – 12 (preliminary levy will be on the agenda for first council meeting)

October 2 – 10

November 6 – 9 (Friday, November 10th is a holiday and I would not likely have any RFCA items)

December 4 – 12

Shannon Battles, Senior Accountant would be the primary contact while I am working remotely but I can be reached via phone, e-mail or Skype.

Financial reporting to council and departments should not be impacted.

2018 Proposed Budget Calendar

May 1, 2017	Work Session Initial discussion, review/revise calendar, establish direction
August 7, 2017	Work Session Introduction of preliminary 2018 General Fund budget and presentations of General Fund requested budget additions
September 5, 2017 (Tuesday)	Work Session Cash balances, fund balances and reserves, debt service Handouts – Base Budget Benefited Positions by Department, Base Budget FTE Benefited Positions and Base Budget Hours and FTE Non-Benefited Positions
September 11, 2017	City Council Adopt 2018 Proposed Budgets and Tax Levies
October 2, 2017	Work Session Recreation, Community Center, Golf, ADA, EDA and TIF Funds
November 6, 2017	Work Session Water, Sewer, Storm Water, Internal Service Funds, Central Equipment Replacement and CIP
December 4, 2017	Work Session Final review of 2018 budgets and tax levies
December 11, 2017	City Council Adopt 2017 final budgets and tax levies

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Meeting Date: November 27. 2017
Item Type: Consent
Contact: Joe Lynch
Prepared by: Joe Lynch
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 Consider approving contract for Five Bugles Design contract for Architectural and Engineering Services for Fire Station Site Design and Construction for Fire Station #2

SUMMARY

At the September 25, 2017 meeting, Council approved awarding the contract for Architectural and Engineering Services for Fire Station Site Design and Construction for Fire Station #2 to Five Bugles Design. The contract has been reviewed by Timothy Kuntz and Stephan Fochler from LeVander, Gillen and Miller, as well as City Administrator Joe Lynch and Fire Chief Judy Thill. Funding for these services will be a part of the construction budget for the new Fire Station.

The terms of the contract have been agreed upon by all parties and is ready to be signed. Staff recommends Council approve the contract with Five Bugles Design.

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 13th day of November in the year Two Thousand Seventeen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55007

and the Architect:
(Name, legal status, address and other information)

WENDEL SGN Architecture, Inc.
Centerpointe Corporate Park
375 Essjay Road, Suite 200
Williamsville, NY 14221

for the following Project:
(Name, location and detailed description)

New fire station for City of Inver Grove Heights
9250 Courthouse Blvd.
Inver Grove Heights, MN 55077

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

The Project will consist of new fire station, based on the 2014 Feasibility Study (2014 estimated cost of \$5,640,000), incorporate the program statement and schematic design. The project will include a two story fire station with either a partial or full basement, with an alternative bid for providing vehicular access to the basement.

The following disciplines are included in Scope of Work for basic services:

- ☐ Architectural Design
- ☐ Structural Engineering
- ☐ Site Civil Engineering
- ☐ Landscape Architecture
- ☐ Plumbing Engineering
- ☐ Mechanical Engineering
- ☐ Electrical Engineering
- ☐ Telecommunication
- ☐ Interior Design

The Owner will proceed with a single bid for a general contractor. The Owner anticipates hiring an Owner's Representative.

Init.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of Design:
November 2017
- .2 Completion of Schematic Design:
December 2017, as approved by owner
- .3 Completion of Construction Documents:
February 2018, as approved by owner
- .4 Project Bidding:
February 2018, as approved by owner
- .5 Award of Construction Contract:
April 2018, as approved by owner
- .6 Project substantial completion:
April 2019, as approved by owner

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability
\$2,000,000 each occurrence (combined single limit for bodily injury and property damage);
\$2,000,000 for personal and advertising injury liability;
\$4,000,000 aggregate on products and completed operations;

\$4,000,000 general aggregate.

.2 Automobile Liability

\$1,000,000 Combined single limit each accident for bodily injury and property damage. Include coverage on all owned, hired, and nonowned automobiles.

.3 Workers' Compensation

\$1,000,000 each accident for bodily injury by accident; \$1,000,000 each employee for bodily injury by disease; \$1,000,000 policy limit for bodily injury by disease

.4 Professional Liability

Covering negligent acts, errors and omissions: \$5,000,000 per claim, \$5,000,000 aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and includes:

- ☐ Architectural Design
- ☐ Structural Engineering
- ☐ Site Civil Engineering
- ☐ Landscape Architecture
- ☐ Plumbing Engineering
- ☐ Mechanical Engineering
- ☐ Electrical Engineering
- ☐ Telecommunication
- ☐ Interior Design

Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and

- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
<i>(Rows deleted)</i>		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided	
§ 4.1.25 Fast-track design services	Not Provided	
§ 4.1.26 Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Twenty-two (22) visits to the site by the Architect over the duration of the Project during construction

Init.

- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion
- .5 Three (3) City Council presentations

§ 4.3.4 If the services covered by this Agreement have not been completed within twenty-four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The

Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 All tangible work produced by Architect/Engineer in connection with the performance of this Agreement, including but not limited, to drawings, schematics, specifications, reports, correspondence, and minutes of meetings, shall be the property of the Owner and such materials in the possession of the Architect/Engineer upon termination of this Agreement for any reason shall be promptly delivered to Owner.

§ 7.3 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

(Paragraphs deleted)

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party, subject to the requirements of the Minnesota Data Practices Act, shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Total compensation for basic services, excluding reimbursables:

\$343,000 based on the Owner's 2014 Program Statement.

Alternate bid for a vehicular access road; for either a full or partial basement. Lump sum of \$19,800.

Additional Alternate bids, if any, will be invoiced at a fee of 7% in accordance with Article 11.6.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

If the Owner requests additional services, compensation will be based on Time and Materials invoiced at Architect Standard Billable rates.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

To be negotiated as Architects hourly rates or as percentage fee related to cost per 11.1

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty-five percent (25 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

(Rows deleted)

Schematic Design Phase

\$14,300

Init.

Design Development Phase	78,600
Construction Documents Phase	147,200
Bidding or Negotiation Phase	17,150
Construction Phase	85,750

Total Basic Compensation	\$343,000
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§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

2017 rates attached. Subsequent rate changes will apply accordingly, as part of Architect's standard operations.

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid () days after the

invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

(Paragraph deleted)

One and five tenths percent (1.5 %), per month, cumulative.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

The Architect shall maintain its records in a manner consistent with Minn.Stat.Ch.13, the Minnesota Data Practices Act.

§12.1.1 The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

§12.1.1.1 Owner agrees to establish a Design and Construction Contingency of ten percent (10%) of the Cost of the Work for changes in the construction of the project and for omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency shall be allocated, respectively, to construction changes, three-fourths (3/4) and to construction documents, one-fourth (1/4). The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes due to construction modifications or adjustments to the construction documents.

§12.1.1.2 When the need for such changes, revisions, interpretations and /or clarifications become known to the Architects, he shall promptly investigate and take appropriate action in the form of drawings, specifications, written description, clarifications, or as otherwise may be necessary to facilitate the modification, change or revision as the case may be. The Architect shall have no liability or responsibility to the Owner or other parties for the costs resulting from such circumstances, except to perform such professional services at the agreed rate for additional service under Paragraph 11.3 of this Agreement when they are due to unforeseen or concealed conditions, and at no additional cost to the Owner when they are a result of minor errors or omissions. The Owner agrees to budget for and provide a contingency fund based on a percent of the Construction Costs against which these construction costs will be charged.

§12.1.2 The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§12.1.3 If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project. The Owner will not be responsible for redesign fees due to the Architect omission. The Architect will absorb the cost of redesign. Should there be an omission by the Architect the

Int.

Owner will pay the cost of "betterment" at the time of bid. The architect will absorb the upcharge costs associated with a change order limited to no more than 10% of the item cost.

§12.1.4 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§12.1.5 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§12.1.6 If the Owner elects to employ a construction manager, the Owner will promptly notify the Architect of the duties, responsibilities and authority of the construction manager and their relationship to the duties, responsibilities and authority of the Architect. A copy of the agreement between the Owner and the construction manager will be provided to the Architect. (See Section 11.2 for compensation adjustments).

§12.1.7 Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§12.1.8 It is understood that estimates for the cost of the work provided by third party estimators, whether obtained by the Architect or the Owner are subject to unpredictable variations in commodity prices, labor rates, and other unforeseen conditions. Significant variations in the estimates for the cost of the work may result in additional services for the Architect as described in Article 4.

§12.2 INDEMNIFICATION

§12.2.1 The architect will indemnify and hold the Owner and its director, officers and employees harmless from any and all claims, costs, losses or damages, including reasonable attorney fees, but only to the extent caused by the negligent acts, errors or omissions of the Architect or the negligent acts, errors or omissions of the Architect's officers, directors, employees, and sub consultants or any other entity or person for whom they would be legally liable for, in the professional liability insurance available at the time of loss under section 12.1.1 and Architect shall have no liability for any amounts above the insurance limits available.

§12.2.1.1 The Architect shall provide the insurance for the indemnity provided for in paragraph 12.1 above, only however to the extent of the scope of the coverage provided under the Architect's Professional Liability policy and within those limits of that Professional Liability policy.

§12.2.1.2 To the fullest extent permitted by law, and subject to Tort Liability Limits under Chapter 446 of Minnesota Statutes the Owner will indemnify and hold the Architect and its directors, officers, and employees harmless from any and all claims, costs, losses, or damages, including reasonable attorney fees, but only to extent caused by the negligent acts, error or omissions of the Owner or the negligent acts, errors or omissions of the Owner's officers, directors, employees, and subconsultants or any other entity or person for whom they would have legal liability.

§12.3 The Architect shall maintain the insurance described in Paragraph 2.6 for the required term. If the Architect fails to furnish and maintain this insurance, the Owner may purchase it on behalf of the Architect and be reimbursed for the cost hereof upon demand or at its option; the Owner shall be entitled to deduct any such costs from any amounts then owing to the Architect, The Architect shall furnish any information needed to obtain such insurance.

§12.4 ACKNOWLEDGEMENT OF RISK

§12.4.1 Professional services provided by the Architect and the Architect's consultants under this Agreement necessarily require the active participation of the Owner. It is the Owner's responsibility to establish goals and objectives for the project, to identify budgetary constraints, and to make key decisions involving trade-offs between time or cost and quality and, in some cases, between time or cost and economic risk. To facilitate such decision making, the Architect shall make investigations, conduct evaluations and present alternative to the Owner within a standard of usual and customary professional care consistent with sound architectural practice and scope of services provided or hereunder. Should the Owner desire more detailed investigations of alternatives, the architect shall conduct such investigations, subject to the constraints of time and cost budgeted by the Owner for the purpose, as an Additional Service.

§12.4.2 Where such decisions are made by the Owner and savings in time or cost realized as a result, the savings accrue to the benefit of the Owner. At the same time, responsibility or the trade-offs involved must be assumed by the Owner. In recognition thereof and notwithstanding anything to the contrary contained herein, it is understood and agreed that the Owner shall be solely responsible for consequences of any adverse impact on quality and any and all economic risk attributable to any such decision.

§12.5 STANDARD OF CARE

§12.5.1 Notwithstanding any other provisions of this Agreement, the parties agree that the Architect and his consultants will only be required to exercise that degree of care and skill ordinarily exercised at the time services are performed, under similar circumstances, by reputable members of their profession, practicing in the same or similar locality on projects of similar type and complexity (the common law standard).

§12.5.2 Notwithstanding any other provisions of this Agreement to the contrary, nothing contained herein shall be construed to mean that the Architect shall be responsible for providing cost or budget estimates and that the Architect shall be held liable for any claims, liabilities, demand, losses, costs or expenses that in any way relate to cost or budget estimates. Any review or evaluation of cost data, budgets or estimates by the Architect shall not be interpreted as the Architect's approval or ratification of such cost data, budgets or estimates.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Init.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Approval of 2018 Park and Recreation Department Fees

Meeting Date: November 27, 2017
 Item Type: Consent Agenda
 Contact: Eric Carlson – 651.450.2587
 Prepared by: Eric Carlson
 Reviewed by: Matt Moynihan
 Tracy Petersen

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

It is recommended that the Council approve the attached 2018 fees for Parks & Recreation.

SUMMARY

Attached is a copy of the 2018 proposed fees for Parks & Recreation. Highlights of the changes are as follows:

Recreation

- A number of facility use fees will increase marginally.

VMCC/Grove

- A number of admission fees will increase slightly.

Inver Wood

- A number of fees are being adjusted upwards to help cover increasing costs. Our goal is to generate \$0.70 of additional revenue for each round in 2018.

The Park and Recreation Commission is recommending approval.

CITY OF INVER GROVE HEIGHTS



2018 PROPOSED FEES PARKS & RECREATION DEPARTMENT

*RECREATION
INVER WOOD GOLF COURSE
VETERANS MEMORIAL COMMUNITY CENTER*

Parks & Recreation

Item	Frequency	2017 Resident	2017 Non-Res	2018 Resident	2018 Non-Res
Park Shelters *(excludes Swing Bridge Park)	Per 5-hour block	\$60	\$80	\$70	\$90
Park Shelter * Swing Bridge Park Only		March-May: \$80; June-Oct \$100	March-May: \$80; June-Oct \$100	\$110	\$110
Additional trash barrels/picnic tables	NA	\$30	\$40	\$30	\$40
Outdoor Ice Rink *	Per hour	\$25	\$35	\$25	\$35
Outdoor Ice Rink w/attendant *	Per hour	\$35	\$45	\$35	\$45
Outdoor Rink Lights	Per hour	\$40	\$60	\$40	\$60
Neighborhood Park/School Athletic Field	Per use	\$35	\$45	\$40	\$50
Tennis Courts	Per Hour/Court	\$6	\$8	\$7	\$9
Rich Valley Baseball Field (youth)	Per gm/practice	\$80	\$100	\$80	\$100
Rich Valley Baseball Field (adult)	Per gm/practice	\$95	\$115	\$95	\$115
Rich Valley Softball Field	Per gm/practice	\$60	\$80	\$60	\$80
Rich Valley/Skyview Soccer Field (youth)	Per gm/practice	\$80	\$100	\$80	\$100
Rich Valley/Skyview Soccer Field (adult)	Per gm/practice	\$95	\$115	\$95	\$115
Rich Valley Soccer ½ Field	Per gm/practice	\$50	\$60	\$50	\$60
Rich Valley Lights	Per hour	\$40	\$60	\$40	\$60
Rich Valley Field Tournament Fee	Per field/day	\$185	\$210	\$190	\$215
Rich Valley Tournament Vendor Fee	Per Weekend	\$55	\$110	\$55	\$110
Rich Valley Concession Stand	Per Weekend	\$250	\$250	\$250	\$250
Rich Valley Additional Maintenance Service- staff, equipment and supplies (4 fields or less)	Per hour	\$50	\$60	\$50	\$60
Rich Valley Additional Maintenance Service- staff, equipment & supplies (5 fields or more)	Per hour	\$70	\$80	\$70	\$80
Rich Valley Additional Maintenance Service-labor & supplies	Per hour	\$40	\$50	\$40	\$50
IGH Baseball, Softball & Soccer Association Tournament Fee	Per field/day	\$85	\$85	\$85	\$85
Local Athletic Assoc. User Fee	Per Player	\$11	\$17	\$13	\$20
Disc Golf Annual Pass	Per year	\$30	\$40	\$30	\$40
Disc Golf Daily Pass	Daily	\$5	\$5	\$5	\$5
Disc Golf Tournament	Per day	\$200	\$225	\$200	\$225
Disc Golf Tournament	Per Weekend	\$500	\$525	\$500	\$525
Mountain Bike Course	Per Day	\$500	\$525	\$500	\$525

- *Requires damage deposit
- **Fee replaces the agreement that expired in 2009 to build Rich Valley Athletic Complex. Revenue generated can be used on a project that would benefit youth athletics and the City. The project would be agreed upon between staff and the association.
- Fees include tax
- Manager has discretion to negotiate off peak time usage rates

Inver Wood Golf Course

Item	Frequency	2017 Resident	2017 Non-Res	2018 Resident	2018 Non-Res
Pull Cart Rental	Per Round	\$3.50		\$3.50	\$3.50
Player's Card	Per Season	\$90	\$110	\$90	\$110
Driving Range Balls-Large	Per Bucket	\$11	\$11	\$12	\$12
Driving Range Balls-Medium	Per Bucket	\$8	\$8	\$9	\$9
Driving Range Balls-Small	Per Bucket	\$5	\$5	\$6	\$6
Diving Range Balls-All Day	Unlimited Per Person	\$14	\$14	\$14	\$14
Season Passes	Adult Season Pass-Restr.	\$1200	\$1200	\$1200	\$1200
	Sr. Season Pass-Restr.	\$1000	\$1000	\$1000	\$1000
	Jr. Season Pass-Restr.	\$500	\$500	\$500	\$500
Weekday	18 Hole Green Fee	\$34	\$34	\$35	\$35
Mon - Thur	9 Hole Green Fee	\$19	\$19	\$19.50	\$19.50
7 am to 5 pm	Patron 18 Green Fee	\$29	\$29	\$30	\$30
Sat - Sun	Patron 9 Green Fee	\$17	\$17	\$17.50	\$17.50
Noon to 5 pm	Sr/Jr 18 Green Fee	\$22.50	\$22.50	\$24	\$24
	Sr/Jr 9 Green Fee	\$13.00	\$13.00	\$13.50	\$13.50
	Executive Green Fee	\$15	\$15	\$15.50	\$15.50
	Patron Exec Green Fee	\$12	\$12	\$12.50	\$12.50
	Sr/Jr Exec Green Fee	\$10.50	\$10.50	\$11	\$11
Weekend	18 Hole Green Fee	\$42	\$42	\$43	\$43
Friday	9 Hole Green Fee	\$27	\$27	\$29	\$29
Noon to 5 pm	Patron 18 Green Fee	\$35	\$35	\$36	\$36
Sat - Sun	Patron 9 Green Fee	\$19.50	\$19.50	\$20	\$20
6 am to Noon	Sr/Jr 18 Green Fee	\$29.50	\$29.50	\$31	\$31
	Sr/Jr 9 Green Fee	\$18	\$18	\$19	\$19
	Executive Green Fee	\$18	\$18	\$18.50	\$18.50
	Patron Exec Green Fee	\$15	\$15	\$15.50	\$15.50
	Sr/Jr Exec Green Fee	\$10.50	\$10.50	\$11	\$11
Golf Car	18 Hole Car Fee	\$18.50	\$18.50	\$19	\$19
Rentals	9 Hole Car Fee	\$11.50	\$11.50	\$12	\$12
	Executive Car Fee	\$6.50	\$6.50	\$7	\$7
	Sr. 18 Hole Car Fee	\$14	\$14	\$14.50	\$14.50
	Sr. 9 Hole Car Fee	\$10	\$10	\$10.50	\$10.50
	Sr. Exec Car Fee	\$6	\$6	\$6.50	\$6.50
Evening	Twilight Green Fee	\$27	\$27	\$27	\$27
5 pm to end	Patron Twilight Green Fee	\$21.50	\$21.50	\$21.50	\$21.50
	Sr/Jr Twilight Green Fee	\$18	\$18	\$18	\$18
	Twilight Car Fee	\$15.50	\$15.50	\$15.50	\$15.50
	Sr. Twilight Car Fee	\$11.50	\$11.50	\$11.50	\$11.50
Advertised/Promotional	18 Hole Green Fee	\$25	\$25	\$27.50	\$27.50
Young Adult	9 Hole Green Fee	\$16	\$16	\$17.50	\$17.50
	Executive Green Fee	\$13	\$13	\$14.50	\$14.50
	18 Hole Car Fee	\$14	\$14	\$15.50	\$15.50
	9 Hole Car Fee	\$10	\$10	\$11	\$11
	Executive Car Fee	\$6	\$6	\$7	\$7
Foot Golf	Adult	\$12	\$12	\$12	\$12
	Youth	\$10	\$10	\$10	\$10
	Ball Rental	\$3	\$3	\$3	\$3

- All fees include tax

VMCC/Grove

Item	Frequency	2017 Resident	2017 Non-Res	2018 Resident	2018 Non-Res
National Guard Room A, B, C	Per Hour	\$33	\$43	\$37	\$47
Community Room 1, 2, 3	Per Hour	\$38	\$48	\$42	\$52
Community Room Kitchen	Per day	\$25	\$25	\$25	\$25
PA System	Per day	\$25	\$25	\$25	\$25
Screen	Per day	\$15	\$15	\$15	\$15
TV/DVD/Projector	Per day	\$25	\$25	\$25	\$25
Room Rental Attendant	Per Hour	\$35	\$35	\$35	\$35
Gymnasium – Athletic	Per Hour	\$65	\$75	\$69	\$79
Gymnasium – Weekday (M-F)	Per Hour	\$85	\$95	\$90	\$100
Gymnasium – Wedding Package (0-300 ppl)	Per Day	\$850	\$1,200	\$900	\$1,300
National Guard Gym Kitchen	Per day	\$85	\$85	\$90	\$90
Catering	Flat fee			\$50	\$50
Alcohol	Flat fee			\$50	\$50
West Rink-Turf	Per Hour	\$85	\$90	\$90	\$100
Childcare Drop-In Rate(non-member)	Per Hour/per child	\$3.50	\$3.50	\$3.50	\$3.50
Childcare Employee Rate	Per Hour/per child	\$1	\$1	\$1	\$1
Membership – Single Enrollment Fee	One-Time	\$49	\$59	\$49	\$59
Membership – Dual Enrollment Fee	One-Time	\$49	\$59	\$49	\$59
Membership – Household Enrollment Fee	One-Time	\$49	\$59	\$49	\$59
Membership – Senior (60+)	Annual	\$459	\$459	\$459	\$459
Membership – Single	Annual	\$592	\$592	\$592	\$592
Membership – Dual	Annual	\$796	\$796	\$796	\$796
Membership – Household (up to 6)	Annual	\$918	\$918	\$918	\$918
Membership – PCA added to household	Annual	\$204	\$204	\$204	\$204
Membership – Senior (60+)	Monthly	\$45	\$45	\$45	\$45
Membership – Single	Monthly	\$58	\$58	\$58	\$58
Membership – Dual	Monthly	\$78	\$78	\$78	\$78
Membership – Household (up to 6)	Monthly	\$90	\$90	\$90	\$90
Membership – PCA added to household	Monthly	\$17	\$17	\$17	\$17
City Emp. Membership – Senior (60+)	Monthly	\$37	\$37	\$37	\$37
City Emp. Membership – Single	Monthly	\$47	\$47	\$47	\$47
City Emp. Membership – Dual	Monthly	\$67	\$67	\$67	\$67
City Emp. Membership – Household	Monthly	\$77	\$77	\$77	\$77
Corporate Membership – Senior	Monthly	\$41	\$41	\$41	\$41
Corporate Membership – Single	Monthly	\$53	\$53	\$53	\$53
Corporate Membership - Dual	Monthly	\$71	\$71	\$71	\$71
Corporate Membership - Household	Monthly	\$82	\$82	\$82	\$82
Military Active - Single	Monthly	\$47	\$47	\$47	\$47
Military Active – Senior	Monthly	\$37	\$37	\$37	\$37
Military Active – Dual	Monthly	\$67	\$67	\$67	\$67
Military Active – Household	Monthly	\$77	\$77	\$77	\$77
Military Vet – Senior	Monthly	\$41	\$41	\$41	\$41
Military Vet – Single	Monthly	\$53	\$53	\$53	\$53
Military Vet – Dual	Monthly	\$71	\$71	\$71	\$71
Military Vet – Household	Monthly	\$82	\$82	\$82	\$82
Daily Admission after 5:30pm (waterpark)	Daily	\$5	\$5	\$6	\$6
Daily Admission before Noon (waterpark/features off)	Daily	\$3	\$3	\$3	\$3
Daily Admission after 8 pm	Daily	\$5	\$5	\$6	\$6
Daily Admission – Youth/Senior	Daily	\$8	\$8	\$6	\$6

Daily Admission – Adult (Ages 10+)	Daily	\$8	\$8	\$9	\$9
Daily Admission – Observer	Daily			\$5	\$5
10-time Pass – Youth/Senior	10 Visits	\$70	\$70	\$80	\$80
10-time Pass – Adult	10 Visits	\$75	\$75	\$85	\$85
ATM Transaction Fee	Per Transaction	\$3	\$3	\$3	\$3
Open Gym	Daily	\$3	\$5	\$3	\$5
Open Gym – Members	Daily	Free		Free	Free
Open Pickleball-Members	Daily	\$3	\$3	\$3	\$5
Open Pickleball-Members	10 Visits	\$25	\$25	\$25	\$25
Open Pickleball-Non Members	Daily	\$5	\$5	\$5	\$5
Open Pickleball-Non Members	10 Visits	\$40	\$40	\$40	\$40
Fitness Studio Rental	Per Hour	\$50	\$50	\$55	\$65
Fitness TRX Room Rental	Per Hour	\$35	\$35	\$40	\$50
Open Skate – adults (18 & older)	Daily	\$5	\$5	\$5	\$5
Open Skate – children (17 & under)	Daily	\$4	\$4	\$4	\$4
Open Skate – Members	Daily	Free	Free	Free	Free
10-time Pass (Open Skate)	10 Visits	\$45	\$45	\$45	\$45
10-time Pass (Open Hockey)	10 Visits	\$54	\$54	\$54	\$54
Daily Admission-Open Freestyle	Daily	\$8	\$8	\$8	\$8
10-time Pass-Open Freestyle	10 Visits	\$70	\$70	\$70	\$70
Skate Rental	Daily	\$2	\$2	\$2	\$2
Open Hockey	Daily	\$6	\$6	\$6	\$6
Shower Rental	Daily	\$4	\$4	\$5	\$5
Towel Rental	Daily	\$1	\$1	\$1	\$1
Locker Rental (small)	Annual	\$100	\$100	\$100	\$100
Locker Rental (large)	Annual	\$200	\$200	\$200	\$200
Locker Rental (small)	Monthly	\$11	\$11	\$11	\$11
Locker Rental (large)	Monthly	\$22	\$22	\$22	\$22
Birthday Party Rental	Per use	Fri: \$150/ Wknd: \$195	Fri: \$150/ Wknd: \$195	Fri: \$175/ Wknd: \$205	Fri: \$175/ Wknd: \$205
Individual Lane Line	Per Hour	\$12.50	\$12.50	\$15	\$15
Leisure Pool	Per Hour	\$495	\$495	\$495	\$495
Lap Pool	Per Hour	\$99	\$99	\$125	\$125
Diving Well	Per Hour	\$71.50	\$71.50	\$90	\$90
Swim Event (Lap and Diving)	Per Hour	\$137.50	\$137.50	\$170.50	\$170.50

- All month-to-month members can receive a 15% discount off 12 months paid in full (fee listed reflects discount)
- All fees include tax
- Pool rentals includes lifeguard fee(s)
- Swim Event rental does not include lifeguard fee(s)
- Employee membership rates are also available to City Council members and active Commission members.
- Manager has discretion to negotiate off-peak time usage rates for swimming pools.
- Seasonal staff working at the VMCC are afforded free use of the facility during their employment this does not include their spouse or family members.

