

## **AGENDA**

### **CITY COUNCIL WORKSHOP & OPEN PODIUM**

**TUESDAY, MAY 6, 2014**

**CITY CENTER**

**5:00 – 6:25 PM, HERITAGE ROOMS**

**6:30 – 7:00 PM, COUNCIL CHAMBER**

**CITY COUNCIL:** Mayor Nancy Tyra-Lukens, Council Members Brad Aho, Sherry Butcher Wickstrom, Kathy Nelson, and Ron Case

**CITY STAFF:** City Manager Rick Getschow, Police Chief Rob Reynolds, Fire Chief George Esbensen, Public Works Director Robert Ellis, Community Development Director Janet Jeremiah, Parks and Recreation Director Jay Lotthammer, Communications Manager Joyce Lorenz, City Attorney Ric Rosow, and Recorder Lorene McWaters

#### ***Workshop - Heritage Room II***

#### **I. LAKE MANAGEMENT**

#### ***Open Podium - Council Chamber***

#### **II. OPEN PODIUM**

#### **III. ADJOURNMENT**

## AGENDA

### EDEN PRAIRIE CITY COUNCIL MEETING

**TUESDAY, MAY 6, 2014**

**7:00 PM, CITY CENTER  
Council Chamber  
8080 Mitchell Road**

**CITY COUNCIL:** Mayor Nancy Tyra-Lukens, Council Members Brad Aho, Sherry Butcher Wickstrom, Kathy Nelson, and Ron Case

**CITY STAFF:** City Manager Rick Getschow, Public Works Director Robert Ellis, City Planner Michael Franzen, Community Development Director Janet Jeremiah, Parks and Recreation Director Jay Lotthammer, City Attorney Ric Rosow and Council Recorder Jan Curielli

**I. CALL THE MEETING TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. COUNCIL FORUM INVITATION**

**IV. PROCLAMATIONS / PRESENTATIONS**

**A. HUMAN RIGHTS AWARDS**

**B. PROCLAIM MAY 2014 TO BE SENIOR AWARENESS MONTH**

**V. APPROVAL OF AGENDA AND OTHER ITEMS OF BUSINESS**

**VI. MINUTES**

**A. COUNCIL WORKSHOP HELD TUESDAY, APRIL 22, 2014**

**B. CITY COUNCIL MEETING HELD TUESDAY, APRIL 22, 2014**

**VII. REPORTS OF ADVISORY BOARDS & COMMISSIONS**

**VIII. CONSENT CALENDAR**

**A. MAC DEVELOPMENT PARCEL 2 by Metropolitan Airports Commission. Second Reading of the Ordinance for Zoning District Change from Rural to Airport Office on 39 acres. Location: Flying Cloud Airport (**Ordinance**)**

**B. PRELIMINARY PLAT APPROVAL PERIOD TEXT AMENDMENT by City of Eden Prairie. Second Reading of the Ordinance to amend City Code regarding the review approval and recording of preliminary and final plats. (**Ordinance and Resolution Approving Summary Ordinance for Publication**)**

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- C. **DIRECT STAFF TO NOT WAIVE THE MONETARY LIMITS ON MUNICIPAL TORT LIABILITY ESTABLISHED BY MINNESOTA STATUTES 466.04**
- D. **ACCEPT PETITION AND SET HEARING FOR ESTABLISHMENT AND FEES FOR EDENVALE HIGHLANDS HOUSING IMPROVEMENT AREA**
- E. **ADOPT RESOLUTION AWARDING CONTRACT FOR EDEN PRAIRIE ROAD IMPROVEMENTS TO NORTHWEST ASPHALT COMPANY**
- F. **AWARD CONTRACT FOR PURCHASE AND INSTALLATION OF NEW CONTROL ROOM VIDEO PRODUCTION EQUIPMENT TO AVI SYSTEMS, INC.**
- G. **APPROVE LEASE BETWEEN CITY OF EDEN PRAIRIE AND NGUYEN LK, INC. FOR LOTUS NAILS AT 8018 DEN ROAD**
- H. **AWARD CONTRACT FOR ENGINEERING SERVICES TO UPGRADE RED ROCK SANITARY SEWER LIFT STATION, I.C. 08-5731**
- I. **APPROVE MINNESOTA DEPARTMENT OF HEALTH GRANT FOR SOURCE WATER PROTECTION**
- J. **AWARD CONTRACT FOR SUPPLY OF BITUMINOUS CRACKSEALANT MATERIAL TO MIDSTATES EQUIPMENT AND SUPPLY**
- K. **APPROVE ADDITIONAL IN-CONSTRUCTION SERVICES BUDGET WITH SRF CONSULTING GROUP FOR NORTHERN SEGMENT OF SHADY OAK ROAD IMPROVEMENTS**
- L. **ADOPT RESOLUTION APPROVING COOPERATIVE CONSTRUCTION AGREEMENT WITH MNDOT FOR SOUTHERN SEGMENT OF SHADY OAK ROAD IMPROVEMENTS**
- M. **APPROVE ACQUISITION OF PARCEL 31 FOR SOUTHERN SEGMENT OF SHADY OAK ROAD IMPROVEMENTS**
- N. **APPROVE DEVELOPMENT AGREEMENT FOR FAIRWAY WOODS II HIA**
- IX. **PUBLIC HEARINGS / MEETINGS**
  - A. **APPROVE FIRST READING OF AN ORDINANCE AMENDING CITY CODE SECTION 11.51, STANDARDS FOR PROTECTION OF WETLAND**
  - B. **RESOLUTION APPROVING PROPERTY TAX ABATEMENT RELATED TO UPGRADES TO THE EDEN PRAIRIE AQUATICS CENTER**

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- C. **AWARD BIDS, ASSIGN CONTRACTS AND ENTER INTO A GUARANTEED MAXIMUM PRICE WITH RJM CONSTRUCTION FOR THE AQUATICS EXPANSION PROJECT**
  
- X. **PAYMENT OF CLAIMS**
  
- XI. **ORDINANCES AND RESOLUTIONS**
  
- XII. **PETITIONS, REQUESTS AND COMMUNICATIONS**
  
- XIII. **APPOINTMENTS**
  
- XIV. **REPORTS**
  - A. **REPORTS OF COUNCIL MEMBERS**
  
  - B. **REPORT OF CITY MANAGER**
  
  - C. **REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR**
    - 1. **Nine Mile Creek Water Resource Center Construction Update**
  
  - D. **REPORT OF PARKS AND RECREATION DIRECTOR**
  
  - E. **REPORT OF PUBLIC WORKS DIRECTOR**
  
  - F. **REPORT OF POLICE CHIEF**
  
  - G. **REPORT OF FIRE CHIEF**
  
  - H. **REPORT OF CITY ATTORNEY**
  
- XV. **OTHER BUSINESS**
  
- XVI. **ADJOURNMENT**

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Proclamations / Presentations		May 6, 2014
<b>DEPARTMENT:</b> Community Development Patricia Fenrick, Housing and Community Services	<b>ITEM DESCRIPTION:</b>  Human Rights Awards	<b>ITEM NO.:</b>  IV. A.

**Requested Action**

*The recipients of the Human Rights Award will be recognized.*

Individual: Lynnea West

Non-Profit Organization: Baro Tutoring

Business: DSO Architecture

Youth: Camila Merino

**Background**

Human Rights and Diversity Commission:

Sandra Filardo Chair  
 PG Narayanan, Vice Chair  
 Jenny Buckland  
 Sana Elassar  
 Connie Iacovelli  
 Harry Davis  
 Tonya Bivins

Staff Liaison: Patricia Fenrick

**Attachment**

Recipient Information

## Human Rights Awards

### Individual

Presenting Award: Sandra Filardo

Receiving Award: Lynnea West

Lynnea West is being recognized for her commitment to human rights, equality and closing the achievement gap in her professional and personal life. Lynnea works to help others see the beauty of our differences and welcome, with excitement, the new cultures in the Eden Prairie community. Lynnea is a teacher in Eden Prairie and works to make sure all students have equal opportunity to succeed and receive a great education. She has worked intentionally to provide support and guidance to parents of diverse students.

### Business

Presenting Award: Chase Carlson, Student Commissioner

Receiving Award: DSO Architecture accepted by Dan O'Brien

DSO Architecture is being recognized for their donation of time and talent to help the PROP Shop build an addition to their building in Eden Prairie. Dan O'Brien designed the space and provided free support to the general contractor to guide the project. The service of Dan O'Brien and DSO exemplifies the Eden Prairie Manifesto by helping to promote an atmosphere of acceptance and caring for others by supporting the role the PROP Shop has in our community to assist families who are in need of help.

### Non-Profit Organization

Presenting Award: Connie Iacovelli

Receiving Award: Linda Bergman for Baro Tutoring

“Baro” is the Somali word for “learn”. Baro Tutoring is a collaboration of adult and teenage volunteers who meet at the Eden Prairie Library every Tuesday and Thursday night during the school year to offer homework help, conversational English and Citizenship classes to help students and adults. The tutors are from Wooddale and City Hill Church and the broader community. Baro tutoring upholds the Eden Prairie manifesto and works against intolerance by encouraging contact and building friendships between neighbors of different cultural groups. The presence of Baro tutors and the 20 to 30 Somali students that they work with in the EP library is a visible witness to this community's commitment to promote a multicultural community that emphasizes care and respect for others.

### Youth

Presenting Award: Karena Lin, Student Commissioner

Receiving Award: Camila Merino

Camila was nominated by her peers to receive the Youth Human Rights Award. She is very involved in activities that promote the acceptance of people from diverse backgrounds and helps to create an accepting atmosphere at the high school. She volunteers with children who have physical and educational disabilities and is very vocal about the importance of acceptance for every person. Her dream is to pursue a career in psychology so that she can help those who have mental conditions. Camila upholds the Eden Prairie Manifesto through her commitment to creating a community that respects diversity and emphasizes the importance of respect and caring for others.

## ***PROCLAMATION***

*City of Eden Prairie  
Hennepin County, Minnesota*

**WHEREAS**, the increasing number of senior citizens in Eden Prairie bring many opportunities and challenges for all components of our City – families, businesses, and government; and

**WHEREAS**, every segment of our society is influenced by the needs, resources and expertise of our senior citizens; and awareness improves participation and action; and

**WHEREAS**, our Eden Prairie seniors play a pivotal role in formal and informal education, sharing years of accumulated experience and wisdom which will impact our future; and

**WHEREAS**, the community wishes to celebrate and acknowledge the contributions and accomplishments of the seniors in our community and recognize the organizations that serve older adults; and

**WHEREAS**, Senior Awareness Month recognizes that seniors are an integral part of our community.

**NOW, THEREFORE**, the Eden Prairie City Council does proclaim May 2014 to be

### **SENIOR AWARENESS MONTH**

**ADOPTED BY** the Eden Prairie City Council on this 6<sup>st</sup> day of May 2014.

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Nancy Tyra Lukens, Mayor  
on behalf of Council Members:

Brad Aho  
Sherry Butcher-Wickstrom  
Ron Case  
Kathy Nelson

**UNAPPROVED MINUTES****CITY COUNCIL WORKSHOP & OPEN PODIUM****TUESDAY, APRIL 22, 2014****CITY CENTER****5:00 – 6:25 PM, HERITAGE ROOMS****6:30 – 7:00 PM, COUNCIL CHAMBER**

**CITY COUNCIL:** Mayor Nancy Tyra-Lukens, Council Members Brad Aho, Sherry Butcher Wickstrom, Kathy Nelson, and Ron Case

**CITY STAFF:** City Manager Rick Getschow, Police Chief Rob Reynolds, Fire Chief George Esbensen, Public Works Director Robert Ellis, Community Development Director Janet Jeremiah, Parks and Recreation Director Jay Lotthammer, Communications Manager Joyce Lorenz, City Attorney Ric Rosow, and Recorder Lorene McWaters

***Workshop - Heritage Room II***

Council Member Nelson was absent.

**I. SW TRANSIT UPDATE**

Len Simich, CEO of SW Transit, and Dave Jacobson, COO, provided updates to the City Council. Simich outlined the Memo of Understanding SW Transit and the Met Council have approved regarding the joint operation of proposed SW LRT and Southwest Transit in Eden Prairie. Simich said the MOU is not a binding agreement, but rather a guiding document for continuing discussions. He said they have come to agreement on operating both bus and rail operations seamlessly at the Southwest Station site. The current plan calls for replacement of the existing station at the expense of the SW LRT project. The agreement also identifies Southwest Transit as the local service provider for Eden Prairie, and states that services provided by Southwest Transit and LRT do not duplicate each other. Parking needed to accommodate LRT operations will be accounted for separately from Southwest Transit, which currently utilizes all available parking on the site. Simich said the Southwest Transit Commission is comfortable with the size of proposed new parking ramps. He said cost sharing details are yet to be worked out, but he is confident that mutually agreeable terms can be negotiated.

Jacobson reviewed some of Southwest Transit's 2013 highlights, including a 3.4% increase in ridership, opening of a new ramp and station in Chaska, and institution of an energy savings program that is projected to result in more than \$1 million in future savings.

**II. HOTEL STUDY**

Economic Development Manager David Lindahl noted that the City and the Chamber of Commerce have long discussed the fact that Eden Prairie does not have a full-service hotel that can accommodate conferences, large meetings and banquet-type events. The City of Eden Prairie retained HVS Consulting and Valuation to conduct a hotel market study. Tanya Pierson, managing director of HVS presented the results of the market study.

Pierson noted that Eden Prairie currently has three select-service hotels and eight limited-service hotels. She said four potential hotel sites were evaluated:



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- Eden Prairie Center Mall Area
- Near Optum Campus
- Near SuperValu Campus
- Near Shop NBC

She also conducted interviews with demand generators (large Eden Prairie companies) to determine their hotel needs and requirements. Some highlights of those interviews include the following:

- Hotel usage ranged from 10 rooms to 400 rooms per month
- Most utilize Eden Prairie hotels, some also use Crowne Plaza, Hilton, Sheraton, Marriott, and Radisson Blu
- Rates range from \$60 - \$140, with most averaging around \$85-90
- All stated Eden Prairie was their preference for a hotel location
- Desired amenities: shuttle, free internet, breakfast, pool/exercise room, dining options, meeting space
- Mixed feelings about need for hotel – some want meeting space/dining options, some are satisfied with current inventory

HVS also interviewed competitive hotels, analyzed growth projections, and evaluated performance of the market and strengths of various types of hotels, particularly select-service hotels and full-service hotels. Select service hotels are a hybrid of full and limited service hotels, with some food service and banquet facilities, but on a smaller scale than full-service hotels. Full service hotels typically offer a variety of food and beverage services, have large meeting spaces, and can accommodate large group events.

Pierson said their research indicates Eden Prairie could accommodate another select service hotel, but is unlikely to be able to support a full-service hotel. Based on discussions with brand representatives, it appears the following brands are available for development in Eden Prairie:

- Aloft
- Wyndham Garden Inn
- Radisson Red
- Four Points by Sheraton
- Hotel Indigo
- Ramada
- Cambria Suites

Council Member Butcher Wickstrom asked if a facility with meeting space only could work if there are enough hotels nearby. Pierson said market research indicates that the hotel/meeting space combination is most economically feasible. Council Member Case said if the market will not support a full service hotel, he does not feel the City should try to force it. Lindahl pointed out that some select service hotels include meeting space. He asked Pierson what the City can do to support those brands. Pierson recommended reaching out directly to those brands and letting local brokers know of the City's interest. Lindahl mentioned that a couple of developers have shown interest in the former Frank's Nursery

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site. He said the City needs to have a discussion around what they might be willing to do to encourage these types of developers. Jeremiah said the City could consider incentives based on inclusion of more meeting space. Butcher Wickstrom said she does not want to see the City build something that will not serve a real need. Jeremiah said she is hearing that more meeting space would be desirable, and Council likes the idea of a select service hotel that would send guests out to support local restaurants. Lindahl said he will continue discussions with developers that are already seeking out sites in Eden Prairie.

### ***Open Podium - Council Chamber***

## **II. OPEN PODIUM**

### **A. Dan Kitrell – Aquatic Center**

Kitrell said he had several points he would like to make regarding the proposed aquatic center. First, he said Council should be aware that not all of those in favor of holding a referendum are against the pool, they just feel residents should have the opportunity to vote on the project. He said there is a credibility gap created by the City from 2005 when it proposed to simply deepen the pool to the \$20 million project being proposed today. He said there are two potential areas of conflict of interest in that several council members are community center members, and that the City Council members are also members of the HRA. He said if you view the original community center expansion and the proposed aquatic center expansion as one project, it is the largest government project ever undertaken by the City.

## **III. ADJOURNMENT**

**UNAPPROVED MINUTES**

**EDEN PRAIRIE CITY COUNCIL MEETING**

**TUESDAY, APRIL 22, 2014**

**7:00 PM, CITY CENTER  
Council Chamber  
8080 Mitchell Road**

**CITY COUNCIL:**

Mayor Nancy Tyra-Lukens, Council Members Brad Aho, Sherry Butcher Wickstrom, Ron Case, and Kathy Nelson

**CITY STAFF:**

City Manager Rick Getschow, Public Works Director Robert Ellis, Community Development Director Janet Jeremiah, Parks and Recreation Director Jay Lotthammer, City Attorney Ric Rosow, and Council Recorder Jan Curielli

**I. CALL THE MEETING TO ORDER**

Mayor Tyra-Lukens called the meeting to order at 7:00 PM. All Council Members were present.

**II. PLEDGE OF ALLEGIANCE**

**III. COUNCIL FORUM INVITATION**

**IV. PROCLAMATIONS / PRESENTATIONS**

**A. EP GIVES WEEK PROCLAMATION**

Mayor Tyra-Lukens read and presented a proclamation proclaiming May 3-10, 2014, as "EP Gives Week" in Eden Prairie to Mark Weber, Eden Prairie Community Foundation Director. Mr. Weber said the purpose of "EP Gives Week" is to spotlight charitable giving and community service and to motivate additional people to get involved in giving back to the community.

**B. ARBOR DAY PROCLAMATION**

Mayor Tyra-Lukens read a proclamation proclaiming May 3, 2014, as Arbor Day in the City of Eden Prairie. She noted Arbor Day is a long-standing tradition in Eden Prairie and Eden Prairie has been recognized as a Tree City USA by the National Arbor Day Foundation for 30 years.

**V. APPROVAL OF AGENDA AND OTHER ITEMS OF BUSINESS**

Case add **Item XIV.A.1.**

**MOTION:** Case moved, seconded by Nelson, to approve the agenda as amended. **Motion carried 5-0.**

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**VI. MINUTES**

**A. COUNCIL WORKSHOP HELD TUESDAY, MARCH 18, 2014**

**MOTION:** Aho moved, seconded by Nelson, to approve the minutes of the Council workshop held Tuesday, March 18, 2014, as published. **Motion carried 4-0-1, with Case abstaining.**

**B. CITY COUNCIL MEETING HELD TUESDAY, MARCH 18, 2014**

**MOTION:** Butcher Wickstrom moved, seconded by Nelson, to approve the minutes of the City Council meeting held Tuesday, March 18, 2014, as published. **Motion carried 4-0-1, with Case abstaining.**

**VII. REPORTS OF ADVISORY BOARDS & COMMISSIONS**

**VIII. CONSENT CALENDAR**

Getschow said the last four items are related to the UHG project and should be addressed separately.