ICE TIME	Monday – Friday		Saturday & Sunday	
	Prime	Non Prime	Prime	Non Prime
	3:00pm – 9:59pm	Before 3:00pm and after 10pm	7:00am – 8:59pm	Before 7:00am and after 9:00pm
October 1, 2018 – March 12, 2019	\$215	\$145	\$215	\$145
	Monday – Friday		Saturday & Sunday	
	Prime	Non Prime	Prime	Non Prime
	5:00pm – 8:59pm	Before 5:00pm and after 9:00pm	9:00am – 7:59pm	Before 9:00am and after 8:00pm
March 13, 2018 – September 30, 2018	\$155	\$140	\$155	\$140

- * - Certain restrictions apply to availability, reservations, and terms of usage.
- Fees do not include tax
- Manager has discretion to negotiate early and late ice time rates

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

**Consider Pay Request No 4 – Bid Package 1 – East Rink Floor Project – City Project
2017-05**

Meeting Date: November 27, 2017
 Item Type: Consent Agenda
 Contact: Eric Carlson – 651.450.2587
 Prepared by: Eric Carlson
 Reviewed by: Shannon Battles

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

The Council is asked to approve pay request #4 for Bid Package #1 for the East Rink Floor Project to Cimco Refrigeration in the amount of \$28,025. The overall project is funded with an interest-free loan from the Central Equipment Fund which will be repaid over a 10-year period from the Host Community Fund.

SUMMARY

On April 24, 2017, the Council approved the East Rink Floor Project. There were three (3) different bid packages awarded for the project with Bid Package 1 being awarded to Cimco Refrigeration Inc. in the amount of \$472,000.

Bid Package 1 includes the complete replacement of the existing concrete floor to include a new sub-floor heating system/piping, new HDPE floor piping and a concrete floor as well as the installation of a new valve which is currently stuck in a closed position.

The overall project budget is as follows:

Item	Description	Amount
Bid Package 1 (Base)	East Rink Floor Replacement (HDPE Pipe)	\$472,000
Bid Package 2 (Base + Alts 3, 4, 7)	New Dasher Boards/New Glass	\$105,400
Bid Package 2 (Change Order #1)	Repair Dasher/Extra Dasher	\$3,072.98
Bid Package 2 (Change Order #2)	Glass Railing Code Issue	\$5,475.75
Bid Package 3 (Base)	ADA Players Bench Modifications	\$49,500
Construction Contingency	8% Contingency (started at \$50,000)	\$41,451.27
Consultant(s)	Engineering, Design, Construction Fees	\$60,900
Total Project		\$737,800

Contractor's Application for Payment No.

4

Application Period: Through 9/30/17		Application Date: September 14, 2017
To (Owner): City of Inver Grove Heights	From (Contractor): Cimco Refrigeration	Via (Engineer): Stevens Engineers, Inc.
Project: Veterans Memorial Community Center: Bid Package 1 - East Rink Floor Replacement	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Proj No.: 900-16-269

Change Order Summary

Approved Change Orders		
Number	Additions	Deductions
TOTALS		
NET CHANGE BY		
CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE.....	\$ 472,000.00
2. Net change by Change Orders.....	\$ -
3. Current Contract Price (Line 1 ± 2).....	\$ 472,000.00
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate).....	\$ 472,000.00
5. RETAINAGE:	
a. 5% X \$472,000.00 Work Completed.....	\$ 23,600.00
b. X Stored Material.....	\$ -
c. Total Retainage (Line 5a + Line 5b).....	\$ 23,600.00
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c).....	\$ 448,400.00
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$ 420,375.00
8. AMOUNT DUE THIS APPLICATION.....	\$ 28,025.00
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above).....	\$ 23,600.00

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

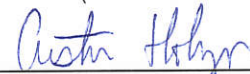
By: See Attached

Date:

Payment of: \$ 28,025.00

(Line 8 or other - attach explanation of the other amount)

is recommended by:


(Engineer)

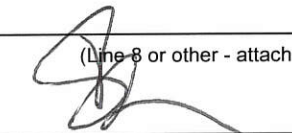
11/13/17
(Date)

Payment of:

\$ 28,025.00

(Line 8 or other - attach explanation of the other amount)

is approved by:


(Owner)

11/14/17
(Date)

Approved by:

N/A
Funding Agency (if applicable)

N/A
(Date)

Progress Estimate

Contractor's Application for Payment

[illegible]

TOROMONT**CIMCO**

Page 1 of 1

CITY OF INVER GROVE HEIGHTS
8150 BARBARA AVE
INVER GROVE HEIGHTS MN 55077
USA

Ship-to address

VETERANS MEMORIAL COMMUNITY
CENTER
8055 BARBARA AVE E
INVER GROVE HEIGHTS MN 55077
USA

Payment Terms: Due net 10 days**Delivery Terms:** FOB**REMIT TO:** Cimco Refrigeration Inc.
2502 Commercial Park Dr, Mobile AL 36606, USA**Invoice 90588295**

Invoice Date	09/25/2017
Purchase Order	Agreement
Document Type	ZFPR
Order No.	4542
Order Date	06/04/2017
Customer No.	124213
Currency	USD
Invoice Amount	28,025.00
Inquiry Phone No.	251 471-2426
Past due amounts are subject to interest charges of 2.0% per month (24% per annum)	

STEVENS ENGINEERS PROJECT # 900-16-269
BID PACKAGE 1: EAST RINK FLOOR REPLACEMENT

Project:	A.1200149 Inver Grove-Veterans Memorial-Rink Floor
Price:	472,000.00
Billing Mode:	Progress billing

Labour and Material to Date	448,400.00
Less Previous Billings	420,375.00

Subtotal	28,025.00
Tax	0.00
Invoice Amount	28,025.00
Tax Status	1 - Tax Extra - Standard

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF 1 PAGES

TO: STEVENS ENGINEERS
2211 O'NEIL ROAD
HUDSON, WI 54016
FROM : CIMCO REFRIGERATION INC
2502 COMMERCIAL PARK DRIVE
MOBILE AL 36606

PROJECT: 900-16-269
BID PACKAGE 1:
EAST RINK FLOOR
REPLACEMENT
INVER GROVE HEIGHTS, MN

APPLICATION NO: 4
PERIOD TO: 9/30/2017
PROJECT NO: A1200149

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐
☐ File

CONTRACT FOR: VETERANS MEMORIAL CIVIC CENTER

CONTRACT DATE: April 25, 2017

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM\$ 472,000.00
2. Net change by Change Orders\$ 0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2).....\$ 472,000.00
4. TOTAL COMPLETED & STORED TO DATE\$ 472,000.00
(Column G on G703)
5. RETAINAGE:
a. 5 % of Completed Work\$ 23,600.00
(Column D + E on G703)
b. % of Stored Material\$ 0.00
(Column F on G703)
Total Retainage (Lines 5a + 5b or\$ 23,600.00
Total in Column I of G703)
6. TOTAL EARNED LESS RETAINAGE\$ 448,400.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT.....\$ 420,375.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE\$ 28,025.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE.....\$ 23,600.00
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: Jeffrey W. Nank

Date: 9/14/17

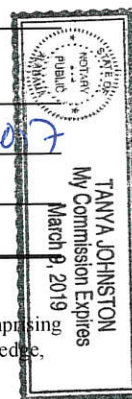
State of: Alabama

County of: Mobile

Subscribed and sworn to before me this 14th day of September, 2017

Notary Public: Tanya Johnston

My Commission expires: 03/09/2019



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED\$ 0.00

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____

Date: _____

PROJECT MANAGER'S CERTIFICATE FOR PAYMENT

By: _____

Date: _____

By: _____

Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G703 PAGE 1 OF 1			Stevens Engineering Veterans Memorial Civic Center - Inver Grove Heights, MN			APPLICATION #: 4			
AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification attached.						APPLICATION DATE: 9/25/2017			
In tabulation below, amounts are stated in nearest dollar.						PERIOD TO: 9/30/2017			
Use column 1 on contracts where variable retainage for line items may apply.						PROJECT #: A1200149			
A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULE VALUE	D WORK PREVIOUS TOTAL	E COMPLETE THIS PERIOD	F MATERIAL STORED THIS PERIOD	G COMPLETE STORED D + E + F	H % G/C	I BALANCE TO FINISH C - G	J RETAINAGE 5%
1	ENGINEERING	\$16,000	\$16,000	\$0	\$0	\$16,000	100%	\$0	\$800
2	TRANSMISSION MAINS	\$15,500	\$15,500	\$0	\$0	\$15,500	100%	\$0	\$775
3	FLOOR MATERIALS	\$82,200	\$82,200	\$0	\$0	\$82,200	100%	\$0	\$4,110
4	FLOOR INSULATION	\$27,200	\$27,200	\$0	\$0	\$27,200	100%	\$0	\$1,360
5	SECONDARY REFRIGERANT	\$6,000	\$0	\$6,000	\$0	\$6,000	100%	\$0	\$300
6	MECHANICAL INSTALLATION	\$115,000	\$115,000	\$0	\$0	\$115,000	100%	\$0	\$5,750
7	RINK EXCAVATION/DEMOLITION	\$56,900	\$56,900	\$0	\$0	\$56,900	100%	\$0	\$2,845
8	CIVIL SUB CONTRACTOR	\$128,200	\$128,200	\$0	\$0	\$128,200	100%	\$0	\$6,410
9	ELECTRICAL SUBCONTRACTOR	\$6,000	\$1,500	\$4,500	\$0	\$6,000	100%	\$0	\$300
10	START UP COMMISSIONING/SUPER/COMM	\$19,000	\$0	\$19,000	\$0	\$19,000	100%	\$0	\$950
11									
12									
	TOTAL VALUES	\$472,000	\$442,500	\$29,500	\$0	\$472,000	100%	\$0	\$23,600

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Approval of Therapeutic Massage Business and Individual Massage Therapist

Meeting Date: November 27, 2017
 Item Type: Consent
 Contact: 651-450-2513
 Prepared by: Michelle Tesser
 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: Consider approval of an massage business license application of new massage business Health 1st Chiropractic and Wellness Center and individual massage therapist license for Dorina Lynn Costa at the new premise located at 2922 Upper 55th Street East, Inver Grove Heights.

SUMMARY:

An application has been submitted by Virginia A. Rivas-Castro for a therapeutic massage business and individual therapeutic massage license for Dorina Lynn Costa. The massage therapist applicant has worked as a massage practitioner for the past several years for this business. Health 1st Chiropractic is a relocation from the City of South St. Paul.

Ms. Virginia A. Rivas-Castro and Ms. Dorina Lynn Costa submitted the appropriate fees and insurance documentation as required by City Code. Ms. Costa completed the required number of hours of therapeutic massage training, provided an insurance certificate, and is a member in good standing of a recognized professional therapeutic massage organization.

A background investigation on the applicants revealed no basis for the denial of the request.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th and Concord Wet Extended Detention Basin)

Meeting Date: November 27, 2017
 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: Storm Water Utility Fund, PSIG Grants (MPCA/PFA) |

PURPOSE/ACTION REQUESTED

Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th and Concord Wet Extended Detention Basin).

SUMMARY

The improvements were ordered as part of the 2017 Stormwater Management Program. The contract was awarded in the amount of \$228,633.00 to Meyer Contracting, Inc., on July 10, 2017 for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th and Concord Wet Extended Detention Basin).

The Final Compensating Change Order balances the value of work completed and total payments made to the contractor. It accounts for miscellaneous increases and decreases in contract quantities listed in the final payment voucher form. Funding comes from the PSIG Grant and the Storm Water Utility Fund.

The contractor has completed the work through October 31, 2017 in accordance with the contract plans and specifications.

I recommend approval of Final Compensating Change Order No. 1 in the amount of \$1,064.25, (for a final contract amount of \$229,697.25), Final Pay Voucher No. 2 in the amount of \$17,170.18, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th and Concord Wet Extended Detention Basin).

TJK/nh

Attachments: Final Compensating Change Order No. 1
 Final Pay Voucher No. 2
 Engineer's Final Report
 Resolution Accepting Work

FINAL COMPENSATING CHANGE ORDER NO. 1

2017 PAVEMENT MANAGEMENT PROGRAM

CITY PROJECT NO. 2016-01

STORMWATER TREATMENT FOR MISSISSIPPI RIVER DISCHARGE (78TH AND CONCORD WET EXTENDED DETENTION BASIN)

Owner: City of Inver Grove Heights 8150 Barbara Avenue Inver Grove Heights, MN 55077	Date of Issuance: November 27, 2017
Contractor: Meyer Contracting, Inc. 11000 93rd Avenue North Maple Grove, MN 55369	Engineer: City Engineer

PURPOSE OF CHANGE ORDER	
Final compensating amount to balance value of work completed and total payments made to the contractor. Accounts for miscellaneous increases and decreases in contract quantities listed in the final payment voucher form.	
Total Value of Work Completed to Date	\$229,697.25
Contract Amount to Date	\$228,633.00
Compensating Change Order Amount	\$1,064.25

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Contract Price: \$228,633.00	Original Contract Time:
Previous Change Orders \$0.00	Net Change from Previous Change Orders
Contract Price Prior to this Change Order \$228,633.00	Contract Time Prior to this Change Order
Net Increase of this Change Order \$1,064.25	Net Increase (Decrease) of Change Order
Contract Price with all Approved Change Orders \$229,697.25	Contract Time with Approved Change
Recommended By:  Nick Hahn, Senior Engineering Technician	Approved By: _____ Meyer Contracting, Inc.

Approved By:

Approved By:

Date of Council Action:


For Thomas J. Kaldunski, City Engineer

George Tourville, Mayor

November 27, 2017

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

ESTIMATE NO: 2 (Two)
DATE: November 27, 2017
PERIOD ENDING: October 31, 2017
CONTRACT: Stormwater Treatment for Mississippi River Discharge
(78th and Concord Wet Extended Detention Basin)
PROJECT NO: 2016-01

TO: Meyer Contracting, Inc.
11000 93rd Avenue North
Maple Grove, MN 55369

Original Contract Amount\$228,633.00
Total Addition (Final Compensating Change Order No. 1)\$1,064.25
Total Deduction\$0.00
Total Contract Amount.....\$229,697.25
Total Value of Work to Date.....\$229,697.25
Less Retained (0%)\$0.00
Less Previous Payment.....\$212,527.07
Total Approved for Payment this Voucher.....\$17,170.18
Total Payments including this Voucher\$229,697.25

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above stated amount for work performed through October 31, 2017.

Signed by:  November 27, 2017
For Thomas J. Kaldunski, City Engineer

Signed by: _____ Date
Meyer Contracting, Inc.

Signed by: _____ November 27, 2017
George Tourville, Mayor

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ENGINEER'S REPORT OF FINAL ACCEPTANCE

CITY PROJECT NO. 2016-01
STORMWATER TREATMENT FOR MISSISSIPPI RIVER DISCHARGE (78TH AND CONCORD WET
EXTENDED DETENTION BASIN)

November 27, 2017

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 Meyer Contracting, Inc. The work consisted of the construction of a wet extended detention basin and associated storm water treatment facilities.

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	\$228,633.00
CHANGE ORDERS	\$1,064.25
FINAL CONTRACT AMOUNT	\$229,697.25
FINAL VALUE OF WORK	\$229,697.25
PREVIOUS PAYMENTS	\$212,527.07
BALANCE DUE	\$17,170.18

Sincerely,


For Thomas J. Kaldunski, P.E.
City Engineer

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

**RESOLUTION ACCEPTING WORK OF MEYER CONTRACTING, INC. AND AUTHORIZING FINAL
PAYMENT IN THE AMOUNT OF \$17,170.18**

**CITY PROJECT NO. 2016-01 – STORMWATER TREATMENT FOR MISSISSIPPI RIVER
DISCHARGE (78TH AND CONCORD WET EXTENDED DETENTION BASIN)**

RESOLUTION NO. _____

WHEREAS, pursuant to a written contract with the City of Inver Grove Heights dated July 10, 2017, Meyer Contracting, Inc. satisfactorily completed improvements and appurtenances for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th and Concord Wet Extended Detention Basin).

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 27th day of November, 2017.

AYES:

NAYS:

George Tourville, Mayor

ATTEST:

Michelle Tesser, City Clerk

Final Pay Estimate No.: 2

2016-01 78TH AND CONCORD STORMWATER TREATMENT
CITY OF INVER GROVE HEIGHTS, MINNESOTA

WORK COMPLETED THROUGH OCTOBER 31, 2017

ITEM NO.	ITEM	UNIT PRICE	AS-BID		PREVIOUS ESTIMATE		COMPLETED TO DATE				
			ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT			
SCHEDULE 1											
1	2021.501 MOBILIZATION	\$11,205.00	1	LS	\$11,205.00	1.00	LS	\$11,205.00	1.00	LS	\$11,205.00
2	2101.601 DEWATERING (AND CONTROL OF WATER)	\$2,550.00	1	LS	\$2,550.00	0.00	LS	\$0.00	1.00	LS	\$2,550.00
3	2563.535 TRAFFIC CONTROL	\$2,000.00	1	LS	\$2,000.00	1.00	LS	\$2,000.00	1.00	LS	\$2,000.00
4	2573.535 STABILIZED CONSTRUCTION EXIT (ROCK CONSTRUCTION ENTRANCE)	\$750.00	1	LS	\$750.00	0.00	LS	\$0.00	1.00	LS	\$750.00
5	2573.533 SEDIMENT CONTROL LOG	\$2.30	300	LF	\$690.00	0.00	LF	\$0.00	0.00	LF	\$0.00
6	2573.502 SILT FENCE, TYPE MS	\$2.00	550	LF	\$1,100.00	501.00	LF	\$1,002.00	520.00	LF	\$1,040.00
7	2101.511 CLEARING AND GRUBBING (DENSE)	\$10,950.00	1	LS	\$10,950.00	1.00	LS	\$10,950.00	1.00	LS	\$10,950.00
8	2104.501 REMOVE CHAIN LINK FENCE	\$4.50	350	LF	\$1,575.00	44.00	LF	\$198.00	60.00	LF	\$270.00
9	2105.525 COMMON TOPSOIL BORROW (ON-SITE) (EV)	\$19.75	650	CY	\$12,837.50	650.00	CY	\$12,837.50	650.00	CY	\$12,837.50
10	2105.501 COMMON EXCAVATION (P) (EV)	\$3.87	5000	CY	\$19,350.00	5,000.00	CY	\$19,350.00	5000.00	CY	\$19,350.00
11	5105.507 SUBGRADE EXCAVATION (AT LINER AND INFILTRATION BENCH) (P) (EV)	\$3.20	800	CY	\$2,560.00	800.00	CY	\$2,560.00	800.00	CY	\$2,560.00
12	2105.607 HAUL EXCESS MATERIAL (DISPOSE OFFSITE AT LOCATION DETERMINED BY CONTRACTOR) (P) (EV)	\$6.60	4900	CY	\$32,340.00	5,800.00	CY	\$38,280.00	5800.00	CY	\$38,280.00
13	2105.607 HAUL AND STOCKPILE EXCESS MATERIAL (STOCKPILE SOIL AND BOULDERS ON ADJACENT PRIVATE PARCELS) (P) (EV)	\$1.00	900	CY	\$900.00	0.00	CY	\$0.00	0.00	CY	\$0.00
14	2105.607 IMPORT CLAY LINER	\$43.75	600	CY	\$26,250.00	600.00	CY	\$26,250.00	600.00	CY	\$26,250.00
15	2451.513 SAND INFILTRATION TRENCH (FINE FILTER AGGREGATE) (P) (EV)	\$52.00	200	CY	\$10,400.00	200.00	CY	\$10,400.00	200.00	CY	\$10,400.00
16	2105.601 SITE GRADING	\$2,847.00	1	LS	\$2,847.00	1.00	LS	\$2,847.00	1.00	LS	\$2,847.00
17	2501.502 RANDOM RIPRAP CLASS III	\$74.25	160	TON	\$11,880.00	150.54	TON	\$11,177.60	166.12	TON	\$12,334.41
18	2105.604 GEOTEXTILE FABRIC, TYPE III (P)	\$0.75	180	SY	\$135.00	180.00	SY	\$135.00	180.00	SY	\$135.00
19	2451.603 GRANULAR BEDDING (AT 60" DIA. STORM SEWER) (P)	\$25.25	16	LF	\$404.00	16.00	LF	\$404.00	16.00	LF	\$404.00
20	2451.603 GRANULAR BEDDING (AT 24" DIA. STORM SEWER) (P)	\$18.25	146	LF	\$2,664.50	146.00	LF	\$2,664.50	146.00	LF	\$2,664.50
21	2104.509 REMOVE DRAINAGE STRUCTURE	\$250.00	1	LF	\$250.00	1.00	LF	\$250.00	1.00	LF	\$250.00
22	2104.501 REMOVE SEWER PIPE (STORM) (30" RCP AND SMALLER) (P)	\$33.25	100	EA	\$3,325.00	100.00	EA	\$3,325.00	100.00	EA	\$3,325.00
23	2501.602 BULKHEAD CULVERT (WITH CONCRETE)	\$572.50	2	EA	\$1,145.00	2.00	EA	\$1,145.00	2.00	EA	\$1,145.00
24	2104.501 REMOVE SEWER PIPE (STORM) (60" RCP) (P)	\$52.00	24	EA	\$1,248.00	24.00	EA	\$1,248.00	24.00	EA	\$1,248.00
25	2502.602 CONNECT INTO DRAINAGE STRUCTURE (CORE DRILL 18" INTO 60" RCP STRUCTURE AT CATTLE PASS)	\$3,719.00	1	EA	\$3,719.00	1.00	EA	\$3,719.00	1.00	EA	\$3,719.00
26	2506.602 DRAINAGE STRUCTURE DESIGN SPECIAL STR01 (96" DIA. PRECAST CONCRETE MANHOLE, COMPLETE)	\$15,685.00	1	EA	\$15,685.00	1.00	EA	\$15,685.00	1.00	EA	\$15,685.00
27	2506.602 DRAINAGE STRUCTURE DESIGN SPECIAL STR02 (48" DIA. PRECAST CONCRETE MANHOLE WITH SUMP AND POROUS WA	\$9,897.00	1	EA	\$9,897.00	1.00	EA	\$9,897.00	1.00	EA	\$9,897.00
28	2506.602 DRAINAGE STRUCTURE DESIGN SPECIAL STR03 (48" DIA. PRECAST CONCRETE MANHOLE WITH WEIR AND ORIFICE, COM	\$6,642.00	1	EA	\$6,642.00	1.00	EA	\$6,642.00	1.00	EA	\$6,642.00
29	2501.511 60" RC PIPE CULVERT CLASS IV (P)	\$457.00	16	LF	\$7,312.00	16.00	LF	\$7,312.00	16.00	LF	\$7,312.00
30	2501.511 24" CP PIPE CULVERT (HDPE DUAL-WALL, SMOOTH INTERIOR) (P)	\$97.25	80	LF	\$7,780.00	80.00	LF	\$7,780.00	80.00	LF	\$7,780.00
31	2501.515 24" RC PIPE APRON	\$2,618.00	1	EA	\$2,618.00	1.00	EA	\$2,618.00	1.43	EA	\$3,743.74
32	2501.511 18"RC PIPE CULVERT CLASS III (P)	\$52.75	66	LF	\$3,481.50	66.00	LF	\$3,481.50	66.00	LF	\$3,481.50
33	2501.515 18" RC PIPE APRON	\$1,180.00	1	EA	\$1,180.00	1.00	EA	\$1,180.00	1.00	EA	\$1,180.00
34	2564.537 STEESIGN TYPE SPECIAL	\$800.00	1	EA	\$800.00	1.00	EA	\$800.00	1.00	EA	\$800.00
35	2575.523 EROSION CONTROL BLANKET	\$1.20	2500	SY	\$3,000.00	3,993.00	SY	\$4,791.60	3993.00	SY	\$4,791.60
36	2575.501 SEEDING (MNDOT 21-111 OATS COVER CROP)	\$150.00	1	ACRE	\$150.00	1.00	ACRE	\$150.00	1.00	ACRE	\$150.00
37	2575.501 SEEDING (MNDOT 22-111 TWO-YEAR STABILIZATION)	\$200.00	1	ACRE	\$200.00	1.00	ACRE	\$200.00	1.00	ACRE	\$200.00
38	2575.501 SEEDING (MIX 25-121 SANDY GENERAL ROADSIDE)	\$225.00	1	ACRE	\$225.00	1.00	ACRE	\$225.00	1.00	ACRE	\$225.00
39	2575.605 MULCH MATERIAL TYPE 1 (STRAW)	\$400.00	0.5	ACRE	\$200.00	0.50	ACRE	\$200.00	0.50	ACRE	\$200.00
40	2557.603 CHAIN LINK FENCE, COMPLETE	\$18.25	350	LF	\$6,387.50	44.00	LF	\$803.00	60.00	LF	\$1,095.00

\$228,633.00 \$223,712.70 \$229,697.25

Estimated Contract Cost to Date

Original Contract Amount \$228,633.00
Final Compensating Change Order No. 1 \$1,064.25
Contract Work Completed to Date \$229,697.25

Completed Work \$229,697.25
Retainage (0%) \$0.00

Previous Payments \$212,527.07

Amount Due This Payment 2 \$17,170.18

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Pay Voucher No. 4 for City Project No. 2016-09E – Bancroft Way Area Reconstruction

Meeting Date: November 27, 2017
 Item Type: Consent
 Contact: Thomas J. Kaldunski, 651.450.2572
 Prepared by: Steve W. Dodge, Asst. City Engineer
 Reviewed by: Scott D. Thureen, Public Works Director

STW

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, Water Fund, Sewer Fund

PURPOSE/ACTION REQUESTED

Consider Pay Voucher No. 4 for City Project No. 2016-09E – Bancroft Way Area Reconstruction.