**A. CLERK'S LICENSE LIST**

**B. ADOPT RESOLUTION NO. 2014-39 APPROVING FINAL PLAT OF ST. ANDREWS HAVEN**

**C. APPROVE 2013 UNBUDGETED FUND TRANSFERS**

**D. ADOPT RESOLUTION NO. 2014-40 DECLARING THE CITY'S OFFICIAL INTENT TO REIMBURSE ITSELF FOR PRIOR EXPENDITURES OUT OF THE PROCEEDS OF A SUBSEQUENTLY ISSUED SERIES OF BONDS**

**E. ADOPT RESOLUTION NO. 2014-41 AUTHORIZING CONSENT TO AMENDMENT OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ENTREVAUX HOMEOWNERS ASSOCIATION**

**F. APPROVE RENEWAL OF TOWING SERVICES AGREEMENT WITH MATT'S AUTO SERVICE FOR 2014**

**G. AWARD CONTRACT FOR 2014 STREET STRIPING PROJECT TO AAA STRIPING SERVICE COMPANY**

**H. AWARD CONTRACT FOR 2014 CRACKSEAL PROJECT TO ASTECH CORPORATION**

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- I. ADOPT RESOLUTION NO. 2014-42 APPROVING PLANS AND SPECIFICATIONS FOR THE RIVERVIEW ROAD CULVERT REPLACEMENT PROJECT
- J. DECLARE "SURPLUS PROPERTY"
- K. APPROVE GRANT AGREEMENT BETWEEN THE STATE OF MINNESOTA AND THE CITY OF EDEN PRAIRIE FOR MANHOLE RECONSTRUCTION RESEARCH
- L. AWARD CONTRACT TO BITUMINOUS ROADWAYS INC. FOR RECONSTRUCTION OF PARKING LOTS AND TRAILS WITHIN HOMEWARD HILLS PARK
- M. AWARD CONTRACT TO NORTHWEST ASPHALT INC FOR OVERLAY AND RECONSTRUCTION OF BITUMINOUS BIKE TRAILS ALONG RICK MARSH LAKE PARK, ANDERSON LAKES PARKWAY AND CHESTNUT DRIVE
- N. APPROVE ENTRY MONUMENT SIGN PROFESSIONAL SERVICES AGREEMENT
- O. ACCEPT 100% PETITION FOR LOCAL IMPROVEMENT FROM UNITED HEALTHCARE SERVICES, INC.
- P. ADOPT RESOLUTION NO. 2014-43 AUTHORIZING ACQUISITION OF PROPERTY FOR CONSTRUCTION OF A TRAIL FOR THE CITY WEST PARKWAY TRAIL CONNECTION
- Q. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH AMERICAN ENGINEERING TESTING INC. FOR CONSTRUCTION AND MATERIAL TESTING FOR SOUTH SHADY OAK ROAD IMPROVEMENTS
- R. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH SRF CONSULTING GROUP INC. FOR SOUTH SHADY OAK ROAD IMPROVEMENTS IN-CONSTRUCTION SERVICES

**MOTION:** Case moved, seconded by Butcher Wickstrom, to approve Items A-N of the Consent Calendar. **Motion carried 5-0.**

Rosow said there is a replacement for **Item VIII.R.** on goldenrod paper that clarifies the amount of the contract with SRF Consulting Group. He noted there is a slight revision to the description for **Item VIII.O.**

**MOTION:** Aho moved, seconded by Butcher Wickstrom, to approve Items O-R of the Consent Calendar. **Motion carried 4-0-1, with Case abstaining.**

IX. PUBLIC HEARINGS / MEETINGS

A. **REEDER RIDGE AND EDEN PRAIRIE WOODS REASSESSMENTS**  
**(RESOLUTION NO. 2014-44)**

Getschow said it is necessary to reallocate the assessment amounts on the Reeder Ridge and Eden Prairie Woods properties because of changes in watershed district boundaries and platted lot sizes. He said official notice of this public hearing was published in the April 3, 2014, *Eden Prairie News* and sent to 12 property owners.

Getschow said Reeder Ridge was assessed in October 2013 and the levy was certified to the 2014 property taxes prior to the recording of the Reeder Ridge plat. It is now necessary to reallocate the assessment amounts on the underlying parcels so they can be divided equally on to the new Reeder Ridge lots. All other aspects of the assessment will remain the same.

Getschow said Eden Prairie Woods was assessed in October 2012, but an error was made in allocating an assessment to Outlot C during the division of the lots. Outlot C should have no assessments. This action will reallocate the assessments over the remaining parcels.

There were no comments from the audience.

**MOTION:** Case moved, seconded by Butcher Wickstrom, to close the public hearing and to adopt Resolution No. 2014-44 approving the Reeder Ridge and Eden Prairie Woods reassessments. **Motion carried 5-0.**

B. **MAC DEVELOPMENT PARCEL 6** by Metropolitan Airports Commission.  
Request for Zoning District Change from Rural & R1-13.5 to Airport Office on 20.02 acres. Location: Flying Cloud Airport (**Ordinance for Zoning District Change**)

Regarding **Items IX.B and C.**, Getschow said the Council held a public hearing in February related to seven development parcels for the MAC. All but two of the seven parcels were approved at the February meeting. Parcels 2 and 6 were continued to March 18 and then to April 22. The MAC has informed City staff that it is withdrawing its application for rezoning of Parcel 6 at this time.

There were no comments from the audience.

**MOTION:** Aho moved, seconded by Case, to accept the withdrawal of the application by MAC for the rezoning of MAC Development Parcel 6 and return the plans to the applicant without prejudice. **Motion carried 5-0.**

C. **MAC DEVELOPMENT PARCEL 2** by Metropolitan Airports Commission.  
Request for Zoning District Change from Rural to Airport Office on 39 acres.  
Location: Flying Cloud Airport (**Ordinance for Zoning District Change**)

Getschow said official notice of this public hearing was published in the April 10, 2014, *Eden Prairie News* and sent to 304 property owners.

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Kayla Abbas, 16101 Valley Road, said there is an easement on their deed from the airport that covers their property. She asked if the airport will be lifting the easement on her property and others in the neighborhood since they are lifting the easement for the airport. She asked how the City determined it was safe to build in a no-build safety zone.

Bridget Rief, Director for Airport Development, said there are no easements on the MAC property that would need to be lifted. There is a navigation easement on Ms Abbas' property. Parcel 2 lies outside of Safety Zone A but is within Zone B which does allow development of a certain type. The MAC controls the height of structures on their property so there is no need for an easement on Parcel 2.

Rosow added the navigation easement restricts the height of buildings. He said the owner of a property would grant an easement to allow a third party access; however, an owner does not need to grant an easement to himself.

Vince Tashe, 10101 Hilltop Road, said he has a nice view from his property and would like MAC to consider leaving this parcel as rural. If the property is developed, he would like them to move it to the eastern side or build a more minimal structure that would not impact the view of the existing properties in order to keep the value of the properties.

Getschow said the action the City Council took previously on the other five parcels was to simply rezone the parcels, and this is a request for the same action on Parcel 2. At a future date the Council would have to consider any site plans or approvals of these projects. We don't know when that would occur for any of the MAC parcels. He said the MAC took some time to present some concepts for the development of the parcels. We do have standards in terms of heights and setbacks and design standards we would expect them to follow.

Mr. Tashe said he would prefer to leave the property as it is. Tyra-Lukens replied the entire Council would most likely want that as well, but the Council doesn't have control over that. When, and if, a proposal comes for any of these parcels, neighbors will be notified about the process and plans so they can attend all the public hearings.

Mike Abbas, 16101 Valley Road, asked about the State guidelines regarding protection Zone A. Rosow said the State guidelines are a model ordinance promulgated by the Joint Airport Zoning Board (JAZB) that came up with specific zoning regulations for the City and covers about 2/3 of the City. That is before the Commissioner for consideration. He said none of that interferes with the City's power to zone property. There is specific language in the statute that it does not interfere with the City's regular process, so the City can zone any property within the City without concern. Once, and if, the JAZB ordinance goes into effect, it will be an overlay district and will provide height regulations to our zoning code. Staff has analyzed whether there are any existing properties that would violate the height restrictions, and there are none.

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Byron Schmidt, 16071 Hilltop Road, said his lot goes down to Valley Road. He was wondering how much this will affect property values. He said they were led to believe this is an airport safety zone and would never be built on. He would like to keep the property rural.

Mr. Abbas expressed concerned about the City Council deciding it is okay to build on Parcel 2. Rosow replied the situation is that the MAC has indicated they want to develop the properties and assert their right as an independent unit of government to go ahead and develop the properties without City permission. We negotiated a process by which they would have to go through our process to receive the zoning authority and to go through our site plan review process so that anything built there would be subject to any standards the City has applied for all property City-wide. This is the operator of the airport who is governed by its own regulations with respect to safety zones and the use of all property around the airport. Any development around there would have to comply with FAA guidelines on uses in and around airports.

Tyra-Lukens said most of the building that is currently on MAC property is construction that didn't have to go through our process with our building standards. This offers an opportunity to raise development on this parcel to our standards. Rosow said the property that pre-dates this are for aviation use, and we have no authority to zone for property with aviation use.

Moraly Alykrishnan, a resident in the area, asked why Parcel 2 could not be withdrawn in the same way Parcel 6 was withdrawn because there are so many residences nearby that would be affected.

Case noted there is often a difference between the emotions we feel and local decisions based on the law. He said if we were looking at Parcel 6 again his concerns would be to look at it as if this were not the airport but rather a private developer who came in with a request for office development here. There is no way we would consider anything other than residential on Parcel 6 since office development would be jumping up three zoning levels. Parcel 2 has a different kind of zoning feel than Parcel 6 and is across the road and next to a church. A private owner who brings a piece of land before us for development approval is allowed to actualize the greatest potential on that land. While he did have some concerns about Parcel 2, he thought we would consider allowing office use if this request were being brought forth by a private developer.

**MOTION:** Butcher Wickstrom moved, seconded by Aho, to close the public hearing and to approve 1st reading of the ordinance for Zoning District change from Rural to Airport Office (A-OFC) subject to the following conditions: Rezoning only that portion of the property located north of the line identified as Runway 10L/28R as shown on Figures C1.1 and C2.1; Any site plan application will conform to all requirements of the City Code.

Tyra-Lukens said she received a number of emails about Parcel 2 prior to the meeting. While she was sympathetic to those who want the property left rural, she



did not think we have a choice in this. She would prefer the land stay empty, but by approving the rezoning we have an opportunity to get a nicer product than we might have if we had no input in the process. She thought we could get the MAC to work with us to give the property a more residential look.

Case said we should be cognizant of the neighbors. He suggested we start to look at proactive measures to protect the contiguous properties.

**VOTE ON THE MOTION: Motion carried 5-0.**

**D. FIRST READING OF ORDINANCE AMENDING CITY CODE CHAPTER 12 RELATING TO PRELIMINARY PLAT APPROVAL AND FINAL PLAT RELEASE AND RECORDING**

Getschow said staff has prepared an amendment to the City Code that:

- Increases the validity period for a preliminary plat from 6 months to 2 years
- Adds requirements to be completed prior to the release of the final plat;
- Adds a time frame of 90 days for recording of the final plat.

Getschow said the Planning Commission voted 6-0 to recommend approval of the code amendment at the March 24, 2014 meeting.

There were no comments from the audience.

**MOTION:** Aho moved, seconded by Nelson, to close the public hearing and to approve 1st reading of the ordinance amending Chapter 12 relating to preliminary plat approval and final plat release & recording. **Motion carried 5-0.**

**X. PAYMENT OF CLAIMS**

**MOTION:** Butcher Wickstrom moved, seconded by Case, to approve the payment of claims as submitted. **Motion was approved on a roll call vote, with Aho, Butcher Wickstrom, Case, Nelson, and Tyra-Lukens voting “aye.”**

**XI. ORDINANCES AND RESOLUTIONS**

**XII. PETITIONS, REQUESTS AND COMMUNICATIONS**

**XIII. APPOINTMENTS**

**XIV. REPORTS**

**A. REPORTS OF COUNCIL MEMBERS**

**1. Parking in Residential Areas -- Council Member Case**

Case said he received a call recently concerning a neighbor in a residential

area who might have, for example, four-five cars, two boats and a camper parked on the property. This has come up before and, in most cases, they are legally parked on pavement. He was interested in checking on how other cities deal with this type of situation. He thought staff might get some background and bring a report back at a later meeting. It might be an issue of the aging of the city so we might want to be proactive. Getschow said staff would look into it.

**B. REPORT OF CITY MANAGER**

**1. Aquatic Center Financing Options**

Getschow said at the last City Council meeting we had a public hearing for site plan approval for the proposed Aquatic Center upgrade. The Council indicated a desire to have an overview of the financing options prior to the consideration of the bids which is scheduled for May 6.

Rusty Fifield, representing Northland Securities, gave a PowerPoint presentation that reviewed the four options available: voter-approved general obligation bonds, general obligation tax abatement bonds, Housing and Redevelopment Authority (HRA) lease revenue bonds, and HRA lease revenue bonds secured with an HRA levy. He said the general obligation bonds approved by the voters are subject to the lowest interest rate that can be achieved in the bond market place. Voter approved general obligation bonds are limited to 3% of the total estimated market value of property in Eden Prairie. The general obligation tax abatement bonds would need to be approved by the City Council after holding a public hearing. Tax abatement bonds will attract identical interest rates to the voter approved bonds. Tax abatement bonds do not count against the debt limit of the City.

Mr. Fifield said the HRA has the ability to issue lease revenue bonds and can issue a lease with the City to make lease payments sufficient to pay bonds back. The City Council must appropriate money to make the lease payment each year and would get the revenue for the lease payments from a property tax levy. The lease revenue bonds would have a higher interest rate because of the potential for non-appropriation.

Mr. Fifield said the HRA lease revenue bonds are more expensive, generally 0.5 to 1% higher than for general obligation bonds. The HRA issues the bonds and the City Council approves the lease purchase agreement. The variant of this is to use the HRA levy as a backup security which would increase the security to the bond holder and would somewhat reduce the difference in the interest cost.

Mr. Fifield noted there is currently a lack of supply in the bond market place. The debt in Eden Prairie is very high quality and will certainly attract investors.

## CITY COUNCIL MINUTES

April 22, 2014

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Nelson asked if there would be a reason not to use the general obligation tax abatement bonds. Mr. Fifield said there is no reason from a financial perspective. Nelson asked what the real disadvantage of those bonds would be. Mr. Fifield replied it would be a policy decision, but he had no reason to say the Council isn't advised to use this type of bonding.

Tyra-Lukens asked if the cost of issuance and cost of debt is the same for both types of general obligation bonds and if he knew what Edina uses for recreational facilities. Mr. Fifield said the cost is the same. He thought Edina has an option to issue general obligation recreational facility bonds without a referendum. Tyra-Lukens said she was somewhat leery of the HRA bonds that would need to be appropriated each year.

Aho said it looks like the general obligation referendum bonds versus the general obligation tax abatement bonds end up with the same cost of money. The referendum bonds count against our debt limit, whereas the tax abatement bonds do not count against the limit so there is some advantage with the tax abatement bonds.

Tyra-Lukens asked Mr. Getschow to outline what will happen on May 6. Getschow said by that date we should have the bids so the City Council would be considering the bids and possibly awarding the bids on May 6. If the Council considers the tax abatement route, there would have to be a public hearing at a later date. There would be a presentation on the bids and the project, a public hearing related to the project, actions related to the bids and then action related to the financing. At a future meeting our financial advisor would come back and present the bids related to the bonding process.

Tyra-Lukens noted this has been an interesting process and has involved a lot of public input. She reviewed the list of meetings and information made available on the subject. We have been hearing about pool issues for the last 10-12 years, and she was pleased with all the public input. She noted a public hearing is not required for the accepting of bids. A public hearing would be required for the general obligation tax abatement bonds. She anticipated we will have a healthy number of people attending a public hearing and wanted to clarify the ground rules. Each speaker will be given a maximum of three minutes to speak. It will not be an interactive event, but rather an opportunity to state an opinion. If individuals need to get answers to questions, they should contact the Parks & Recreation Director, the City Manager or a City Council Member. Staff will not answer questions at the public hearing but will get back to an individual with answers.

### **C. REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR**

#### **1. Thrive MSP 2040**

Jeremiah said the Metropolitan Council has released the Thrive MSP 2040 vision for the next 30 years. Thrive MSP 2040 has identified five outcomes

## CITY COUNCIL MINUTES

April 22, 2014

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for the region: stewardship, prosperity, equity, livability, and sustainability. The five outcomes need to be addressed in our next comprehensive plan due to the Met Council in 2018. She noted there are some comments from staff in the Planning Commission report with regard to the new outcomes and the types of additional items that will need to be addressed in a future comprehensive plan. During 2014 and 2015 the Met Council will put out more detailed policy plans. She said the Met Council has forecasted growth for Eden Prairie to 2040 to be 1000 additional households and about 4500 new employees. Staff has looked to see if we can accommodate additional growth and it does look feasible, depending on a more detailed analysis of our infrastructure capacity. She asked for comments from the Council before staff writes the comment letter to the Met Council.

Aho said he attended a forum on Thrive MSP 2040 today where experts gave their take on the project. He had some concerns about the direction the Met Council is taking in terms of forcing high density and transit oriented development. He thought we have to look carefully at what is being planned and what is being promoted to see if that is something we want. He said some of their guidelines and thoughts are contrary to the market and really drive a lower standard of living.

Case said the market has really driven our growth. In 1980 the Met Council projected Eden Prairie's population to be over 100,000. He thought we can really trust the market as we go along; however we may find the millennial generation bringing a change in our demographics. He thought we could accept incentives they might offer if we want them.

Tyra-Lukens said there was some discussion at the Southwest Corridor opportunity meetings about having the same kind of zoning around all of the transit stops, which we opposed. She shared some of the concerns expressed about the Met Council's growth forecasts. She asked if they looked at the density of land because she thought it is pretty hard to intensify development in Eden Prairie. Jeremiah replied that is a good question that staff has also asked. Staff asked the Met Council to bring back information for the traffic area zones to see where they projected growth. They showed growth in areas that have very established single family neighborhoods; whereas we anticipate growth may occur in the Major Center Area and the Golden Triangle. We asked them to look at that. We did our own analysis about the accommodation of growth in areas where we anticipated growth, and the question comes back to the infrastructure issue.

Tyra-Lukens asked if these are mandates or just a planning document. Jeremiah replied it is a planning document that guides implementation policies. Generally the Met Council overestimates the amount of growth that might occur. The market really dictates whether growth will come and where, so it is by no means a mandate.

Nelson asked if they also looked at the fact we have a lot of acreage in areas

like the airport and the former dump. We are close to being built out at this point, and they have to take that into account. We won't just take away a business to build more residential. She hoped we can underline that we have a comprehensive plan, and we have had planned development. We are not going to sell our parks to build on parkland.

Butcher Wickstrom asked if this is part of the livable communities initiative. Jeremiah said they try to integrate the two. One of the five outcomes is livability, and they try to integrate livable communities into the comprehensive plan. The livable communities program is evolving, and part of the funding is going to transit oriented development. Butcher Wickstrom said in some ways she saw the livable communities to be a stick more than a carrot. We have about 35% of our land in green or open space, and that is a value the residents have cherished for decades.

**D. REPORT OF PARKS AND RECREATION DIRECTOR**

**1. Miracle Field Fund Raising Update**

Lotthammer said some community builders are here tonight to tell about their fund raising efforts for the Miracle Field.

Several representatives of the Baseball Association and three players gave an update on the community events and fundraising efforts for the Miracle Field. Mike Espe said they plan to have a community event this summer after they have raised enough money to start building the field. They will be trying to recruit kids to sign up to play in the Miracle League. John McCarthy said they have been working on the website and corporate sponsorships and can feel the momentum building.

Tyra-Lukens asked if they have visited a Miracle Field in another community. One of the baseball players said he played in a tournament in Lakeville and saw their Miracle Field.

**E. REPORT OF PUBLIC WORKS DIRECTOR**

**F. REPORT OF POLICE CHIEF**

**G. REPORT OF FIRE CHIEF**

**H. REPORT OF CITY ATTORNEY**

**XV. OTHER BUSINESS**

**XVI. ADJOURNMENT**

**MOTION:** Butcher Wickstrom moved, seconded by Case, to adjourn the meeting.  
**Motion carried 5-0.** Mayor Tyra-Lukens adjourned the meeting at 8:37 PM.

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Agenda		05/06/14
<b>DEPARTMENT/DIVISION:</b> Community Development/Planning Janet Jeremiah	<b>ITEM DESCRIPTION:</b> Rezoning of MAC Development Parcel 2	<b>ITEM NO.:</b> VIII.A.

**Requested Action**

Move to:

- Approve 2<sup>nd</sup> Reading of the Ordinance for Zoning District Change from Rural to Airport Office (A-OFC) subject to the following conditions:
  1. Rezoning only that portion of the property located north of the line identified as Runway 10L/28R as shown on Figures C1.1 and C2.1.
  2. Any site plan application will conform to all requirements of the City Code.

**Synopsis**

This is the final approval of the rezoning for that portion of the 39 acre parcel lying of the line identified as Runway 10L/28R as shown on Figures C1.1 and C2.1.

**Background**

The 120-Day Review Period Expires on June 7, 2014.

**Attachment**

Ordinance for Zoning District Change from Rural and Public (PUB) to Airport Office (A-OFC).

MAC DEVELOPMENT PARCEL 2

CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA

ORDINANCE NO. \_\_\_\_-2014

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, REMOVING CERTAIN LAND FROM ONE ZONING DISTRICT AND PLACING IT IN ANOTHER, AMENDING THE LEGAL DESCRIPTIONS OF LAND IN EACH DISTRICT, AND ADOPTING BY REFERENCE CITY CODE CHAPTER 11 AND SECTION 11.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS**

**THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA, ORDAINS:**

Section 1. That the land which is the subject of this Ordinance (hereinafter, the “land”) is legally described in Exhibit A attached hereto and made a part hereof.

Section 2. That action was duly initiated proposing that the land be removed from the Rural District and be placed in the Airport-Office (A-OFC) District.

Section 3. The proposal is hereby adopted and the land shall be, and hereby is removed from the Rural District and shall be included hereafter in the Airport – Office (A-OFC) District, and the legal descriptions of land in each District referred to in City Code Section 11.03, Subdivision 1, Subparagraph B, shall be, and are amended accordingly.

Section 4. City Code Chapter 1, entitled “General Provisions and Definitions Applicable to the Entire City Code Including Penalty for Violation” and Section 11.99, “Violation a Misdemeanor” are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 5. This rezoning is subject to the following condition:

Any site plan application will conform to all requirements of the City Code.

Section 6. This Ordinance shall become effective from and after its passage and publication.

FIRST READ at a regular meeting of the City Council of the City of Eden Prairie on the 18<sup>th</sup> day of February, 2014, and finally read and adopted and ordered published in summary form as attached hereto at a regular meeting of the City Council of said City on the 6<sup>th</sup> day of May, 2014.