SUMMARY

The improvements were ordered as part of the 2017 Pavement Management Program. The contract was awarded in the amount of \$1,356,207.30 to McNamara Contracting, Inc., on May 8, 2017 for 2017 Pavement Management Program, City Project No. 2016-09E – Bancroft Way Area Reconstruction. Change Order No. 1 reduced bid quantities in Bid Schedule 5 – Rain Gardens, for a revised total contract of \$1,312,241.30.

The project is substantially complete, and the retainage is being reduced from 5% to 1%.

I recommend approval of Pay Voucher No. 4, in the amount of \$242,142.72 for work on City Project No. 2016-09E – Bancroft Way Area Reconstruction.

TJK/nh

Attachments: Pay Voucher No. 4

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

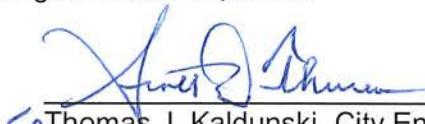
ESTIMATE NO: 4 (Four)
DATE: November 27, 2017
PERIOD ENDING: October 31, 2017
CONTRACT: 2017 Pavement Management Program
PROJECT NO: 2016-09E – Bancroft Way Area Reconstruction

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

Original Contract Amount\$1,356,207.30
Total Addition (Change Order No. 2)\$16,038.00
Total Deduction (Change Order No. 1)(\$43,966.00)
Total Contract Amount.....\$1,328,279.30
Total Value of Work to Date.....\$1,170,715.61
Less Retained (1%)\$11,707.16
Less Previous Payment.....\$916,865.73
Total Approved for Payment this Voucher.....\$242,142.72
Total Payments including this Voucher\$1,159,008.45

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above stated amount for work performed through October 31, 2017.

Signed by:  November 27, 2017
for Thomas J. Kaldunski, City Engineer

Signed by: _____
McNamara Contracting, Inc. Date

Signed by: _____
George Tourville, Mayor November 27, 2017

PAYMENT DETAIL LIST

Contract: CP 2016-09E
 Owner: City of Inver Grove Heights
 Projects: Bancroft Way Area Reconstruction

SEH Job No: INVER 138128

Schedule: 1
 Description: 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	LS	1.00	1.00	\$ 15,675.00	\$ 15,675.00	\$ 15,675.00
2	2100.601	NIGHT WORK	EACH	3.00		\$ 100.00	\$ 300.00	\$ -
3	2101.502	CLEARING	TREE	1.00		\$ 450.00	\$ 450.00	\$ -
4	2101.507	GRUBBING	TREE	1.00		\$ 300.00	\$ 300.00	\$ -
5	2104.501	REMOVE CURB AND GUTTER	LF	7165.00	7121.00	\$ 3.00	\$ 21,495.00	\$ 21,363.00
6	2104.503	REMOVE BITUMINOUS PAVEMENT	SF	200.00	210.00	\$ 0.01	\$ 2.00	\$ 2.10
7	2104.505	REMOVE BITUMINOUS DRIVEWAY OR TRAIL PAVEMENT	SY	1674.00	1524.00	\$ 5.00	\$ 8,370.00	\$ 7,620.00
8	2104.505	REMOVE CONCRETE DRIVEWAY PAVEMENT	SY	273.00	328.00	\$ 16.00	\$ 4,368.00	\$ 5,248.00
9	2104.523	SALVAGE SIGN TYPE C	EACH	7.00	7.00	\$ 27.00	\$ 189.00	\$ 189.00
10	2104.523	SALVAGE SIGN TYPE SPECIAL	EACH	1.00	1.00	\$ 27.00	\$ 27.00	\$ 27.00
11	2105.501	COMMON EXCAVATION (EV) (P)	CY	14336.00	14336.00	\$ 15.00	\$ 215,040.00	\$ 215,040.00
12	2105.507	SUBGRADE EXCAVATION (EV)	CY	200.00	29.00	\$ 20.00	\$ 4,000.00	\$ 580.00
13	2105.522	SELECT GRANULAR BORROW (CV)	CY	11372.00	10907.00	\$ 13.50	\$ 153,522.00	\$ 147,244.50
14	2105.541	STABILIZING AGGREGATE	CY	100.00		\$ 35.00	\$ 3,500.00	\$ -
15	2105.604	GEOTEXTILE FABRIC, TYPE V	SY	17057.00	16347.00	\$ 1.00	\$ 17,057.00	\$ 16,347.00
16	2123.610	STREET SWEEPING (WITH PICKUP BROOM)	hour	120.00	7.25	\$ 65.00	\$ 7,800.00	\$ 471.25
17	2130.601	WATER USAGE ALLOWANCE	LS	1.00		\$ 2,500.00	\$ 2,500.00	\$ -
18	2211.501	AGGREGATE BASE (CV) CLASS 5	TON	5745.00	5463.75	\$ 4.00	\$ 22,980.00	\$ 21,855.00
19	2331.604	EDGE MILL BITUMINOUS SURFACE	SY	37.00	105.00	\$ 17.00	\$ 629.00	\$ 1,785.00
20	2331.604	BITUMINOUS PAVEMENT RECLAMATION (P)	SF	134622.00	134622.00	\$ 0.15	\$ 20,193.30	\$ 20,193.30
21	2357.502	BITUMINOUS TACK COAT	GAL	960.00	1105.00	\$ 2.00	\$ 1,920.00	\$ 2,210.00
22	2360.501	TYPE SP 9.5 WEARING COURSE MIX (3,C)	TON	1786.00	1471.65	\$ 44.00	\$ 78,584.00	\$ 64,752.60
23	2360.501	TYPE SP 12.5 NON WEAR COURSE MIX (3,C)	TON	1786.00	1660.28	\$ 42.00	\$ 75,012.00	\$ 69,731.76
24	2360.501	TYPE SP 9.5 WEARING COURSE MIX (2,E), 6.0" - DRIVEWAY	TON	566.00	199.60	\$ 75.00	\$ 42,450.00	\$ 14,970.00
25	2360.604	FULL DEPTH BITUMINOUS PATCHING	SY	200.00		\$ 0.01	\$ 2.00	\$ -
26	2501.602	EXCAV. SPECIAL (POTHOLE EXISTING UTILITY)	EACH	10.00	6.00	\$ 500.00	\$ 5,000.00	\$ 3,000.00
27	2502.521	4" PERF HDPE PIPE DRAIN WITH CIRCULAR KNIT	LF	7200.00	7003.00	\$ 6.00	\$ 43,200.00	\$ 42,018.00
28	2502.521	4" PVC SUMP BASKET PIPE	LF	400.00	11.00	\$ 7.00	\$ 2,800.00	\$ 77.00
29	2504.602	ADJUST CURB STOP BOX	EACH	20.00	2.00	\$ 125.00	\$ 2,500.00	\$ 250.00
30	2504.604	4" POLYSTYRENE INSULATION	SY	80.00		\$ 31.00	\$ 2,480.00	\$ -
31	2506.602	CONSTRUCT DRAINAGE STRUCTURE (SUMP BASKET)	EACH	8.00	1.00	\$ 475.00	\$ 3,800.00	\$ 475.00
32	2521.501	PEDESTRIAN CURB RAMP	EACH	2.00	2.00	\$ 1,500.00	\$ 3,000.00	\$ 3,000.00
33	2531.501	CONCRETE CURB AND GUTTER DESIGN B618	LF	7245.00	7243.00	\$ 10.30	\$ 74,623.50	\$ 74,602.90
34	2531.501	CONCRETE CURB AND GUTTER (HAND POUR)	LF	80.00		\$ 17.50	\$ 1,400.00	\$ -
35	2531.507	6" CONCRETE DRIVEWAY PAVEMENT	SY	270.00	338.00	\$ 45.00	\$ 12,150.00	\$ 15,210.00
36	2531.507	DECORATIVE DRIVEWAY ALLOWANCE	LS	1.00	0.11	\$ 5,000.00	\$ 5,000.00	\$ 550.00
37	2531.604	6" WING APRON	SF	398.00	400.00	\$ 6.00	\$ 2,388.00	\$ 2,400.00
38	2531.604	6" CONCRETE VALLEY GUTTER	LF	151.00	64.00	\$ 27.00	\$ 4,077.00	\$ 1,728.00

39	2531.604	HIGH EARLY STRENGTH CONCRETE	CY	100.00		\$	16.00	\$	1,600.00	\$	-
40	2540.601	MAILBOX MAINTENANCE	LS	1.00	1.00	\$	3,150.00	\$	3,150.00	\$	3,150.00
41	2563.601	TRAFFIC CONTROL ALLOWANCE	LS	1.00	0.95	\$	10,000.00	\$	10,000.00	\$	9,500.00
42	2564.531	SIGN PANELS TYPE C	SF	87.00		\$	37.00	\$	3,219.00	\$	-
43	2564.537	INSTALL SIGN TYPE SPECIAL	EACH	1.00	1.00	\$	53.00	\$	53.00	\$	53.00
44	2572.125	PRUNE TREES	HR	40.00		\$	150.00	\$	6,000.00	\$	-
45	2573.502	SILT FENCE, TYPE MS	LF	325.00		\$	2.00	\$	650.00	\$	-
46	2573.530	STORM DRAIN INLET PROTECTION (WIMCO)	EACH	45.00	39.00	\$	130.00	\$	5,850.00	\$	5,070.00
47	2573.533	SEDIMENT CONTROL LOG TYPE COMPOST	LF	200.00	60.00	\$	4.00	\$	800.00	\$	240.00
48	2573.535	STABILIZED CONSTRUCTION EXIT	LS	1.00		\$	1,250.00	\$	1,250.00	\$	-
49	2573.550	EROSION CONTROL SUPERVISOR	LS	1.00	1.00	\$	300.00	\$	300.00	\$	300.00
50	2573.601	STORM WATER MANAGEMENT ALLOWANCE	LS	1.00	0.19	\$	10,000.00	\$	10,000.00	\$	1,900.00
51	2573.602	DEWATERING (EXCAVATION)	LS	1.00		\$	100.00	\$	100.00	\$	-
52	2574.525	BOULEVARD TOPSOIL BORROW (CV)	CY	1913.00	2367.00	\$	33.00	\$	63,129.00	\$	78,111.00
53	2575.501	SEEDING (MIX 25-151)	ACRE	2.37	2.27	\$	2,550.00	\$	6,043.50	\$	5,788.50
54	2575.560	FLEXTERRA HYDROMULCH (HYDRAULIC SOIL STAB. TYPE SPECIAL)	LB	7128.00	6840.00	\$	1.00	\$	7,128.00	\$	6,840.00
55	2575.572	RAPID STABILIZATION METHOD 2 MODIFIED	SY	2868.00		\$	2.00	\$	5,736.00	\$	-

Schedule 1 Subtotal: \$ 983,792.30 \$ 879,567.91

Schedule: 2
Description: 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	2104.501	REMOVE SEWER PIPE (STORM)	LF	1212.00	1032.00	8.00	\$ 9,696.00	\$ 8,256.00
2	2104.501	REMOVE STORM STRUCTURE	EACH	22.00	23.00	181.00	\$ 3,982.00	\$ 4,163.00
3	2503.503	RECONSTRUCT DRAINAGE STRUCTURE (STORM)	EACH	1.00		1,100.00	\$ 1,100.00	\$ -
4	2503.511	12" CP PIPE SEWER	LF	16.00	15.00	35.00	\$ 560.00	\$ 525.00
5	2503.541	15" RC PIPE SEWER DES 3006 CL V	LF	1594.00	1532.00	38.00	\$ 60,572.00	\$ 58,216.00
6	2503.541	18" RC PIPE SEWER DES 3006 CL III	LF	32.00		56.00	\$ 1,792.00	\$ -
7	2503.541	24" RC PIPE SEWER DES 3006 CL III	LF	16.00		62.00	\$ 992.00	\$ -
8	2503.541	27" RC PIPE SEWER DES 3006 CL III	LF	16.00		70.00	\$ 1,120.00	\$ -
9	2503.541	30" RC PIPE SEWER DES 3006 CL III	LF	8.00		75.00	\$ 600.00	\$ -
10	2503.602	CONNECT TO EXISTING STORM STRUCTURE	EACH	1.00	1.00	1,200.00	\$ 1,200.00	\$ 1,200.00
11	2503.602	CONNECT TO EXISTING STORM SEWER	EACH	15.00	15.00	875.00	\$ 13,125.00	\$ 13,125.00
12	2506.502	CONSTRUCT DRAINAGE STRUCTURE 2' X 3' CB	EACH	7.00	7.00	2,200.00	\$ 15,400.00	\$ 15,400.00
13	2506.502	CONSTRUCT DRAINAGE STRUCTURE DES 48-4020	EACH	18.00	19.00	2,600.00	\$ 46,800.00	\$ 49,400.00
14	2506.502	CONSTRUCT DRAINAGE STRUCTURE DES 60-4020	EACH	1.00	1.00	3,900.00	\$ 3,900.00	\$ 3,900.00
15	2506.502	CONSTRUCT DRAINAGE STRUCTURE DES 72-4020	EACH	1.00	1.00	5,200.00	\$ 5,200.00	\$ 5,200.00

Schedule 2 Subtotal: \$ 166,039.00 \$ 159,385.00

Schedule: 3
Description: 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	2104.501	REMOVE WATER SERVICE	EACH	5.00		\$ 250.00	\$ 1,250.00	\$ -
2	2104.501	REMOVE GATE VALVE BOX	EACH	15.00	15.00	\$ 625.00	\$ 9,375.00	\$ 9,375.00
3	2104.501	REMOVE WATERMAIN	LF	85.00		\$ 18.00	\$ 1,530.00	\$ -
4	2104.523	SALVAGE HYDRANT AND GATE VALVE	EACH	2.00	5.00	\$ 350.00	\$ 700.00	\$ 1,750.00
5	2504.601	IRRIGATION ALLOWANCE	LS	1.00		\$ 2,500.00	\$ 2,500.00	\$ -
6	2504.602	1" CORPORATION STOP	EACH	5.00		\$ 105.00	\$ 525.00	\$ -
7	2504.602	1" TYPE K COPPER	EACH	200.00		\$ 31.00	\$ 6,200.00	\$ -
8	2504.602	1" CURB STOP AND BOX	EACH	5.00		\$ 337.00	\$ 1,685.00	\$ -
9	2504.602	6" GATE VALVE BOX	EACH	17.00	15.00	\$ 1,100.00	\$ 18,700.00	\$ 16,500.00
10	2504.602	CONNECT TO EXISTING WATER SERVICE	EACH	5.00		\$ 240.00	\$ 1,200.00	\$ -
11	2504.602	INSTALL HYDRANT & GATE VALVE	EACH	2.00	5.00	\$ 5,200.00	\$ 10,400.00	\$ 26,000.00
12	2504.608	DI FITTINGS (EPOXY COATED)	LB	26.00	95.00	\$ 14.00	\$ 364.00	\$ 1,330.00

Schedule 3 Subtotal: \$ 54,429.00 \$ 54,955.00

Schedule: 4
Description: 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	2104.509	REMOVE SANITARY SEWER SERVICE	EACH	5.00		\$ 300.00	\$ 1,500.00	\$ -
2	2104.509	REMOVE CASTING AND RINGS (SANITARY)	EACH	20.00	20.00	\$ 100.00	\$ 2,000.00	\$ 2,000.00
3	2503.602	F&I EXTERNAL MANHOLE CHIMNEY SEAL	EACH	23.00	23.00	\$ 150.00	\$ 3,450.00	\$ 3,450.00
4	2503.602	SANITARY SEWER SERVICE ADJUSTMENT	EACH	5.00		\$ 1,300.00	\$ 6,500.00	\$ -
5	2503.603	RECONSTRUCT STRUCTURE (SANITARY)	EACH	3.00	3.00	\$ 2,600.00	\$ 7,800.00	\$ 7,800.00
6	2503.606	SANITARY MANHOLE UMBRELLAS	EACH	23.00	23.00	\$ 60.00	\$ 1,380.00	\$ 1,380.00
7	2506.521	INSTALL NEW RINGS AND CASTING (SANITARY)	EACH	23.00	20.00	\$ 775.00	\$ 17,825.00	\$ 15,500.00

Schedule 4 Subtotal: \$ 40,455.00 \$ 30,130.00

Schedule: 5
Description: Rain Garden 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	2411.602	RAIN GARDEN RET. WALL (MODULAR BLOCK)	SQFT	500.00		\$ 42.00	\$ 21,000.00	\$ -
2	2411.602	RAIN GARDEN RET. WALL (BOULDER)	SQFT	500.00	65.00	\$ 31.50	\$ 15,750.00	\$ 2,047.50
3	2411.602	FORD A1 COVER	EACH	16.00	1.00	\$ 140.00	\$ 2,240.00	\$ 140.00
4	2411.602	LIMESTONE SPLASH BLOCK	EACH	30.00	3.00	\$ 55.00	\$ 1,650.00	\$ 165.00
5	2502.541	4" PERF HDPE PIPE DRAIN WITH CIRCULAR KNIT FILTER SOCK	LF	160.00	20.00	\$ 10.00	\$ 1,600.00	\$ 200.00
6	2502.602	INSTALL 4" PVC PIPE DRAIN CLEANOUT (VENTED)	EACH	8.00	1.00	\$ 104.00	\$ 832.00	\$ 104.00
7	2504.602	4"x4" TEE (DRAIN TILE TO PVC)	EACH	8.00	1.00	\$ 40.00	\$ 320.00	\$ 40.00
8	2504.602	4" KNIFE VALVE AND BOX	EACH	8.00	1.00	\$ 300.00	\$ 2,400.00	\$ 300.00
9	2506.602	CONST. DRAINAGE STRUCTURE DES. SPEC. 1 (CURBSIDE RAIN GARDEN)	EACH	8.00	1.00	\$ 2,100.00	\$ 16,800.00	\$ 2,100.00
10	2540.603	LANDSCAPE EDGER PLASTIC	LF	600.00		\$ 7.50	\$ 4,500.00	\$ -
11	2571.507	NATIVE PLUGS	PLANT	1200.00	150.00	\$ 3.70	\$ 4,440.00	\$ 555.00
12	2571.618	RAIN GARDEN PREPARATION, SAND AND COMPOST BEDDING	SF	1600.00	200.00	\$ 10.25	\$ 16,400.00	\$ 2,050.00

Schedule 5 Subtotal: \$ 87,932.00 \$ 7,701.50

Schedule: 6
Description: Babcock Trail Culvert Crossing

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	LS	1.00	1.00	\$ 500.00	\$ 500.00	\$ 500.00
2	2104.503	REMOVE BITUMINOUS PAVEMENT	SF	760.00	1066.00	\$ 2.00	\$ 1,520.00	\$ 2,132.00
3	2105.522	SELECT GRANULAR BORROW (CV)	CY	63.00		\$ 30.00	\$ 1,890.00	\$ -
4	2211.501	AGGREGATE BASE (CV) CLASS 5	TON	22.00	23.66	\$ 20.00	\$ 440.00	\$ 473.20
5	2331.604	EDGE MILL BITUMINOUS SURFACE	SY	25.00	25.00	\$ 25.00	\$ 625.00	\$ 625.00
6	2357.502	BITUMINOUS TACK COAT	GAL	4.00	10.00	\$ 2.00	\$ 8.00	\$ 20.00
7	2360.604	FULL DEPTH BITUMINOUS PATCHING	SY	106.00	118.50	\$ 50.00	\$ 5,300.00	\$ 5,925.00
8	2563.601	TRAFFIC CONTROL ALLOWANCE	LS	1.00	1.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
9	2573.533	SEDIMENT CONTROL LOG TYPE COMPOST	LF	90.00		\$ 3.00	\$ 270.00	\$ -
10	2574.525	BOULEVARD TOPSOIL BORROW (CV)	CY	20.00	20.00	\$ 42.00	\$ 840.00	\$ 840.00
11	2575.501	SEEDING (MIX 25-151)	ACRE	0.15	0.15	\$ 2,600.00	\$ 390.00	\$ 390.00
12	2575.560	FLEXTERRA HYDROMULCH (HYDRAULIC SOIL STAB. TYPE SPECIAL)	LB	75.00	75.00	\$ 3.00	\$ 225.00	\$ 225.00
13	2582.502	PAVEMENT MARKING	LF	60.00	76.00	\$ 16.00	\$ 960.00	\$ 1,216.00
14	2104.501	REMOVE SEWER PIPE (STORM)	LF	70.00	70.00	\$ 14.00	\$ 980.00	\$ 980.00
15	2104.501	REMOVE STORM STRUCTURE	EACH	1.00	1.00	\$ 365.00	\$ 365.00	\$ 365.00
16	2501.515	18" RC PIPE APRON	EACH	1.00	1.00	\$ 1,100.00	\$ 1,100.00	\$ 1,100.00
17	2503.541	18" RC PIPE SEWER DES 3006 CL III	LF	71.00	71.00	\$ 57.00	\$ 4,047.00	\$ 4,047.00
18	2503.602	CONNECT TO EXISTING STORM STRUCTURE	EACH	1.00	1.00	\$ 1,600.00	\$ 1,600.00	\$ 1,600.00

Schedule 6 Subtotal: \$ 23,560.00 \$ 22,938.20

COST SUMMARY

Contract: CP 2016-09E
 Owner: City of Inver Grove Heights
 Project: Bancroft Way Area Reconstruction

Schedule	Description	Total Estimated Cost	Total Contract Cost To-Date
1	Street Improvements	\$ 983,792.30	\$ 879,567.91
2	Storm Sewer Improvements	\$ 166,039.00	\$ 159,385.00
3	Rain Garden Improvements	\$ 87,932.00	\$ 7,701.50
4	Water Main Improvements	\$ 54,429.00	\$ 54,955.00
5	Sanitary Sewer Improvements	\$ 40,455.00	\$ 30,130.00
6	Babcock Trail Culvert Crossing	\$ 23,560.00	\$ 22,938.20
Total Base Cost		\$ 1,356,207.30	\$ 1,154,677.61
Change Order No. 1		\$ (43,966.00)	
Change Order No. 2		\$ 16,038.00	\$ 16,038.00
Total Contract Amount		\$ 1,328,279.30	
Contract Work Completed To Date			\$ 1,170,715.61
Retainage 1.00%			\$ 11,707.16
Previous Payments			\$ 916,865.73
Amount Due This Partial Payment #4			\$ 242,142.72

Current Construction Cost Breakdown to Date (Internal Use Only, Not for City Council Memo)							
Date of Council Action: 11/27/2017							
City Project No.	Original Contract Amount	Total Change Orders	Contract Work Completed to Date	Retainage	Current Payment	Paid to Date	Current Contract Amount
2016-09E	\$1,356,207.30	-\$27,928.00	\$1,170,715.61	\$11,707.16	\$242,142.72	\$1,159,008.45	\$1,328,279.30
Totals:	\$1,356,207.30	-\$27,928.00	\$1,170,715.61	\$11,707.16	\$242,142.72	\$1,159,008.45	\$1,328,279.30

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

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Pay Voucher No. 5 for the 2017 Capital Improvement Program, City Project No. 2017-02 – NWA Watermain Improvements, 65th Street Loop

Meeting Date: November 27, 2017
 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: 511 NWA Water Fund |

PURPOSE/ACTION REQUESTED

Consider Pay Voucher No. 5 for the 2017 Capital Improvement Program, City Project No. 2017-02 – NWA Watermain Improvements, 65th Street Loop.

SUMMARY

The improvements were ordered as part of the 2017 Capital Improvement Program. The contract was awarded in the amount of \$1,362,495.50 to G.F. Jedlicki on March 27, 2017.

Pay Voucher No. 5 is for work that occurred through the end of October and includes the Inver Grove Heights-Eagan watermain interconnect along with the directional drilling and boring of the water main along TH 3.

I recommend approval of Pay Voucher No. 5, in the amount of \$175,052.13 for work on the 2017 Capital Improvement Program, City Project No. 2017-02 – NWA Trunk Utility Improvements, 65th Street Loop.

TJK/me

Attachments: Pay Voucher No. 5

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

ESTIMATE NO: 5 (Five)
DATE: November 27, 2017
PERIOD ENDING: October 31, 2017
PROJECT NO: 2017-02 NWA Trunk Utility Improvements, 65th Street Loop

TO: G.F. Jedlicki, Inc.
2471 Galpin Court
Suite #110
Chanhassen, MN 55317

Original Contract Amount	\$1,362,495.50
Total Addition	\$173,518.00
Total Deduction	\$0.00
Total Contract Amount.....	\$1,536,013.50
Total Value of Work to Date (includes stored materials).....	\$ 1,081,670.74
Less Retained (5%).....	\$ 54,083.54
Less Previous Payment.....	\$ 852,535.07
Total Approved for Payment this Voucher	\$ 175,052.13
Total Payments including this Voucher	\$ 1,027,587.20

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above state amount for work performed through October 31, 2017.