ATTEST:

\_\_\_\_\_  
Kathleen Porta, City Clerk

\_\_\_\_\_  
Nancy Tyra-Lukens, Mayor

PUBLISHED in the *Eden Prairie News* on \_\_\_\_\_, 2014.

## Exhibit A Legal Description MAC Development Parcel 2

That part of the Southeast Quarter of the Northeast Quarter, that part of the Northeast Quarter of the Northeast Quarter all of Section 29, that part of the Southeast Quarter of the Southeast Quarter of Section 20, Township 116 North, Range 22 West, Hennepin County, Minnesota, described as follows:

Commencing at the southeast corner of the Southeast Quarter of the Northeast Quarter of said Section 29; thence North 00 degrees 15 minutes 42 seconds East, assumed bearing, along the east line of said Southeast Quarter of the Northeast Quarter 861.76 feet to the southerly line of Zone A of Metropolitan Airports Commission; thence North 87 degrees 27 minutes 33 seconds West along said Zone A line 356.76 feet to the point of beginning of the land to be described; thence continuing North 87 degrees 27 minutes 33 seconds West along said Zone line 903.95 feet to the centerline of Eden Prairie Road as described in Document No. 3617459; thence northerly along said centerline 10.13 feet along a non-tangential curve, concave to the east, radius 1761.15 feet, central angle 00 degrees 19 minutes 46 seconds, and a chord that bears North 01 degrees 07 minutes 09 seconds West; thence North 00 degrees 57 minutes 16 seconds West along said centerline, tangent to said curve 102.05 feet; thence northwesterly along said centerline 178.71 feet along a tangential curve, concave to the west, radius 610.85 feet, central angle 16 degrees 45 minutes 45 seconds; thence North 17 degrees 43 minutes 01 seconds West along said centerline, tangent to said curve 65.93 feet; thence northerly along said centerline 112.84 feet along a tangential curve, concave to the east, radius 322.97 feet, central angle 20 degrees 01 minutes 02 seconds; thence northeasterly 136.01 feet along said centerline along a compound curve, radius 233.20 feet, central angle 33 degrees 25 minutes 00 seconds; thence North 35 degrees 43 minutes 02 seconds East along said centerline, tangent to said curve 35.27 feet; thence North 33 degrees 38 minutes 07 seconds East along said centerline 476.95 feet; thence northeasterly along said centerline 193.45 feet along a tangential curve, concave to the northwest, radius 1043.59 feet, central angle 10 degrees 37 minutes 15 seconds; thence northeasterly 355.28 feet along said centerline along a reverse curve, concave to the southeast, radius 2142.76 feet, central angle 09 degrees 30 minutes 00 seconds; thence North 32 degrees 30 minutes 52 seconds East, along said centerline, tangent to said curve 270.35 feet to the south line of the Southeast Quarter of the Southeast Quarter of said Section 20; thence North 32 degrees 12 minutes 10 seconds East along the traveled centerline of said Eden Prairie Road 245.00 feet; thence northeasterly 279.89 feet along said traveled centerline along a tangential curve, concave to the southeast, radius 320.00 feet, central angle 50 degrees 06 minutes 51 seconds; thence North 82 degrees 19 minutes 01 seconds East along said traveled centerline, tangent to said curve 235.63 feet to the east line of said Southeast Quarter of the Southeast Quarter, also being the west line of GRACE CHURCH SECOND ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota; thence South 01 degrees 38 minutes 04 seconds East along said east line 376.64 feet to the southeast corner of said Southeast Quarter of the Southeast Quarter; thence South 00 degrees 15 minutes 42 seconds West along the east line of the Northeast Quarter of the Northeast Quarter of said Section 29, a distance of 66.73 feet to the northerly line of Zone A of Metropolitan Airports Commission; thence North 70 degrees 23 minutes 51 seconds West along said Zone A 29.46 feet; thence South 11 degrees 04 minutes 45 seconds West 1751.27 feet to the point of beginning.



This tract contains 39.00 acres of land and is subject to right-of-way in existing Eden Prairie Road and Spring Road and is subject to any and all easements of record.

That part of the above described parcel, lying northerly of the following described line:

Commencing at the southeast corner of said Southeast Quarter of the Northeast Quarter of Section 29; thence North 00 degrees 15 minutes 42 seconds East, assumed bearing, along the east line of said Southeast Quarter of the Northeast Quarter and it's northerly extension, 2207.73 feet to the point of beginning of the line to be described; thence North 78 degrees 55 minutes 56 seconds West 795.25 feet to the centerline of said Eden Prairie Road as described in Document No. 3617459 and said line there terminating.

This tract contains 9.26 acres of land more or less and is subject to right-of-way in existing Eden Prairie Road and Spring Road and is subject to any and all easements of record.

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**RESOLUTION NO. 2014-**

**A RESOLUTION APPROVING THE SUMMARY  
OF ORDINANCE NO. \_\_-2014 AND ORDERING THE  
PUBLICATION OF SAID SUMMARY**

**WHEREAS**, Ordinance No. \_\_-2014 was adopted and ordered published at a regular meeting of the City Council of the City of Eden Prairie held on the 6th day of May, 2014.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, THAT THE CITY COUNCIL FINDS, DETERMINES, AND ORDERS AS FOLLOWS:**

- A. Ordinance No. \_\_-2014 is lengthy.
- B. The text of summary of Ordinance No. \_\_-2014, attached hereto as Exhibit A, conforms to M.S. § 331A.01, Subd. 10, and is approved, and publication of the title and summary of the Ordinance will clearly inform the public of the intent and effect of the Ordinance.
- C. The title and summary shall be published once in the Eden Prairie News in a body type no smaller than brevier or eight-point type.
- D. A printed copy of the Ordinance shall be made available for inspection by any person, during regular office hours, at the office of the City Clerk, and a copy of the entire text of the Ordinance shall be posted in the City offices.
- E. Ordinance \_\_-2014 shall be recorded in the Ordinance Book, along with proof of publication, within twenty (20) days after said publication.

**ADOPTED** by the City Council on May 6, 2014.

\_\_\_\_\_  
Nancy Tyra-Lukens Mayor

(Seal)

**ATTEST:**

\_\_\_\_\_  
Kathleen Porta, City Clerk

**EXHIBIT A**

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**SUMMARY OF ORDINANCE \_\_-2014**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, REMOVING CERTAIN LAND FROM ONE ZONING DISTRICT AND PLACING IT IN ANOTHER, AMENDING THE LEGAL DESCRIPTIONS OF LAND IN EACH DISTRICT, AND ADOPTING BY REFERENCE CITY CODE CHAPTER 11 AND SECTION 11.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS**

**THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA, ORDAINS:**

Summary: The Ordinance rezones a portion of Parcel 2 to Airport Office.

Effective Date: This Ordinance shall take effect upon publication.

**ATTEST:**

\_\_\_\_\_  
Kathleen Porta, City Clerk

\_\_\_\_\_  
Nancy Tyra- Lukens, Mayor

PUBLISHED in the *Eden Prairie News* on \_\_\_\_\_.

(A full copy of the text of this Ordinance is available from City Clerk.)

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Agenda		5/06/14
<b>DEPARTMENT/DIVISION:</b> Community Development/Planning Janet Jeremiah	<b>ITEM DESCRIPTION:</b> Preliminary & Final Plat Text Amendment	<b>ITEM NO.:</b> VIII.B.

**Requested Action**

Move to:

- Approve 2<sup>nd</sup> Reading of the Ordinance amending Chapter 12 relating to preliminary plat approval and final plat release and recording.
- Adopt Resolution Approving the Summary of Ordinance and Ordering the publication of said summary.

**Synopsis**

This is final approval of an ordinance relating to preliminary plat review and final plat release and recording.

**Attachments**

1. Ordinance
2. Resolution

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**ORDINANCE NO. \_\_\_\_-2014**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA AMENDING CITY CODE CHAPTER 12 AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 12.99 WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS.**

**THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA ORDAINS:**

**Section 1.** City Code Chapter 12, Section 12.04 is hereby amended by adding Subd. 6 to read as follows:

**Subd. 6.       Validity of Approval.** An approved preliminary plat shall be valid for a period not to exceed two (2) years from the date of approval by the City Council. In the event that a final plat or plats are not approved within that time for all of the property included in the preliminary plat, the preliminary plat shall be void as to those portions not part of an approved final plat, unless, prior to the expiration, an extension is requested in writing by the owner or subdivider and for good cause granted by the City Council.

**Section 2.** City Code Chapter 12, Section 12.20, Subd. 2 A. is hereby amended by deleting the end of the first sentence which deleted language reads as follows “not later than six (6) months after the date of preliminary approval; otherwise, the preliminary approval will be considered void unless an extension is requested in writing by the subdivider and for good cause granted by Council” and inserting “of the preliminary plat”.

**Section 3.** City Code Chapter 12, Section 12.20, Subd. 4 is hereby deleted in its entirety and replaced with the following:

**Subd. 4.       Release and Recording.** The City shall not release the final plat until all of the following have been completed:

- A.       The plat has been executed by all required parties;
- B.       The developer’s agreement has been executed by all required parties;
- C.       The submission of necessary financial guarantees and development fees to the City;
- D.       The submission to the City one full-size Mylar reproducible, one paper print and one copy of the final plat in digital (AutoCAD) format compatible with the county coordinate system; and
- E.       The submission in recordable form of all required easements and deeds as required by the City for trails, ponding, parks, utilities or

similar purposes in a form approved by the City Attorney.

Upon release of the final plat, the subdivider shall record it with the County Recorder or Registrar of Titles as provided by law, along with any other documents required by the City to be recorded with the Plat. If the plat is not recorded within 90 days after the date of approval, the City Council may, upon ten days written notice to the subdivider, consider a resolution revoking the approval.

**Section 4.** City Code Chapter 1 entitled “General Provisions and Definitions Applicable to the Entire City Code Including Penalty for Violation” and Section 3.99 entitled “Violation a Misdemeanor” are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

**Section 5.** This ordinance shall become effective from and after its passage and publication.

FIRST READ at a regular meeting of the City Council of the City of Eden Prairie on the 22<sup>nd</sup> day of April, 2014, and finally read and adopted and ordered published at a regular meeting of the City Council of said City on the 6<sup>th</sup> day of May, 2014.

\_\_\_\_\_  
Kathleen Porta, City Clerk

\_\_\_\_\_  
Nancy Tyra-Lukens, Mayor

Published in the *Eden Prairie News* on the \_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**RESOLUTION NO. 2014-**

**A RESOLUTION APPROVING THE SUMMARY  
OF ORDINANCE NO. \_\_-2014 AND ORDERING THE  
PUBLICATION OF SAID SUMMARY**

**WHEREAS**, Ordinance No. \_\_-2014 was adopted and ordered published at a regular meeting of the City Council of the City of Eden Prairie held on the 6th day of May, 2014.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, THAT THE CITY COUNCIL FINDS, DETERMINES, AND ORDERS AS FOLLOWS:**

- A. Ordinance No. \_\_-2014 is lengthy.
- B. The text of summary of Ordinance No. \_\_-2014, attached hereto as Exhibit A, conforms to M.S. § 331A.01, Subd. 10, and is approved, and publication of the title and summary of the Ordinance will clearly inform the public of the intent and effect of the Ordinance.
- C. The title and summary shall be published once in the Eden Prairie News in a body type no smaller than brevier or eight-point type.
- D. A printed copy of the Ordinance shall be made available for inspection by any person, during regular office hours, at the office of the City Clerk, and a copy of the entire text of the Ordinance shall be posted in the City offices.
- E. Ordinance \_\_-2014 shall be recorded in the Ordinance Book, along with proof of publication, within twenty (20) days after said publication.

**ADOPTED** by the City Council on May 6, 2014.

\_\_\_\_\_  
Nancy Tyra-Lukens Mayor

(Seal)

**ATTEST:**

\_\_\_\_\_  
Kathleen Porta, City Clerk

**EXHIBIT A**

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**SUMMARY OF ORDINANCE \_\_-2014**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA AMENDING CITY CODE CHAPTER 12, SECTIONS 12.04 AND 12.20 AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 12.99 WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS.**

**THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA, ORDAINS:**

Summary:

This ordinance amends Chapter 12 Sections 12.04 and 12.20 relating to validity of approval for preliminary plats, filing, release and recording of final plats.

Effective Date: This Ordinance shall take effect upon publication.

**ATTEST:**

\_\_\_\_\_  
Kathleen Porta, City Clerk

\_\_\_\_\_  
Nancy Tyra- Lukens, Mayor

PUBLISHED in the *Eden Prairie News* on \_\_\_\_\_.

(A full copy of the text of this Ordinance is available from City Clerk.)



<b>CITY COUNCIL AGENDA</b> <b>SECTION:</b> Consent Agenda		<b>DATE:</b> May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Human Resources Alecia Rose, HR Manager	<b>ITEM DESCRIPTION:</b> Direct Staff to not Waive the Monetary Limits on Tort Liability Established by Minnesota Statutes 466.04	<b>ITEM NO. :</b> VIII.C.

**Requested Action**

Move to: Direct staff to not waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04.

**Synopsis**

The City of Eden Prairie obtains liability coverage from the League of Minnesota Cities Insurance Trust. Each City Council must formally decide whether to waive or not to waive the statutory tort liability limits to the extent of the coverage purchased. Staff recommends that the City choose not to waive.

**Attachment**

Waiver Form

SECTION I: LIABILITY COVERAGE WAIVER FORM

Cities obtaining liability coverage from the League of Minnesota Cities Insurance Trust must decide whether or not to waive the statutory tort liability limits to the extent of the coverage purchased. The decision to waive or not to waive the statutory limits has the following effects:

*If the city does not waive the statutory tort limits, an individual claimant would be able to recover no more than \$500,000. on any claim to which the statutory tort limits apply. The total which all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would be limited to \$1,500,000. These statutory tort limits would apply regardless of whether or not the city purchases the optional excess liability coverage.*

*If the city waives the statutory tort limits and does not purchase excess liability coverage, a single claimant could potentially recover up to \$1,500,000. on a single occurrence. The total which all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to \$1,500,000., regardless of the number of claimants.*

*If the city waives the statutory tort limits and purchases excess liability coverage, a single claimant could potentially recover an amount up to the limit of the coverage purchased. The total which all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to the amount of coverage purchased, regardless of the number of claimants.*

Claims to which the statutory municipal tort limits do not apply are not affected by this decision.

This decision must be made by the city council. **Cities purchasing coverage must complete and return this form to LMCIT before the effective date of the coverage.** For further information, contact LMCIT. You may also wish to discuss these issues with your city attorney.

City of Eden Prairie accepts liability coverage limits of \$ 1,500,000 from the League of Minnesota Cities Insurance Trust (LMCIT).

Check one:

- The city **DOES NOT WAIVE** the monetary limits on municipal tort liability established by Minnesota Statutes 466.04.
- The city **WAIVES** the monetary limits on tort liability established by Minnesota Statutes 466.04, to the extent of the limits of the liability coverage obtained from LMCIT.

Date of city council meeting \_\_\_\_\_

Signature \_\_\_\_\_

Position \_\_\_\_\_

*Return this completed form to LMCIT, 145 University Ave. W., St. Paul, MN. 55103-2044*

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Agenda		May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Robert Ellis Public Works Director	<b>ITEM DESCRIPTION:</b> Accept petition and set hearing for establishment and fees for Edenvale Highlands Housing Improvement Area	<b>ITEM NO.:</b> VIII.D.

### **Requested Action**

Move to: Accept petition and set a public hearing for May 20, 2014 for the establishment and fees for the Edenvale Highlands Housing Improvement Area.

### **Synopsis**

The City of Eden Prairie is authorized under Minn. Stat. 428A.11 to 428A.21 to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area by resolution. The owners of the 8 housing units within Edenvale Highlands have petitioned the City to establish a Housing Improvement Area (“HIA”) for Edenvale Highlands in order to facilitate improvements to the common elements. The cost of the improvements will be paid through fees assessed against the owners of the housing units. The statutes require that a public hearing be held prior to the establishment of an HIA and prior to the setting of fees for an HIA.

### **Background Information**

The owners of the housing units in the Edenvale Highlands HIA have sought City assistance in financing improvements and repairs to a failing retaining wall. The HIA process allows the City to providing funding for such improvements and repairs and to recoup those costs through fees specially assessed against the properties.

### **Attachments**

Petition  
Hearing Notice

March 28, 2014

Robert Ellis, P.E., P.T.O.E.  
Public Works Director  
8080 Mitchel Rd  
Eden Prairie, MN 55344-4485  
(952) 949-8300

Dear Mr. Ellis,

On behalf of the Home Owners Association of Edenvale Highlands, attached is a petition to establish a Housing Improvement Area (HIA) for our HOA covering all of the retaining walls within our development. We have 8 homeowners in the development and we unanimously voted to form such an HIA. Their electronic signatures are confirmed by their e-mail votes attached to the petition.

After discussions with our HOA members we propose the following structure for determining the assessment charge per household and the terms of HIA dissolution:

- 1) As an HOA we vote on a case by case basis whether a pending wall repair should be financed through the HIA or through a special HOA assessment
- 2) If we decide to finance the repairs through the HIA, the following terms are proposed:
  - a. The city will set up a special assessment equally split between the 8 properties and financed at a fixed rate over a 10 year period
  - b. If no funds to repair the walls are requested within 10 years of establishing the HIA, the HIA will be dissolved

If you have any questions regarding this petition or if we are missing any important details that are required to initiate this process please let me know.

Thank you for your consideration,

Sincerely,



Philip M. Rolchigo  
Acting President of Edenvale Highlands HOA  
6814 Alpine Trail  
Eden Prairie, MN 55346  
(763) 843-4479

CITY OF EDEN PRAIRIE, MINNESOTA  
 PETITION FOR LOCAL IMPROVEMENT



To The Eden Prairie City Council:

The undersigned property owners herein petition the Eden Prairie City Council to consider making the following described improvement(s):

<input type="checkbox"/> Sanitary Sewer <input type="checkbox"/> Watermain <input type="checkbox"/> Storm Sewer <input type="checkbox"/> Street Paving <input type="checkbox"/> Curb & Gutter <input checked="" type="checkbox"/> Other	}	(General Location) <u>Eden Vale Highlands</u> <hr/> To form a Housing Improvement Area (HIA) for potential issues related to Retaining wall improvements & failures (See Attached Email Documents)
--	---	---

Street Address of Other  
 Legal Description of  
 Property to be Served

Signatures of Petitioners  
 (Must Be Property Owners)

<u>6831 Alpine Trail, EP</u>	<u>Herbert A. Marzalia</u>
<u>6847 Alpine Trail, EP</u>	<u>Signature by email</u>
<u>6839 Alpine Trail, EP</u>	<u>Signature by email</u>
<u>6823 Alpine Trail, EP</u>	<u>Signature by email</u>
<u>6802 Alpine Trail, EP</u>	<u>Signature by email</u>
<u>6808 Alpine Trail, EP</u>	<u>Signature by email</u>
<u>6814 Alpine Trail, EP</u>	<u>Signature by email</u>
<u>6826 Alpine Trail, EP</u>	<u>Signature by email</u>

8 of 8 Home owners in Eden Vale Highlands votes to  
Form HIA

(For City Use)

Date Received \_\_\_\_\_

Project No. \_\_\_\_\_

Council Consideration \_\_\_\_\_

**Rolchigo, Phil**

**From:** HMargo1049@aol.com  
**Sent:** Wednesday, January 29, 2014 7:10 PM  
**To:** Rolchigo, Phil  
**Subject:** Re: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

We agree with going forward with paragraph 2. a. and b. below and forming the HIA.

In a message dated 1/29/2014 2:05:23 P.M. Central Standard Time, [Phil.Rolchigo@PENTAIR.COM](mailto:Phil.Rolchigo@PENTAIR.COM) writes:

Dear Edenvale Highlands HOA members,

At our last HOA meeting we agreed that myself, Herb Margolis and Michael Sack would approach the city to explore ways to possibly have the city finance any significant expenses associated with the repair of the retaining walls within our HOA. We had a productive meeting with Rob Ellis, EP Public Works Director and he agreed to explore potential options on our behalf.

6831 Alpine Trail

After discussions with his colleagues at the city, Rob proposed the following structure:

- 1) Our HOA petition to establish a Housing Improvement Area (HIA) within our HOA covering all of the retaining walls within our development
- 2) As part of the petition, as an HOA we would have to agree to the methodology of charging future assessments to each homeowner
- 3) Establish a sunset clause whereby if funds are not accessed by the HOA the HIA would be dissolved

Establishing this HIA with access to funds to perform any major future wall repairs would be highly beneficial to all of us since the costs would be spread out over a multi-year period and be tax deductible.

We need a majority vote to proceed with forming this HIA. To start things rolling I propose the following methodology and terms for accessing any future fees.

- 1) As an HOA we vote on a case by case basis whether a pending wall repair should be financed through the HIA or through a special HOA assessment
- 2) If we decide to finance the repairs through the HIA, I propose the following terms:
  - a. The city will set up a special assessment equally split between the 8 properties and financed at a fixed rate over a 10 year period
  - b. If no funds to repair the walls are requested within 10 years of establishing the HIA, the HIA will be dissolved

I need your feedback on 2 items ASAP:

- 1) Vote YES or NO to move forward and establish an HIA for our development
- 2) If YES, please confirm you are in agreement with the terms outlined in 2a & 2b above or suggest changes to the terms outlined above.