Signed by: 
for Thomas J. Kaldunski, City Engineer

November 27, 2017
Date

Signed by: _____
G. F. Jedlicki

Date

Signed by: _____
George Tourville, Mayor

November 27, 2017
Date

Partial Pay Estimate No.:

5

2017-02 NWA WATERMAIN IMPROVEMENTS - 65TH STREET LOOP

CITY OF INVER GROVE HEIGHTS, MINNESOTA

BMI PROJECT NO. T18.108658

WORK COMPLETED THROUGH October 31, 2017

ITEM NO.	ITEM	UNIT PRICE	AS BID		PREVIOUS ESTIMATE		COMPLETED TO DATE		
			ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	
SCHEDULE 1									
1	2021.501	MOBILIZATION	\$50,000.00	0.8 LUMP SUM	\$40,000.00	0.80 LUMP SUM	\$40,000.00	0.80 LUMP SUM	\$40,000.00
2	2101.501	CLEARING	\$5,500.00	2.3 ACRE	\$12,650.00	1.58 ACRE	\$8,690.00	1.58 ACRE	\$8,690.00
3	2101.502	CLEARING	\$110.00	26 TREE	\$2,860.00	12.00 TREE	\$1,320.00	12.00 TREE	\$1,320.00
4	2101.506	GRUBBING	\$5,500.00	2.3 ACRE	\$12,650.00	1.58 ACRE	\$8,690.00	1.58 ACRE	\$8,690.00
5	2101.507	GRUBBING	\$110.00	26 TREE	\$2,860.00	12.00 TREE	\$1,320.00	12.00 TREE	\$1,320.00
6	2104.521	SALVAGE FENCE	\$10.00	260 LIN FT	\$2,600.00	0.00 LIN FT	\$0.00	0.00 LIN FT	\$0.00
7	2104.601	SALVAGE MISCELLANEOUS ITEMS ALLOWANCE	\$10,000.00	0.8 LUMP SUM	\$8,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
8	2105.511	CHANNEL AND POND EXCAVATION (P)	\$35.00	168 CU YD	\$5,880.00	0.00 CU YD	\$0.00	168.00 CU YD	\$5,880.00
9	2105.601	CONSTRUCT TEMPORARY ACCESS ROAD	\$23,500.00	1 EACH	\$23,500.00	1.00 EACH	\$23,500.00	1.00 EACH	\$23,500.00
10	2105.602	OBSTRUCTION REMOVAL	\$2,200.00	3 EACH	\$6,600.00	3.00 EACH	\$6,600.00	5.00 EACH	\$11,000.00
11	2118.501	AGGREGATE SURFACING CLASS 5	\$27.00	200 TON	\$5,400.00	167.46 TON	\$4,521.42	273.80 TON	\$7,392.60
12	2123.610	STREET SWEEPER (WITH PICKUP BROOM)	\$45.00	15 HOUR	\$675.00	8.00 HOUR	\$360.00	9.00 HOUR	\$405.00
13	2130.601	WATER USAGE ALLOWANCE	\$5,000.00	0.8 LUMP SUM	\$4,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
14	2451.609	GRANULAR BACKFILL	\$20.00	400 TON	\$8,000.00	0.00 TON	\$0.00	0.00 TON	\$0.00
15	2451.609	AGGREGATE FOUNDATION	\$52.00	100 TON	\$5,200.00	88.06 TON	\$4,579.12	143.92 TON	\$7,483.84
16	2476.601	WASTE COLLECTION AND DISPOSAL ALLOWANCE	\$10,000.00	0.8 LUMP SUM	\$8,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
17	2501.511	15" CS PIPE CULVERT	\$30.00	30 LIN FT	\$900.00	0.00 LIN FT	\$0.00	30.00 LIN FT	\$900.00
18	2501.511	18" CS PIPE CULVERT	\$34.00	20 LIN FT	\$680.00	0.00 LIN FT	\$0.00	0.00 LIN FT	\$0.00
19	2501.515	15" CS PIPE APRON	\$250.00	2 EACH	\$500.00	0.00 EACH	\$0.00	2.00 EACH	\$500.00
20	2501.515	18" CS PIPE APRON	\$350.00	2 EACH	\$700.00	0.00 EACH	\$0.00	0.00 EACH	\$0.00
21	2503.602	BORING PIT	\$15,250.00	1 EACH	\$15,250.00	1.00 EACH	\$15,250.00	1.00 EACH	\$15,250.00
22	2504.601	FLUSH WATERMAIN	\$3,900.00	0.8 LUMP SUM	\$3,120.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
23	2504.602	CONNECT TO EXISTING WATER MAIN	\$4,800.00	1 EACH	\$4,800.00	1.00 EACH	\$4,800.00	1.00 EACH	\$4,800.00
24	2504.602	HYDRANT	\$5,500.00	9 EACH	\$49,500.00	5.00 EACH	\$27,500.00	6.00 EACH	\$33,000.00
25	2504.602	1" CORPORATION STOP	\$400.00	1 EACH	\$400.00	0.00 EACH	\$0.00	0.00 EACH	\$0.00
26	2504.602	6" GATE VALVE & BOX	\$2,000.00	9 EACH	\$18,000.00	5.00 EACH	\$10,000.00	6.00 EACH	\$12,000.00
27	2504.602	16" BUTTERFLY GATE VALVE	\$6,500.00	7 EACH	\$45,500.00	4.00 EACH	\$26,000.00	5.00 EACH	\$32,500.00
28	2504.602	1" CURB STOP & BOX	\$550.00	1 EACH	\$550.00	0.00 EACH	\$0.00	0.00 EACH	\$0.00
29	2504.603	1" TYPE K COPPER PIPE	\$48.00	15 LIN FT	\$720.00	0.00 LIN FT	\$0.00	0.00 LIN FT	\$0.00
30	2504.603	6" WATERMAIN DUCTILE IRON CL 52	\$39.00	77 LIN FT	\$3,003.00	91.00 LIN FT	\$3,549.00	62.00 LIN FT	\$2,418.00
31	2504.603	16" WATERMAIN DUCTILE IRON CL 52	\$115.00	903 LIN FT	\$103,845.00	403.00 LIN FT	\$46,345.00	569.00 LIN FT	\$65,435.00
32	2504.603	16" WATERMAIN DUCTILE IRON CL 52 (THROUGH CASING)	\$101.00	247 LIN FT	\$24,947.00	184.00 LIN FT	\$18,584.00	184.00 LIN FT	\$18,584.00
33	2504.603	16" WATERMAIN DUCTILE IRON CL 52 (TIED JOINTS)	\$175.00	30 LIN FT	\$5,250.00	0.00 LIN FT	\$0.00	0.00 LIN FT	\$0.00
34	2504.603	STEEL CASING PIPE (TRENCHLESS)	\$440.00	247 LIN FT	\$108,680.00	170.00 LIN FT	\$74,800.00	170.00 LIN FT	\$74,800.00
35	2504.603	16" I.D. WATERMAIN (TRENCHLESS)	\$151.50	3294 LIN FT	\$499,041.00	1980.00 LIN FT	\$299,970.00	2,160.00 LIN FT	\$327,240.00
36	2504.603	BUTTERFLY VALVE MANHOLE	\$550.00	70 LIN FT	\$38,500.00	63.00 LIN FT	\$34,650.00	75.00 LIN FT	\$41,250.00
37	2504.603	HYDRANT EXTENSION	\$900.00	7 LIN FT	\$6,300.00	15.00 LIN FT	\$13,500.00	15.00 LIN FT	\$13,500.00
38	2504.604	4" POLYSTYRENE INSULATION	\$37.00	20 SQ YD	\$740.00	0.00 SQ YD	\$0.00	0.00 SQ YD	\$0.00
39	2504.608	DUCTILE IRON FITTINGS	\$2.00	9815 POUND	\$19,630.00	3335.00 POUND	\$6,670.00	5,010.00 POUND	\$10,020.00
40	2511.502	RANDOM RIPRAP CLASS III	\$100.00	24 TON	\$2,400.00	0.00 TON	\$0.00	17.44 TON	\$1,744.00
41	2533.507	PORTABLE PRECAST CONC BARRIER DES 8337	\$15.50	500 LIN FT	\$7,750.00	600.00 LIN FT	\$9,300.00	600.00 LIN FT	\$9,300.00
42	2533.508	RELOCATE PORT PRECAST CONC BAR DES 8337	\$4.00	500 LIN FT	\$2,000.00	0.00 LIN FT	\$0.00	0.00 LIN FT	\$0.00

5

BMI PROJECT NO. T18.108658

ITEM NO.	ITEM	UNIT PRICE	AS BID		PREVIOUS ESTIMATE		COMPLETED TO DATE		
			ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	
43	2540.601	LANDSCAPE ALLOWANCE	\$10,000.00	0.8 LUMP SUM	\$8,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
44	2550.602	MARKING POST	\$200.00	7 EACH	\$1,400.00	0.00 EACH	\$0.00	0.00 EACH	\$0.00
45	2557.603	INSTALL FENCE	\$18.00	260 LIN FT	\$4,680.00	0.00 LIN FT	\$0.00	0.00 LIN FT	\$0.00
46	2557.603	CONSTRUCTION FENCE	\$5.00	100 LIN FT	\$500.00	90.00 LIN FT	\$450.00	140.00 LIN FT	\$700.00
47	2563.601	TRAFFIC CONTROL	\$3,300.00	0.8 LUMP SUM	\$2,640.00	0.80 LUMP SUM	\$2,640.00	0.80 LUMP SUM	\$2,640.00
48	2573.502	SILT FENCE, TYPE MS	\$2.00	3357 LIN FT	\$6,714.00	2050.00 LIN FT	\$4,100.00	2,050.00 LIN FT	\$4,100.00
49	2573.602	ROCK CONSTRUCTION ENTRANCE	\$900.00	2 EACH	\$1,800.00	1.00 EACH	\$900.00	1.00 EACH	\$900.00
50	2573.901	STORM WATER MANAGEMENT ALLOWANCE	\$10,000.00	0.8 LUMP SUM	\$8,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
51	2575.523	EROSION CONTROL BLANKET CATEGORY 3N	\$1.50	3541 SQ YD	\$5,311.50	700.00 SQ YD	\$1,050.00	1,600.00 SQ YD	\$2,400.00
52	2573.530	STORM DRAIN INLET PROTECTION	\$200.00	6 EACH	\$1,200.00	6.00 EACH	\$1,200.00	6.00 EACH	\$1,200.00
53	2575.533	SEDIMENT CONTROL LOG TYPE WOOD CHIP	\$2.20	200 LIN FT	\$440.00	500.00 LIN FT	\$1,100.00	700.00 LIN FT	\$1,540.00
54	2575.570	RAPID STABILIZATION METHOD 3 (MIX 25-141)	\$3,300.00	3.5 ACRE	\$11,550.00	2.25 ACRE	\$7,425.00	3.60 ACRE	\$11,880.00
		SCHEDULE 1 TOTAL:			\$1,163,816.50		\$709,363.54		\$804,282.44
SCHEDULE 2									
1	2021.501	MOBILIZATION	\$50,000.00	0.2 LUMP SUM	\$10,000.00	0.20 LUMP SUM	\$10,000.00	0.20 LUMP SUM	\$10,000.00
2	2101.501	CLEARING	\$200.00	3 EACH	\$600.00	4.00 EACH	\$800.00	4.00 EACH	\$800.00
3	2101.506	GRUBBING	\$200.00	3 EACH	\$600.00	4.00 EACH	\$800.00	4.00 EACH	\$800.00
4	2104.601	SALVAGE MISCELLANEOUS ITEMS ALLOWANCE	\$10,000.00	0.2 LUMP SUM	\$2,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
5	2105.601	CONSTRUCT TEMPORARY ACCESS ROAD	\$23,000.00	1 EACH	\$23,000.00	0.00 EACH	\$0.00	1.00 EACH	\$23,000.00
6	2118.501	AGGREGATE SURFACING CLASS 5	\$27.00	20 TON	\$540.00	0.00 TON	\$0.00	0.00 TON	\$0.00
7	2123.610	STREET SWEEPER (WITH PICKUP BROOM)	\$45.00	10 HOUR	\$450.00	1.00 HOUR	\$45.00	1.00 HOUR	\$45.00
8	2130.601	WATER USAGE ALLOWANCE	\$5,000.00	0.2 LUMP SUM	\$1,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
9	2451.609	GRANULAR BACKFILL	\$20.00	75 TON	\$1,500.00	0.00 TON	\$0.00	0.00 TON	\$0.00
10	2451.609	AGGREGATE FOUNDATION	\$52.00	30 TON	\$1,560.00	23.65 TON	\$1,229.80	23.65 TON	\$1,229.80
11	2476.601	WASTE COLLECTION AND DISPOSAL ALLOWANCE	\$10,000.00	0.2 LUMP SUM	\$2,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
12	2504.601	FLUSH WATERMAIN	\$3,900.00	0.2 LUMP SUM	\$780.00	0.20 LUMP SUM	\$780.00	0.20 LUMP SUM	\$780.00
13	2504.602	CONNECT TO EXISTING WATER MAIN	\$4,800.00	2 EACH	\$9,600.00	2.00 EACH	\$9,600.00	2.00 EACH	\$9,600.00
14	2504.602	HYDRANT	\$5,500.00	1 EACH	\$5,500.00	1.00 EACH	\$5,500.00	1.00 EACH	\$5,500.00
15	2504.602	1" CORPORATION STOP	\$400.00	1 EACH	\$400.00	1.00 EACH	\$400.00	1.00 EACH	\$400.00
16	2504.602	6" GATE VALVE & BOX	\$2,000.00	1 EACH	\$2,000.00	1.00 EACH	\$2,000.00	1.00 EACH	\$2,000.00
17	2504.602	12" GATE VALVE & BOX	\$5,200.00	3 EACH	\$15,600.00	3.00 EACH	\$15,600.00	3.00 EACH	\$15,600.00
18	2504.602	WATER METER MANHOLE	\$33,400.00	1 EACH	\$33,400.00	1.00 EACH	\$33,400.00	1.00 EACH	\$33,400.00
19	2504.603	6" WATERMAIN DUCTILE IRON CL 52	\$48.00	13 LIN FT	\$624.00	14.00 LIN FT	\$672.00	14.00 LIN FT	\$672.00
20	2504.603	12" WATERMAIN DUCTILE IRON CL 52	\$80.00	73 LIN FT	\$5,840.00	61.00 LIN FT	\$4,880.00	61.00 LIN FT	\$4,880.00
21	2504.603	12" I.D. WATERMAIN (TRENCHLESS)	\$100.00	711 LIN FT	\$71,1				

Partial Pay Estimate No.:

5

2017-02 NWA WATERMAIN IMPROVEMENTS - 65TH STREET LOOP
CITY OF INVER GROVE HEIGHTS, MINNESOTA
BMI PROJECT NO. T18.108658

WORK COMPLETED THROUGH October 31, 2017

ITEM NO.	ITEM	UNIT PRICE	AS BID		PREVIOUS ESTIMATE		COMPLETED TO DATE	
			ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT
28	2573.502 SILT FENCE, TYPE MS	\$2.20	325 LIN FT	\$715.00	425.00 LIN FT	\$935.00	425.00 LIN FT	\$935.00
29	2573.602 ROCK CONSTRUCTION ENTRANCE	\$900.00	2 EACH	\$1,800.00	2.00 EACH	\$1,800.00	2.00 EACH	\$1,800.00
30	2573.901 STORM WATER MANAGEMENT ALLOWANCE	\$10,000.00	0.2 LUMP SUM	\$2,000.00	0.00 LUMP SUM	\$0.00	0.00 LUMP SUM	\$0.00
31	2575.523 EROSION CONTROL BLANKET CATEGORY 3N	\$2.00	100 SQ YD	\$200.00	0.00 EACH	\$0.00	0.00 EACH	\$0.00
32	2575.570 RAPID STABILIZATION METHOD 3 (MIX 25-141)	\$3,300.00	0.2 ACRE	\$660.00	0.80 ACRE	\$2,640.00	0.80 ACRE	\$2,640.00
SCHEDULE 2 TOTAL:				\$198,679.00		\$165,041.80		\$188,041.80
TOTAL AMOUNT BID (SCHEDULE 1 + SCHEDULE 2):				\$1,362,495.50		\$874,405.34		\$992,324.24

STORED MATERIALS	\$0.00
DEDUCTION FOR STORED MATERIALS USED IN WORK COMPLETED	\$0.00
STORED MATERIALS REMAINING	\$0.00

	Estimated Cost	Contract Cost to Date
Schedule 1	\$1,163,816.50	\$804,282.44
Schedule 2	\$198,679.00	\$188,041.80
Original Contract Amount	\$1,362,495.50	
C.O.#1	\$173,518.00	\$89,346.50
Revised Contract Amount	\$1,536,013.50	
Contract Work Completed to Date		\$1,081,670.74
Total Stored Materials to Date		\$0.00
Deduction for Stored Materials used		\$0.00
Completed Work and Stored Materials Retainage (5%)		\$1,081,670.74
		\$54,083.54
Previous Payments		\$852,535.07
Amount Due This Payment 5		\$175,052.13

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Approve Sidewalk Easement for 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge)

Meeting Date: November 27, 2017
Item Type: Consent
Contact: Scott D. Thureen, 651-450-2571
Prepared by: Scott D. Thureen, Public Works Director
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 Sidewalk Easement for 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge).

SUMMARY

Upon reviewing a certificate of survey for 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge) it was discovered that approximately 34 s.f. of sidewalk encroaches onto 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge). Lennar has requested the encroachment be addressed with additional sidewalk easement.

It is recommended that the City Council approve the Sidewalk Easement for 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge) between the City and U.S. Home Corporation dba Lennar, a Delaware Corporation.

SDT/mw

Attachments: Sidewalk Easement

SIDEWALK EASEMENT

THIS SIDEWALK EASEMENT IS MADE and entered into this 27th day of November, 2017, by and between U.S. Home Corporation dba Lennar, a Delaware Corporation, Grantor, and the CITY OF INVER GROVE HEIGHTS, a Minnesota Municipal Corporation, Grantee.

WITNESSETH that whereas said Grantor is the fee owner of the tract of land in the County of Dakota, State of Minnesota, described as follows:

DESCRIPTION OF PROPERTY:

Lot 18 BLOCK 3, BLACKSTONE RIDGE, according to the recorded plat thereof, Dakota County, Minnesota.

NOW THEREFORE, Grantor, in consideration of One Dollar and other good and valuable consideration, to it in hand paid by Grantee, receipt of which is hereby acknowledged, hereby grants to said Grantee, its successors and assigns, the following sidewalk easement:

DESCRIPTION OF EASEMENT:

An easement over, under and across that part of Lot 18, Block 3, BLACKSTONE RIDGE, according to the recorded plat thereof, Dakota County, Minnesota lying southwesterly of a curve described as commencing at the most southeast corner of said Lot 18; thence on an assumed bearing of North 79 degrees 50 minutes 58 seconds West, along the south line of said Lot 18, a distance of 147.70 feet to a point of curvature; thence northwesterly a distance of 3.76 feet along a non-tangential curve, concave to the southwest, being the southwesterly line of said Lot 18, having a radius of 60.00 feet, a central angle of 03 degrees 35 minutes 17 seconds and a chord which bears North 42 degrees 30 minutes 58 seconds West for 3.76 feet to the point of beginning of the curve to be described; thence northerly a distance of 23.32 feet along a reverse curve, concave to the northeast, having a radius of 22.00 feet and a central angle of 60 degrees 44 minutes 34 seconds to the west line of said Lot 18 and there terminating.

Easement Area: 34 s.f.

Exhibit A attached hereto is a depiction of the Sidewalk Easement.

IN WITNESS WHEREOF, the parties hereto have executed this Sidewalk Easement on the date set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

ATTEST:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser, 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

U.S. Home Corporation

By 

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 21st day of
November, 2017, by Jacob Kohagen,
the Construction Manager of Lennar Corporation,
a Delaware Corporation, on behalf of the Corporation.


Notary Public

This Instrument Drafted by and after
Recording please return to:

LENNAR CORPORATION
16305 36th Avenue North
Suite 600
Plymouth MN 55446



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

ATTORNEYS AT LAW

MEMO

40

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
*STEPHEN H. FOCHLER
*JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
*BRIDGET McCAULEY NASON
TONA T. DOVE
AARON S. PRICE
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
ROGER C. MILLER
1924-2009
•
*ALSO ADMITTED IN WISCONSIN
*ALSO ADMITTED IN NORTH DAKOTA
*ALSO ADMITTED IN MASSACHUSETTS
*ALSO ADMITTED IN OKLAHOMA
*ALSO ADMITTED IN ARIZONA

TO: Inver Grove Heights Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: November 22, 2017
**RE: Release of Improvement Agreement Related to 9735 Robert Trail South
owned by Inver Grove Storage, LLC; November 27, 2017 Council Meeting**

Section 1. Background. An Improvement Agreement for Lot 1, Block 1, Gopher Resource Addition was entered into on September 12, 2016 and recorded on October 26, 2016 as Dakota County Document No. 3158161. The Improvement Agreement related to the construction of a mini-storage facility (Inver Grove Storage & Rental) on property at 9735 Robert Trail South (Lot 1, Block 1, Gopher Resource Addition) owned by Inver Grove Storage, LLC.

Section 2. Release of Development Contract. The owner of Lot 1, Block 1, Gopher Resource Addition is Inver Grove Storage, LLC. The owner has requested that the Improvement Agreement be released for the purpose of removing the document as an encumbrance to the title of the property.

The City has confirmed that all of the obligations under the Improvement Agreement have been satisfied and the Improvement Agreement may be released.

Section 3. Council Action. At the November 27th Council meeting, the Council will be asked to consider the attached *Release of Improvement Agreement for Lot 1, Block 1, Gopher Resource Addition Recorded as Dakota County Document No. 3158161*. The release document is attached to this memo. A copy of the underlying Improvement Agreement is also attached for reference.

Attachments

**RELEASE OF IMPROVEMENT AGREEMENT FOR LOT 1, BLOCK 1,
GOPHER RESOURCE ADDITION RECORDED AS
DAKOTA COUNTY DOCUMENT NO. 3158161**

This RELEASE OF IMPROVEMENT AGREEMENT FOR LOT 1, BLOCK 1, GOPHER RESOURCE ADDITION RECORDED AS DAKOTA COUNTY DOCUMENT NO. 3158161 (Release) is executed and delivered as of the 27th day of November, 2017, by the City of Inver Grove Heights, a Minnesota municipal corporation (the "City").

Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals herein contained, the City recites as follows:

RECITALS:

WHEREAS, an Improvement Agreement for Lot 1, Block 1, Gopher Resource Addition was entered into on September 12, 2016 and recorded on October 26, 2016 as Dakota County Document No. 3158161 (the "Improvement Agreement").

WHEREAS, the property subject to this Release is legally described as Lot 1, Block 1, Gopher Resource Addition, Dakota County, Minnesota (hereafter the "Property").

WHEREAS, the Improvement Agreement established improvements that the developer was required to complete in connection with obtaining the City's approval of the development plans for improvements on the Property.

WHEREAS, the fee owner of the Property has requested that the City release the Improvement Agreement for the purpose of removing the Improvement Agreement as an encumbrance to the title of the Property.

WHEREAS, the City has confirmed that all of the obligations under the Improvement Agreement have been satisfied and the Improvement Agreement may be released.

NOW, THEREFORE, the City hereby confirms and releases the following:

1. The obligations under the Improvement Agreement for the Property have been met.
2. The City hereby releases the Property from the Improvement Agreement.

3. The fee owner of Lot 1, Block 1, Gopher Resource Addition, Dakota County, Minnesota may record this Release with the Dakota County Recorder.

IN WITNESS WHEREOF, the undersigned has executed this Release as of the day and year first above written.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

By: _____
Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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

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

Receipt:# 464729

AGREE \$46.00

Return to:
LARRY KOLAND
4813 BLAINE AVE
INVER GROVE HEIGHTS MN
55076

3158161



Recorded on: 10/26/2016 3:42 PM

By: AS, Deputy

Office of the County Recorder
Dakota County, Minnesota
Joel T. Beckman, County Recorder

6-7

**IMPROVEMENT AGREEMENT
FOR LOT 1, BLOCK 1,
GOPHER RESOURCE ADDITION,
INVER GROVE HEIGHTS
DAKOTA COUNTY, MN**

**CITY OF INVER GROVE HEIGHTS
IMPROVEMENT AGREEMENT FOR LOT 1, BLOCK 1,
GOPHER RESOURCE ADDITION,
INVER GROVE HEIGHTS, MN**

THIS IMPROVEMENT AGREEMENT (Agreement) is made and entered into on the 12th day of September, 2016, 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 the installation of storm water facilities and installation of associated landscaping and vegetation.

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 enters 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 Inver Grove Storage, LLC, a Minnesota limited liability company, and its successors and assigns.

1.4 **Owner.** "Owner" means Inver Grove Storage, LLC, a Minnesota limited liability company, 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:

- 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 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.

1.19 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.** Inver Grove Storage, LLC, a Minnesota limited liability company, 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: Inver Grove Storage, LLC
Attention: Larry Koland
9735 Robert Trail South
Inver Grove Heights, MN

If to Owner: Inver Grove Storage, LLC
Attention: Larry Koland
9735 Robert Trail South
Inver Grove Heights, MN

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 1.18(G) become defective or damaged 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, 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 Storm Water Facilities Maintenance Agreement between the City and Developer. If the Developer Public Improvements do not conform, Formal Notice shall be given to the Developer of the need for repair or replacement 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;
- 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.) 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;
- g.) construction of the Developer Improvements; and
- h.) delays in construction of the Developer Improvements.

ARTICLE 11
CITY REMEDIES UPON DEVELOPER DEFAULT

11.1 City Remedies. If a Developer Default occurs, that is not caused by Force Majeure, 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. If the Developer, after Formal Notice to it by the City, does not cure the Developer Default within thirty (30) 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 Improvement Agreement;
- b.) the City may suspend any work, improvement or obligation to be performed by the City;
- c.) the City may collect on the irrevocable letter of credit or cash deposit pursuant to Article 12 hereof;
- d.) the City may suspend or deny building permits for buildings within the Subject Property;
- 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.

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, 2019. 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, 2019, 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, 2019.

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 1.18(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. 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
George Tourville
Its: Mayor

ATTEST:

Michelle Tesser
Michelle Tesser, City Clerk

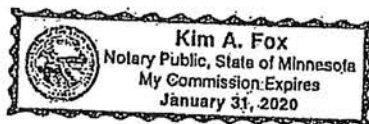
(CITY SEAL)

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

ss.

On this 12th day of September, 2016, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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.



Kim A. Fox
Notary Public

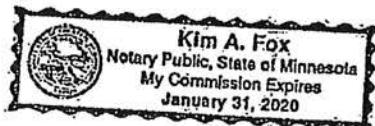
**OWNER AND DEVELOPER:
INVER GROVE STORAGE, LLC**

By: _____

Lawrence Koland
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA).

On this 20th day of September, 2016, before me a Notary Public within and for said County, personally appeared Lawrence Koland, to me personally known, who being by me duly sworn, did say that he is the Chief Manager of Inver Grove Storage, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed on behalf of Inver Grove Storage, LLC by authority of the Boards of Governors of Inver Grove Storage, LLC.



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:

Lot 1, Block 1, Gopher Resource Addition, Dakota County, Minnesota.

Ⓢ

EXHIBIT B
LIST OF DEVELOPMENT PLANS

<u>PLAN</u>	<u>DATE OF PLAN PREPARATION</u>	<u>PREPARED BY</u>
Cover Sheet (C0-1)	9-23-16	Loucks Associates and CNH Architects
Demolition Plan (C1-2)	9-23-16	Loucks Associates and CNH Architects
Site Plan (C2-1)	9-23-16	Loucks Associates and CNH Architects
Grading & Drainage Plan (C3-1)	9-23-16	Loucks Associates and CNH Architects
SWPPP Plan (C3-2 and C3-3)	9-23-16	Loucks Associates and CNH Architects
Utility Plan (C4-1)	9-23-16	Loucks Associates and CNH Architects
Civil Details (C8-1 and C8-2)	9-23-16	Loucks Associates and CNH Architects
Landscape Plan (L1-1)	9-23-16	Loucks Associates and CNH Architects

The above-listed Development Plans were approved by the City Engineer on September 28, 2016. 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 Assistant City Engineer Steve Dodge to Associate Planner Heather Botten dated July 27, 2016;
2. Memo from Greg Fransen at Barr Engineering to City Engineer Tom Kaldunski dated August 9, 2016;
3. Memo from Vicki VanDell at Loucks Associates to Assistant City Engineer Steve Dodge dated September 20, 2016.

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	12-31-17, or prior to issuance of building permit; whichever occurs first	grading, drainage; sediment and erosion control
X	12-31-17, or prior to issuance of building permit; whichever occurs first	stormwater facilities (including retention pond modifications) substantially complete and functional to a level approved by the City Engineer
X	12-31-17, or prior to issuance of certificate of occupancy; whichever occurs first	extension of water service lines to building
X	12-31-17, or prior to issuance of certificate of occupancy; whichever occurs first	stormwater facilities (including retention pond modifications) complete and functional
X	12-31-17, or prior to issuance of certificate of occupancy; whichever occurs first	curb and pavement
X	12-31-17, or prior to issuance of certificate of occupancy; whichever occurs first	landscaping / vegetation*
X	12-31-17, or prior to issuance of certificate of occupancy; whichever occurs first	certified as-builts

X

12-31-17, or prior to
issuance of certificate
of occupancy, whichever
occurs first

construction debris clean-up

The City Engineer and/or Director of Public Works reserve the right to extend the above completion dates, if requested by Developer, to a date reasonably determined by the City.

*Note: Landscaping must be completed prior to issuance of certificate of occupancy, provided, however, if the request for the certificate of occupancy is made in the months of October through April and if all other requirements for the certificate of occupancy, except landscaping, have been met, then the City shall issue the certificate of occupancy and the Developer is then required to complete the landscaping no later than the following June 15th.

EXHIBIT D

**MISCELLANEOUS REQUIREMENTS AND CONDITIONS
IMPOSED BY THE CITY**

- 1.) **CONDITIONS TO BE SATISFIED BEFORE CONSTRUCTION BEGINS ON THE SUBJECT PROPERTY.** Before construction begins 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 stated on Exhibit E of the 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

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

- g.) Owner must present to the City a title insurance policy that shows that Owner is the fee title owner of the Subject Property.
- h.) Developer/Owner must record the plat of Gopher Resource Addition.

- 2.) **CONDITIONS TO BE SATISFIED BY DECEMBER 31, 2017 OR BEFORE CITY ISSUES BUILDING PERMIT FOR SUBJECT PROPERTY.** By December 31, 2017, or before the City issues a building permit for the Subject Property, whichever occurs first, all of the following conditions must be satisfied:

- a.) All of the conditions in paragraph 1 of this Exhibit D have been met.
- b.) Grading, drainage, erosion and sediment control have been completed or, in the judgment of the City Engineer or Director of PWD, the grading, drainage and erosion control have been completed to the point that the commencement of building will not cause adverse effects with respect to storm water runoff or storm water detention.
- c.) Storm water facilities have been substantially completed and functional to a level approved by the City Engineer.

- 3.) **CONDITIONS TO BE SATISFIED BY DECEMBER 31, 2017 OR BEFORE CITY ISSUES CERTIFICATE OF OCCUPANCY FOR SUBJECT PROPERTY.** By December 31, 2017, or before the City issues a certificate of occupancy for the Subject Property, whichever occurs first, all of the following conditions must be satisfied:

- a.) All of the conditions in paragraph 1 of this Exhibit D have been met.
- b.) All grading, drainage and erosion control must be completed.
- c.) All storm water facilities must be completed and approved by the City Engineer.
- d.) Water service lines shall be extended to the Subject Property.
- e.) All site landscaping and vegetation must be completed, with the exception provided in Exhibit C.
- f.) Certified as-builts shall be submitted to the City.
- g.) The curb and paving shall be completed.

- 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.

EXHIBIT E
ESCROW CALCULATION

DEVELOPER IMPROVEMENTS

1.)	Grading, Drainage Erosion & Sediment Control	\$50,000
2.)	Water Service Line Extension	\$30,000
3.)	Storm Water Facilities (including modification of retention pond)	\$25,000
4.)	Paving and curb	\$48,000
5.)	Retaining Walls	\$30,000
6.)	Landscaping / Vegetation	\$19,000
7.)	Certified As-Builts	\$3,000
8.)	Construction Debris Clean-up	\$2,000
SUBTOTAL:		\$207,000
<u>MULTIPLIED BY:</u>		x 1.25
EQUALS		\$258,750
<u>ESCROW AMOUNT:</u>		\$258,750

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 \$6,000 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 and erosion control and landscaping 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, and erosion control or landscaping; 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 control, or vegetation exceed the initially deposited \$6,000 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

In addition to the \$6,000 Engineering Escrow Amount stated above, Developer shall also deposit \$3,000 in cash with the City (hereafter "Vegetation Escrow Amount") to ensure the vegetation installed within and around the stormwater 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 stormwater 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 approval by the City Engineer, 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 stormwater facilities exceeds the initially deposited \$3,000 Vegetation Escrow Amount, the Developer is responsible for payment of such excess within thirty (30) days after billing by the City.

4P

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

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
*STEPHEN H. FOHLER
*JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
*BRIDGET McCAULEY NASON
TONA T. DOVE
AARON S. PRICE
HAROLD LEVANDER
1910-1992
ARTHUR GILLEN
1919-2005
ROGER C. MILLER
1924-2009

MEMO

*ALSO ADMITTED IN WISCONSIN
*ALSO ADMITTED IN NORTH DAKOTA
*ALSO ADMITTED IN MASSACHUSETTS
*ALSO ADMITTED IN OKLAHOMA
*ALSO ADMITTED IN ARIZONA

TO: Inver Grove Heights Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: November 22, 2017
RE: Release of Lot 5, Block 1, Blackberry Town Office Park from Development Contract Related to Plat of Blackberry Town Office Park; November 27, 2017 Council Meeting

Section 1. Background. A *Development Contract for Plat of Blackberry Town Office Park* was entered into on September 15, 2000 and recorded on September 28, 2000 as Dakota County Document No. 1720587.

The plat of Blackberry Town Office Park comprises of Lots 1 through 31, inclusive, Block 1, Blackberry Town Office Park and Outlots A, B and C, Blackberry Town Office Park, Dakota County, Minnesota.

Section 2. Release of Development Contract. The owner of Lot 5, Block 1, Blackberry Town Office Park is Candlepoint Properties, LLP. The owner is selling the property and has requested that the Development Contract be released for the purpose of removing the document as an encumbrance to the title of the property.

The City has confirmed that all of the obligations under the Development Contract have been satisfied and the Development Contract may be released.

Section 3. Council Action. At the November 27th Council meeting, the Council will be asked to consider the attached *Release of Development Contract for Plat of Blackberry Town Office Park Recorded as Dakota County Document No. 1720587*. The release document is attached to this memo. A copy of the underlying Development Contract is also attached for reference.

Attachments

**RELEASE OF DEVELOPMENT CONTRACT FOR PLAT OF
BLACKBERRY TOWN OFFICE PARK RECORDED AS
DAKOTA COUNTY DOCUMENT NO. 1720587**

This RELEASE OF DEVELOPMENT CONTRACT FOR PLAT OF BLACKBERRY TOWN OFFICE PARK RECORDED AS DAKOTA COUNTY DOCUMENT NO. 1720587 (Release) is executed and delivered as of the 27th day of November, 2017, by the City of Inver Grove Heights, a Minnesota municipal corporation (the "City").

Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals herein contained, the City recites as follows:

RECITALS:

WHEREAS, a *Development Contract for Plat of Blackberry Townoffice Park* was entered into on September 15, 2000 and recorded on September 28, 2000 as Dakota County Document No. 1720587 (the "Development Contract"). The plat of Blackberry Town Office Park comprises Lots 1 through 31, inclusive, Block 1, Blackberry Town Office Park and Outlots A, B and C, Blackberry Town Office Park, Dakota County, Minnesota.

WHEREAS, the property subject to this Release is legally described as Lot 5, Block 1, Blackberry Town Office Park, Dakota County, Minnesota (hereafter the "Property").

WHEREAS, the Development Contract established improvements that the developer was required to complete in connection with obtaining the City's approval of the development plans for the plat of Blackberry Town Office Park.

WHEREAS, the fee owner of the Property has requested that the City release the Development Contract from the Property for the purpose of removing the Development Contract as an encumbrance to the title of the Property.

WHEREAS, the City has confirmed that all of the obligations under the Development Contract have been satisfied and the Development Contract may be released.

NOW, THEREFORE, the City hereby confirms and releases the following:

1. The obligations under the Development Contract for the Property have been met.

2. The City hereby releases the Property from the Development Contract.
3. The fee owner of Lot 5, Block 1, Blackberry Town Office Park may record this Release with the Dakota County Recorder.

IN WITNESS WHEREOF, the undersigned has executed this Release as of the day and year first above written.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

By: _____
Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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

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

**CITY OF INVER GROVE HEIGHTS
DEVELOPMENT CONTRACT FOR
PLAT OF BLACKBERRY TOWNOFFICE PARK**

THIS AGREEMENT, made and entered into on the 15th day of September, 2000, by and between the CITY OF INVER GROVE HEIGHTS, a municipality of the State of Minnesota, (hereinafter called the CITY), and the DEVELOPER identified herein.

RECITALS:

WHEREAS, the DEVELOPER has submitted plans for the plat of Blackberry Townoffice Park.

WHEREAS, the DEVELOPER has applied to the CITY for approval of the plat based upon the DEVELOPMENT PLANS.

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 DEVELOPMENT CONTRACT, which contract defines the work which the DEVELOPER undertakes to complete for the SUBJECT PROPERTY; and

2. The DEVELOPER shall provide an irrevocable, absolute and unconditional 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 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 THE PWD.

NOW, THEREFORE, subject to the terms and conditions of this DEVELOPMENT CONTRACT 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 DEVELOPMENT CONTRACT, 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 DaVern - II, Inc., a Minnesota corporation.

1.4 **SUBJECT PROPERTY.** "SUBJECT PROPERTY" means all the real property within the plat of Blackberry Townoffice Park, in the City of Inver Grove Heights, Dakota County, Minnesota.

1.5 **DEVELOPMENT PLANS.** "DEVELOPMENT PLANS" means all those plans, drawings, specifications and surveys identified on the attached Exhibit A, which is hereby incorporated by reference and made a part of this DEVELOPMENT CONTRACT.

1.6 **DEVELOPMENT CONTRACT.** "DEVELOPMENT CONTRACT" means this instant contract by and between the CITY and DEVELOPER.

1.7 **COUNCIL.** "COUNCIL" means the Council of the City of Inver Grove Heights.

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

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

1.10 **COUNTY.** "COUNTY" means Dakota County, Minnesota.

1.11 **DEVELOPER IMPROVEMENTS.** "DEVELOPER IMPROVEMENTS" means and includes all the improvements identified on the attached Exhibit B, which is hereby incorporated by reference and made a part of this DEVELOPMENT CONTRACT.

1.12 **DEVELOPER DEFAULT.** "DEVELOPER DEFAULT" means and includes any of the following or any combination thereof:

- a.) failure by the DEVELOPER to timely pay the CITY any money required to be paid under the DEVELOPMENT CONTRACT;
- 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 DEVELOPMENT CONTRACT;
- d.) breach of the DEVELOPER WARRANTIES.

1.13 **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.

1.14 **DEVELOPER WARRANTIES.** "DEVELOPER WARRANTIES" means that the DEVELOPER hereby warrants and represents the following:

- A. **TWO YEAR WARRANTY ON PROPER WORK AND MATERIALS.** The DEVELOPER warrants all work related to the grading, drainage, erosion control and storm water pond required to be performed by it under this DEVELOPMENT CONTRACT against poor material and faulty workmanship for a period of two (2) years after its completion and acceptance by the CITY. The DEVELOPER shall be solely responsible for all costs of performing repair work required by the CITY within thirty (30) days of notification. All trees to be planted by DEVELOPER 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.
- B. **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.

1.15 **CITY WARRANTIES.** "CITY WARRANTIES" means that the CITY hereby warrants and represents as follows:

- A. **AUTHORITY.** CITY is a municipal corporation duly incorporated and validly existing in good standing under the laws of the State of Minnesota. CITY has the right, power, legal capacity and authority to enter into and perform its obligations under this DEVELOPMENT CONTRACT.

1.16 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 55075

If to DEVELOPER: DaVern - II, Inc.
 Attention: David E. Ficek
 3585 North Lexington
 Suite 270
 Arden Hills, MN 55126

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

DEVELOPER IMPROVEMENTS

2.1 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 B, except as completion dates are extended by subsequent approval of the DIRECTOR OF PWD. Failure of the CITY to promptly take action to enforce this DEVELOPMENT CONTRACT after expiration of time in 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 contract shall be deemed to be automatically extended until such time as the DEVELOPER IMPROVEMENTS are completed to the CITY's satisfaction.

2.2 **OCCUPANCY.** No certificate of occupancy and no occupancy of any building on the SUBJECT PROPERTY shall occur until the site grading, drainage, erosion control and storm water pond improvements have been completed.

2.3 **CONSTRUCTION.** The construction, installation, materials and equipment related to DEVELOPER IMPROVEMENTS shall be in accordance with the DEVELOPMENT PLANS. The DEVELOPER shall cause the contractors to furnish the PWD with 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 IMPROVEMENTS.

2.4 **INSPECTION.** The PWD or its designated representative shall have the right to periodically inspect the work installed by the DEVELOPER, its contractors, subcontractors or agents.

2.5 **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 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 that within two (2) years after approval of the DEVELOPER IMPROVEMENTS by the CITY becomes defective in the opinion of the City.

ARTICLE 3 **RESPONSIBILITY FOR COSTS**

3.1 **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.

3.2 **ENFORCEMENT COSTS.** The DEVELOPER shall pay the CITY for costs incurred in the enforcement of this DEVELOPMENT CONTRACT, including engineering and reasonable attorneys' fees.

3.3 **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 become interest at the rate of 8% per year.

ARTICLE 4
DEVELOPER WARRANTIES

4.1 STATEMENT OF DEVELOPER WARRANTIES. The DEVELOPER hereby makes and states the DEVELOPER WARRANTIES.

ARTICLE 5
CITY WARRANTIES

5.1 STATEMENT OF CITY WARRANTIES. The CITY hereby makes and states the CITY WARRANTIES.

ARTICLE 6
INDEMNIFICATION OF CITY

6.1 INDEMNIFICATION OF CITY. 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;
- 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 DEVELOPMENT CONTRACT;
- d.) failure by the DEVELOPER to pay contractors, subcontractors, laborers, or materialmen;
- e.) failure by the DEVELOPER 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 DEVELOPER IMPROVEMENTS;
- h.) construction of the DEVELOPER IMPROVEMENTS.

6.2 NOTICE. Within a reasonable period of time after the CITY's receipt of actual notice of any matter giving rise to a right of payment against the CITY pursuant to Section 6.1, the CITY shall give the FORMAL NOTICE in reasonable detail to the DEVELOPER. The DEVELOPER shall not be obligated to make any payment to the CITY for any such claim until the passage of thirty (30) days from the date of its receipt of FORMAL NOTICE from the CITY, during which time the DEVELOPER shall have the right to cure or remedy the event leading to such claim.

6.3 DEFENSE OF CLAIM. With respect to claims or demands asserted against the CITY by a third party of the nature covered by Sections 6.1 and 6.2 above, and provided that the CITY gives FORMAL NOTICE thereof, the DEVELOPER will, at its sole expense, provide for the defense thereof with counsel of its own selection but approved by the CITY; the DEVELOPER will pay all costs and expenses including attorneys' fees incurred in so defending against such claims, provided that the CITY shall at all times also have the right to fully participate in the defense at the DEVELOPER's expense. If the DEVELOPER fails to defend, the CITY shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the DEVELOPER.

ARTICLE 7 **CITY REMEDIES UPON DEVELOPER DEFAULT**

7.1 CITY REMEDIES. If a DEVELOPER DEFAULT occurs, that is not caused by FORCE MAJEURE, the CITY shall give the DEVELOPER FORMAL NOTICE of the DEVELOPER DEFAULT and the DEVELOPER shall have five (5) days to cure the DEVELOPER DEFAULT. If the DEVELOPER, after FORMAL NOTICE to it by the CITY, does not cure the DEVELOPER DEFAULT within five (5) 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 DEVELOPMENT CONTRACT;
- b.) the CITY may collect on the irrevocable letter of credit or cash deposit;
- c.) the CITY may suspend or deny building and occupancy permits for buildings within the SUBJECT PROPERTY;
- d.) 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 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.

7.2 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this DEVELOPMENT CONTRACT 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.

7.3 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 DEVELOPMENT CONTRACT 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.

7.4 EMERGENCY. Notwithstanding the requirement relating to FORMAL NOTICE to the DEVELOPER in case of a DEVELOPER DEFAULT and notwithstanding the requirement relating to giving the DEVELOPER a five (5) 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 five (5) 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 8
ESCROW DEPOSIT

8.1 ESCROW REQUIREMENT. Prior to commencing the DEVELOPER IMPROVEMENTS and prior to release of the plat for recording, the DEVELOPER shall provide the CITY an irrevocable, absolute and unconditional letter of credit in favor of the CITY by a state or national bank located in Ramsey, Hennepin, Washington or Dakota counties whereby the bank agrees to pay over to the CITY the escrow amount shown on Exhibit C if the DEVELOPER does not satisfactorily and timely complete the DEVELOPER IMPROVEMENTS shown on Exhibit B. The form of the letter of credit shall be subject to approval of the DIRECTOR OF PWD and CITY Attorney. In addition, the DEVELOPER shall post a cash deposit with the CITY for the inspection fees shown on Exhibit C.

All cost estimates shall be determined and approved by the DIRECTOR OF PWD. The total irrevocable, absolute and unconditional letter of credit amount shall be calculated as shown on the attached Exhibit C. The irrevocable, absolute and unconditional letter of credit shall continue to be in full force and effect until released by the CITY. The irrevocable, absolute and unconditional letter of credit shall be for a term ending two (2) years after the completion of the DEVELOPER IMPROVEMENTS. In the alternative, the letter of credit may be for a one (1) year term provided it is automatically renewable for successive one (1) year periods from the present or any future expiration dates with a final expiration date of two (2) years after completion of the DEVELOPER IMPROVEMENTS 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 letter of credit shall secure compliance by the DEVELOPER with the terms of this DEVELOPMENT CONTRACT. The CITY may draw down on the letter of credit without any further notice than that provided in Section 7.1 relating to a DEVELOPER DEFAULT, for any of the following reasons:

- a.) a DEVELOPER DEFAULT; or
- b.) upon the CITY receiving notice that the letter of credit will be allowed to lapse or terminate.

With CITY approval, the letter of credit may be reduced pursuant to Section 8.2 from time to time as financial obligations are paid.

8.2 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 letter of credit covering those specific completed

improvements only shall be released. The final ten percent (10%) of that portion of the letter of credit for those specific completed improvements shall be held until acceptance by the CITY and expiration of the two year warranty period under Section 1.14 hereof; in the alternative, the DEVELOPER may post a bond satisfactory to the CITY with respect to the final ten percent (10%).

ARTICLE 9 **MISCELLANEOUS**

9.1 **CITY'S DUTIES.** The terms of this DEVELOPMENT CONTRACT shall not be considered an affirmative duty upon the CITY to complete any DEVELOPER IMPROVEMENTS.

9.2. **NO THIRD PARTY RECOURSE.** Third parties shall have no recourse against the CITY under this DEVELOPMENT CONTRACT.

9.3 **VALIDITY.** If any portion, section, subsection, sentence, clause, paragraph or phrase of this DEVELOPMENT CONTRACT is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this DEVELOPMENT CONTRACT.

9.4 **RECORDING.** By September 15, 2000, the DEVELOPMENT CONTRACT shall be recorded by the DEVELOPER with the COUNTY Recorder and the DEVELOPER shall provide and execute any and all documents necessary to implement the recording.

9.5 **BINDING AGREEMENT.** The parties mutually recognize and agree that all terms and conditions of this recordable DEVELOPMENT CONTRACT shall run with the SUBJECT PROPERTY and shall be binding upon the heirs, successors, administrators and assigns of the DEVELOPER.

9.6 **CONTRACT ASSIGNMENT.** The DEVELOPER may not assign this DEVELOPMENT CONTRACT without the written permission of the COUNCIL. The DEVELOPER's obligations hereunder shall continue in full force and effect, even if the DEVELOPER sells the SUBJECT PROPERTY, or any part of it.

9.7 **AMENDMENT AND WAIVER.** The parties hereto may by mutual written agreement amend this DEVELOPMENT CONTRACT 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 DEVELOPMENT CONTRACT or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this DEVELOPMENT CONTRACT, waive compliance by another with any of the covenants contained in this DEVELOPMENT CONTRACT, 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 DEVELOPMENT CONTRACT. 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 DEVELOPMENT CONTRACT shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

9.8 GOVERNING LAW. This DEVELOPMENT CONTRACT shall be governed by and construed in accordance with the laws of the State of Minnesota.

9.9 COUNTERPARTS. This DEVELOPMENT CONTRACT 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.

9.10 HEADINGS. The subject headings of the paragraphs and subparagraphs of this DEVELOPMENT CONTRACT are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

9.11 INCONSISTENCY. If the DEVELOPMENT PLANS are inconsistent with the words of this DEVELOPMENT CONTRACT or if the obligations 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.

9.12 ACCESS. The DEVELOPER 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 by the DEVELOPER.

ARTICLE 10 **FURTHER REQUIREMENTS**

10.1 STORM WATER PONDS. The storm water pond in the northern area of Outlot B of the PLAT and the storm water pipes, conduits, culverts, ditches and catch basins and appurtenances thereto lying outside of public road right-of-way but within Outlot B of the PLAT shall be perpetually maintained by the owner of Outlot B and its assigns and successors in interest. The standard of maintenance shall comply with the minimum standards contained in Section 430 of the City Code and, in addition, the standard of care shall 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. The obligation of the owner of Outlot B, and its assigns and successors in interest for perpetual maintenance exists notwithstanding the fact that the pond within Outlot B of the PLAT and the storm water pipes, conduits, culverts, ditches and catch basins and appurtenances thereto lying outside of the public road right-of-way but within Outlot B of the PLAT may be dedicated to the CITY on the PLAT. An agreement containing the substance of this Section 10.1 shall be separately recorded with the PLAT.

10.2 PAYMENT OF PARK CONTRIBUTION. The park contribution fee as required by ordinance, shall be paid when a building permit is obtained.

10.3 CONSERVATION EASEMENT. Blackberry Townoffice Park Association, Inc., shall grant to the CITY a conservation easement over a portion of Lot 32, Block 1, of the PLAT. The conservation easement shall be recorded with the PLAT. The form and legal description of the conservation easement shall be subject to approval of the DIRECTOR OF PWD and the CITY Attorney.

10.4. TOWNOFFICE ASSOCIATION. Outlot B of the PLAT and Lot 32, Block 1, of the PLAT shall be owned by the Blackberry Townoffice Park Association, Inc. The Articles of Incorporation, the Bylaws, and Common Interest Community Declaration relating to the Association and to Outlot A and Outlot B and Lot 32, Block 1 shall be recorded with the PLAT and shall be subject to approval of the CITY Attorney.

10.5 DRAINAGE AND UTILITY EASEMENT OVER OUTLOTS A AND B FOR BENEFIT OF OUTLOT C. There shall be established a drainage and utility easement over Outlots A and B of the PLAT for the benefit of Outlot C of the PLAT. Such easement shall be recorded with the PLAT. The form and substance of the easement shall be subject to the approval of the DIRECTOR OF PWD and the CITY Attorney.

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IN WITNESS WHEREOF, the parties have executed this DEVELOPMENT CONTRACT.

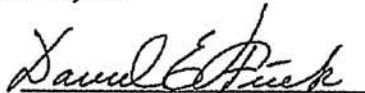
CITY OF INVER GROVE HEIGHTS

By:

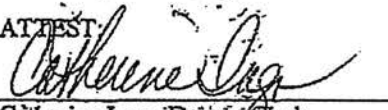

Joseph Atkins, Mayor

DEVELOPER:
DaVern - II, Inc.

By:


David E. Ficek
Its President

ATTEST:

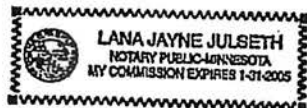

Catherine Iago, Deputy Clerk

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

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this ^{12th} day of September, 2000, before me a Notary Public within and for said County, personally appeared Joseph Atkins and Catherine Iago, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy 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 in behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.



Lana Jayne Julseth
Notary Public

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 15th day of September, 2000, before me a Notary Public within and for said County, personally appeared David E. Ficek to me personally known, who being by me duly sworn, did say that he is the President of DaVern - II, Inc., the corporation named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and said David E. Ficek acknowledged said instrument to be the free act and deed of the corporation.



Catherine J. Iago
Notary Public

EXHIBIT A

LIST OF DEVELOPMENT PLANS

PLAN	PREPARED BY	DATE PREPARED
Plat of Blackberry Townoffice Park	E.G. Rud Surveying	8-22-2000
Surveys of platted area	E.G. Rud Surveying	8-22-2000
Site Plan	E.G. Rud Surveying	12-22-99
Tree Inventory	E.G. Rud Surveying	8-14-2000
Grading and Drainage	Plowe Engineering	8-11-2000
Erosion Control	Plowe Engineering	8-11-2000
Site Landscaping	Mohagen Architects	8-31-2000
Storm Water Pond	Plowe Engineering	8-11-2000

EXHIBIT B

DEVELOPER IMPROVEMENTS

COMPLETION DATE	IMPROVEMENT
12-31-2000	Site grading, drainage, erosion control and storm water pond
9-1-2001	Site landscaping

EXHIBIT C
ESCROW CALCULATION

IMPROVEMENT	COST
Grading, Drainage, Erosion Control and Storm Water Pond	\$60,000
Site landscaping	\$60,000
SUBTOTAL:	\$120,000
MULTIPLIED BY:	1.25
EQUALS	\$150,000

In addition to the Escrow Amount set forth above, the DEVELOPER shall also deposit \$500 in cash with the CITY contemporaneously with execution of this DEVELOPMENT CONTRACT. This sum shall be to pay the CITY for engineering inspection fees at the CITY's standard rates charged for such tasks. Upon satisfactory completion of the work, the CITY shall return to the DEVELOPER any remaining portion of the sum not otherwise charged the DEVELOPER for engineering inspection performed by the CITY. To the extent the engineering inspection fees, calculated according to the CITY's standard rates, exceed the \$500 deposit, the DEVELOPER is responsible for payment of such excess within thirty (30) days after billing by the CITY.