Note that Rob made it clear that no previous repairs made prior to establishing an HIA would be eligible to access these funds, so if we are interested in establishing an HIA we should move quickly before any major wall issues occur.

Sincerely,

Philip M. Rolchigo  
(763) 843-4479

## Rolchigo, Phil

---

**From:** Anil Goel <agoel01@hotmail.com> *6847 Alpine Trail*  
**Sent:** Wednesday, February 05, 2014 12:55 AM  
**To:** Rolchigo, Phil; Amrita Goel  
**Cc:** Dr Phil  
**Subject:** RE: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members  
**Importance:** High

Sorry, Phil for late reply. I am out of country for the past two weeks. Please see my vote below. I will get the details later once I am back in US e.g, would the special assessment start right away whether we have any need for repair or not and how much that be?

> 1) Vote YES or NO to move forward and establish an HIA for our development  
YES

>  
> 2) If YES, please confirm you are in agreement with the terms outlined in 2a & 2b above or suggest changes to the terms outlined above.  
I agree.

Anil Goel

> From: [Phil.Rolchigo@PENTAIR.COM](mailto:Phil.Rolchigo@PENTAIR.COM)  
> To: [agoel01@hotmail.com](mailto:agoel01@hotmail.com); [k.weirick@yahoo.com](mailto:k.weirick@yahoo.com); [ralphsteele@me.com](mailto:ralphsteele@me.com); [b\\_weirick@yahoo.com](mailto:b_weirick@yahoo.com); [amrita\\_goel@hotmail.com](mailto:amrita_goel@hotmail.com)  
> CC: [drphilter@aol.com](mailto:drphilter@aol.com)  
> Subject: RE: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members  
> Date: Tue, 4 Feb 2014 17:40:30 +0000  
>  
> Anil/Amitra, Bill/Kristin and Ralph,  
>  
> We still need your votes on the proposal below. Please let me know if you have any questions.  
>  
> Thanks much,  
> Phil  
> (763) 843-4479  
>  
>  
> -----Original Message-----  
> From: Rolchigo, Phil  
> Sent: Wednesday, January 29, 2014 2:05 PM  
> To: Anil Goel; [bellajlr@aol.com](mailto:bellajlr@aol.com); [vishnumohabir@gmail.com](mailto:vishnumohabir@gmail.com); Herb Margolis; [LMargo9633@aol.com](mailto:LMargo9633@aol.com); [juliatorres308@hotmail.com](mailto:juliatorres308@hotmail.com); [k.weirick@yahoo.com](mailto:k.weirick@yahoo.com); [ralphsteele@me.com](mailto:ralphsteele@me.com); [b\\_weirick@yahoo.com](mailto:b_weirick@yahoo.com); Amrita Goel; Michelle Sack; Mike Sack; [david.jellison@ksmwater.com](mailto:david.jellison@ksmwater.com)  
> Cc: Dr Phil ; Rolchigo, Phil  
> Subject: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members



- >
- > Dear Edenvale Highlands HOA members,
- >
- > At our last HOA meeting we agreed that myself, Herb Margolis and Michael Sack would approach the city to explore ways to possibly have the city finance any significant expenses associated with the repair of the retaining walls within our HOA. We had a productive meeting with Rob Ellis, EP Public Works Director and he agreed to explore potential options on our behalf.
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- > After discussions with his colleagues at the city, Rob proposed the following structure:
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- > 1) Our HOA petition to establish a Housing Improvement Area (HIA) within our HOA covering all of the retaining walls within our development
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- > 2) As part of the petition, as an HOA we would have to agree to the methodology of charging future assessments to each homeowner
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- > 3) Establish a sunset clause whereby if funds are not accessed by the HOA the HIA would be dissolved
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- > Establishing this HIA with access to funds to perform any major future wall repairs would be highly beneficial to all of us since the costs would be spread out over a multi-year period and be tax deductible.
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- > We need a majority vote to proceed with forming this HIA. To start things rolling I propose the following methodology and terms for accessing any future fees.
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- > 1) As an HOA we vote on a case by case basis whether a pending wall repair should be financed through the HIA or through a special HOA assessment
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- > a. The city will set up a special assessment equally split between the 8 properties and financed at a fixed rate over a 10 year period
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- > b. If no funds to repair the walls are requested within 10 years of establishing the HIA, the HIA will be dissolved
- >
- > I need your feedback on 2 items ASAP:
- >
- >
- > 1) Vote YES or NO to move forward and establish an HIA for our development
- YES
- >
- > 2) If YES, please confirm you are in agreement with the terms outlined in 2a & 2b above or suggest changes to the terms outlined above.
- I agree.
- >
- > Note that Rob made it clear that no previous repairs made prior to establishing an HIA would be eligible to

**Rolchigo, Phil**

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**Subject:** FW: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

**From:** vishnu lalta [mailto:vishnumohabir@gmail.com]

6839 Alpine Trail

**Sent:** Wednesday, January 29, 2014 4:26 PM

**To:** Rolchigo, Phil

**Subject:** Re: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

I Vote YES, On 2a and 2b. Thanks for all the hard work.

On Wed, Jan 29, 2014 at 2:05 PM, Rolchigo, Phil <Phil.Rolchigo@pentair.com> wrote:  
Dear Edenvale Highlands HOA members,

At our last HOA meeting we agreed that myself, Herb Margolis and Michael Sack would approach the city to explore ways to possibly have the city finance any significant expenses associated with the repair of the retaining walls within our HOA. We had a productive meeting with Rob Ellis, EP Public Works Director and he agreed to explore potential options on our behalf.

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  - b. If no funds to repair the walls are requested within 10 years of establishing the HIA, the HIA will be dissolved

I need your feedback on 2 items ASAP:

- 1) Vote YES or NO to move forward and establish an HIA for our development
- 2) If YES, please confirm you are in agreement with the terms outlined in 2a & 2b above or suggest changes to the terms outlined above.

Note that Rob made it clear that no previous repairs made prior to establishing an HIA would be eligible to access these funds, so if we are interested in establishing an HIA we should move quickly before any major wall issues occur.

Sincerely,

Philip M. Rolchigo  
(763) 843-4479

## Rolchigo, Phil

---

**From:** David Jellison - KSM Water GmbH <david.jellison@ksmwater.com>  
**Sent:** Wednesday, January 29, 2014 3:38 PM  
**To:** Rolchigo, Phil  
**Subject:** Re: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

Yes on it all... Interestingly enough I have a jerry rigged drainage pipe from prior owner that needs to be remedied that should go through the wall not over it (current)... looking forward to meeting you Phil...

David B. Jellison  
CEO, KSM Water, Inc.  
M: (720) 633 - 0899  
Sent from iPad

On Jan 29, 2014, at 2:05 PM, "Rolchigo, Phil" <[Phil.Rolchigo@PENTAIR.COM](mailto:Phil.Rolchigo@PENTAIR.COM)> wrote:

Dear Edenvale Highlands HOA members,

At our last HOA meeting we agreed that myself, Herb Margolis and Michael Sack would approach the city to explore ways to possibly have the city finance any significant expenses associated with the repair of the retaining walls within our HOA. We had a productive meeting with Rob Ellis, EP Public Works Director and he agreed to explore potential options on our behalf.

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I need your feedback on 2 items ASAP:

- 1) Vote YES or NO to move forward and establish an HIA for our development
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Sincerely,

Philip M. Rolchigo  
(763) 843-4479

## Rolchigo, Phil

---

**From:** Bill Weirick <b\_weirick@yahoo.com> *6802 Alpine Trail*  
**Sent:** Tuesday, February 04, 2014 12:52 PM  
**To:** Rolchigo, Phil  
**Subject:** Re: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

Phil,

Yes to move forward on the HIA and yes to 2a & 2b.

Bill Weirick

Sent from my iPad

> On Feb 4, 2014, at 11:40 AM, "Rolchigo, Phil" <[Phil.Rolchigo@PENTAIR.COM](mailto:Phil.Rolchigo@PENTAIR.COM)> wrote:

>  
> Anil/Amitra, Bill/Kristin and Ralph,  
>  
> We still need your votes on the proposal below. Please let me know if you have any questions.

>  
> Thanks much,  
> Phil  
> (763) 843-4479

> -----Original Message-----

> From: Rolchigo, Phil  
> Sent: Wednesday, January 29, 2014 2:05 PM  
> To: Anil Goel; [bellajlr@aol.com](mailto:bellajlr@aol.com); [vishnumohabir@gmail.com](mailto:vishnumohabir@gmail.com); Herb Margolis; [LMargo9633@aol.com](mailto:LMargo9633@aol.com); [juliatorres308@hotmail.com](mailto:juliatorres308@hotmail.com); [k.weirick@yahoo.com](mailto:k.weirick@yahoo.com); [ralphsteele@me.com](mailto:ralphsteele@me.com); [b\\_weirick@yahoo.com](mailto:b_weirick@yahoo.com); Amrita Goel; Michelle Sack; Mike Sack; [david.jellison@ksmwater.com](mailto:david.jellison@ksmwater.com)  
> Cc: Dr Phil ; Rolchigo, Phil  
> Subject: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

> Dear Edenvale Highlands HOA members,

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- > Note that Rob made it clear that no previous repairs made prior to establishing an HIA would be eligible to access these funds, so if we are interested in establishing an HIA we should move quickly before any major wall issues occur.
- >
- > Sincerely,
- >
- > Philip M. Rolchigo
- > (763) 843-4479

## Rolchigo, Phil

---

**From:** RALPH STEELE <ralphsteele@me.com> *6508 Alpine Trail*  
**Sent:** Wednesday, March 26, 2014 4:55 PM  
**To:** Rolchigo, Phil  
**Subject:** Re: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

Hello Phil,  
As regard to the HIA development proposal and specifically to 2a & 2b , I vote yes.

Ralph Steele

On Mar 26, 2014, at 10:49 AM, "Rolchigo, Phil" <[Phil.Rolchigo@PENTAIR.COM](mailto:Phil.Rolchigo@PENTAIR.COM)> wrote:

Hi Ralph...we are ready to submit this petition to the City Council, but still need your vote.

Can you please let me know your thoughts on the information below.

Hope all is well,  
Phil

Philip M. Rolchigo, PhD

Vice President of Global Technology  
Pentair  
5500 Wayzata Blvd., Suite 800  
Minneapolis, MN 55416-1261  
(763) 843-4479

-----Original Message-----

**From:** Rolchigo, Phil  
**Sent:** Wednesday, January 29, 2014 2:05 PM  
**To:** Anil Goel; [bellajlr@aol.com](mailto:bellajlr@aol.com); [vishnumohabir@gmail.com](mailto:vishnumohabir@gmail.com); Herb Margolis; [LMargo9633@aol.com](mailto:LMargo9633@aol.com); [juliatorres308@hotmail.com](mailto:juliatorres308@hotmail.com); [k.weirick@yahoo.com](mailto:k.weirick@yahoo.com); [ralphsteele@me.com](mailto:ralphsteele@me.com); [b\\_weirick@yahoo.com](mailto:b_weirick@yahoo.com); Amrita Goel; Michelle Sack; Mike Sack; [david.jellison@ksmwater.com](mailto:david.jellison@ksmwater.com)  
**Cc:** Dr Phil ; Rolchigo, Phil  
**Subject:** PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

Dear Edenvale Highlands HOA members,

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Sincerely,

Philip M. Rolchigo  
(763) 843-4479

## Rolchigo, Phil

---

**From:** Rolchigo, Phil *6814 Alpine Trail*  
**Sent:** Wednesday, March 26, 2014 10:45 AM  
**To:** Rolchigo, Phil  
**Subject:** RE: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

Rolchigo Family Votes Yes

Philip M. Rolchigo, PhD

Vice President of Global Technology  
Pentair  
5500 Wayzata Blvd., Suite 800  
Minneapolis, MN 55416-1261  
(763) 843-4479

-----Original Message-----

From: Rolchigo, Phil  
Sent: Wednesday, January 29, 2014 2:05 PM  
To: Anil Goel; [bellajlr@aol.com](mailto:bellajlr@aol.com); [vishnumohabir@gmail.com](mailto:vishnumohabir@gmail.com); Herb Margolis; [LMargo9633@aol.com](mailto:LMargo9633@aol.com); [juliatorres308@hotmail.com](mailto:juliatorres308@hotmail.com); [k.weirick@yahoo.com](mailto:k.weirick@yahoo.com); [ralphsteele@me.com](mailto:ralphsteele@me.com); [b\\_weirick@yahoo.com](mailto:b_weirick@yahoo.com); Amrita Goel; Michelle Sack; Mike Sack; [david.jellison@ksmwater.com](mailto:david.jellison@ksmwater.com)  
Cc: Dr Phil ; Rolchigo, Phil  
Subject: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

Dear Edenvale Highlands HOA members,

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Sincerely,

Philip M. Rolchigo  
(763) 843-4479

**Rolchigo, Phil**

---

**From:** Mike Sack <ms2inv@comcast.net>  
**Sent:** Monday, February 24, 2014 6:33 PM  
**To:** Rolchigo, Phil  
**Subject:** Re: PLEASE READ - Important Vote Required by Edenvale Highland HOA Members

6826 Alpine Trail

Phil: The Sack's vote is Yes & Yes, with the exception of the Margolis wall... As the minutes stated he holds responsibility for that section going forward, which he has not disputed. Please clarify before accepting our vote. Thanks for communicating with the HOA. Does this take a majority vote or all in? We should at least record a response from all. Thoughts?

Sent from my iPhone

- > On Jan 29, 2014, at 2:05 PM, "Rolchigo, Phil" <Phil.Rolchigo@PENTAIR.COM> wrote:
- >
- > Dear Edenvale Highlands HOA members,
- >
- > At our last HOA meeting we agreed that myself, Herb Margolis and Michael Sack would approach the city to explore ways to possibly have the city finance any significant expenses associated with the repair of the retaining walls within our HOA. We had a productive meeting with Rob Ellis, EP Public Works Director and he agreed to explore potential options on our behalf.
- >
- > After discussions with his colleagues at the city, Rob proposed the following structure:
- >
- >
- > 1) Our HOA petition to establish a Housing Improvement Area (HIA) within our HOA covering all of the retaining walls within our development
- >
- > 2) As part of the petition, as an HOA we would have to agree to the methodology of charging future assessments to each homeowner
- >
- > 3) Establish a sunset clause whereby if funds are not accessed by the HOA the HIA would be dissolved
- >
- > Establishing this HIA with access to funds to perform any major future wall repairs would be highly beneficial to all of us since the costs would be spread out over a multi-year period and be tax deductible.
- >
- > We need a majority vote to proceed with forming this HIA. To start things rolling I propose the following methodology and terms for accessing any future fees.
- >
- >
- > 1) As an HOA we vote on a case by case basis whether a pending wall repair should be financed through the HIA or through a special HOA assessment
- >
- > 2) If we decide to finance the repairs through the HIA, I propose the following terms:
- >
- > a. The city will set up a special assessment equally split between the 8 properties and financed at a fixed rate over a 10 year period
- >
- > b. If no funds to repair the walls are requested within 10 years of establishing the HIA, the HIA will be dissolved

>  
> I need your feedback on 2 items ASAP:  
>  
>  
> 1) Vote YES or NO to move forward and establish an HIA for our development  
>  
> 2) If YES, please confirm you are in agreement with the terms outlined in 2a & 2b above or suggest changes to the terms outlined above.  
>  
> Note that Rob made it clear that no previous repairs made prior to establishing an HIA would be eligible to access these funds, so if we are interested in establishing an HIA we should move quickly before any major wall issues occur.  
>  
> Sincerely,  
>  
> Philip M. Rolchigo  
> (763) 843-4479

**NOTICE OF PUBLIC HEARING  
2014 CITY OF EDEN PRAIRIE  
EDENVALE HIGHLANDS HOUSING IMPROVEMENT AREA**

Notice is hereby given that the City of Eden Prairie, pursuant to Minnesota Statutes Sections 428A.11- 428A.21, is holding a public hearing on May 20, 2014 at 7:00 p.m. in the Eden Prairie City Council Chambers, 8080 Mitchell Road, Eden Prairie, Minnesota, for the purpose of establishing the Edenvale Highlands Housing Improvement Area (“Edenvale HIA”) and the imposition of fees on housing units within the Edenvale HIA.

The public hearing is being held pursuant to a petition of more than 50% of the property owners of the housing units of the Edenvale Highlands requesting that the City establish a Housing Improvement Area to facilitate various improvements to the common areas at the Edenvale Highlands and to finance those improvements by imposing fees on the owners of the housing units. The boundaries of the proposed Edenvale HIA are shown in the map below.

**EDENVALE HIGHLANDS ADDITION**



**Persons to be heard:** All persons owning housing units in the proposed Edenvale HIA that would be subject to a fee for housing improvements, and all other interested persons, will be given an opportunity to be heard at the hearing.

**Housing Improvements:** A preliminary list of the housing improvements to be made in the Edenvale HIA will be

available at the hearing.

**Estimated cost of Improvements to be paid in whole or in part by Housing Improvement Fee:** The total estimated project cost is \$300,000. All contracts for the improvements must comply with Minnesota State Statute 471.345.

**Amount to be charged against each housing unit:** Each of the 8 housing units that comprise the Edenvale HIA will be assessed \$37,500 for the improvements. Such assessment is proposed to be payable in equal annual installments extending over a period of 10 years from the date the first installment is due and payable and will bear interest, at the rate of the prime rate plus 2 based on the prime rate published by Wells Fargo applicable for the date of the requested payment, per annum from the effective date of the assessment resolution. The first installment shall be payable in the year following the certification of the assessment to the County Auditor and to the first installment shall be added interest on the entire assessment from the date of this resolution until December 31 of the year the first installment is due.

**Owner's right to prepay the total fee:** The owners may, at any time prior to the certification of the assessment to the County Auditor, pay to the City the entire assessment on such unit, with interest accrued to the date of payment. No interest shall be charged if the entire assessment is paid within 30 days from the adoption of this assessment. The owners may at any time thereafter, pay to the City the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.

**Objections: Prior to the adoption of the ordinance, or during the public hearing,** Before the ordinance is adopted or at the hearing at which it is to be adopted, the owner of a housing unit in the proposed housing improvement area may file a written objection with the city clerk asserting that the owner's property should not be included in the area or should not be subjected to a fee and objecting to the inclusion of the housing unit in the area, for the reason that the property would not benefit from the improvements.

**Compliance with Petition Requirement:** Owners of more than 50 percent of the housing units that would be subject to the proposed Housing Improvement Fee in the Edenvale HIA have filed a petition with the City requesting a public hearing on the proposed Housing Improvement fee. This meets the requirement for a public hearing under Minn. Stat. 428A.12.

For additional information on the proposed Housing Improvement Fee, contact the City of Eden Prairie at 952-949-8439.

***This material can be provided to you in different forms on request, such as large print, if you call 952-949-8300 (voice) or 952-949-8399 (TTD/TTY).***

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Mary Krause Public Works / Engineering	<b>ITEM DESCRIPTION: I.C. 01-5537</b> Award Contract to Northwest Asphalt, Inc. for Eden Prairie Road Improvement Project	<b>ITEM NO.:</b> VIII.E.

**Requested Action**

Move to: Adopt Resolution Awarding Contract for the Eden Prairie Road Improvement Project to Northwest Asphalt, Inc. in the amount of \$1,982,394.01.

**Synopsis**

Bids were received on Thursday, April 24, 2014 for the Eden Prairie Road Improvement Project. Three bids were received and are tabulated as indicated on the attached Bid Tabulation.

**Background Information**

This project consists of improving Eden Prairie Road just north of Riley Creek to just south of the Eden Prairie Woods development. The proposed improvements include upgrading the existing rural section to an urban section with concrete curb and gutter, storm sewer and water quality improvements along with trail, sidewalk and utility improvements. The low bid is approximately 12% lower than the Engineer’s Estimate. The project is anticipated to start in June and be substantially complete by the end of November.

**Project Cost Summary**

The project will be funded through special assessments. The City Council authorized a feasibility study of street and utility improvements for Eden Prairie Road (south of Riley Creek) on October 16, 2001. The amended feasibility study and resolution regarding special assessments was authorized by City Council on August 20, 2013. The low bid \$1,982,394.01 is substantially lower than the estimated costs shown in Table No. 1 of the Feasibility Study of \$3,274,600.

**Attachments**

- Recommendation of Award
- Bid Tabulation
- Resolution



April 29, 2014

RE: Eden Prairie, Minnesota  
Recommendation of Award for  
Reconstruction of Eden Prairie Road -  
IC No. 01-5537  
SEH No. EDENP020200 14.00

Mary Krause  
Senior Project Engineer  
City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN 55344

Dear Mary:

On April 24, 2014, at 10:00 a.m. 3 bid proposals were received for the above-referenced Project. The bids ranged from a high of \$2,856,269.65 to a low of \$1,982,394.01. The low bid was submitted by Northwest Asphalt Inc.

We have investigated the qualifications of Northwest Asphalt Inc. and find the following to be true:

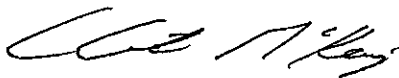
1. They have a sufficient understanding of the project and equipment to perform the construction for which it bid
2. According to their bonding agent, they presently have the financial ability to complete the project.

SEH makes no representation or warranty as to the actual financial viability of the contractor or its ability to complete its work.

We recommend the Project be awarded to Northwest Asphalt Inc. in the amount of \$1,982,394.01.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.



Christopher McKenzie, PE  
Project Manager

cdm

c: Jeremy Gylland, Northwest Asphalt, Inc  
Paul Pasko, SEH

p:\a\edenp\020200\6-bidding\recommendation of award letter.docx



TABULATION OF BIDS

Shaded area denotes corrected figure

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Reconstruction of Eden Prairie Road Eden Prairie, Minnesota SEH No.: EDENP0202.00 Bid Date: 10:00 a.m., Thursday, April 24, 2014				City Imp Contract No. 01-5537		Northwest Asphalt Inc. 1451 Stagecoach Road Shakopee, MN 55379 \$1,982,394.01	North Pine Aggregate Inc. 14551 Lake Drive Forest Lake, MN 55025 \$2,249,318.80	Northdale Const Co., Inc. 9760 71st Street NE Albertville, MN 55301 \$2,856,269.65	
Item No.	Item	Unit	Est. Quantity	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
<b>Schedule A - General</b>									
1	MOBILIZATION	LS	1	\$145,000.00	\$145,000.00	\$130,000.00	\$130,000.00	\$86,588.60	\$86,588.60
4	CLEARING	TREE	15	200.00	3,000.00	210.00	3,150.00	210.00	3,150.00
5	GRUBBING	TREE	15	200.00	3,000.00	215.00	3,225.00	210.00	3,150.00
6	CLEARING	ACRE	2	4,000.00	8,000.00	5,275.00	10,550.00	5,250.00	10,500.00
7	GRUBBING	ACRE	2	4,000.00	8,000.00	4,500.00	9,000.00	4,200.00	8,400.00
8	REMOVE EXISTING STORM SEWER PIPE	LIN FT	333	10.00	3,330.00	3.55	1,182.15	8.00	2,664.00
9	REMOVE EXISTING WATER MAIN PIPE	LIN FT	170	12.00	2,040.00	9.00	1,530.00	10.00	1,700.00
10	REMOVE EXISTING SANITARY SEWER PIPE	LIN FT	220	12.00	2,640.00	12.00	2,640.00	28.41	6,250.20
11	REMOVE FENCE	LIN FT	400	3.00	1,200.00	2.55	1,020.00	10.00	4,000.00
12	REMOVE RETAINING WALL	SQ FT	20	10.00	200.00	20.00	400.00	5.00	100.00
13	RECLAIM EXISTING BITUMINOUS PAVEMENT (P)	SQ YD	9,856	1.20	11,827.20	2.30	22,668.80	3.13	30,849.28
14	REMOVE BITUMINOUS DRIVEWAY PAVEMENT	SQ YD	598	3.00	1,794.00	6.25	3,737.50	5.00	2,990.00
15	REMOVE CONCRETE DRIVEWAY PAVEMENT	SQ YD	60	5.00	300.00	10.25	615.00	5.00	300.00
16	REMOVE CONCRETE CURB & GUTTER	LF	100	4.00	400.00	7.00	700.00	5.00	500.00
17	REMOVE DRAINAGE STRUCTURE	EACH	4	250.00	1,000.00	400.00	1,600.00	350.00	1,400.00
18	REMOVE CAST IN PLACE 8" X 6" BOX CULVERT	EACH	40	40.00	1,600.00	94.00	3,760.00	200.00	8,000.00
19	REMOVE DEBRIS	LS	1	725.00	725.00	4,350.00	4,350.00	6,250.00	6,250.00
20	SAWING BITUMINOUS PAVEMENT	LIN FT	345	2.50	862.50	3.50	1,207.50	5.25	1,811.25
21	SALVAGE SIGN, TYPE "C"	EACH	27	25.00	675.00	30.00	810.00	26.25	708.75
22	SALVAGE SIGN, STREET NAME	EACH	3	25.00	75.00	40.00	120.00	36.75	110.25
27	TOPSOIL BORROW (LV)	CU YD	1,338	19.10	25,555.80	23.90	31,978.20	26.66	35,671.08
41	MODULAR BLOCK RETAINING WALL	SQ FT	300	25.40	7,620.00	26.50	7,950.00	26.25	7,875.00
100	TRAFFIC CONTROL	LS	1	6,800.00	6,800.00	7,175.00	7,175.00	7,140.00	7,140.00
101	FURNISH AND INSTALL SIGN PANEL ASSEMBLY, TYPE "C"	SQ FT	185	30.00	5,550.00	31.50	5,827.50	30.98	5,731.30
102	INSTALL SALVAGED STREET NAME ASSEMBLY	EACH	5	75.00	375.00	100.00	500.00	99.75	498.75
103	INSTALL SALVAGED SIGN PANEL	EACH	4	75.00	300.00	16.00	64.00	15.75	63.00
104	PERMENENT BARRICADE, TYPE III	EACH	3	275.00	825.00	370.00	1,110.00	367.50	1,102.50
105	RIVER BIRCH 2-INCH B&B	TREE	15	395.00	5,925.00	350.00	5,250.00	414.75	6,221.25
106	SWAMP WHITE OAK 2-INCH B&B	TREE	13	400.00	5,200.00	350.00	4,550.00	420.00	5,460.00
107	HACKBERRY 2-INCH B&B	TREE	6	395.00	2,370.00	350.00	2,100.00	414.75	2,488.50
108	BLACK HILLS SPRUCE 2-INCH B&B	TREE	12	365.00	4,380.00	275.00	3,300.00	383.25	4,599.00
109	8' HIGH CLUMP RIVER BIRCH	EACH	6	365.00	2,190.00	350.00	2,100.00	383.25	2,299.50
110	HARVEST AND INSTALL WILLOW STAKES	EACH	300	11.00	3,300.00	6.50	1,950.00	11.00	3,300.00
111	RED TWIG DOGWOOD, 5 GAL	EACH	10	78.00	780.00	50.00	500.00	81.90	819.00
113	EROSION CONTROL SILT FENCE, HEAVY DUTY	LIN FT	3,550	1.50	5,325.00	1.60	5,680.00	1.58	5,609.00
114	EROSION CONTROL FLOTATION SILT CURTAIN - MOVING WATER	LIN FT	120	17.65	2,118.00	18.50	2,220.00	18.53	2,223.60
115	ROCK FILTRATION SUMP	EACH	2	350.00	700.00	2,000.00	4,000.00	2,625.00	5,250.00



TABULATION OF BIDS

Shaded area denotes corrected figure

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Reconstruction of Eden Prairie Road Eden Prairie, Minnesota SEH No.: EDENP0202.00 Bid Date: 10:00 a.m., Thursday, April 24, 2014				City Imp Contract No. 01-5537		Northwest Asphalt Inc. 1451 Stagecoach Road Shakopee, MN 55379 \$1,982,394.01		North Pine Aggregate Inc. 14551 Lake Drive Forest Lake, MN 55025 \$2,249,318.80		Northdale Const Co., Inc. 9760 71st Street NE Albertville, MN 55301 \$2,856,269.65	
Item No.	Item	Unit	Est. Quantity	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price		
116	EROSION CONTROL BLANKET CATEGORY 3 (WOOD FIBER)	SY	16,598	1.05	17,427.90	1.10	18,257.80	1.10	18,257.80		
117	EROSION CONTROL BLANKET CATEGORY 6 (WOOD FIBER)	SY	9,094	3.20	29,100.80	3.40	30,919.60	3.36	30,555.84		
118	HYDRAULIC SOIL STABILIZER (TYPE 6)	LB	23,302	0.69	16,078.38	0.75	17,476.50	0.72	16,777.44		
119	SEEDING	ACRE	5.3	125.00	662.50	132.00	699.60	131.25	695.63		
120	SODDING, TYPE LAWN	SQ YD	6,700	3.85	25,795.00	3.80	25,460.00	3.78	25,326.00		
121	COMMERCIAL FERTILIZER, ANALYSIS 12-12-12	LB	1,062	0.53	562.86	0.55	584.10	0.56	594.72		
122	SEED, MIXTURE 110 TEMPORARY SEED (OATS) (70 LBS PER ACRE)	LB	76	2.05	155.80	2.15	163.40	2.15	163.40		
123	SEED, MIXTURE 270 RESIDENTIAL TURF (120 LBS PER ACRE)	LB	55	3.25	178.75	3.40	187.00	3.41	187.55		
124	SEED, MIXTURE 328 - WETLAND SEED MIX (88 LBS PER ACRE)	LB	95	7.10	674.50	7.50	712.50	7.46	708.70		
125	SEED, MIXTURE 350 - NATIVE MIX FOR ROADSIDE AREAS (85 LBS PER ACRE)	LB	155	5.65	875.75	6.00	930.00	5.93	919.15		
126	SEED, MIXTURE BWSR 34-261 - CREEK RESTORATION AREAS (35 LBS PER ACRE)	LB	24	32.35	776.40	34.15	819.60	33.97	815.28		
<b>Subtotal Schedule A</b>					<b>\$367,271.14</b>		<b>\$384,730.75</b>		<b>\$370,775.32</b>		
<b>Schedule B - Streets and Driveways</b>											
23	COMMON EXCAVATION (P) (2014)	CU YD	37,762	3.85	145,383.70	5.05	190,698.10	17.99	679,338.38		
24	COMMON EXCAVATION (P) (2015)	CU YD	2,102	15.00	31,530.00	14.00	29,428.00	21.99	46,222.98		
25	MUCK EXCAVATION	CU YD	6,722	8.00	53,776.00	12.00	80,664.00	28.13	189,089.86		
26	IMPORTED COMMON BORROW (CV)	CU YD	12,088	10.40	125,715.20	11.50	139,012.00	17.90	216,375.20		
28	SELECT GRANULAR BORROW (CV)	CU YD	712	13.50	9,612.00	5.00	3,560.00	24.35	17,337.20		
30	3/4" CLEAR CRUSHED AGGREGATE FILL	TON	130	23.00	2,990.00	34.00	4,420.00	26.54	3,450.20		
32	TEST ROLLING	RD STA	35	180.00	6,300.00	50.00	1,750.00	50.00	1,750.00		
33	WATER FOR DUST CONTROL	M GALS	180	35.00	6,300.00	32.50	5,850.00	50.00	9,000.00		
34	AGGREGATE BASE, CLASS 5 100% CRUSHED QUARRY ROCK (ROADS)	TON	3,431	14.20	48,720.20	18.50	63,473.50	17.72	60,797.32		
34A	AGGREGATE BASE, CLASS 5 (ROADS)	TON	3,430	13.00	44,590.00	14.65	50,249.50	20.00	68,600.00		
35	AGGREGATE BASE, CLASS 5 100% CRUSHED QUARRY ROCK (DRIVEWAY AND TRAIL)	TON	1,979	18.00	35,622.00	19.75	39,085.25	23.22	45,952.38		
36	TYPE SPWEA240B WEARING COURSE MIXTURE (ROADS)	TON	1,100	60.90	66,990.00	61.95	68,145.00	61.95	68,145.00		
37	TYPE SPNWB240B NON-WEARING COURSE MIXTURE (ROADS)	TON	1,468	60.00	88,080.00	56.70	83,235.60	56.70	83,235.60		
38	SPWEA240B WEARING COURSE MIXTURE (DRIVEWAYS)	TON	75	140.00	10,500.00	105.00	7,875.00	105.00	7,875.00		
39	TYPE SPWEB240B WEARING COURSE MIXTURE (TRAILS)	TON	495	74.75	37,001.25	65.10	32,224.50	65.10	32,224.50		
40	BITUMINOUS MATERIAL FOR TACK COAT	GALS	602	3.25	1,956.50	3.15	1,896.30	3.15	1,896.30		
45	4-INCH PE CORRUGATED PERFORATED PIPE DRAIN WITH SOCK	LIN FT	1,800	15.00	27,000.00	22.65	40,770.00	9.69	17,442.00		
46	CONNECT 4-INCH PVC OR PERF PE TO RCP STORM SEWER	EACH	10	250.00	2,500.00	500.00	5,000.00	300.05	3,000.50		



TABULATION OF BIDS

Shaded area denotes corrected figure

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Reconstruction of Eden Prairie Road Eden Prairie, Minnesota SEH No.: EDENP0202.00 Bid Date: 10:00 a.m., Thursday, April 24, 2014				City Imp Contract No. 01-5537		Northwest Asphalt Inc. 1451 Stagecoach Road Shakopee, MN 55379	North Pine Aggregate Inc. 14551 Lake Drive Forest Lake, MN 55025	Northdale Const Co., Inc. 9760 71st Street NE Albertville, MN 55301	
Item No.	Item	Unit	Est. Quantity	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
					\$1,982,394.01		\$2,249,318.80		\$2,856,269.65
97	5-INCH CONCRETE WALK	SQ FT	8,175	4.20	34,335.00	4.00	32,700.00	4.10	33,517.50
98	PEDESTRIAN CURB RAMP	SQ FT	670	11.75	7,872.50	18.50	12,395.00	18.48	12,381.60
99	CONCRETE CURB & GUTTER, DESIGN B618	LIN FT	7,040	10.25	72,160.00	11.85	83,424.00	10.40	73,216.00
127	4" SOLID LINE DOUBLE YELLOW, EPOXY	LIN FT	3,520	0.90	3,168.00	0.63	2,217.60	0.63	2,217.60
128	ZEBRA CROSSWALK WHITE, EPOXY	SQ FT	324	3.50	1,134.00	4.00	1,296.00	3.99	1,292.76
	<b>Subtotal Schedule B</b>				\$863,236.35		\$979,369.35		\$1,674,357.88
	<b>Schedule C - Storm Sewer</b>								
2	RILEY CREEK FLOW BYPASS	LS	1	12,500.00	12,500.00	38,500.00	38,500.00	10,000.00	10,000.00
3	RILEY CREEK STABILIZATION	LS	1	5,000.00	5,000.00	7,750.00	7,750.00	30,000.00	30,000.00
42	DEWATERING	LS	1	42,000.00	42,000.00	71,500.00	71,500.00	50,000.00	50,000.00
43	10' X 7' BOX CULVERT	LIN FT	96	600.00	57,600.00	755.00	72,480.00	691.31	66,365.76
44	10' X 7' BOX CULVERT END SECTION	EACH	2	10,100.00	20,200.00	16,000.00	32,000.00	15,115.55	30,231.10
50	12-INCH RC PIPE SEWER, CLASS V	LIN FT	564	32.00	18,048.00	32.00	18,048.00	33.13	18,685.32
51	15-INCH RC PIPE SEWER, CLASS V	LIN FT	443	34.30	15,194.90	24.50	10,853.50	32.52	14,406.36
52	18-INCH RC PIPE SEWER, CLASS V	LIN FT	689	36.00	24,804.00	28.00	19,292.00	38.78	26,719.42
53	21-INCH RC PIPE SEWER, CLASS IV	LIN FT	1,223	53.00	64,819.00	47.25	57,786.75	44.54	54,472.42
54	24-INCH RC PIPE SEWER, CLASS IV	LIN FT	616	57.00	35,112.00	42.50	26,180.00	48.21	29,697.36
55	36-INCH RC PIPE SEWER, CLASS III	LIN FT	292	68.00	19,856.00	65.00	18,980.00	70.36	20,545.12
56	36-INCH RC APRON W/ TRASH GUARD	EACH	3	2,172.00	6,516.00	2,455.50	7,366.50	1,590.05	4,770.15
57	CONNECT TO EXISTING STORM SEWER	EACH	5	650.00	3,250.00	1,350.00	6,750.00	750.00	3,750.00
75	OUTLET STRUCTURE MANHOLE AND SKIMMER	EACH	1	4,035.00	4,035.00	3,825.05	3,825.05	3,604.25	3,604.25
76	STANDARD CATCH BASIN W/ CASTING 48" DIA, DESIGN S-5	LIN FT	202.7	188.00	38,107.60	255.00	51,688.50	153.45	31,104.32
77	STANDARD CATCH BASIN W/ CASTING 60" DIA, DESIGN S-5	LIN FT	19	324.00	6,156.00	500.00	9,500.00	254.95	4,844.05
78	SUMP CATCH BASIN/MANHOLE 72" DIAMETER, DESIGN S-7	LIN FT	16	264.00	4,224.00	265.00	4,240.00	490.20	7,843.20
79	2' X 3' DEAD END CATCH BASIN W/ CASTING, DESIGN S-6	LIN FT	63.8	230.00	14,674.00	300.00	19,140.00	186.05	11,869.99
81	CASTING ASSEMBLY R-3067-V	EACH	12	540.00	6,480.00	410.00	4,920.00	541.30	6,495.60
82	CASTING ASSEMBLY R-3250-1	EACH	26	680.00	17,680.00	560.00	14,560.00	686.42	17,846.92
83	CASTING ASSEMBLY R-4342	EACH	1	390.00	390.00	255.00	255.00	590.80	590.80
89	RANDOM RIPRAP CLASS II	CU YD	100	100.00	10,000.00	96.55	9,655.00	100.00	10,000.00
90	RANDOM RIPRAP CLASS III	CU YD	646	100.00	64,600.00	81.00	52,326.00	100.00	64,600.00
91	RANDOM RIPRAP CLASS IV	CU YD	76	100.00	7,600.00	84.15	6,395.40	100.00	7,600.00
92	RIP RAP GRANULAR FILTER	CU YD	181	35.00	6,335.00	10.00	1,810.00	10.00	1,810.00
93	2.5' DIAMETER IGNEOUS BOULDER	EACH	11	75.00	825.00	161.50	1,776.50	411.25	4,523.75
94	ROOTWAD (12" MINIMUM TRUNK DIA)	EACH	10	350.00	3,500.00	509.45	5,094.50	411.25	4,112.50
95	FOOTER LOG (12" MINIMUM TRUNK DIA)	LIN FT	11	350.00	3,850.00	475.00	5,225.00	40.75	448.25
96	GEOTEXTILE FILTER TYPE IV	SQ YD	265	1.50	397.50	2.60	689.00	4.09	1,083.85
112	INLET PROTECTION	EACH	78	100.00	7,800.00	415.00	32,370.00	250.00	19,500.00
	<b>Subtotal Schedule C</b>				\$521,554.00		\$610,956.70		\$557,520.49



TABULATION OF BIDS

Shaded area denotes corrected figure

1

2

3

Reconstruction of Eden Prairie Road Eden Prairie, Minnesota SEH No.: EDENP0202.00 Bid Date: 10:00 a.m., Thursday, April 24, 2014				City Imp Contract No. 01-5537		Northwest Asphalt Inc. 1451 Stagecoach Road Shakopee, MN 55379 \$1,982,394.01	North Pine Aggregate Inc. 14551 Lake Drive Forest Lake, MN 55025 \$2,249,318.80	Northdale Const Co., Inc. 9760 71st Street NE Albertville, MN 55301 \$2,856,269.65	
Item No.	Item	Unit	Est. Quantity	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
<b>Schedule D - Watermain</b>									
47	4-INCH RIGID INSULATION	SQ YD	233	32.00	7,456.00	40.00	9,320.00	46.96	10,941.68
59	6" DIP CL 52 WATERMAIN	LIN FT	45	37.00	1,665.00	74.00	3,330.00	40.61	1,827.45
60	8" DIP CL 52 WATERMAIN	LIN FT	1,096	35.50	38,908.00	44.00	48,224.00	42.91	47,029.36
61	12" DIP CL 52 WATERMAIN	LIN FT	85	65.00	5,525.00	110.00	9,350.00	61.20	5,202.00
62	14" HDPE WATERMAIN	LIN FT	170	82.00	13,940.00	115.00	19,550.00	56.53	9,610.10
63	6" GATE VALVE	EACH	3	1,220.00	3,660.00	1,630.00	4,890.00	1,370.15	4,110.45
64	8" GATE VALVE	EACH	3	1,640.00	4,920.00	2,050.00	6,150.00	1,786.39	5,359.17
65	CUT IN 12" BUTTERFLY VALVE INTO 14" HDPE	EACH	2	10,000.00	20,000.00	11,950.00	23,900.00	9,936.93	19,873.86
66	OFFSET EXISTING WATERMAIN	EACH	1	2,200.00	2,200.00	3,300.00	3,300.00	7,502.38	7,502.38
67	HYDRANT	EACH	3	3,280.00	9,840.00	4,100.00	12,300.00	3,251.19	9,753.57
70	ADJUST GATE VALVE BOX	EACH	7	350.00	2,450.00	250.00	1,750.00	250.00	1,750.00
71	1" CORPORATION STOP	EACH	7	160.00	1,120.00	430.00	3,010.00	210.73	1,475.11
72	1" CURB STOP AND BOX	EACH	7	232.00	1,624.00	755.00	5,285.00	341.35	2,389.45
73	CONNECT TO EXISTING WATER MAIN	EACH	7	600.00	4,200.00	2,100.00	14,700.00	1,161.25	8,128.75
74	1" COPPER SERVICE PIPE - TYPE K	LIN FT	105	25.00	2,625.00	39.50	4,147.50	29.82	3,131.10
<b>Subtotal Schedule D</b>					\$120,133.00		\$169,206.50		\$138,084.43
<b>Schedule E - Sanitary Sewer</b>									
29	EDEN PRAIRIE SAND AND GRAVEL BEDDING	CU YD	652	0.01	6.52	1.00	652.00	30.00	19,560.00
31	EDEN PRAIRIE BINDERSTONE (1 1/2" CLEAR)	TON	130	20.00	2,600.00	27.50	3,575.00	26.54	3,450.20
48	8" PVC SDR 35 SEWER PIPE	LIN FT	863	38.00	32,794.00	21.50	18,554.50	30.28	26,131.64
49	10" HDPE DR 11 SEWER PIPE	LIN FT	220	74.00	16,280.00	65.25	14,355.00	53.65	11,803.00
58	CONNECT TO EXISTING SANITARY SEWER	EACH	5	1,500.00	7,500.00	2,350.00	11,750.00	1,269.35	6,346.75
68	8" X 4" PVC SANITARY SEWER WYES	EACH	7	148.00	1,036.00	240.00	1,680.00	572.52	4,007.64
69	4" PVC SANITARY SEWER SERVICE PIPE	LIN FT	147	26.00	3,822.00	22.00	3,234.00	27.54	4,048.38
80	CASTING ASSEMBLY R-1733	EACH	9	429.00	3,861.00	475.00	4,275.00	774.44	6,969.96
84	ADJUST FRAME & RING CASTING	EACH	6	450.00	2,700.00	640.00	3,840.00	511.25	3,067.50
85	STANDARD SANITARY MANHOLE DESIGN S-1 0-8'	EACH	5	1,812.00	9,060.00	2,315.00	11,575.00	1,893.20	9,466.00
86	EXTRA DEPTH SANITARY MANHOLE, 48" DIA	LIN FT	24	140.00	3,360.00	355.00	8,520.00	112.03	2,688.72
87	RECONSTRUCT SANITARY SEWER MANHOLE	LIN FT	67	230.00	15,410.00	185.00	12,395.00	175.25	11,741.75
88	SANITARY SEWER BYPASS PUMPING	LS	1	11,770.00	11,770.00	10,650.00	10,650.00	6,250.00	6,250.00
<b>Subtotal Schedule E</b>					\$110,199.52		\$105,055.50		\$115,531.54
<b>TOTAL BID PRICE</b>					<b>\$1,982,394.01</b>		<b>\$2,249,318.80</b>		<b>\$2,856,269.65</b>

Northwest Asphalt - multiplication error, correct amount shown.