Notwithstanding anything to the contrary contained in Section 8.2 of this DEVELOPMENT CONTRACT, the letter of credit relating to grading, drainage, erosion control and storm water pond will not be reduced below an amount equal to 125% multiplied by the cost of installing the pine trees on the northerly line of the Conservation Easement on Lot 32, Block 1 of the PLAT. Such trees shall be installed according to that certain plan dated revision date of August 31, 2000, and labelled "Overall Landscape Plan And Details." The trees shall be a minimum of six (6) feet in height. The cost of installing the trees includes the cost of the trees as well as the labor cost for installation.

When such trees have been installed, then the letter of credit may be reduced pursuant to Section 8.2 of this DEVELOPMENT CONTRACT.

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

PERSONNEL ACTIONS

Meeting Date: November 27, 2017
 Item Type: Consent Agenda
 Contact: Janet Shefchik, HR Manager
 Prepared by: Carrie Isaacson, Admin Svc Cord
 Reviewed by: Janet Shefchik, HR Manager

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 approve the personnel actions listed below:

Please confirm the Full-Time Employment of:

Police

Schnell, Paul, Police Chief

Please confirm the Part-Time/Temporary/Seasonal Employment of:

Fire

Pedersen, Dustin, Firefighter
 Wegner, Nicholas, Firefighter
 Wegner, Richard, Firefighter

Parks & Recreation/VMCC

Anderson, Tanner, Lifeguard
 Leeder, Katherine, Lifeguard
 Lucas, Dwan, Swim Lesson Manager
 Kurr, Laura, Lead Lifeguard/Water Safety Instructor
 Molstad, Rebecca, Birthday Party Host/Pool Attendant
 Suppes, Kelsie, Skating Instructor
 Toomey, Jordyn, Lifeguard

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

KEVIN KNEISL – CASE NO. 17-52V

Meeting Date: November 27, 2017

Item Type: Regular

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 two detached accessory structures where one is the maximum allowed for property located at 1847 Upper 55th Street.

- Requires a 3/5ths vote.
- 60-day deadline: December 8, 2017 (first 60-days)

SUMMARY

The applicant is requesting to add a second accessory building on their property whereas only one is allowed. The property is 1.3 acres in size and zoned R-1C, single family residential. The house was built in 1950 and there currently is no attached garage. The property has one detached accessory building about 365 square feet in size and a carport attached to the home. The applicants are proposing to construct an additional 565 square foot detached accessory building.

The applicant stated the proposed structure is for their own personal use. The additional structure would clean up the property as some of the materials that are currently stored outside would be brought inside the building. The closest neighboring home would be about 100 feet away with trees located between the properties.

Staff does not support the variance as presented due to the fact the property is not unique or limiting that it cannot be used in a reasonable manner without the request. Staff believes the request does not satisfy the variance criteria as there is room on the property to add an attached garage, complying with zoning code requirements.

Planning Staff: Staff recommends **denial** of the request as the conditions of the property are not unique, approval of the variance could set a precedent for other requests to exceed the number of accessory buildings on a property when there are options available to add an attached garage to the home that complies with zoning criteria. The facts presented did not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance; the additional structure may be considered a convenience to the applicant, not a practical difficulty.

Planning Commission: At the November 7, 2017 public hearing, the applicant was present. One neighbor testified in support of the structure if it is used to clean up the property as the existing site is an eyesore with too much stuff stored outside.

The Planning Commission recommended **denial** of the request stating the facts presented did not satisfy the criteria needed to show a practical difficulty (8-0). Minutes from the meeting are not currently available for review.

Attachments: Denial resolution
Planning staff report

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

RESOLUTION NO. _____

**RESOLUTION DENYING A VARIANCE TO ALLOW TWO DETACHED ACCESSORY
BUILDINGS ON THE PROPERTY WHEREAS ONE IS THE MAXIMUM ALLOWED**

**CASE NO. 17-52V
Kneisl**

Property located at 1847 Upper 55th Street and legally described as follows:

S 271 FT OF W 560 FT OF N 1/2 OF NE 1/4 OF SE 1/4 EX W 320 FT,
SECTION 32 TWN 28 RANGE 22, Dakota County, Minnesota

WHEREAS, an application has been received for a Variance to allow a second detached accessory building whereas one is the maximum allowed;

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 November 7, 2017 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 with an existing detached garage.
2. Approval of the variance to allow a second detached accessory building could set a precedent for other requests for additional accessory buildings on a property.
3. The facts presented do not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance; the additional accessory building may be considered a convenience to the applicant, not a practical difficulty as there is room on the property to add an attached garage to the home that would comply with zoning criteria.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, that the variance to allow two detached accessory buildings on the property whereas one is the maximum allowed is hereby denied.

Adopted by the City Council of Inver Grove Heights this 27th day of November, 2017.

George Tourville, Mayor

Ayes:

Nays:

ATTEST:

Michelle Tesser, City Clerk

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: November 7, 2017

CASE NO: 17-52V

APPLICANT/PROPERTY OWNER: Kevin Kneisl

REQUEST: Variance to allow two detached accessory buildings on a property whereas one is the maximum allowed.

LOCATION: 1847 Upper 55th Street

COMPREHENSIVE PLAN: Low Density Residential

ZONING: R-1C, Single-family residential

REVIEWING DIVISIONS: Planning
 Engineering

PREPARED BY: Heather Botten 
Associate Planner

BACKGROUND

The applicant is requesting a variance to allow a second accessory building on the property whereas the total number of detached accessory buildings shall be limited to one. The property is 1.3 acres in size, located in the R-1C zoning district. The house was built in 1950 with no attached garage. The property has one detached accessory building about 365 square feet and a carport attached to the home. The applicants are proposing to construct an additional 576 square foot detached accessory building located on the north side of the home. The zoning code permits a maximum of one detached accessory structure in the R-1 zoning.

The applicant has stated the additional building is needed to store a camper and boat, it would not be used as a main garage. The proposed structure would be in compliance with setbacks, exterior building materials and impervious surface standards.

SPECIFIC REQUEST

The following specific application is being requested:

- 1) A variance to allow two detached accessory buildings on a property whereas one is the maximum allowed in the R-1C zoning district.

EVALUATION OF THE REQUEST

SURROUNDING USES: The subject site is surrounded by the following uses:

North, West and East: Single Family Residential; zoned R-1C; guided Low
Density Residential

South: Single Family Residential; zoned R-1B; guided Low Density Residential

ENGINEERING

Engineering has reviewed the request and found no easements, no utility issues, and the site is under the allowed impervious surface percentage and would remain so if the proposed garage were constructed. Engineering takes no exception to the variance request.

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 variance, 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 surrounding properties are zoned and developed residential. Allowing an accessory building on the property would be in harmony with the general purpose and intent of the comprehensive plan which is a single family housing neighborhood. The zoning code allows one structure up to 1,000 gross square feet in the R-1 zoning district. The proposed structure would meet all other code requirements including setbacks, impervious surface and exterior building material requirements.

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

In all single-family residential districts the Zoning Ordinance considers detached accessory buildings to be a reasonable use. The property is 1.3 acres in size. The size of the two accessory buildings combined on the applicant's property would be less than 1,000 square feet, complying with the maximum square footage typically allowed on R-1C lots. The Council has recognized that there should be a limit to the number of structures allowed on a property. The existing home, built in 1950, does not have an attached garage; there is room on the property to add an attached garage and be in compliance with code requirements.

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

The property is 1.3 acres in size with the home located in the middle of the property. Although not economical for the property owners, there is room on the property to remove the carport and add an attached garage to the home without needing any variances.

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

Aesthetically the proposed location of the structure would meet setbacks and would be located behind the existing home and carport. Architecturally the structure would comply with exterior building material requirements. The closest neighboring home would be to the east, about 100 feet away from the structure with trees located between the proposed

structure and home. The additional structure would clean up the property by putting existing belongings indoors that are currently stored outside.

5. *Economic considerations alone do not constitute an undue hardship.*

Economic considerations do appear to be a basis for this request; adding an attached garage to the home is not cost prohibitive for the applicant.

ALTERNATIVES

The Planning Commission has the following actions available for the request:

- A. **Approval** If the Planning Commission finds the setback variance to be acceptable, the Commission should recommend approval of the request with at least the following conditions:
1. The site shall be developed in substantial conformance with the site plan on file with the Planning Department.
 2. A grading/erosion control plan shall be required at the time of the building permit application.
- 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. The conditions of the property are not so limiting or unique that the property could not be used in a reasonable manner without the variance approval; the property would still function as a residential lot.
 2. Approval of the variance could set a precedent for other requests to exceed the number of accessory buildings on a property when there are options available to add an attached garage to the home that complies with zoning criteria.
 3. The facts presented did not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance; the additional structure may be considered a convenience to the applicant, not a practical difficulty.

RECOMMENDATION

Based on the information in the preceding report and the rationale listed in Alternative B, staff is recommending denial of the variance request as staff believes the request does not meet the variance criteria.

Attachments: Location Map
 Applicant Narrative
 Site Plan
 Photos of the property



1847 Upper 55th St.

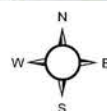
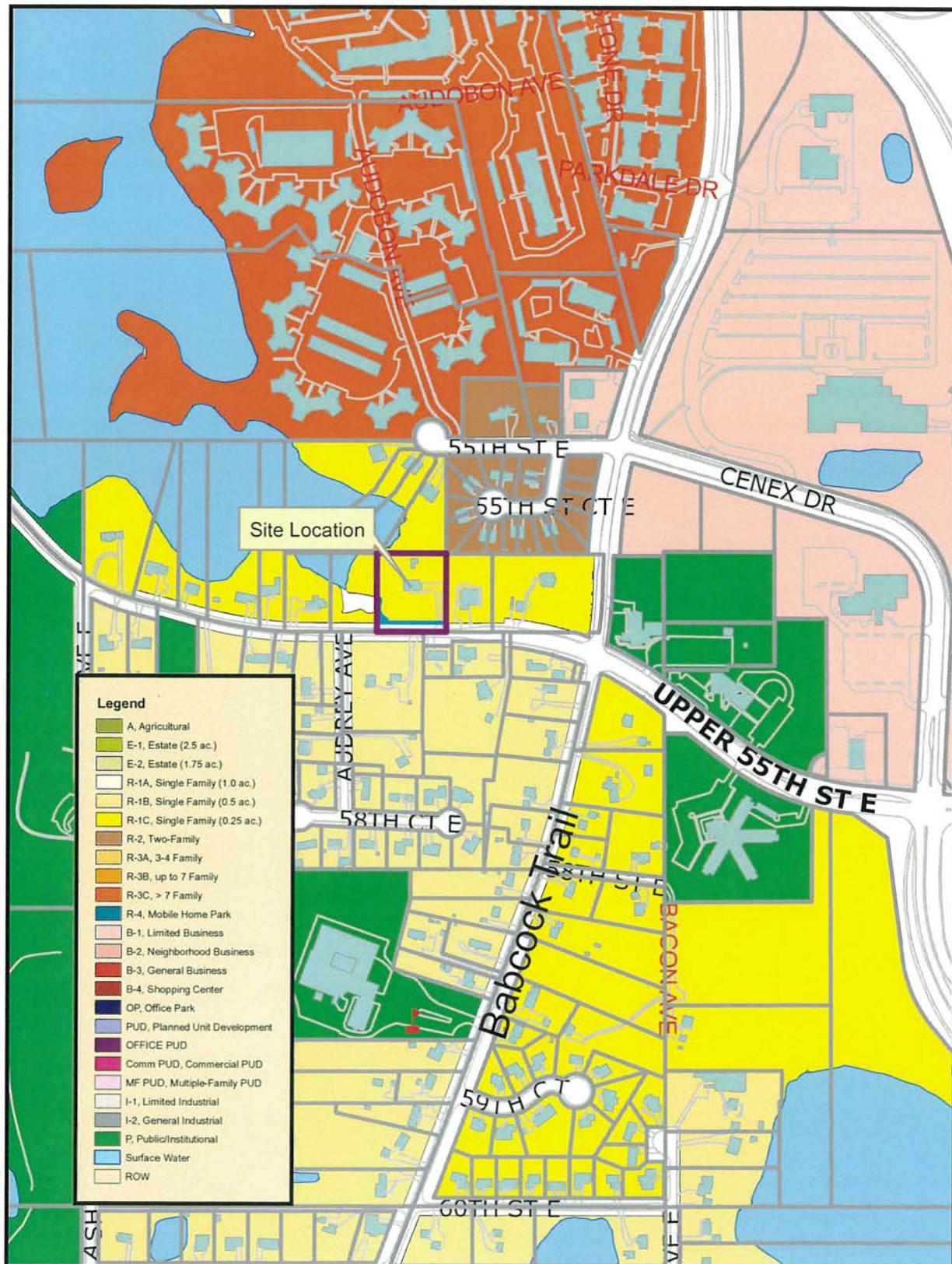


Exhibit A
Zoning and Location Map
Map not to scale

Heather Botten

From: kneisl@aol.com
Sent: Tuesday, October 31, 2017 2:49 PM
To: Heather Botten
Subject: narrative

Heather,

We are asking for a variance for a second detached building for several reasons.

- 1) We tore down an existing dilapidated structure that was next to the larger existing detached structure (approximately 14 x 20).
- 2) Building another structure in that same area would not be advised as it is an area that get run-off water and would be subject to flooding as the prior building was full of moisture and mold.
- 3) An attached structure is cost prohibitive for us. It adds another \$10-15,000 depending on how deep the footings need to be. (per several concrete contractors' bids)
- 4) When the satellite photo was taken...the area near the proposed building was NOT grass. However, as shown by photos, this area is now green space. We mainly use this area as storage for our pop up camper, boat and another seasonal vehicle.
- 5) Also, the building will mainly be used to store these items from the elements. We do NOT plan on putting in a driveway to the structure, as it will not be needed as this will not be used daily anyway. (plus it would also be too costly)
- 6) We have a a carport we regularly park our daily vehicles and will continue to utilize this.
- 7) Since the satellite photo was taken several large gardens have been added to the landscape and will continue to be maintained.

Thank you for your consideration.

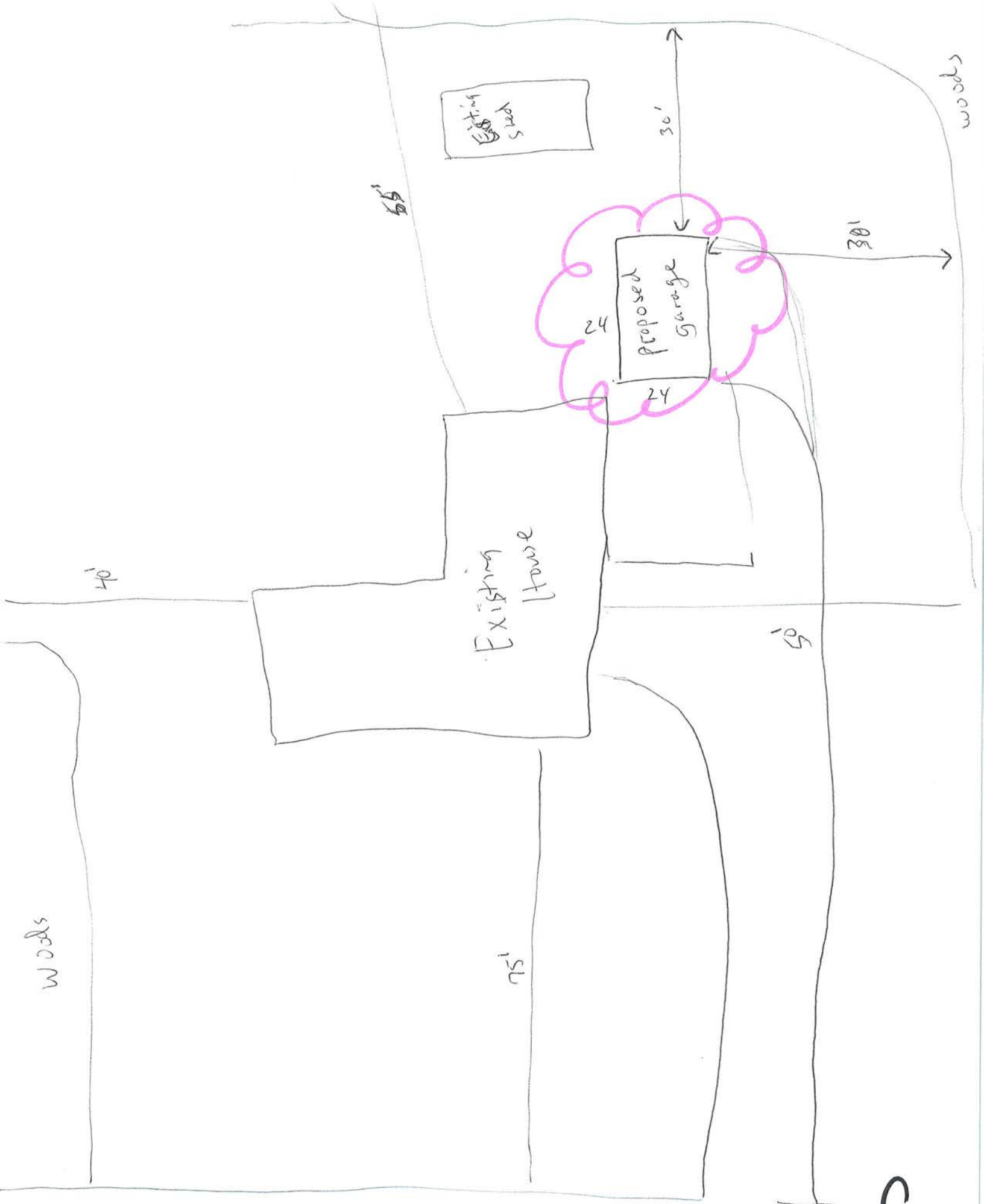
* if there is something not addressed here please let me know and I will address it immediately.

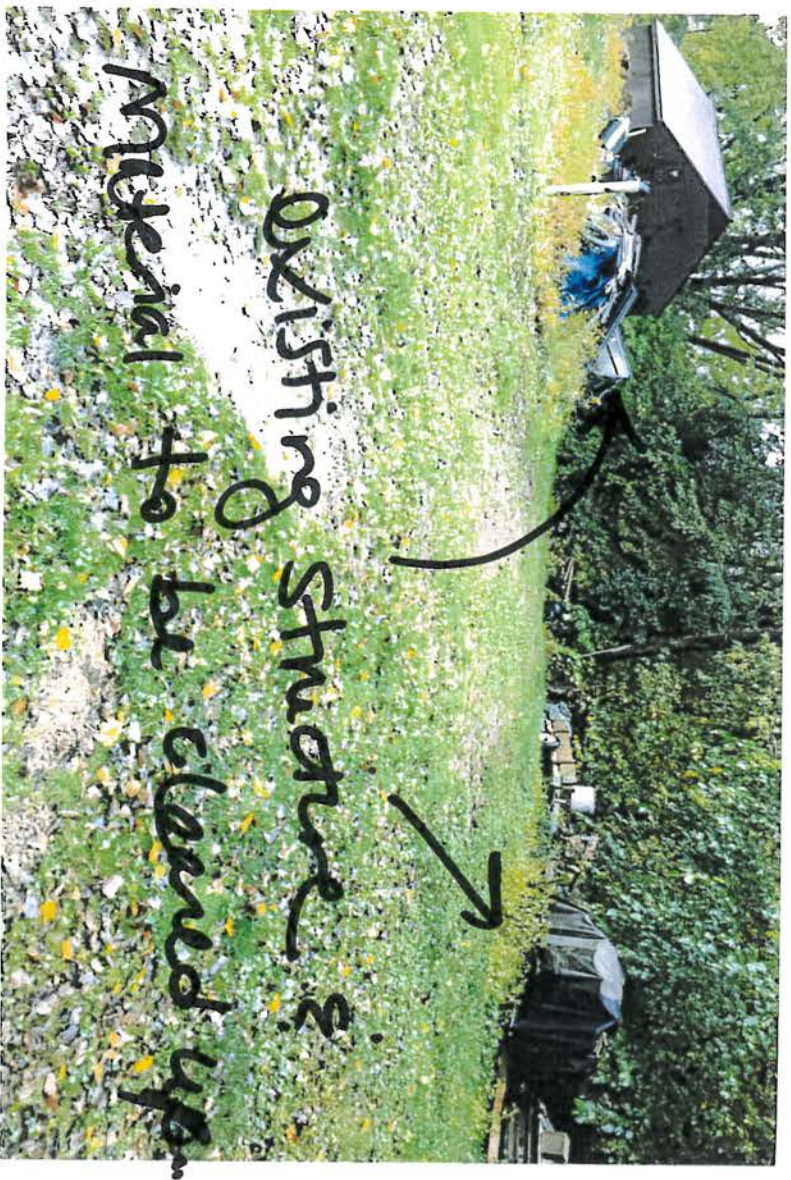
Melissa

B

1847 Upper 55th E

C





D

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

ALAN & LLONI BEBEL – CASE NO. 17-54S

Meeting Date: November 27, 2017
 Item Type: Regular Agenda
 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 Preliminary and Final Plat, Custom Grading Agreement, Stormwater Facilities Maintenance Agreement and Related Documents for the plat of Llonis 2nd Addition

- Requires 3/5th's vote.
- 60-day deadline: December 8, 2017 (first 60 days)

SUMMARY

The applicant is requesting to plat a 5.8-acre property into two buildable single-family lots. The property is zoned E-1, estate residential (2.5-acre minimum lot size). Lot 1 would be 3.30 acres in size and Lot 2 would be 2.5 acres in size, meeting the minimum lot size requirements. The City approved a variance from the minimum lot width requirements for both lots this past August; Lot 1 would be 190 feet wide and Lot 2 would be 172 feet whereas 200 feet is the minimum lot width requirement. The plat is consistent with the E-1 zoning and Rural Density Residential guiding.

The standard park dedication rate of \$2,850 per lot would be required prior to the release of the plat. The proposed plat is compatible with surrounding properties and there would be no public health or safety impacts. The applicants are proposing to build a single-family home on Lot 1 using the existing access point off Alverno Avenue; Lot 2 would have a separate access.

Engineering has reviewed the plans and has been working with the applicant on storm water and grading requirements. A custom grading agreement and storm water facilities maintenance agreement is required to be executed between the City and the property owner prior to any issuance of building permits. Engineering is requesting drainage easements on the property over the swale conveying the 100-year emergency overflow routes. Final site, grading, storm water management, and erosion control plans shall be approved by the City Engineer. The building permit will not be issued for the new home and the final plat will not be released until final plans have been approved by the City Engineer.

City Staff: Based on the information provided and the conditions listed in the attached resolution, staff is recommending **approval** of the plat and related agreements

Planning Commission. At the November 7, 2017 public hearing the Planning Commission recommended approval of the request for a preliminary and final plat as submitted with the conditions listed in the attached resolution (8-0).

Attachments: Resolution of Approval
 Custom Grading Agreement, SWFMA and related documents
 Planning Commission Recommendation
 Planning Report

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

RESOLUTION NO. _____

**A RESOLUTION APPROVING A PRELIMINARY AND FINAL PLAT, CUSTOM
GRADING AGREEMENTS, STORMWATER MAINTENANCE AGREEMENTS, AND
RELATED AGREEMENTS FOR THE PLAT KNOWN AS LLONIS 2ND ADDITION**

**CASE NO. 17-54S
(Bebel)**

WHEREAS, a preliminary and final plat application has been submitted to the City for property legally described as;

Lot 1, Block 1, Llonis Addition, Dakota County, Minnesota, according to the recorded plat thereof

WHEREAS, a public hearing concerning the preliminary plat was held before the Inver Grove Heights Planning Commission in accordance with Minnesota Statutes, Section 462.357, Subdivision 3 on November 7, 2017;

WHEREAS, the final plat application satisfies the pertinent conditions of preliminary plat approval and conforms to all applicable zoning and subdivision regulations (City Code Sections 10-13A and 11-1) and other standards applied by the City in the platting of property;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS that, the Preliminary and Final Plat, custom grading agreement, stormwater maintenance agreements and related agreements for the plat of Llonis 2nd Addition is hereby approved subject to the following conditions:

1. The final plat and development plans shall be in substantial conformance with the plans on file with the Planning Department except as may be modified by the conditions below.

2. A park dedication fee equal to \$2,850 per lot for Lot 1 and Lot 2 shall be paid to the City prior to release of the final plat (\$5,700 total).
3. The applicant shall meet the conditions outlined in the City Engineers review letters and subsequent correspondence.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL, that the Mayor and Deputy Clerk are hereby authorized and directed to record a certified copy of this Resolution at the Dakota County Recorder's Office.

Passed this 27th day of November, 2017.

AYES:
NAYS:

George Tourville, Mayor

ATTEST:

Michelle Tesser, City Clerk

CUSTOM GRADING AGREEMENT
FOR
LOT 1, BLOCK 1, LLONIS 2ND ADDITION
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

CUSTOM GRADING AGREEMENT
FOR
LOT 1, BLOCK 1, LLONIS 2ND ADDITION
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

THIS CUSTOM GRADING AGREEMENT (Agreement) is made and entered into on the 27th day of November, 2017, 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, storm water management improvements and associated landscaping;

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 Alan Bebel and Lloni Bebel, husband and wife, and their successors and assigns.

1.4 DEVELOPMENT PLANS. "Development Plans" means all those plans, drawings, specifications and surveys identified in 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.** The 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: Alan Bebel and Lloni Bebel
3852 North Ridge Drive
Eagan, MN 55123

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, 2020. 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, 2020, 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, 2020.

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 has deposited \$2,500 in cash with the City (hereafter "Engineering Escrow Amount") prior to 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 \$2,500 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:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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 1, Block 1, Llonis 2nd Addition, Dakota County, Minnesota.

APPENDIX 1
LIST OF DEVELOPMENT PLANS

<u>PLAN</u>	<u>DATE OF PLAN PREPARATION</u>	<u>PREPARED BY</u>
Certificate of Survey	_____	Pioneer Engineering, P.A.

The Development Plans were approved by the City Engineer on November ____, 2017.

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 or 12-31-18, whichever occurs first	Grading, drainage, and sediment & erosion control
<u> X </u>	Prior to Certificate of Occupancy or 12-31-18, whichever occurs first	Stormwater Facilities
<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

CUSTOM GRADING AGREEMENT
FOR
LOT 2, BLOCK 1, LLONIS 2ND ADDITION
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

CUSTOM GRADING AGREEMENT
FOR
LOT 2, BLOCK 1, LLONIS 2ND ADDITION
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

THIS CUSTOM GRADING AGREEMENT (Agreement) is made and entered into on the 27th day of November, 2017, 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, storm water management improvements and associated landscaping;

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 Alan Bebel and Lloni Bebel, husband and wife, and their successors and assigns.