North Pine Aggregate - Schedule A and D - column adding error, correct amount shown.

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**RESOLUTION NO. 2014-\_\_**

**RESOLUTION ACCEPTING BID FOR  
EDEN PRAIRIE ROAD IMPROVEMENT PROJECT  
I.C. 01-5537**

**WHEREAS**, pursuant to an advertisement for bids for the following improvement:

I.C. 01-5537: Eden Prairie Road Improvement Project

bids were received, opened and tabulated according to law. Those bids received are shown on the attached Consultant Recommendation Letter; and

**WHEREAS**, the City Engineer recommends award of Contract to

Northwest Asphalt, Inc.

as the lowest responsible bidder.

**NOW, THEREFORE, BE IT RESOLVED** by the Eden Prairie City Council as follows:

The Mayor and City Manager are hereby authorized and directed to enter in a Contract with Northwest Asphalt, Inc. in the name of the City of Eden Prairie, in the amount of \$1,982,394.01, in accordance with the plans and specifications thereof approved by the Council and on file in the office of the City Engineer.

**ADOPTED** by the Eden Prairie City Council on May 6, 2014.

\_\_\_\_\_  
Nancy Tyra-Lukens, Mayor

**ATTEST:**

**SEAL**

\_\_\_\_\_  
Kathleen Porta, City Clerk

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b>
Joyce Lorenz, Communications Division	Accept the quote of AVI Systems, Inc. for Control Room video production equipment upgrades.	VIII.F.

**Requested Action**

Move to: Accept the quote of AVI Systems, Inc. for Control Room video production equipment upgrades in an amount not to exceed \$83,843.00, and authorize the Mayor and City Manager to enter into a the City’s Standard Agreement for Contract Services, with such changes applicable to this quote as recommended by the City Attorney approved by the officer executing the contract.

**Synopsis**

This project is the next step in a multi-phase/multi-year plan to improve the City’s delivery of live meeting broadcasts to cable subscribers, specifically accomplishing the following goals:

- Remodel the broadcast technician’s work space to consolidate functions and simplify performance of job duties.
- Install and integrate new equipment that is compatible with modern A/V requirements.
- Improve the reliability of the overall system and the customer experience.

**Attachment**

AVI Systems, Inc. Proposal  
Compview Bid



## City of Eden Prairie Control Room Upgrades

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Proposal Number: 05-069-001760  
Date: Wednesday, April 30, 2014  
Prepared For: City of Eden Prairie  
Attention: Joyce Lorenz  
Accounts Payable / Dept  
Eden Prairie, MN 55344  
Phone: (952) 949-8554  
Fax: (952) 949-8383  
Email: jlorenz@edenprairie.org

Prepared By: AVI Systems, Inc ("AVI")  
By: Renea Dalton  
9675 West 76th Street, Suite 200  
Eden Prairie, MN 55344  
Phone: (952) 949-3700  
Fax: (952) 949-6000  
Email: renea.dalton@avisystems.com

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The prices quoted in this Proposal reflect a discount for a cash payment (i.e., check, wire transfer).  
The prices are valid for 30 Days and may be locked in by signing AVI's Retail Sales Agreement.

### CONFIDENTIAL INFORMATION

THE INDIVIDUAL LISTED IN THE "ATTENTION" LINE HAS REQUESTED THIS CONFIDENTIAL PRICE QUOTATION ON BEHALF OF THE CUSTOMER IDENTIFIED ABOVE. THIS INFORMATION AND DOCUMENT IS CONFIDENTIAL AND IS INTENDED SOLELY FOR THE PRIVATE USE OF THE CUSTOMER IDENTIFIED ABOVE. CUSTOMER AGREES IT WILL NOT DESSEMINATE COPIES OF THIS QUOTE TO ANY THIRD PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF AVI. IF YOU ARE NOT THE INTENDED RECEIPT OF THIS QUOTE (I.E., THE "CUSTOMER" ABOVE), YOU ARE NOT PROPERLY IN POSSESSION OF THIS DOCUMENT AND YOU SHOULD IMMEDIATELY DESTROY ALL COPIES OF IT. THANK YOU.



## Scope of Work

AVI to install audiovisual system upgrades at Eden Prairie council chambers. Upgrades include removing all existing control room equipment; AVI to properly dispose of AV equipment scheduled for removal (see equipment removal schedule). Disposal of other furniture and shelving is not included in the AV project scope. AVI will install Owner Furnished Equipment (OFE) and new video equipment into the new Winsted video console. Video system will maintain current functionality and signal flow minus several items scheduled for removal. All OFE must be in proper working order, work to bring OFE equipment to full functionality is outside the scope of this proposal. Audio system functionality will be maintained in the upgraded system with changes made only to the "request to speak" panels. Mayor and control room "request to speak" panel functions will be moved to the new control system touch screen user interface. AVI to re-certify audio system performance using existing DSP profile as a baseline, work to start a new DSP profile from scratch is not included in the price. Project involves removal of mechanical button control interface at the dais, leaving a large hole in the dais surface - AVI to repair dais by plugging hole with similar material and finish, repair will be basic/functional in nature, seams will be visible and wood grain will likely not match, a complete restoration of the dais surface is outside of this project scope. AVI will maintain the existing Sony PTZ camera control system. Existing field cabling will be re-used to the greatest extent as is practicable, replacing certain cabling as required to properly serve new functionality will incur additional premium. AVI to have engineer and project manager attend (2) construction meetings. This estimate assumes that the lighting system control function will not be deployed as written in the bid spec based on verbal notes from the consultant during the site walk through. Labor rates are assumed to be code 728 "WIRING SYSTEMS INSTALLER" as defined by Minnesota department of labor and will be verified with Consultant.

### Equipment Removal Schedule:

- Control room request to speak panel
- Dais request to speak panel
- 8" booth monitors #1-4
- Winsted Control room racks

Option 1: AVI to add SD/HD-SDI card to OFE camera, and install 3 new PTZ cameras utilizing the existing Sony PTZ control system. (Priced separately but included in base bid)

## Products and Services Detail

### Control Room

<u>Line #</u>	<u>Model #</u>	<u>Type</u>	<u>Mfg</u>	<u>Description</u>	<u>Qty</u>	<u>List</u>	<u>Discounted</u>	<u>Extended</u>
1	CP3	Equ	CRESTRON	3-Series Control System®	1	\$1,800.00	\$1,072.00	\$1,072.00
2	CEN-SWPOE-24	Equ	CRESTRON	24-Port Managed PoE Switch [Limited Supply]	1	\$3,800.00	\$2,262.00	\$2,262.00
3	TPMC-V15-WALL-B	Equ	CRESTRON	V-Panel™ Integrated 15" Wall Mount HD Touch Screen, Black, includes TPMC-V-IMCW and WMKC-V15-B	1	\$8,000.00	\$4,820.00	\$4,820.00
4	TSW-750-B-S	Equ	CRESTRON	7" Touch Screen, Black Smooth	2	\$1,400.00	\$834.00	\$1,668.00
5	TSW-750-TTK-B-S	Equ	CRESTRON	TableTop Kit for TSW-750, Black Smooth	2	\$200.00	\$120.00	\$240.00
6	C2N-IO	Equ	CRESTRON	Control Port Expansion Module	2	\$300.00	\$195.00	\$390.00
7	22MP55HQ-P	Equ	LG	1920 x 1080 IPS Panel D-SUB, HDMI 1000:1, 5M:1(DFC)	4	\$216.00	\$174.00	\$696.00
8	E4703	Equ	WINSTED	Wrap Around Edit Desk	1	\$3,722.00	\$2,947.00	\$2,947.00
9	NE1F4428	Equ	RAXXESS	E1 ENCLOSED RACK, 44U, 28 DEEP	1	\$959.00	\$571.00	\$571.00
10	KCG110B	Equ	CHIEF	LIFTING DUAL ARM DESK CLAMP	1	\$552.00	\$198.00	\$198.00
11	FSP4100B	Equ	CHIEF	FP POLE/CEIL MNT VESA	4	\$195.00	\$125.00	\$500.00
12	KTA1036B	Equ	CHIEF	36 POLE ACCESSORY	4	\$108.00	\$39.00	\$156.00
13	KTA1000B	Equ	CHIEF	GROMMET MOUNT ACCESSORY	4	\$118.00	\$43.00	\$172.00
14	TPK1	Equ	CHIEF	POLE CLAMP KIT, 1-2	2	\$53.00	\$30.00	\$60.00
15	TPPU	Equ	CHIEF	TRUSS, PITCH-ADJ UNIVERSAL	1	\$459.00	\$295.00	\$295.00

16	AVIONSITE	Int	AVI TECH SERV	Onsite Integration	1	-	\$46,760.00	\$46,760.00	
17	BID BOND	Equ	AVI Systems	Bid Bond	1	\$650.00	\$650.00	\$650.00	
								Control Room Subtotal	\$63,457.00

**Products and Services Total** **\$63,457.00**

Freight \$650.00

**Grand Total** **\$64,107.00**

**Optional Items**

**Optional (Optional)**

<u>Line #</u>	<u>Model #</u>	<u>Type</u>	<u>Mfg</u>	<u>Description</u>	<u>Qty</u>	<u>List</u>	<u>Discounted</u>	<u>Extended</u>	
1	BRBKHSD2	Equ	SONY	HD/SD SDI Output Card for the BRU-SF10 and the BRC-Z330 P/T/Z Camera	1	\$1,800.00	\$1,500.00	\$1,500.00	
2	BRCZ330	Equ	SONY	HD 1/3 1CMOS P/T/Z Color Video Camera	3	\$3,995.00	\$3,330.00	\$9,990.00	
3	BRBKHSD2	Equ	SONY	HD/SD SDI Output Card for the BRU-SF10 and the BRC-Z330 P/T/Z Camera	3	\$1,800.00	\$1,500.00	\$4,500.00	
4	AVIONSITE	Int	AVI TECH SERV	Onsite Integration	1	-	\$3,746.00	\$3,746.00	
								Optional Subtotal	\$19,736.00

- Unless listed above all applicable taxes, delivery charges, and insurance costs are additional.
- Standard payment terms are Net 30 days, with progressive billing for labor and materials, monthly billing for hardware, and pre-payment for support agreements.



1410 Energy Park Dr., Suite 16; St. Paul, MN 55108  
 P: 651.647.4354 | P: 800.448.8439 | F:651.647.4459  
 www.compview.com

Registered and Bonded			
Oregon LTD Energy	#34-514CLE	California C-7	#778555
Oregon CCB	#134110	Utah Business	#20050108
Minnesota Business	#102248	Idaho Electrical	#32414
Minnesota Contractor	TS02057	Idaho Contractor	#16075
Washington Electrical	#COMPV1961CD	Montana Contractor	#152978
Washington Contractor	#COMPV1*015DT	Nevada Contractor	#71540
		Wyoming Contractor	#LV-G-19651

**Project Number:** MN5012  
**Account Executive:** 0  
**Date:** 4/8/2014

## Bill of Materials A:City of Eden Prairie

**Project Title:** City Center Control Room BID  
**Title of System:** MAT A

**Client Information**  
**Name:**  
**Company:** City of Eden Prairie  
**Address:** City Center  
**Address:** 8080 Mitchell Road  
**City/State/Zip:** Eden Prairie MN 55344

Item	Qty Total	Qty per Room	Manufacturer	Model #	Description	Price Each	Price Total
1.00	0	0				\$ -	\$ -
2.00	1	1	Crestron	CP3	Control System	\$ 1,053.00	\$ 1,053.00
3.00	1	1	Crestron	CEN-SWPOE-24	24-Port Managed POE Switch	\$ 2,224.00	\$ 2,224.00
4.00	1	1	Crestron	DGE-2	Digital Graphics Engine	\$ 4,682.00	\$ 4,682.00
5.00	1	1	Crestron	TPMC-V15-Wall	Wall mounted Touch Screen Display	\$ 4,682.00	\$ 4,682.00
6.00	2	2	Crestron	TSW-750-B-S	7" Touch Screen, Black	\$ 819.00	\$ 1,638.00
7.00	2	2	Crestron	TSW-750-TTK-B-S	Table Top Kit, Black	\$ 146.00	\$ 292.00
8.00	4	4	LG	LG22EA63TP	21.5" IPS LED HD Monitor	\$ 246.00	\$ 984.00
9.00	1	1	Vaddio	999-6850-110	Sony BRBKHSD2 HDSDI Output Board	\$ 1,517.00	\$ 1,517.00
10.00	1	1	Winsted	E4703	Wing Top Desk w/ Black Bumper Edge	\$ 3,050.00	\$ 3,050.00
11.00	1	1	Raxxess	NE1F4428	E1 Enclosed Rack	\$ 561.00	\$ 561.00
12.00	1	1	Chief	KCG110B	Flat Panel Dual Arm Desk Mount	\$ 184.00	\$ 184.00
13.00	4	4	Chief	FSP4100B	Single Display Pole Mount	\$ 116.00	\$ 464.00
14.00	4	4	Chief	KTA1036B	36" Pole Accessory	\$ 36.00	\$ 144.00
15.00	4	4	Chief	KTA1000B	Grommet Mount Accessory	\$ 39.00	\$ 156.00
16.00	2	2	Chief	TPK1	Pole Clamp Kit	\$ 28.00	\$ 56.00
17.00	1	1	Chief	TPPU	Large Tilt Truss Mount	\$ 275.00	\$ 275.00
18.00	1	1			Set up Tri-Caster	\$ -	\$ -
19.00	1	1			Wire and program timer	\$ -	\$ -
20.00	0	0				\$ -	\$ -
21.00	0	0			<b>Option 1</b>	\$ -	\$ -
22.00	3	3	Vaddio	999-6850-000	Sony BRC-Z330 PTZ Camera	\$ 4,442.00	\$ 13,326.00
23.00	3	3	Vaddio	999-6850-110	Sony BRBKHSD2 HDSDI Output Board	\$ 1,517.00	\$ 4,551.00
24.00	0	0				\$ -	\$ -
100.00	1	1	CVI	CVI	Misc. Cabling, Connectors and Installation	\$ 6,155.00	\$ 6,155.00

SUMMARY	EACH	TOTAL
Equipment	\$ 39,839.00	
Parts & Materials	\$ 6,155.00	
<b>EQUIPMENT &amp; SHIPPING TOTAL</b>		<b>\$ 45,994.00</b>
<b>INTEGRATION SERVICES TOTAL</b>		<b>\$ 39,044.00</b>
<b>SYSTEM TOTAL</b>	<b>\$ -</b>	<b>\$ 88,384.06</b>

<b>CITY COUNCIL AGENDA</b> <b>SECTION:</b> Consent Agenda		<b>DATE:</b> May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Community Development: Janet Jeremiah/David Lindahl	<b>ITEM DESCRIPTION:</b> Lotus Nails – 8018 Den Road (former Complete Nutrition Store)	<b>ITEM NO.</b> VIII.G.

### Requested Council Action

Move to: Approve a new lease between the City of Eden Prairie and Nguyen LK, Inc. for a Lotus Nails store at a City owned property located at 8018 Den Road.

### Synopsis

The enclosed lease is for a 1,402 square foot Lotus Nails store at the City owned property located at 8018 Den Road, a space formerly leased to Complete Nutrition. The basic terms of the lease are as follows:

Term: 10 years (w/options to renew)

Rent:

<u>Lease Year</u>	<u>Rent Per Sq. Ft.</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
1	\$20.00	\$2,336.67	\$28,040.00
2	\$21.00	\$2,453.50	\$29,442.00
3–5	\$22.00	\$2,570.33	\$30,844.00
6–10	\$23.00	\$2,687.17	\$32,246.00
<b>Total</b>			<b>\$311,244.00</b>

Tenant Improvements: Tenant pays for all improvements

Tenant Allowance: No tenant allowance

Broker Commissions: \$9,000

Landlord Work: None

Common Area Maintenance: Tenant pays

Property Taxes/Insurance: Tenant Pays

### Background

In 1998 the City built a liquor store at 8018 Den Road. Because the site allowed for a larger building then required for liquor operations additional space was added to the plan and leased to Hollywood Video. The City collected about \$1.3 million in rent from Hollywood Video over the term of their lease which essentially paid for the building and land. After Hollywood Video went out of business the space was subdivided and leased to Complete Nutrition and Encore Boutique in 2011.

Complete Nutrition recently exercised an early termination option in their lease since store sales were less than expected. Their last rent payment to the City was in March of this year.

Lotus Nails, who also operate Happy Nails at the Prairie Courts Mall on Wagner Way, will take possession of the property May 15<sup>th</sup> and expect to be open by September 2014.

### Attachment

Lease

# **LEASE AGREEMENT**

**SHOPPING CENTER:** EDEN PRAIRIE LIQUOR STORE

**LOCATION:** 8020 DEN ROAD, EDEN PRAIRIE, MINNESOTA 55344

**LANDLORD:** CITY OF EDEN PRAIRIE

**TENANT:** NGUYEN FAMILY, INC.

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between City of Eden Prairie, MN ("Landlord"), with its principal office at 8080 Mitchell Road Eden Prairie, MN 55344 and Nguyen Family, Inc. ("Tenant"), with its principal office at 16366 Wagner Way, Eden Prairie, MN 55344.

### **ARTICLE I. GRANT AND TERM**

#### **Section 1.01 - Premises:**

Landlord hereby lease to Tenant for the term and upon the covenants hereinafter set forth, approximately 1,402 square feet of floor area (the "Premises") in the shopping center commonly known as the Eden Prairie Liquor Store Shopping Center in Eden Prairie (the "Shopping Center"). The Premises are located at 8020 Den Road and are cross-hatched on the site plan of the Shopping Center attached hereto and made a part hereof as Exhibit "A."

#### **Section 1.02 - Site Plan:**

Exhibit "A" sets forth the general layout of the Shopping Center. Landlord has the reasonable right to alter (a) any of the stores within the Shopping Center, (b) the Common Areas (herein defined) or (c) any other aspect of the Shopping Center with notice to Tenant; provided, however, no change shall decrease the parking ratio to less than required for zoning or materially or visibly alter access to or visibility of Premises or Tenant's signage. This Lease is subject to all applicable building restrictions, planning and zoning ordinances, governmental rules and regulations, and all other encumbrances, restrictions and easements affecting the Shopping Center and the terms and provisions of certain declarations, reciprocal easement and operating agreements now or hereafter affecting the Shopping Center.

#### **Section 1.03 - Term:**

The term of this Lease shall be for a period of Ten (10) Lease Years commencing on May 15, 2014 (the "Term Commencement Date"), and expiring at midnight on May 14, 2024, unless sooner terminated in accordance with the provisions hereof (the "Expiration Date"). The term "Lease Year" as used in this Lease shall be defined to mean each successive twelve (12) month period commencing on the Term Commencement Date. Tenant shall be allowed to take possession of the Premises for the purpose of performing the Tenant's Work starting on May 15, 2014 (the "Possession Date").