1.4 DEVELOPMENT PLANS. "Development Plans" means all those plans, drawings, specifications and surveys identified in 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.** The 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:
Alan Bebel and Lloni Bebel
3852 North Ridge Drive
Eagan, MN 55123

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, 2020. 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, 2020, 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, 2020.

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 has deposited \$2,500 in cash with the City (hereafter "Engineering Escrow Amount") prior to 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 \$2,500 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:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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 2, Block 1, Llonis 2nd Addition, Dakota County, Minnesota.

APPENDIX 1
LIST OF DEVELOPMENT PLANS

<u>PLAN</u>	<u>DATE OF PLAN PREPARATION</u>	<u>PREPARED BY</u>
Certificate of Survey		Pioneer Engineering, P.A.

The Development Plans were approved by the City Engineer on November ____, 2017.

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 or 12-31-18, whichever occurs first	Grading, drainage, and sediment & erosion control
<u> X </u>	Prior to Certificate of Occupancy or 12-31-18, whichever occurs first	Stormwater Facilities
<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

STORM WATER FACILITIES MAINTENANCE AGREEMENT
FOR
LOT 1, BLOCK 1, LLONIS 2ND ADDITION,
INVER GROVE HEIGHTS, DAKOTA COUNTY, MINNESOTA

THIS STORM WATER FACILITIES MAINTENANCE AGREEMENT (Agreement) is made, entered into and effective this 27th day of November, 2017, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as City) and Alan Bebel and Lloni Bebel, husband and wife (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 Alan Bebel and Lloni Bebel, husband and wife, and their 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:

Any existing or future drainage swales, culverts, storm sewer pipes, catch basins, flared end sections, headwall, infiltration basin, EOF (emergency overflow) on top of driveways, other related appurtenances and storm water storage areas lying within the Landowner Property.

1.5 Storm Water Facility Plan. “Storm Water Facility Plan” means that certain Certificate of Survey prepared by Pioneer Engineering, P.A. dated November ____, 2017, and approved by the City Engineer on ____, 2017. The Storm Water Facility Plan is on file with the City and attached hereto as **Exhibit D.**

1.6 Landowner Property. “Landowner Property” means that certain real property located in the City of Inver Grove Heights, Dakota County, Minnesota legally described on **Exhibit A.**

1.7 Responsible Owner. “Responsible Owner” means, jointly and severally, all of the following:

The fee title owner of the property legally described on Exhibit A attached hereto, and the successors and assigns of such fee title owner.

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 Custom Grading Agreement. “Custom Grading Agreement” means that certain Custom Grading Agreement for Lot 1, Block 1, Llonis 2nd Addition by and between the City and Landowner dated November 27, 2017.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner owns the Landowner Property.

Recital No. 2. Landowner has requested that the City approve the Development Plans as identified in the Custom Grading Agreement relating to the Landowner Property.

Recital No. 3. The City is willing to approve the Development Plans referenced in the Custom Grading Agreement, if, among other things, 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.
- 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. Prior to December 31, 2018, or prior to issuance of a certificate of occupancy by the City for the Landowner Property, whichever occurs first, Responsible Owner agrees that the Storm Water Facilities shall be constructed and installed in accordance with the Storm Water Facility Plan at the sole expense of Responsible Owner at a location and in a configuration as approved by the City.

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 for as long as the Storm Water Facilities exist. 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.

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); and
- b. The Standard of Maintenance shall comply with the stormwater maintenance standards and bio-retention 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; and
- c. The Standard of Maintenance shall comply with the City approved Operations & Maintenance Plan hereafter referenced;
- d. The Standard of Maintenance shall comply with the 2011 Watershed Management Plan for the Lower Mississippi Watershed Management Organization (LMRWMO) dated August 2011;

- 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.) 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 shall 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 as approved by the City. The Operations & Maintenance Plan shall be on file with the City's Director of Public Works.
 - iii.) The Operations & Maintenance Plan shall contain the following information:
 - a. Detailed inspection requirements;
 - b. Inspection and maintenance schedules;
 - c. Contact information for the Responsible Owner;
 - d. As built plans of the Storm Water Facilities;
 - e. The requirement for an annual report to the City to demonstrate that post construction maintenance is being accomplished per the Operations & Maintenance Plan;
 - f. 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. Storm Water 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.

If the Storm Water 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.

On December 31 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 3.3 and 3.4; Cure Period. If the City's Director of Public Works ("DPW") determines, at his 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 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 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 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 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 3.3.

In addition, if payment is not made under Section 3.5 by the Responsible Owner with respect to the Landowner Property, the City may use the funds available under Article 4 to reimburse the City for the cost and expenses incurred by the City.

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.

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.

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 **ESCROW DEPOSIT**

4.1 Engineering Escrow Amount. The Landowner has deposited \$2,500 in cash with the City (hereafter "Engineering Escrow Amount") prior to 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 Storm Water Facility Plan and this Agreement and other associated City costs. Fees will be calculated at the City's standard rates charged for such tasks.

Upon satisfactory completion of the Storm Water Facilities, the City shall return to the Landowner any remaining portion of the Engineering Escrow Amount not otherwise previously charged the Landowner.

To the extent the engineering inspection charges or the amount needed to correct any deficiencies and problems relating to grading, drainage, erosion control, or landscaping exceed the initially deposited \$2,500 Engineering Escrow Amount, the Landowner is responsible for payment of such excess within thirty (30) days after billing by the City.

ARTICLE 5 **CITY'S COVENANTS**

5.1 Approval of Development Plans. The City agrees that if Landowner executes this Storm Water Facilities Maintenance Agreement and if the other conditions set forth by the City in the Custom Grading Agreement, the Engineering Memo dated July 18, 2017, the Engineering Memo dated August 16, 2017 and the Engineering Memo dated October 17, 2017 are met, the Council will approve the Development Plans referenced in the Custom Grading Agreement for the Landowner Property.

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: Alan Bebel and Lloni Bebel
3852 North Ridge Drive
Eagan, MN 55123

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 Landowner and the City have entered into this Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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:

Lot 1, Block 1, Llonis 2nd Addition, Dakota County, Minnesota.

EXHIBIT B
OPERATIONS & MAINTENANCE PLAN

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 facility conforming to the intend 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	Maintenance Done By
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	Property owner unless designated
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	Property owner unless designated
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	Property owner unless designated
4. Mulch replacement	Every 2 to 3 years or as needed to maintain 3" to 4" depth	If applicable, add shredded hardwood mulch	Property owner
5. Watering	As needed	Provide 1 inch of water when plants show signs of stress	Property owner
6. Vegetation replacement and weeding	Annually in spring and fall	Replace dead vegetation and remove evasive or unwanted plants	Property owner
7. Clean/fix structural components	As needed per inspection	Dependent on the type of damage; repair components per manufacturer's recommendations	Property owner unless designated
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.	Property owner unless designated

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					
ILLICIT 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

EXHIBIT D
STORM WATER FACILITY PLAN

[to be inserted]

STORM WATER FACILITIES MAINTENANCE AGREEMENT
FOR
LOT 2, BLOCK 1, LLONIS 2ND ADDITION,
INVER GROVE HEIGHTS, DAKOTA COUNTY, MINNESOTA

THIS STORM WATER FACILITIES MAINTENANCE AGREEMENT (Agreement) is made, entered into and effective this 27th day of November, 2017, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as City) and Alan Bebel and Lloni Bebel, husband and wife (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 Alan Bebel and Lloni Bebel, husband and wife, and their 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:

Any existing or future drainage swales, culverts, storm sewer pipes, catch basins, flared end sections, headwall, infiltration basin, EOF (emergency overflow) on top of driveways, other related appurtenances and storm water storage areas lying within the Landowner Property.

1.5 Storm Water Facility Plan. “Storm Water Facility Plan” means that certain Certificate of Survey prepared by Pioneer Engineering, P.A. dated November ____, 2017, and approved by the City Engineer on ____, 2017. The Storm Water Facility Plan is on file with the City and attached hereto as **Exhibit D**.

1.6 Landowner Property. “Landowner Property” means that certain real property located in the City of Inver Grove Heights, Dakota County, Minnesota legally described on **Exhibit A**.

1.7 Responsible Owner. “Responsible Owner” means, jointly and severally, all of the following:

The fee title owner of the property legally described on Exhibit A attached hereto, and the successors and assigns of such fee title owner.

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 Custom Grading Agreement. “Custom Grading Agreement” means that certain Custom Grading Agreement for Lot 2, Block 1, Llonis 2nd Addition by and between the City and Landowner dated November 27, 2017.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner owns the Landowner Property.

Recital No. 2. Landowner has requested that the City approve the Development Plans as identified in the Custom Grading Agreement relating to the Landowner Property.

Recital No. 3. The City is willing to approve the Development Plans referenced in the Custom Grading Agreement, if, among other things, 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.
- 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. Prior to December 31, 2018, or prior to issuance of a certificate of occupancy by the City for the Landowner Property, whichever occurs first, Responsible Owner agrees that the Storm Water Facilities shall be constructed and installed in accordance with the Storm Water Facility Plan at the sole expense of Responsible Owner at a location and in a configuration as approved by the City.

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 for as long as the Storm Water Facilities exist. 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.

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); and
- b. The Standard of Maintenance shall comply with the stormwater maintenance standards and bio-retention 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; and
- c. The Standard of Maintenance shall comply with the City approved Operations & Maintenance Plan hereafter referenced;
- d. The Standard of Maintenance shall comply with the 2011 Watershed Management Plan for the Lower Mississippi Watershed Management Organization (LMRWMO) dated August 2011;

- 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.) 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 shall 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 as approved by the City. The Operations & Maintenance Plan shall be on file with the City's Director of Public Works.
 - iii.) The Operations & Maintenance Plan shall contain the following information:
 - a. Detailed inspection requirements;
 - b. Inspection and maintenance schedules;
 - c. Contact information for the Responsible Owner;
 - d. As built plans of the Storm Water Facilities;
 - e. The requirement for an annual report to the City to demonstrate that post construction maintenance is being accomplished per the Operations & Maintenance Plan;
 - f. 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. Storm Water 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.

If the Storm Water 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.

On December 31 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 3.3 and 3.4; Cure Period. If the City's Director of Public Works ("DPW") determines, at his 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 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 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 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 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 3.3.

In addition, if payment is not made under Section 3.5 by the Responsible Owner with respect to the Landowner Property, the City may use the funds available under Article 4 to reimburse the City for the cost and expenses incurred by the City.

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.

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.

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.

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4.1 Engineering Escrow Amount. The Landowner has deposited \$2,500 in cash with the City (hereafter "Engineering Escrow Amount") prior to 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 Storm Water Facility Plan and this Agreement and other associated City costs. Fees will be calculated at the City's standard rates charged for such tasks.

Upon satisfactory completion of the Storm Water Facilities, the City shall return to the Landowner any remaining portion of the Engineering Escrow Amount not otherwise previously charged the Landowner.

To the extent the engineering inspection charges or the amount needed to correct any deficiencies and problems relating to grading, drainage, erosion control, or landscaping exceed the initially deposited \$2,500 Engineering Escrow Amount, the Landowner is responsible for payment of such excess within thirty (30) days after billing by the City.

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5.1 Approval of Development Plans. The City agrees that if Landowner executes this Storm Water Facilities Maintenance Agreement and if the other conditions set forth by the City in the Custom Grading Agreement, the Engineering Memo dated July 18, 2017, the Engineering Memo dated August 16, 2017 and the Engineering Memo dated October 17, 2017 are met, the Council will approve the Development Plans referenced in the Custom Grading Agreement for the Landowner Property.

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.

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

If to Landowner: Alan Bebel and Lloni Bebel
3852 North Ridge Drive
Eagan, MN 55123

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 Landowner and the City have entered into this Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser 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:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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
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Lot 2, Block 1, Llonis 2nd Addition, Dakota County, Minnesota.

EXHIBIT B
OPERATIONS & MAINTENANCE PLAN

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 facility conforming to the intend 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.

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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	Property owner unless designated
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	Property owner unless designated
4. Mulch replacement	Every 2 to 3 years or as needed to maintain 3" to 4" depth	If applicable, add shredded hardwood mulch	Property owner
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6. Vegetation replacement and weeding	Annually in spring and fall	Replace dead vegetation and remove evasive or unwanted plants	Property owner
7. Clean/fix structural components	As needed per inspection	Dependent on the type of damage; repair components per manufacturer's recommendations	Property owner unless designated
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.	Property owner unless designated

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

EXHIBIT D
STORM WATER FACILITY PLAN

[to be inserted]

PERMANENT UTILITY AND DRAINAGE EASEMENT

THIS PERMANENT UTILITY AND DRAINAGE EASEMENT (Easement) is made, granted and conveyed this 27th day of November, 2017, between Alan Bebel and Lloni Bebel, husband and wife (hereinafter referred to as "Landowner") and City of Inver Grove Heights, a municipal corporation organized under the laws of the State of Minnesota (hereinafter referred to as the "City").

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

The 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, the following:

A permanent easement for utility and drainage purposes and all such purposes ancillary, incident or related thereto (hereinafter "**Permanent Easement**") under, over, across, through and upon that real property legally described on **Exhibit B** (hereinafter the "**Permanent Easement Area**") attached hereto and incorporated herein by reference.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any sanitary sewer, water mains, storm water facilities, drainage facilities and any utilities, underground pipes, culverts, conduits, other utilities and mains, and all facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Permanent Easement Area to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of any sanitary sewer, water mains, storm water facilities, drainage facilities any utilities, underground pipes, conduits, culverts, other utilities, mains and all facilities and improvements ancillary, incident or related thereto.

EXEMPT FROM STATE DEED TAX

The rights of the City also include the right of the City, its contractors, agents and servants:

- a.) to enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of this Easement; and
- b.) to maintain the Permanent Easement Area, any City improvements and any underground pipes, conduits, or mains, together with the right to excavate and refill ditches or trenches for the location of such pipes, conduits or mains; and
- c.) to remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of the pipes, conduits, or mains and to deposit earthen material in and upon the Permanent Easement Area; and
- d.) to remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as the City may deem appropriate.

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' 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, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the Landowner's 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, themselves or their successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statute, Chapter 466.

The Landowner, for themselves and their successors and assigns, do hereby warrant to and covenant with the City, its successors and assigns, that they are well seized in fee of the Landowner's Property described on Exhibit A and the Permanent Easement Area described on Exhibit B and that they have good right to grant and convey the Permanent Easement herein to the City.

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

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

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser, 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

LANDOWNER:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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 LANDOWNER'S PROPERTY

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

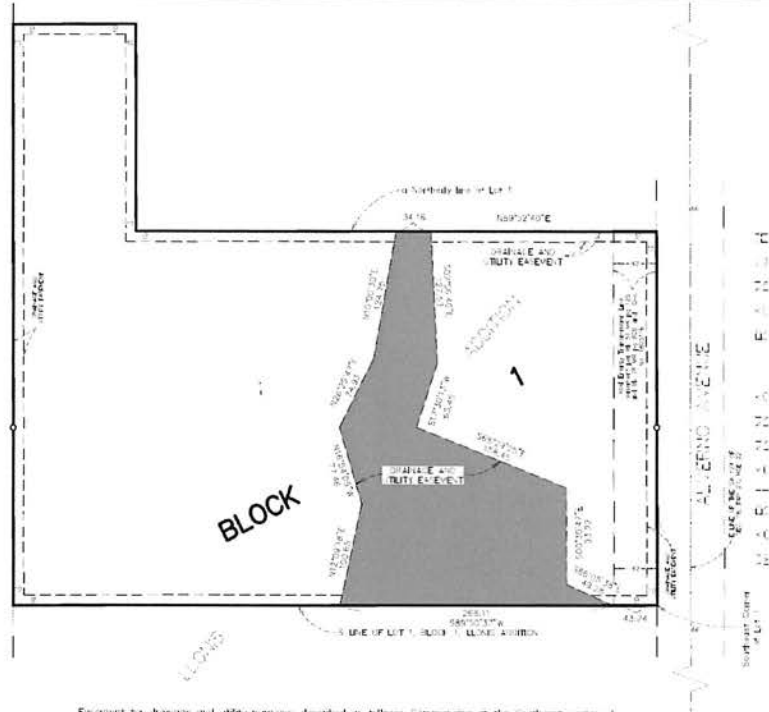
Lot 1, Block 1, Llonis Addition, Dakota County, Minnesota.

EXHIBIT B
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

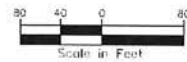
A perpetual easement for drainage and utility purposes over, under and across the following described property:

Commencing at the Southeast corner of Lot 1, Block 1, LLONIS ADDITION according to the recorded plat thereof, Dakota County, Minnesota. Thence, South 89 degrees 50 minutes 37 seconds West, assumed bearing, along the South line of said Lot 1, 43.24 feet to the point of beginning of said easement; thence, continuing South 89 degrees 50 minutes 37 seconds West along said south line 268.11 feet; thence, North 12 degrees 09 minutes 18 seconds East, 100.65 feet; thence, North 16 degrees 54 minutes 05 seconds West, 77.46 feet; thence, North 26 degrees 29 minutes 47 seconds East, 74.93 feet; thence, North 10 degrees 00 minutes 30 seconds East, 124.75 feet to a Northerly line of said Lot 1; thence, North 89 degrees 52 minutes 40 seconds East, along said Northerly line, 34.16 feet; thence, South 02 degrees 56 minutes 40 seconds East, 127.53 feet; thence, South 17 degrees 30 minutes 13 seconds West, 65.45 feet; thence, South 68 degrees 29 minutes 25 seconds East, 158.45 feet; thence, South 00 degrees 30 minutes 47 seconds East, 93.92 feet; thence, South 66 degrees 05 minutes 38 seconds East, 49.28 feet to the point of beginning.

6 4 2 0 0 4



Easement for drainage and utility purposes described as follows: Commencing at the southeast corner of Lot 1, Block 1, L.P. 45 4207070, according to the recorded plat thereof, Dakota County, Minnesota; thence, South 89 degrees 50 minutes 37 seconds West, measured bearing, along the South line of said Lot 1, 63.24 feet to the point of beginning of said easement; thence, continuing South 89 degrees 50 minutes 37 seconds West along said South line 268.17 feet; thence, North 12 degrees 09 minutes 18 seconds East, 76.02 feet; thence, North 16 degrees 24 minutes 05 seconds West, 77.46 feet; thence, North 28 degrees 29 minutes 47 seconds East, 74.93 feet; thence, North 10 degrees 50 minutes 30 seconds East, 72.75 feet to a North line of said Lot 1; thence, North 89 degrees 50 minutes 40 seconds East, along said North line, 34.16 feet; thence, South 82 degrees 28 minutes 40 seconds East, 127.53 feet; thence, South 11 degrees 20 minutes 12 seconds West, 85.45 feet; thence, South 88 degrees 23 minutes 26 seconds East, 188.45 feet; thence, South 80 degrees 52 minutes 47 seconds East, 93.92 feet; thence, South 66 degrees 05 minutes 38 seconds East, 43.28 feet to the point of beginning.



Drainage and Utility
Easement

Cad File: 171662.dwg
Folder #: 8135
Drawn by: MTW

PIONEER engineering
LANSING, MINNESOTA
4811 68th St. N.
Lansing, MN 55450
312 Corporate Drive
Morton Heights, MN 55120
www.pioneereng.com

Sheet
1 of 1

RELEASE AND INDEMNIFICATION AGREEMENT RELATING TO
LOT 1, BLOCK 1, LLONI'S 2ND ADDITION
IN THE CITY OF INVER GROVE HEIGHTS,
DAKOTA COUNTY, MINNESOTA

**RELEASE AND INDEMNIFICATION AGREEMENT
RELATING TO LOT 1, BLOCK 1, LLONI'S 2ND ADDITION,
IN THE CITY OF INVER GROVE HEIGHTS,
DAKOTA COUNTY, MINNESOTA**

THIS RELEASE AND INDEMNIFICATION AGREEMENT (Agreement) is made this 27th day of November, 2017, by and between the City of Inver Grove Heights (hereafter referred to as "City"), a Minnesota municipal corporation, and Alan Bebel and Lloni Bebel, husband and wife, (hereinafter individually and collectively referred to as the "Landowners"). Based on the covenants, agreements, representations and recitals herein contained, the parties agree as follows:

ARTICLE 1
TERMS

1.1 Terms. Unless specifically defined elsewhere in this Agreement, the following terms shall have the following meanings.

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

1.3 Subject Lot. "Subject Lot" means Lot 1, Block 1, Lloni's 2nd Addition, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota. The Subject Lot is located in the City of Inver Grove Heights, Dakota County, Minnesota.

1.4 Landowners. "Landowners" means Alan Bebel and Lloni Bebel, husband and wife, and their assigns and successors in interest with respect to the Subject Lot.

1.5 Indemnified Parties. "Indemnified Parties" means individually and collectively the City, its successors and assigns, and the agents, consultants, employees, engineers, attorneys and representatives of the City.

ARTICLE 2
RECITALS

Recital No. 1. The undersigned Landowners are the fee title owners of the Subject Lot located in Inver Grove Heights, Dakota County, Minnesota.

Recital No. 2 On the Subject Lot, a home, attached garage and driveway will be constructed.

Recital No. 3. The home is being constructed with the lowest floor one (1) foot above the natural overflow elevation for the basin located on the Subject Lot for a 100 year rainfall event. The lowest floor elevation of the home is 868.

Recital No. 4. The driveway is designed to withstand a 100 year rainfall event high water elevation of 856.8.

Recital No. 5. The City has advised the Landowner that building within the 867 natural overflow elevation is not allowed and that the Landowner should consider additional flood protection measures above the regulatory flood level.

Recital No. 6. The Landowners have chosen not to follow the City's recommendation.

Recital No. 7. As a condition precedent to approval of the site plan for the construction of the home, attached garage and driveway, the City has requested this Agreement. The Landowners acknowledge sufficient consideration for this Agreement. Upon execution of this Agreement the City will approve the site plan, subject to the conditions and terms set forth in the Custom Grading Agreement between the parties of even date herewith.

NOW, THEREFORE, THE CITY OF INVER GROVE HEIGHTS AND THE UNDERSIGNED LANDOWNERS, FOR THEMSELVES, AND THEIR SUCCESSORS, HEIRS AND ASSIGNS DO HEREBY AGREE:

ARTICLE 3 **AGREEMENTS**

3.1 Release. Landowners hereby release and discharge forever the Indemnified Parties from all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies including interest, penalties and attorneys fees that may result from, relate to or arise out of the location, elevation and construction of structures (including the home, attached garage and driveway) on the Subject Lot.

3.2 Indemnification. Landowners shall indemnify, defend and hold the Indemnified Parties harmless against and in respect to any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies including interest, penalties and attorneys fees that may result from, relate to or arise out of the location, elevation and construction of structures (including the home, attached garage and driveway) on the Subject Lot.

3.3 Waiver. Landowners hereby forever waive all claims, demands and liabilities against the Indemnified Parties for losses and damages that may result from, relate to or arise out of the location, elevation and construction of structures (including the home, attached garage and driveway) on the Subject Lot.

ARTICLE 4 **APPROVAL OF SITE PLAN**

4.1 Approval of Site Plan. Upon execution of this Agreement the City will approve the site plan for the home, attached garage and driveway, subject to the conditions and terms set forth in the Custom Grading Agreement between the parties of even date herewith.

ARTICLE 5 **MISCELLANEOUS**

5.1 Recording. This Agreement shall be recorded with the Dakota County Recorder against the Subject Lot.

5.2 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Lot and shall be binding upon the heirs, successors, administrators and assigns of the parties.

This Agreement shall also be binding upon all after-acquired rights, interests and title of the parties that may be acquired from and after the date of this Agreement.

5.3 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 and 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.

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

5.5 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.

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its Mayor

ATTEST:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser, 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

LANDOWNERS:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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

RELEASE AND INDEMNIFICATION AGREEMENT RELATING TO
LOT 2, BLOCK 1, LLONI'S 2ND ADDITION
IN THE CITY OF INVER GROVE HEIGHTS,
DAKOTA COUNTY, MINNESOTA

**RELEASE AND INDEMNIFICATION AGREEMENT
RELATING TO LOT 2, BLOCK 1, LLONI'S 2ND ADDITION,
IN THE CITY OF INVER GROVE HEIGHTS,
DAKOTA COUNTY, MINNESOTA**

THIS RELEASE AND INDEMNIFICATION AGREEMENT (Agreement) is made this 27th day of November, 2017, by and between the City of Inver Grove Heights (hereafter referred to as "City"), a Minnesota municipal corporation, and Alan Bebel and Lloni Bebel, husband and wife, (hereinafter individually and collectively referred to as the "Landowners"). Based on the covenants, agreements, representations and recitals herein contained, the parties agree as follows:

ARTICLE 1
TERMS

1.1 Terms. Unless specifically defined elsewhere in this Agreement, the following terms shall have the following meanings.

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

1.3 Subject Lot. "Subject Lot" means Lot 2, Block 1, Lloni's 2nd Addition, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota. The Subject Lot is located in the City of Inver Grove Heights, Dakota County, Minnesota.

1.4 Landowners. "Landowners" means Alan Bebel and Lloni Bebel, husband and wife, and their assigns and successors in interest with respect to the Subject Lot.

1.5 Indemnified Parties. "Indemnified Parties" means individually and collectively the City, its successors and assigns, and the agents, consultants, employees, engineers, attorneys and representatives of the City.

ARTICLE 2
RECITALS

Recital No. 1. The undersigned Landowners are the fee title owners of the Subject Lot located in Inver Grove Heights, Dakota County, Minnesota.

Recital No. 2 On the Subject Lot, a home, attached garage and driveway will be constructed.

Recital No. 3. The home is being constructed with the lowest floor one (1) foot above the natural overflow elevation for the basin located on the Subject Lot for a 100 year rainfall event. The lowest floor elevation of the home is 868.

Recital No. 4. The driveway is designed to withstand a 100 year rainfall event high water elevation of 856.8.

Recital No. 5. The City has advised the Landowner that building within the 867 natural overflow elevation is not allowed and that the Landowner should consider additional flood protection measures above the regulatory flood level.

Recital No. 6. The Landowners have chosen not to follow the City's recommendation.

Recital No. 7. As a condition precedent to approval of the site plan for the construction of the home, attached garage and driveway, the City has requested this Agreement. The Landowners acknowledge sufficient consideration for this Agreement. Upon execution of this Agreement the City will approve the site plan, subject to the conditions and terms set forth in the Custom Grading Agreement between the parties of even date herewith.

NOW, THEREFORE, THE CITY OF INVER GROVE HEIGHTS AND THE UNDERSIGNED LANDOWNERS, FOR THEMSELVES, AND THEIR SUCCESSORS, HEIRS AND ASSIGNS DO HEREBY AGREE:

ARTICLE 3 **AGREEMENTS**

3.1 Release. Landowners hereby release and discharge forever the Indemnified Parties from all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies including interest, penalties and attorneys fees that may result from, relate to or arise out of the location, elevation and construction of structures (including the home, attached garage and driveway) on the Subject Lot.

3.2 Indemnification. Landowners shall indemnify, defend and hold the Indemnified Parties harmless against and in respect to any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies including interest, penalties and attorneys fees that may result from, relate to or arise out of the location, elevation and construction of structures (including the home, attached garage and driveway) on the Subject Lot.

3.3 Waiver. Landowners hereby forever waive all claims, demands and liabilities against the Indemnified Parties for losses and damages that may result from, relate to or arise out of the location, elevation and construction of structures (including the home, attached garage and driveway) on the Subject Lot.

ARTICLE 4 **APPROVAL OF SITE PLAN**

4.1 Approval of Site Plan. Upon execution of this Agreement the City will approve the site plan for the home, attached garage and driveway, subject to the conditions and terms set forth in the Custom Grading Agreement between the parties of even date herewith.

ARTICLE 5 **MISCELLANEOUS**

5.1 Recording. This Agreement shall be recorded with the Dakota County Recorder against the Subject Lot.

5.2 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Lot and shall be binding upon the heirs, successors, administrators and assigns of the parties.

This Agreement shall also be binding upon all after-acquired rights, interests and title of the parties that may be acquired from and after the date of this Agreement.

5.3 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 and 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.

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

5.5 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.

5.6 Headings. The subject headings of the sections this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

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

IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its Mayor

ATTEST:

Michelle Tesser, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of November, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser, 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

LANDOWNERS:

Alan Bebel

Lloni Bebel

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Alan Bebel and Lloni Bebel, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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

**RECOMMENDATION TO
CITY OF INVER GROVE HEIGHTS**

TO: Mayor and City Council of Inver Grove Heights

FROM: Planning Commission

DATE: November 7, 2017

SUBJECT: **ALLAN & LLONI BEBEL – CASE NO. 17-54S**

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a preliminary and final plat for a two-lot subdivision to be known as Lloni's 2nd Addition, for the property located at 8843 Alverno Avenue. 43 notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the property is zoned E-1, Estate Residential. The applicant is requesting to subdivide the 5.8-acre property into two lots; Lot 1 would be 3.3 acres in size and Lot 2 would be 2.5 acres in size. The City recently approved a variance from the minimum lot width requirements for both lots. The applicants are proposing to build on Lot 1 and use the existing access point. Lot 2 would have a separate access. Staff recommends approval of the request and have not heard from any abutting property owners.

Opening of Public Hearing

Lloni Bebel, 3852 North Ridge Drive, Eagan, advised she was available to answer any questions.

Chair Maggi asked the applicant if she read and understood the report.

Ms. Bebel replied in the affirmative.

Chair Maggi closed the public hearing.

Planning Commission Recommendation

Motion by Commissioner Wippermann, second by Commissioner Lissarrague, to approve the request for a preliminary and final plat for a two-lot subdivision to be known as Lloni's 2nd Addition, for the property located at 8843 Alverno Avenue, with the conditions listed in the report.

Motion carried (8/0). This item goes to the City Council on November 13, 2017.

PLANNING REPORT CITY OF INVER GROVE HEIGHTS

HEARING DATE: November 7, 2017

CASE NO.: 17-54S

APPLICANT & PROPERTY OWNER: Alan & Lloni Bebel

REQUEST: Preliminary and Final Plat request for a two-lot subdivision

LOCATION: 8843 Alverno Avenue (north of 8915 Alverno Ave)

COMPREHENSIVE PLAN: RDR, Rural Density Residential

ZONING: E-1, Estate residential

REVIEWING DIVISIONS: Planning
Engineering

PREPARED BY: Heather Botten
Associate Planner



BACKGROUND

The applicants' property is 5.8 acres in size and zoned E-1, Estate Residential. It is the property owners desire to subdivide their property into two lots. Lot 1 would be 3.30 acres in size and Lot 2 would be 2.5 acres in size, meeting the minimum lot size requirements. The City approved a variance from the minimum lot width requirements for both lots this past August; Lot 1 would be 190 feet wide and Lot 2 would be 172 feet whereas 200 feet is the minimum lot width requirement.

The property currently has an existing accessory building with no principal structure. The owners are in the process of building a new home on Lot 1 for their primary residence and Lot 2 would be developed at a later date. The following specific application is being requested:

- a.) A Preliminary and Final Plat for a two-lot subdivision to be known as Llonis 2nd Addition in the E-1 Zoning District;

EVALUATION OF THE REQUEST

The following land uses, zoning districts, and comprehensive plan designations surround the subject property:

- North - Residential; zoned E-1, Estate Residential; guided RDR, Rural density residential
- East - Open space; zoned PUD, Planned Unit Development; guided PO, Public open space
- West - Residential; zoned PUD, Planned Unit Development; guided RDR, Rural density residential
- South - Residential; zoned E-1, Estate Residential; guided RDR, Rural density residential

PLAT REVIEW

Zoning and Comprehensive Plan Consistency. The property is zoned E-1, estate residential which has a 2.5 acre minimum lot size requirement and it is guided RDR, Rural Density Residential. The proposed plat is consistent with the zoning and comprehensive plan designations.

Lots & Blocks.

The proposed plat consists of two lots, Lot 1 would be 3.30 acres in size and Lot 2 would be 2.5 acres in size, meeting the minimum lot size requirements. A variance was approved for the minimum lot widths of 190 feet for Lot 1 and 172 feet for Lot 2.

Park Dedication. Park dedication on this plat will be cash in lieu of land. If approved, prior to release of the final plat for filing with Dakota County, a cash fee of \$2,850 per lot would be required (\$5,700 total).

Infrastructure. This property is located outside of the MUSA boundary. The proposed lots would be on well and septic. Soil borings have been submitted and reviewed by the Inspections Department and have been found to be acceptable for a septic system.

Access. Access to the property would be off of Alverno Avenue. There is an existing access point on the property that is currently used to access the accessory buildings on the lot to the north, this access would also be used for the new home on Lot 1. Lot 2 is shown having its own access off Alverno Avenue.

Engineering. Engineering has reviewed the plans and has been working with the applicant on storm water and grading requirements. A custom grading agreement and storm water facilities maintenance agreement would be required to be executed between the City and the property owner prior to any issuance of building permits. Final site, grading, storm water management, and erosion control plans shall be approved by the City Engineer. Engineering has made some recommendations on conditions that should be added to the approval; these conditions are included in the list of conditions at the end of this report.

ALTERNATIVES

The Planning Commission has the following actions available for the proposed request:

- A. Approval. If the Planning Commission finds the application to be acceptable the following actions should be recommended for approval:
- Approval of the Preliminary and Final Plat for a two lot subdivision to be known as Llonis 2nd Addition subject to the following conditions:
 1. The final plat and development plans shall be in substantial conformance with the plans on file with the Planning Department except as may be modified by the conditions below.

2. A park dedication fee equal to \$2,850 per lot for Lot 1 and Lot 2 shall be paid to the City prior to release of the final plat (\$5,700 total).
3. Drainage and utility easements shall be provided on the final plat as required by the City Engineering Department.
4. A Custom Grading Agreement shall be prepared by the City Attorney and executed by both the City and the property owner prior to issuance of a building permit for Lot 1 and Lot 2.
5. The applicant shall meet the conditions outlined in the City Engineers review letters and subsequent correspondence.

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

RECOMMENDATION

Based on the information in the preceding report and the conditions listed in Alternative A, staff is recommending approval of the preliminary and final plat request for a two-lot subdivision.

Attachments: Exhibit A -Location/Zoning Map
Exhibit B- Plat
Exhibit C- Grading Plan



8843 Alverno Avenue Case No. 17-54S



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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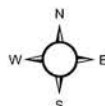


Exhibit A
Zoning and Location Map
Map not to scale

LLONIS 2ND ADDITION

KNOW ALL PERSONS BY THESE PRESENTS: That Alan and Llonis Bebel, husband and wife, owners, of the following described property:

Lot 1, Block 1, LLONIS ADDITION, according to the recorded plat thereof, Dakota County, Minnesota.

Have caused the same to be surveyed and platted as LLONIS 2ND ADDITION and do hereby dedicate to the public for public use the drainage and utility easements as created by this plat.

IN WITNESS WHEREOF said Alan and Llonis Bebel, husband and wife, have hereunto set their hands this ____ day of _____, 20____.

By: _____ By: _____
Alan Bebel Llonis Bebel

STATE OF MINNESOTA

COUNTY OF _____

This instrument was acknowledged before me on _____, 20____, by Alan and Llonis Bebel.

Notary Public, _____
My Commission Expires _____

SURVEYORS CERTIFICATE

I, Peter J. Hawkinson do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this ____ day of _____, 20____.

Peter J. Hawkinson, Licensed Land Surveyor
Minnesota License Number 42299

STATE OF MINNESOTA

COUNTY OF _____

This instrument was acknowledged before me on _____, by Peter J. Hawkinson.

Notary Public, _____
My Commission Expires _____

CITY PLANNING COMMISSION

Approved by the Planning Commission of the City of Inver Grove Heights, Minnesota this ____ day of _____, 20____.

By: _____ By: _____
Secretary Chair

CITY COUNCIL

This plat was approved by the City Council of Inver Grove Heights, Minnesota, this ____ day of _____, 20____, and hereby certifies compliance with all requirements as set forth in Minnesota Statutes, Section 505.03, Subd. 2.

By: _____ By: _____
Mayor Clerk

DAKOTA COUNTY SURVEYOR

I hereby certify that in accordance with Minnesota Statutes, Section 505.021, Subd. 11, this plat has been reviewed and approved this ____ day of _____, 20____.

Todd B. Tallefson
Dakota County Surveyor

DEPARTMENT OF PROPERTY TAXATION AND RECORDS

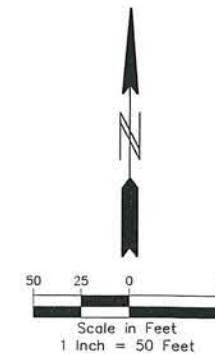
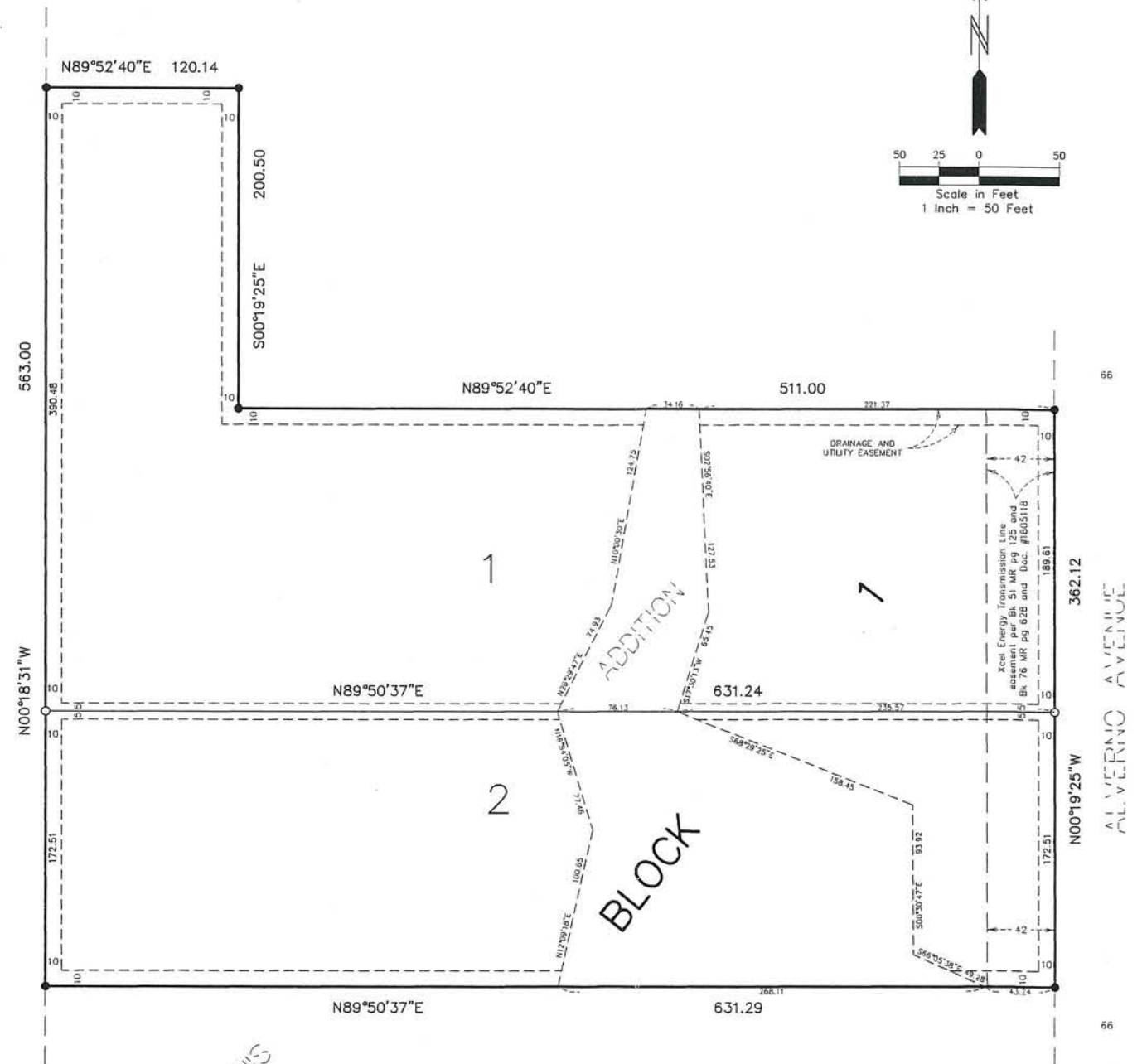
Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 20____ on the land hereinbefore described have been paid. Also, pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this ____ day of _____, 20____.

_____, Director
Department of Property Taxation and Records

COUNTY RECORDER, COUNTY OF DAKOTA, STATE OF MINNESOTA

I hereby certify that this plat of LLONIS 2ND ADDITION, was filed in the office of the County Recorder for public record on this ____ day of _____, 20____, at ____ o'clock P.M. and was duly filed in Book _____ of Plats, Page _____, as Document Number _____.

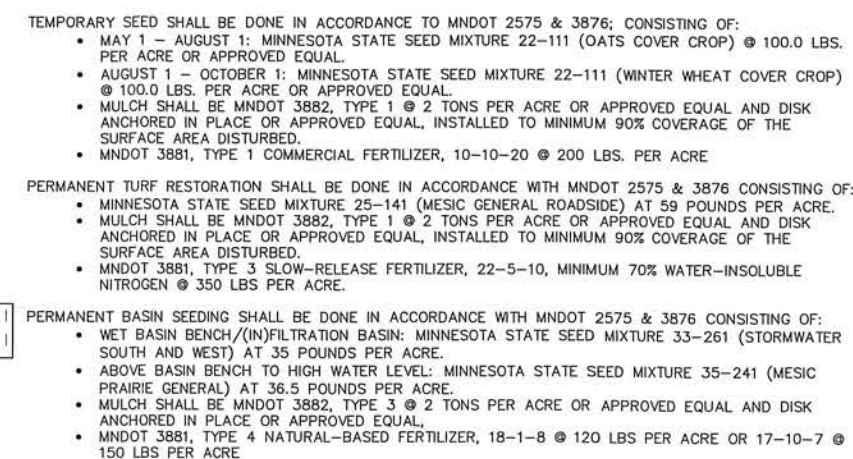
County Recorder



ORIENTATION OF THIS BEARING SYSTEM IS BASED ON THE NORTH LINE OF OUTLOT J, ARGENTA HILLS 8TH ADDITION, WHICH IS ASSUMED TO HAVE A BEARING OF NORTH 85°54'24\"/>

- DENOTES FOUND CAST IRON MONUMENT
- DENOTES SET 1/2 INCH BY 14 INCH IRON PIPE MONUMENT MARKED BY LICENSE NUMBER 42299, OR WILL BE SET IN ACCORDANCE WITH MS 505.021, SUBD. 10.
- DENOTES FOUND 1/2 INCH IRON MONUMENT.

PIONEER Engineering, P.A.
CIVIL ENGINEERS LAND PLANNERS LAND SURVEYORS LANDSCAPE ARCHITECTS



EARTHWORK:
CUT = 4,234 CY
FILL = 1,195 CY



Know what's below.
Call before you dig.

INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

CITY OF INVER GROVE HEIGHTS – TRANSIENT LODGING

Case No. 17-33ZA

Meeting Date: November 27, 2017
Item Type: Regular Session
Contact: Heather Botten 651.450.2569
Prepared by: Heather Botten, Associate Planner
Reviewed by: 

PURPOSE/ACTION REQUESTED

Consider the Third Reading of an Ordinance to prohibit transient lodging (short-term rentals) of residential property for less than 30 consecutive days.

- Requires 3/5th's vote.

BACKGROUND

On September 25th City Council approved the second reading of the ordinance amendment to prohibit transient lodging in residential homes but to continue to allow Bed and Breakfasts in residential districts. Additionally, Council requested information relating to alternatives if it was decided to allow transient lodging in specific situations.

ORDINANCE LANGUAGE

The third reading of the proposed code amendment is consistent with the second reading.

Definition added to section 4-13-2:

Transient Lodging: The letting, lease, license or other agreement for the use or occupancy of a rental dwelling unit, or portion thereof, where the actual term of use or occupancy is less than 30 consecutive calendar days including, but not limited to vacations homes, crash pads, hostels, and the like. Transient Lodging does not apply to Bed and Breakfast as provided for Section 10-2-2 & 10-6-1 of the City Code.

A sentence would also be added to the General Rule in the License Required section of the code 4-13-3A:

No one shall let, lease, license, or agree to allow the use or occupancy of a rental dwelling unit, or portion thereof, for transient lodging. No one shall use or occupy a rental dwelling unit or portion thereof for transient lodging.

With the direction to prohibit short term rentals, the exemption section of the rental ordinance would also be modified (4-13-4).

ANALYSIS

Although short term rentals provide an alternative to a hotel stay while tourists visit Inver Grove Heights, they also:

- create conflicting land uses with a commercial use being operated out of a residential neighborhood including, but not limited to, not paying commercial tax
- generate additional traffic and high occupant turnover which may negatively impact a residential neighborhood

- provide an opportunity for gatherings of people, who do not own the home or live in the neighborhood, to be disruptive to the abutting residents
- may cause complaints to the public safety department regarding noise, underage drinking and other nuisances to a residence not occupied by the owner

The Council decided to keep Bed and Breakfast (B&B) listed as a conditional use in the Zoning Code; staff is not aware of any B&B's currently operating in the City. If a resident advertises on the website AirBnB this does not mean they would be allowed under the category of Bed and Breakfast.

The City Code defines a BED AND BREAKFAST as: *A house, or portion thereof, where short term lodging rooms and meals are provided. The operator of the bed and breakfast shall live on the premises.*

During the discussion of the second reading a couple of the Council Members expressed interest in possibly allowing transient lodging, depending on the situation. Staff met to discuss different alternatives and came up with the recommendation that, if the Council decided to allow short term rentals, this could be done by interim use permit. The interim use permit process requires neighbor notification, allows for enforcement through the termination of the permit, and allows for conditions that could be specific to a location. Staff discussed hosted rentals and determined it would be impossible to enforce and difficult to require a homeowner to not leave their home if they had a transient lodger present.

Council expressed concerns about the number guests that the transient lodgers could have on the property. Staff discussed a condition could be added stating that no guests would be allowed after a designated time (ie..10:00 pm); this is similar to what hotels implement for their guests. Staff also discussed adding conditions such as requiring off street parking, limiting the number of occupants based on bedrooms, and requiring the property to be homesteaded.

If the Council decides to allow transient lodging in residential homes a new public hearing process would be required, starting with the Planning Commission and then back to City Council for review. During this time additional conditions could be discussed and included with the recommendation.

RECOMMENDATION

City Staff: Staff recommends approval of the third reading as presented prohibiting transient lodging for less than 30 consecutive days.

Planning Commission: At the August 15, 2017 public hearing, the Planning Commission recommended **denial** of the ordinance amendment as presented stating they would like to see an ordinance that allows short term rentals with regulations and performance standards (6-2). There was public testimony from Inver Grove residents who were also opposed to the ordinance amendment prohibiting transient lodging.

Attachment: Ordinance

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

ORDINANCE NO. _____

**AN ORDINANCE AMENDING INVER GROVE HEIGHTS CITY CODE TITLE
4, CHAPTER 13, SECTION 2, REGARDING THE DEFINITION OF
TRANSIENT LODGING, AMENDING TITLE 4, CHAPTER 13, SECTION 3,
AND AMENDING TITLE 4, CHAPTER 13, SECTION 4,
ALL RELATING TO TRANSIENT LODGING AS A PROHIBITED USE IN
DWELLING UNITS**

THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS ORDAINS AS
FOLLOWS:

Section One. Amendment. Title 4, Chapter 13, Section 2, of the Inver Grove Heights City Code is hereby amended to add the following definition of Transient Lodging:

Transient Lodging: The letting, lease, license or other agreement for the use or occupancy of a rental dwelling unit, or portion thereof, where the actual term of use or occupancy is less than 30 consecutive calendar days including, but not limited to, vacations homes, crash pads, hostels, and the like. Transient Lodging does not apply to Bed and Breakfasts as provided for Section 10-2-2 & 10-6-1 of the City Code.

Section Two. Amendment. Title 4, Chapter 13, Section 3A, of the Inver Grove Heights City Code is hereby amended to add the following:

4-13-3 : LICENSE REQUIRED:

- A. General Rule: No person, partnership, business entity, or corporation shall operate a rental dwelling or rental dwelling unit in the city without a license. The license shall be the owner.

No one shall let, lease, license, or agree to allow the use or occupancy of a rental dwelling unit, or portion thereof, for transient lodging. No one shall use or occupy a rental dwelling unit or portion thereof for transient lodging.

Section Three. Amendment. Title 4, Chapter 13, Section 4F & G, of the Inver Grove Heights City Code is hereby amended to add the following:

4-13-4 : EXEMPTIONS:

F. Single-family homes in which an individual owns the single-family home and resides in a portion of the building in which there is a rental dwelling unit and there are a total of no more than three (3) person within the rental dwelling unit that are unrelated to the owner and to each other where the term of occupancy or use is not less than 30 consecutive calendar days.

G. Accessory dwelling units pursuant to section 10-18-1 of this code where the term of occupancy or use is not less than 30 consecutive calendar days.

Section Four. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed in regular session of the City Council on the ____ day of ____, 2017.

CITY OF INVER GROVE HEIGHTS

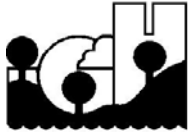
George Tourville, Mayor

Ayes:

Nays:

ATTEST:

Michelle Tesser, City Clerk



INVER GROVE HEIGHTS CITY COUNCIL AGENDA

Monday, November 27, 2017

8150 BARBARA AVENUE

7:00 P.M.

1. CALL TO ORDER

2. ROLL CALL

3. PRESENTATIONS

- A. Sibley High School Marching Band invitational to America's National Independence Day Parade
- B. Miss Inver Grove Heights Scholarship Program

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 Council member or citizen so requests, in which event the item will be removed from this Agenda and considered in normal sequence.

- A. i. Minutes October 9, 2017 City Council Meeting
 - ii. Minutes October 23, 2017 City Council Meeting
 - iii. Minutes October 25, 2017 Special City Council Meeting
 - iv. Minutes November 2, 2017 Special City Council Meeting
- B. Resolution Approving Disbursements for Period Ending on November 21, 2017
- C. CITY OF INVER GROVE HEIGHTS; Approve a Resolution creating a permanent pedestrian trail easement for Lot 7, Block 1, Blackstone Vista
- D. Approval of the 2018 Election Polling Place Designation
- E. Approval of the 2018 Fee Schedule
- F. Approval of Kristi Smith's Employment Agreement Extension with the City of Inver Grove Heights
- G. Consider Approval of the Five Bugles Design for Architectural and Engineering Services for the Fire Station Site Design and Construction of Fire State #2
- H. Consider Approval of the 2018 Parks and Recreation Department Fees
- I. Consider Pay Request No. 4 – Bid Package 1 – East Rink Floor Project – City Project 2017-05
- J. Consider Approval for Therapeutic Massage Business License for Health 1st Chiropractic and Individual Therapeutic Massage License of Dorina Lynn Costa
- K. Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2016-01 – Stormwater Treatment for Mississippi River Discharge (78th St. and Concord Blvd. Wet Extended Detention Basin)
- L. Consider Pay Voucher No. 4 for City Project No. 2016-09E – Bancroft Way Area Reconstruction
- M. Consider Pay Voucher No. 5 for the 2017 Capital Improvement Program, City Project No. 2017-02 – NWA Watermain Improvements, 65th Street Loop

- N. Approve Sidewalk Easement for 6888 Alverno Court (Lot 18, Block 3, Blackstone Ridge)
 - O. Release of Improvement Agreement Related to 9735 Robert Trail South owned by Inver Grove Storage, LLC
 - P. Release of Lot 5, Block 1, Blackberry Town Office Park from Development Contract Related to Plat of Blackberry Town Office Park
 - Q. Personnel Actions
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 HEARINGS:**
7. **REGULAR AGENDA:**
- I. **COMMUNITY DEVELOPMENT:**
- A. **KEVIN KNEISL;** Consider a Resolution relating to a Variance to allow two detached accessory structures where one is the maximum allowed for property located at 1847 Upper 55th Street
 - B. **ALAN AND LLONI BEBEL;** Consider a Resolution relating to a Preliminary and Final Plat, development contract and related agreements for a two lot subdivision to be known as Lloni's 2nd Addition located at 8843 Alverno Avenue
 - C. **CITY OF INVER GROVE HEIGHTS;** Consider the Third Reading of an Ordinance to prohibit transient lodging (short-term rentals) of residential property
8. **MAYOR & COUNCIL COMMENTS:**
9. **ADJOURN:**

This document is available upon 3 business day request in alternate formats such as Braille, large print, audio recording, etc. Please contact Michelle Tesser at 651.450.2513 or mtesser@invergroveheights.org