#### **Section 1.04 Option Terms:**

(a) Subject to the terms provided herein, and provided Tenant is not in default as provided in this Lease, Tenant shall have two (2) options to extend the term of this Lease for a period of five (5) years ("First Option Term" and "Second Option Term," or collectively "Option Terms") immediately following the initial term ("Options"). The Options granted to Tenant in this Lease are personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises, who does so without the intent of thereafter assigning this Lease or subletting the Premises or any portion thereof, and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant. The Options herein granted to Tenant are not assignable separate and apart from this Lease, nor may the Options be separated from this Lease in any manner, whether by reservation or otherwise.

(b) The First Option Term shall be exercised, if at all, by written notice delivered by Tenant to Landlord not later than six (6) months prior to the end of the initial term of this Lease. Provided Tenant has properly and timely exercised the First Option, the initial term of this Lease shall be extended by the First Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except for the Rent, which shall be adjusted pursuant to Paragraph 2.01 below.

(c) The Second Option Term shall be exercised, if at all, by written request delivered by Tenant to Landlord not later than six (6) months prior to the end of the First Option Term of this Lease. Provided Tenant has properly and timely exercised the Second Option and the Landlord has not exercised its right to reject the Second Option Term, the term of this Lease shall be extended by the Second Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except for the Rent, which shall be adjusted pursuant to Paragraph 2.01 below.

### **ARTICLE II. RENT**

#### **Section 2.01 - Minimum Rent:**

Commencing on November 15, 2014 (the "Rent Commencement Date"), and continuing during the entire term of this Lease, Tenant shall pay annual "Minimum Rent" for the Premises payable to Landlord, without demand, deduction, set-off or counterclaim, in equal installments (the "Monthly Minimum Rent") in advance, on or before the first (1<sup>st</sup>) day of each month. Minimum Rent shall be calculated based on the square footage of the Premises (1,402) and shall be as follows:

<u>Lease Year</u>	<u>Minimum Rent Per Sq. Ft.</u>	<u>Monthly Minimum Rent</u>	<u>Annual Minimum Rent</u>
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1	\$20.00	\$2,336.67	\$28,040.00
2	\$21.00	\$2,453.50	\$29,442.00
3-5	\$22.00	\$2,570.33	\$30,844.00
6-10	\$23.00	\$2,687.17	\$32,246.00

Tenant shall pay the first installment of Minimum Rent on the Rent Commencement Date. If the Rent Commencement Date occurs on other than the first (1<sup>st</sup>) day of a month, Minimum Rent shall be prorated on a daily basis on the basis of a thirty (30) day month.

**Section 2.02 - Payments by Tenant:**

Unless otherwise stated, all sums of money or charges payable to Landlord from Tenant by this Lease, other than Minimum Rent, are defined as “Additional Rent” and are due on the first day of each month with the payment of Minimum Rent, without any deductions, set-offs or counterclaims, and failure to pay such charges carries the same consequences as Tenant’s failure to pay Minimum Rent. All payments and charges required to be made by Tenant to Landlord hereunder shall be payable in coin or currency of the United States of America, at the address indicated herein. No payment to or receipt by Landlord of a lesser amount than that then amount required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable hereunder shall be deemed an accord and satisfaction, and Landlord may accept such check in payment without prejudice to Landlord’s right to recover the balance of any sums owed by Tenant hereunder. In the event Landlord bills Tenant for any charge hereunder and within ninety (90) days of receipt of the same Tenant does not provide Landlord with notice that it disputes such charge, then Tenant waives any further right to dispute such charge.

**Section 2.03 - Security Deposit:**

Tenant shall submit to Landlord upon the execution of this agreement a financial security deposit in the amount of Two Thousand Three Hundred Thirty Six 67/100 Dollars (\$2,336.67). Said financial security deposit may be drawn upon by Landlord to cover any and all costs associated with Tenant’s failure to comply with conditions and/or requirements as set forth in this agreement. Within thirty (30) days of any lease termination, Landlord shall remit financial security deposit to Tenant less any withdrawals as deemed appropriate by Lessor.

**Section 2.04 - Late Charge:**

In the event any sums required hereunder to be paid are not received by Landlord on or before the date the same are due, then, Tenant shall immediately pay, as Additional Rent, a service charge equal to Fifty and no/100 Dollars (\$50.00). In addition, interest shall accrue on all past due sums from the due date thereof at an annual rate equal to one percent (1%) per month. Such interest shall also be deemed Additional Rent. Notwithstanding this service and interest charge, Tenant shall be in Default if all payments required to be made by Tenant are not made at or before the times herein stipulated.

**ARTICLE III. IMPROVEMENTS AND ALTERATIONS**

**Section 3.01 – Landlord’s Work:**

Tenant agrees to accept the Premises in its current state and condition and Landlord has no obligation to perform any work, repairs, treatments, or improvements to the Premises. Any work done by Landlord at Tenant’s request shall be at Tenant’s expense and shall be paid for by Tenant depositing with Landlord, prior to the commencement of such work, a sum equal to the cost for such work, as reasonably estimated by Landlord. Upon completion thereof, appropriate adjustment shall be made between Landlord and Tenant based upon the actual cost of the work. The opening by Tenant of Tenant’s business in the Premises shall constitute an acknowledgment by Tenant that Landlord has sufficiently performed all of Landlord’s work.

**Section 3.02 – Tenant’s Work:**

All work is to be performed by Tenant, at its sole expense, (“Tenant’s Work”) in accordance with Exhibit “B”, which work shall include any and all fixturing work necessary and desirable for the operation of Tenant’s business. All entry into the Premises and work done by Tenant shall be at Tenant’s risk. Tenant shall prepare and submit to Landlord store design and working drawings of Tenant’s Work. In the event Tenant’s plans and specifications, in Landlord’s reasonable judgment, are inconsistent with the terms of this Lease and/or would subject Landlord to additional costs or expenses in the performance of Landlord’s work, and/or would provide for or require any installation or work which is or might be unlawful or create an unsound or dangerous condition or adversely affect the structural soundness of the Premises or the building of which the same forms a part, and/or would interfere with the use and enjoyment of any adjoining space in the building in which the Premises are located, then, in the event Landlord determines that Landlord and Tenant are unable to agree upon store design drawings and/or working drawings, Tenant shall have the option, upon ten (10) days’ written notice to Landlord to declare this Lease null and void and of no further force and effect, in which event this Lease shall terminate. All work performed by Tenant shall be subject to Landlord’s prior written approval (which shall not be unreasonably withheld or delayed) and shall be in accordance with good construction practices, all applicable laws, codes, ordinances, regulations, and insurance

requirements and Landlord's reasonable rules and regulations. No material deviations from the final plans and specifications, once approved by Landlord, shall be permitted without Landlord's additional approval. Tenant shall obtain, at Tenant's sole expense, all certificates and approvals which may be necessary so that a certificate of occupancy for the Premises may be issued. Upon the issuance of the certificate of occupancy, a copy thereof shall be immediately delivered to Landlord. Tenant shall ready the Premises for the opening of Tenant's business by September 1, 2014.

**Section 3.03 - Alterations by Tenant:**

(a) During the term of this Lease, Tenant may not make any exterior or structural alterations to the Premises without the prior written consent of Landlord which consent shall not be unreasonably withheld or delayed. In addition, Tenant shall not make any interior alterations, except for alterations to the decor of the Premises provided such alterations affect color or merchandising aspects of the interior only, without giving prior written notice to Landlord and Landlord giving Tenant its written consent therefor. Any such alterations shall be performed in a good and workmanlike manner and in accordance with applicable legal and insurance requirements and the terms and provisions of this Lease.

(b) In the event that any mechanic's lien is filed against the Premises, Common Areas or Shopping Center as a result of any work or act of Tenant, Tenant, at its expense, shall discharge or bond off the same within sixty (60) days from the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay without inquiring into the validity or merits of such lien and all sums so advanced shall be paid to Landlord as Additional Rent.

(c) Prior to the commencement of any work by Tenant, Tenant shall obtain public liability and workers' compensation insurance to cover every contractor to be employed by Tenant, and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval.

(d) If, in an emergency, it shall become necessary to make repairs required to be made by Tenant, Landlord may reenter the Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay Landlord the costs of such repairs as Additional Rent.

**ARTICLE IV. CONDUCT OF BUSINESS**

**Section 4.01 - Use and Trade Name:**

(a) Tenant shall use and occupy the Premises for the following purpose only, and for no other purpose whatsoever: the operation of a nail salon and/or full-service beauty salon. Tenant shall have the exclusive right to maintain a nail salon and/or full-service beauty salon in the Shopping Center and Landlord covenants that it will not lease or permit any other store in the Shopping Center to be used for a nail salon and/or full-service beauty salon.

(b) If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business or other activity carried on in the Premises, or if a failure to procure such a license or permit might or would in any way adversely affect Landlord or the Shopping Center, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such a license or permit and submit the same for inspection by Landlord. Tenant, at Tenant's expense, shall, at all times, comply with the requirements of each such license or permit.

(c) Tenant shall operate its business from the Premises under the following trade name: Lotus Nails.

**Section 4.02 - Utilities:**

In the event utilities to the Premises are separately metered, Tenant shall pay directly to the public utility companies the cost of any and all such utility services. In the event that Landlord supplies or pays for any such utilities, then as Additional Rent, Tenant shall reimburse Landlord for the same. In the event, for any reason whatsoever, any particular utility is not separately metered, then, and in that event, Tenant shall be responsible for its share based upon the formula that Landlord, in its reasonable discretion with consultation with Tenant, deems appropriate. Landlord shall not be liable to Tenant for damages or otherwise (i) if any utilities shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (ii) for any interruption in any utility service (including, but without limitation, any heating, ventilation or air conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control unless Landlord's negligence, interference or intentional act causes the unavailability or interruption.

**Section 4.03 - Sign:**

(a) Premises Building Sign. Tenant may install and maintain one (1) sign affixed to the front of the Premises in a location, size and style reasonably approved by Landlord. Notwithstanding Landlord's approval and/or the terms of this Lease, Tenant's sign shall conform to all applicable legal and insurance requirements and limitations. Tenant shall pay for all costs in connection with such sign and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Shopping Center and/or Premises thereby. In the event Landlord deems it necessary to remove such sign (for example, to perform repairs to the Premises, Common Areas or other parts of the Shopping Center), then Landlord shall have the right to do so, provided, however, Landlord shall replace said sign as soon as practicable at Landlord's sole cost. Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered).

(b) Pylon Sign. Tenant may install a pre-finished black cabinet on the Eden Prairie Liquor store pylon sign. Tenant may use one of the panels on the cabinet for a Tenant sign. The cabinet and Tenant's sign on the panel



shall be in a location, size and style reasonably approved by Landlord. Tenant shall be responsible for 100% of the cost to modify the existing pylon sign to accommodate the cabinet. Tenant shall be responsible for 100% of the cost of its individual panel and sign in the cabinet.

**Section 4.04 – Tenant’s Warranties:**

Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term hereof it shall: (i) keep the Premises and any platform or loading dock used by Tenant in a neat and clean condition, (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant’s business or fixtures, and pay when due all fees of similar nature, (iii) observe all rules and regulations established by Landlord for tenants in the Shopping Center, (iv) not use any advertising medium or sound devices inside the Premises which may be heard outside the Premises, or permit any objectionable odors to emanate from the Premises, (v) operates its business in compliance with all laws, rules and regulations, (vi) not use or permit the use of any part of the Premises for the sale, rental, display or operation of amusement, electronic, video machines, games, cassettes or devices without the prior written consent of Landlord or allow the sale or offering of any lottery or raffle tickets or permit any form of games of chance or gambling, in any form, without such similar consent, (vii) not commit or suffer to be committed any waste upon the Premises, not place a load upon any floor of the Premises which exceeds the floor load per square foot area which such floor was designated to carry, and not commit or suffer to be committed any nuisance or other act or thing which may disturb the quiet enjoyment of any other occupant or tenant of the Shopping Center.

**Section 4.05 - Hazardous Materials:**

Tenant agrees that except for *de minimus* amounts used in the ordinary course of Tenant’s business operation and at all time in compliance with applicable laws, it will not use, permit, hold, release or dispose of any Hazardous Material (defined hereinafter) on, under or at the Premises or the Shopping Center and that it will not use or permit the use of the Premises or any other portion of the Shopping Center as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material. Tenant further agrees that it will not cause or allow any asbestos to be incorporated into any improvements or alterations which it makes or causes to be made to the Premises. Tenant hereby holds Landlord harmless from and indemnifies Landlord against any and all losses, liabilities, damages, injuries, costs, expenses, fines, penalties, and claims of any and every kind whatsoever (including, without limitation, court costs and attorneys’ fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord for, with respect to, or as a direct or indirect result of a breach by Tenant of the foregoing covenants. For purposes of this Lease, “Hazardous Material” means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called “Superfund” or “Superlien” law, the Toxic Substances Control Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous, waste, substance or material.

**ARTICLE V. COMMON AREA**

**Section 5.01 - Definition:**

The term “Common Areas” shall mean the interior and exterior areas and facilities within the Shopping Center, which are: (i) not leased to a tenant, (ii) by nature not leasable to a tenant for the purpose of the sale of merchandise or the rendition of services to the general public, or (iii) not shown on Exhibit A as potential space for another tenant of the Shopping Center. Common Areas shall include but shall not be limited to all parking areas and facilities, roadways, driveways, entrances and exits, truck service ways and tunnels, utilities, water filtration and treatment facilities, retention ponds or basins located within or outside the Shopping Center, retaining and exterior walls, sidewalks, open and enclosed malls, outside courts, landscaped and planted areas, escalators, stairways, elevators, service corridors, service areas, loading docks, hallways, public restrooms, community rooms or areas, roofs, equipment, signs and any special services provided by Landlord for the common or joint use and benefit of all tenants in the Shopping Center, their employees, customers and invitees.

**Section 5.02 - Use:**

During the term of this Lease Tenant is granted, subject to Landlord’s rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any of the stores in the Shopping Center or the Common Areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type; provided, however, no such change shall (a) unreasonably restrict or interfere with the operation of Tenant’s business or (b) reduce the number of parking spaces or access drives to cause the Shopping Center not to comply with all applicable laws, rules and ordinances.

**Section 5.03 - Common Area Expenses:**

Landlord agrees, subject to events beyond its reasonable control, to maintain and keep in good service and repair the Common Areas. The manner in which such areas and facilities shall be maintained, managed and operated, and the expenditures therefor, shall be at the sole discretion of Landlord and the use of such areas and facilities shall be subject to such reasonable rules and regulations as Landlord shall make from time to time. Starting with the Rent Commencement Date and continuing throughout the entire term of this Lease, Tenant shall pay, as Additional Rent, the Common Areas expenses (the “Common Area Expense”). During the first full or

partial calendar year of the term of this Lease, Tenant's Common Area Expense, not including taxes payable directly by Tenant pursuant to Section 7.02, is estimated to be \$5.28 per square foot of the Premises (1,402), for a total of \$7,402.56 per year, to be paid in advance, in equal monthly installments of \$616.88 on or before the first day of each month.

**Section 5.04 – Operating Costs:**

Tenant shall, for the entire Term of this Lease, and without any abatement, set-off or deduction therefrom, pay to Landlord as Additional Rent its Pro Rata Share, as hereinafter defined, of all costs which Landlord may incur in maintaining and operating the entire Shopping Center. Said costs shall be referred to herein as "Operating Costs" and are hereby defined with respect to any calendar year to include but not be limited to the following costs incurred by Landlord in such calendar year with respect to the project: all real estate taxes and installments of special assessments which shall accrue or become a lien against, or are payable in respect of, any part of the Shopping Center during the Term of this Lease; all other governmental impositions relating to the Shopping Center, including but not limited to amounts payable under assessment agreements; the costs of heat, cooling, utilities, insurance, security, landscaping, janitorial and cleaning services; all employment costs including salaries, wages and fringe benefits; all management fees, including expenses reimbursable to any manager and rental of property management office; fees for professional services; charges under maintenance and service contracts; all supplies purchased for use in the Shopping Center; all maintenance and repair costs; any equipment rental; amortization of the cost of capital improvements made subsequent to the date of this Lease (i) to reduce Operating Costs or limit increases therein, or (ii) required by Landlord's insurance carrier or (iii) required by any law, rule, regulation or order of any governmental or quasi-governmental authority having jurisdiction; and any and all other costs of operation, whether ordinary or extraordinary.

Operating Costs shall not include direct out-of-pocket costs of the following: leasing commissions and costs of marketing; the cost of constructing leasehold improvements; payments of principal and interest on any mortgages, deeds of trust or other encumbrances upon the Shopping Center; the capital cost of the Shopping Center or any depreciation or amortization thereof except as provided above; the cost of any items for which Landlord is directly reimbursed by insurance proceeds, condemnation awards, a tenant of the Shopping Center or the like; wages, salaries or other compensation paid to executive employees of Landlord or the property manager ranking above the highest-ranking, on-site employee; costs associated with the operation of the business of the entity which constitutes Landlord, which costs are not directly related to maintaining or operating the Shopping Center (by way of example, the formation of the entity, internal accounting and legal matters, including but not limited to preparation of tax returns and financial statements and gathering of data therefore, costs of defending any lawsuits related to maintaining or operating the Shopping Center, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Shopping Center, and costs of any disputes between Landlord and its employees); any expense representing an amount paid for products or services (other than overall property management) to a person or entity relating to or affiliated with Landlord which is in excess of the fair market value of such services and products; fees incurred in disputes with tenants; costs of remediation of Hazardous Materials which are (i) in or on the Shopping Center as of the date of this Lease and which are classified as Hazardous Materials as of the date of this Lease under laws in effect as of the date of this Lease, or (ii) which are subsequently brought onto the Shopping Center by Landlord or with the express consent of Landlord and which are on the date of their introduction onto the Shopping Center classified as Hazardous Materials under laws in effect as of the date of such introduction, excluding in the case of both (i) and (ii) above, lawful use and disposition of reasonable quantities of supplies used in the ordinary course of operation and maintenance of like projects.

**Section 5.05 – Estimated Operating Costs:**

As frequently hereafter as Landlord shall deem appropriate, Landlord may give Tenant notice of Landlord's estimate of Operating Costs for the then-current calendar year ("Estimated Operating Costs"). Tenant shall pay on the first day of each calendar month during the Term, as additional rent hereunder, one-twelfth (or rentable portion thereof for partial months) of Tenant's Pro Rata Share of Estimated Operating Costs.

**Section 5.06 – Tenant's Pro Rata Share:**

Tenant's "Pro Rata Share" is 29.97%, which is calculated as follows: a fraction, the numerator of which is the area of the Premises, which is 1,402 square feet, and the denominator of which is the area of all areas in the Project designated by Landlord for lease, excluding separately leased storage and parking areas, which is 4,678 square feet.

**Section 5.07 – Actual Operating Costs:**

Within a reasonable time after the expiration of each calendar year, Landlord shall submit to Tenant a statement setting forth the actual Operating Costs of the Project for such calendar year ("Actual Operating Costs"), (a) Tenant's Pro Rata Share of Actual Operating Costs, and (b) the aggregate of Tenant's payments of Estimated Operating Costs for such year. Within thirty days after the delivery of such statement (including any statement delivered after the expiration or termination of the Term of this Lease), the party in whose favor the difference, if any, between (a) and (b) exists shall pay the amount of such difference to the other; provided, however, that overpayments by Tenant may at Landlord's option be credited against future payments of Estimated Operating Costs except with respect to the last year of the Term. Landlord's books and records relating to Actual Operating Costs for any particular calendar year shall be available for inspection by Tenant, during the 90 day period following delivery of Landlord's statement with respect to such year, and during normal business hours upon prior appointment at Landlord Address set forth in Item of the Data Sheet or such other address within the metropolitan area as designated by Landlord in notice to Tenant. Each statement furnished by Landlord hereunder shall constitute a final determination upon Tenant unless Tenant shall within 90 days after delivery thereof give written notice to Landlord

that Tenant disputes the accuracy thereof, which notice shall specify in reasonable detail the inaccuracies of the statement.

**Section 5.08 – Accounting Year:**

Landlord may at its option by 30 days written notice to Tenant change its accounting year hereunder from the calendar year to a fiscal year, making such adjustments from the end of the last calendar year to the commencement of the first full fiscal year as shall be appropriate pursuant to generally accepted accounting principles. Upon such change, references in this Article V to a calendar year shall be deemed to be references to a fiscal year.

**ARTICLE VI. REPAIRS AND MAINTENANCE**

**Section 6.01 – Landlord’s Obligations:**

Landlord shall make, at Landlord’s sole cost and expense, all repairs and perform all maintenance work that is necessary in order to keep the Premises and equipment servicing the Premises, including but not limited to all utilities, the sprinkler system, if any, and the heating, ventilating and air conditioning unit(s), in good order and repair and in a safe and dry tenantable condition and in compliance with all regulations, codes and ordinances, including keeping in good repair the sewer and water lines outside the Premises and the structural supports, inclusive of the roof, foundation, and demising walls of the Premises.

**Section 6.02 – Tenant’s Obligations:**

Except as stated in Section 6.01, Tenant, at its expense, shall provide trash storage and removal services regardless of the location of any storage and removal facilities, except that if Landlord, in its sole discretion, shall provide trash services, then, in such event, Tenant shall be obligated to use and pay Landlord for the same as Additional Rent. Tenant’s proportionate share of such trash storage and removal service costs shall be determined, at Landlord’s option, either (i) by multiplying such trash storage and removal service costs by a fraction, the numerator of which shall be the total square footage of the Premises, and the denominator of which shall be the average total gross leased and occupied square footage in the Shopping Center for the applicable billing period or (ii) on the basis of a separate metering or monitoring of Tenant’s use of such services or facilities. Notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours except to the extent caused by Landlord’s negligence.

**ARTICLE VII. REAL ESTATE TAXES**

**Section 7.01 - Liability:**

Starting with the Rent Commencement Date and continuing throughout the entire term of this Lease, Tenant shall pay Landlord, except as provided in Section 7.02 below, as Additional Rent, Tenant’s proportionate share of Taxes, as hereinafter defined, for each tax year. The term “Taxes” means the total of all taxes and assessments, general and special, ordinary and extraordinary, real and/or personal, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Shopping Center, any tax or surcharge of any kind or nature with respect to the parking areas or the number of parking spaces in the Shopping Center including without limitation all taxes payable pursuant to Minnesota Statutes Section 272.01, Subd. 2. For purposes of determining Taxes, the term Shopping Center shall be deemed to include any land upon which parking facilities, berms, landscaping, lighting and/or off-site sewer and utility systems (including drainage and flood control and retention ponds) serving the Shopping Center are located, with all improvements situated thereon, provided however that once any such area, or portion thereof, is sold or leased by Landlord, then such area, or portion thereof, would no longer be so included. The term “Taxes” also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of or in addition to the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon or imposed upon any personality used in connection therewith or upon the collection of rents or other sums due hereunder, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Shopping Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term “Taxes” for the purposes hereof. Tenant’s proportionate share of Taxes shall be calculated by multiplying Taxes by a fraction, the numerator of which shall be the total square footage of the Premises (as contemplated in Section 1.01), and the denominator of which shall be the average total gross square footage of the Shopping Center for the applicable billing period.

**Section 7.02 - Method of Payment:**

All taxes dues pursuant to Minnesota Statutes Section 272.01 Subd. 2 shall be paid directly by Tenant to Hennepin County. Landlord shall request that Hennepin County establish a personal property tax under Minnesota Statutes Section 272.01, Subd. 2 for Tenant. For all other Taxes Tenant shall pay its proportionate share of such Taxes by the following method: one-twelfth (1/12) of the Taxes estimated to be due by Landlord shall be paid each month with Minimum Rent until the end of the first tax year after the Rent Commencement Date; thereafter, the monthly payments shall be based upon the tax bill for the previous tax year plus any reasonably anticipated increases. Any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished. Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the term of

this Lease, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant. Notwithstanding anything contained in this Article VII to the contrary, if Landlord is required to pay Taxes in advance, Tenant shall pay to Landlord on the Rent Commencement Date, an amount equal to Tenant's proportionate share of Taxes for the entire tax year in which the Rent Commencement Date occurs.

## ARTICLE VIII. INSURANCE

### Section 8.01 – Tenant's Insurance Obligations:

(a) General Liability Coverage. Tenant agrees to carry, at its own expense, throughout the Term of this Lease, Commercial General Liability insurance in the broadest form obtainable (including contractual liability coverage) covering the Premises and Tenant's use of the Premises with a minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for Bodily Injury and Property Damage, including Loss of Use. Tenant may satisfy its obligation to maintain Commercial General Liability insurance, as required pursuant to this Section 8.01, by obtaining a combination of primary liability and umbrella/excess liability policies that total a minimum of \$2,000,000 per occurrence limit, provided that Tenant's primary liability policy shall be in the minimum amount of One Million Dollars (\$1,000,000) per occurrence. Tenant's insurance policy(ies) shall be written with insurers licensed to do business in the state of Minnesota, in a form satisfactory to Landlord and shall carry an A.M. Best rating of at least A-. Tenant's policies shall name Landlord as an additional insured and shall be endorsed to provide Landlord with no less than thirty (30) days prior written notice of cancellation or non-renewal. Tenant's policies shall also be endorsed to reflect that in the event that coverage benefiting Landlord exists under both Landlord's and Tenant's policies, coverage under the Tenant's policies shall be primary.

(b) Property Coverage. Tenant shall bear the entire risk of loss for all of its property, furniture, fixtures, carpets, machinery, improvements & betterments, equipment, inventory, stock in trade and goods placed in the Premises. Tenant shall carry, at its sole cost and expense, Special Perils "all-risk" property coverage, including Loss of Income, of the broadest form available covering the above property on a full replacement cost basis. Coverage shall include improvements to the Premises while under construction or installation by Tenant. Said policy shall include a waiver of subrogation against Landlord as to loss or damage covered by such policy.

(c) Workers' Compensation Coverage. Tenant shall also carry at all times such Workers' Compensation insurance as to comply with the laws and regulations of the state of Minnesota and shall provide Landlord with a Certificate evidencing coverage currently in force.

(d) Basic Insurance Requirements. Tenant shall provide Landlord with Certificates of Insurance (ACORD 25) prior to the date of occupancy by Tenant and within thirty (30) days of the anniversary of said insurances, evidencing the above-required coverages. Tenant's policies shall name Tenant as insured and Landlord as additional insured as their interests may appear. Tenant shall require any Contractor of Tenant performing work on the Premises to maintain the same coverages as required of Tenant and to provide the same evidence of such coverage to Tenant before the Work begins. Failure on the part of Tenant to provide such evidence of insurance may cause, but does not obligate, Landlord to effect such coverage and in such event, Tenant agrees to pay the premium for such coverage promptly upon Landlord's demand, plus and administrative fee of fifteen percent (15%) of the total cost thereof.

### Section 8.02 – Landlord's Insurance Obligations:

(a) Building, Loss of Rental Income and Liability Coverage. Landlord agrees to carry insurance covering Landlord's building and loss of rental income against perils or loss and in an amount as Landlord may deem appropriate ("Landlord's Insurance"), but in the case of the building, no less than the replacement value thereof. Landlord's Insurance shall also include coverage for liability arising from the Common Areas of the Shopping Center. Tenant shall have no rights in said policy or policies and shall not be entitled to be an insured thereunder.

### Section 8.03 – Tenant's Contribution Towards Landlord's Insurance:

Starting with the Rent Commencement Date and continuing throughout the entire term of this Lease, Tenant shall pay to Landlord, as Additional Rent, Tenant's proportionate share of Landlord's insurance expenses ("Insurance Charges"). Tenant's proportionate share of Insurance Charges shall be calculated by multiplying Insurance Charges by a fraction, the numerator of which shall be the total square footage of the Premises, and the denominator of which shall be the total gross square footage in the Shopping Center for the applicable billing period. At the end of each calendar year, there shall be an adjustment if the amount paid by Tenant is less than Tenant's proportionate share actually incurred in that year so long as Landlord notifies Tenant of such deficiency within 90 days of the end of the calendar year.

Tenant shall not permit to be done any act which will invalidate or be in conflict with Landlord's insurance policies covering the Shopping Center or Regional Development or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents shall increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent. Notwithstanding anything to the contrary in this Section 8.03, Tenant shall have no liability for any rate insurance increase to the extent caused by a tenant other than Tenant.

### Section 8.04 - Waiver of Subrogation:

Notwithstanding any provision of this Lease to the contrary, Landlord and Tenant each hereby release and waive all rights of subrogation against the other, its officers, directors, employees and agents from any and all loss, damages or liability covered under any policy of insurance required to be maintained by this Lease, including

deductibles or retentions, notwithstanding that such loss, damages or liability may have arisen from the negligence, tortious act or omission of the other party, or anyone for whom such party may be responsible.

**Section 8.05 - Indemnification:**

Tenant hereby indemnifies and agrees to save harmless Landlord, Landlord's officers, directors, employees, and agents, and any mortgagee and master lessor of the Shopping Center or Regional Development (collectively, the "Protected Parties"), from and against all claims, losses, liabilities, damages, penalties, fines and expenses (including but not limited to attorneys' fees) that arise from or in connection with (i) the possession, use, occupation, management, repairs, maintenance or control of the Premises, or any portion thereof, inclusive of improvements, and any sidewalks adjoining same, (ii) any act or omission of Tenant, its employees, agents, contractors, licensees, or invitees, or (iii) any violation, breach, or Default of this Lease by Tenant. Tenant shall, at its own cost and expense, defend any and all actions which may be brought against any of the Protected Parties with respect to the foregoing. Tenant shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against any of the Protected Parties in connection with the foregoing.

Landlord agrees to indemnify and save Tenant harmless from and against any and all claims, actions, lawsuits, damages, liability and expense (including, but not limited to, reasonable attorneys' fees) arising from damage, loss or injury to persons or property occurring in, on or about the Shopping Center or Regional Development caused by (a) the negligence, act or omission of Landlord, its employees, agents or contractors or (b) any violation, breach or Default of this Lease by Landlord.

**ARTICLE IX. DESTRUCTION OF PREMISES**

**Section 9.01 - Continuance of Lease:**

In the event the Premises shall be partially or totally destroyed by fire or other casualty insured under the provisions of Section 8.01 above, so as to become partially or totally untenantable, then the damage to the Premises shall be promptly repaired by Landlord unless Landlord shall elect not to rebuild or repair as hereinafter set forth. Except in the case of termination, Minimum Rent shall be abated in proportion to the amount of the Premises rendered untenantable until so repaired. If more than twenty-five percent (25%) of the Premises or twenty-five percent (25%) of the floor area of the Shopping Center or the Regional Development shall be damaged or destroyed by fire or other casualty, then Landlord may elect that the Shopping Center, the Regional Development, and/or the Premises, as the case may be, be repaired or rebuilt or, either Landlord or Tenant may elect to terminate this Lease by giving written notice to the other party of its election to so terminate, such notice to be given within ninety (90) days after the occurrence of such damage or destruction. If the Lease is not terminated and Landlord is required or elects to repair or rebuild the Premises as herein provided, upon completion of such work by Landlord, Tenant shall immediately repair or replace its merchandise, improvements, trade fixtures, furnishings and equipment in a manner and to at least a condition equal to that immediately prior to its damage or destruction. Landlord shall give Tenant written notice of Landlord's intent regarding reconstruction, including the length of time for reconstruction, within sixty (60) days of the casualty.

**Section 9.02 - Reconstruction; Rent Abatement:**

If all or any portion of the Premises is damaged by fire or other casualty and this Lease is not terminated in accordance with the above provision, then all insurance proceeds however recovered shall be made available for payment of the cost of repair, replacing and rebuilding. Landlord shall use the proceeds from the insurance as set forth herein to repair or rebuild the Premises to its condition as on the Delivery Date, and Tenant shall, using the proceeds from the insurance provided for in Section 8.01, repair, restore, replace or rebuild that portion of the Premises constituting Tenant's Work as defined herein together with any additional improvements installed by Tenant, such that the Premises shall be restored to its condition as of immediately prior to the occurrence of such casualty. If Tenant's insurance proceeds shall be less than Tenant's obligation hereunder, Tenant shall pay the entire excess cost. Minimum Rent, which is payable hereunder during the existence of such damage and until such repair or rebuilding is substantially completed by Landlord, shall be equitably abated. Equitable abatement shall terminate upon the earlier of (i) the date upon which Tenant operates its business within the Premises or (ii) thirty (30) days following the date upon which Landlord substantially completes its repair or rebuilding work to the Premises.

**ARTICLE X. CONDEMNATION**

**Section 10.01 - Eminent Domain:**

If twenty-five percent (25%) or more of the Premises shall be taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date of which such title shall vest in the authority. If the parking facilities are reduced below the minimum parking requirements imposed by the applicable authorities, either Tenant or Landlord may elect to terminate this Lease by giving the other party notice within ninety (90) days after such taking. In the case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for fixtures and other equipment which under the terms of this Lease would not have become the property of Landlord; further provided, that any such award to Tenant shall not be in diminution of any award to Landlord as a result of such taking or condemnation.

## **ARTICLE XI. ASSIGNING, SUBLETTING AND ENCUMBERING LEASE**

### **Section 11.01 - Assigning, Subletting and Encumbering Lease:**

(a) Except as otherwise set forth in this Lease (including any riders), Tenant shall not without Landlord's prior written consent, which shall be subject to Landlord's sole discretion (i) assign or otherwise transfer, or mortgage or otherwise encumber, this Lease or any of its rights hereunder, (ii) sublet the Premises or any part thereof, or permit the use of the Premises or any part thereof by any persons other than Tenant or its agents, or (iii) permit the assignment or other transfer of this Lease or any of Tenant's rights hereunder by operation of law. Any attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest hereunder and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Premises in violation of the foregoing sentence shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee, sublessee or occupant.

(b) If Tenant desires at any time to assign or transfer this Lease or sublet (or permit occupancy or use of) the Premises, Tenant shall first give Landlord written notice of its desire to do so and shall submit in writing to Landlord (i) the name of the proposed assignee, mortgagee, subtenant or other transferee (any of the foregoing being hereinafter referred to as an "Assignee"), (ii) the nature of the proposed Assignee's business to be carried out on the Premises, (iii) a copy of the proposed Assignment agreement and any other agreements to be entered into concurrently with such Assignment, including full disclosure of all financial terms, and (iv) such financial information as Landlord may reasonably request concerning the proposed Assignee. Tenant shall pay to Landlord a reasonable fee for Landlord's expenses, including attorneys' fees, in reviewing such proposed Assignment. Neither the furnishing of such information nor the payment of such fee shall limit any of Landlord's rights or alternatives under this Article XI. For thirty (30) days following receipt of said notice, Landlord shall have the right, exercisable by sending written notice to Tenant, to (i) object to such assignment, sublet or transfer or (ii) terminate this Lease if all of the Premises were affected by the assignment or sublease. The consent by Landlord to any assignment, transfer or subletting to any party shall not be construed as a waiver or release of Tenant under the terms of any covenant or obligation under this Lease, nor shall the collection or acceptance of rent from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant of any covenant or obligation contained in this Lease, nor shall any such assignment, transfer or subletting be construed to relieve Tenant from giving Landlord said thirty (30) days notice or from obtaining the consent in writing of Landlord to any further assignment, transfer or subletting. Once Tenant has given Landlord notice of a proposed assignment or subletting, Landlord's failure to respond within such 30-day period shall be deemed to be Landlord's consent to such assignment or subletting.

(c) Notwithstanding anything to the contrary above, Tenant shall have the right, upon fifteen (15) days prior written notice to Landlord but without Landlord's prior consent, (i) to sublet all or part of the Premises to Tenant's parent company ("Parent"), or to any entity which is a subsidiary of Tenant or its Parent (any of such entities being herein called a "Parent Affiliate"); or (ii) to assign this Lease (a) to a Parent or a Parent Affiliate or to (b) a successor entity into which or with which Tenant is merged or consolidated or which acquired substantially all of Tenant's assets and property, provided that such subtenant or assignee assumes all of the obligations and liabilities of Tenant arising under this Lease and Tenant is not released from liability hereunder.

In addition, in no event shall (a) a change in control of Tenant resulting from a merger, consolidation or asset sale, or (b) sales or transfers, whether voluntary, by operation of law or otherwise, of any portion of the common or preferred stock of Tenant, or the sale or creation of new stock (including, without limitation, an initial public offering) be considered an assignment or conveyance which requires Landlord's prior written consent. Tenant's shareholders shall be permitted to sell and transfer their shares and interests in the Tenant to each other and to third parties without such sales or transfers requiring Landlord's consent and the sale additional shares or securities of Tenant, including, without limitation, an initial public offering, shall not be considered an assignment, subleasing or other transfer of this Lease.

## **ARTICLE XII. SUBORDINATION AND FINANCING**

### **Section 12.01 - Subordination:**

On the condition that such lender grant Tenant non-disturbance, this Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage or deed of trust now or hereafter placed upon the interest of Landlord and the Premises. Tenant also agrees that any mortgagee or trustee may elect to have this Lease a prior lien to its mortgage or deed of trust, and in the event of such election, and upon notification by such mortgagee or trustee to Tenant to that effect, this Lease shall be deemed prior in lien to the said mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said mortgage or deed of trust. Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee or trustee subordinating this Lease to the lien of any present or future mortgage or deed of trust, or as may be otherwise required to carry out the intent of this Section. Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver any such instrument of Tenant.

### **Section 12.02 - Attornment:**

If, and so long as this Lease is in full force and effect, then at the option of the mortgagee: (a) this Lease shall remain in full force, notwithstanding (i) a default under the mortgage by Landlord, or (ii) any bankruptcy or similar proceedings with respect to Landlord; (b) if any such mortgagee shall become possessed of the Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease; and (c) if any mortgagee or purchaser, at a private or public sale shall become possessed of the Premises, Tenant shall, without charge, attorn to such mortgagee or purchaser as its landlord under this Lease. Tenant agrees that in the event Landlord is in default under this Lease, any mortgagee or

trustee under a deed of trust of Landlord's interest in the Premises shall be permitted (but not required) to enter the Premises for the purpose of correcting or remedying such default, and Tenant agrees to accept performance by such mortgagee or trustee in lieu of performance by Landlord. Tenant further agrees that, from and after written notice from Landlord of the name and address of any mortgagee or trustee, Tenant will contemporaneously deliver notice to any such mortgagee or trustee of a default by Landlord under this Lease. Notwithstanding any provision of this Lease, Tenant agrees that no termination of this Lease or abatement or reduction of rent or any other amounts under this Lease shall be effective unless and until such mortgagee or trustee has received notice and fails within thirty (30) days of the date on which Landlord's cure period expires to cure the default of Landlord in question, or if the default cannot be cured within said thirty (30) days, fails to commence and diligently prosecute the cure of such default.

**Section 12.03 - Estoppel:**

From time to time and upon ten (10) days' notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Shopping Center may request to be confirmed. If Tenant fails to execute such certificate, Tenant hereby appoints Landlord as its attorney-in-fact, irrevocably, to execute and deliver such certificate for Tenant, or Landlord may elect to terminate this Lease.

**ARTICLE XIII. DEFAULTS**

**Section 13.01 - Events of Default:**

If any one or more of the following events occur, said event or events shall hereby be classified as a Tenant "Default":

(a) If Tenant fails to pay Minimum Rent, Additional Rent or any other charges required to be paid by Tenant when same shall become due and payable, and such failure continues for five (5) days after written notice from Landlord;

(b) If Tenant shall fail to perform or observe any terms and conditions of this Lease, and such failure shall continue for ten (10) days after written notice from Landlord;

(c) If Tenant refuses to take possession of the Premises at the Term Commencement Date, or fails to open its doors for business on or before September 1, 2014;

(d) If Tenant fails to conduct its business for the use and under the trade name as set forth in Section 4.01;

(f) If Tenant, or any guarantor of Tenant's obligations hereunder, shall make an assignment for the benefit of creditors or file a petition, in any state court, in bankruptcy, reorganization, composition, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property;

(g) If any petition shall be filed under state law against Tenant or any guarantor of Tenant's obligations hereunder in any bankruptcy, reorganization or insolvency proceedings, and said proceedings shall not be dismissed or vacated within thirty (30) days after such petition is filed;

(h) If a receiver or trustee shall be appointed under state law for Tenant or any guarantor of Tenant's obligations hereunder, for all or any portion of the property of either of them, and such receivership or trusteeship shall not be set aside within thirty (30) days after such appointment; or

(i) If any execution, levy, attachment or other legal process of law shall occur upon Tenant's goods, fixtures, or interest in the Premises.

**Section 13.02 – Landlord's Remedies:**

Should a Default occur, Landlord may pursue any or all of the following:

(a) Landlord may terminate this Lease by giving five (5) days written notice of such termination to Tenant, whereupon this Lease shall automatically cease and terminate and Tenant shall be immediately obligated to quit the Premises. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or recovery of possession by Landlord, whichever is later. If Landlord elects not to terminate this Lease, Landlord may pursue any remedy available at law.

(b) Upon termination of this Lease pursuant to Section 13.02, Landlord may proceed to recover possession of the Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Shopping Center is located, or by such other proceedings, including reentry and possession, as may be applicable.

(c) If Tenant shall be in Default, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Default for the account of and at the expense of Tenant. No such notice shall be required for emergency repairs.

(d) Whether or not Landlord elects to terminate this Lease, Landlord may enter upon and repossess the Premises (said repossession being herein after referred to as "Repossession") by force, summary proceedings, ejectment or otherwise, and may remove Tenant and all other persons and property therefrom. From time to time

after Repossession of the Premises, whether or not this Lease has been terminated, Landlord may, but shall not be obligated to, attempt to relet the Premises for the account of Tenant in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and for such terms (which may include concessions or free rent) and for such uses as Landlord, in its uncontrolled discretion, may determine, and may collect and receive the rent therefor. Any rent received shall be applied against Tenant's obligations hereunder, but Landlord shall not be responsible or liable for any failure to collect any rent due upon any such reletting.

(e) No termination of this Lease and no Repossession of the Premises pursuant to Section 13.02(d) or otherwise shall relieve Tenant of its liabilities and obligations under this Lease, all of which shall survive any such termination or Repossession. In the event of any such termination or Repossession, whether or not the Premises shall have been relet, Tenant shall pay to Landlord the Minimum Rent and other sums and charges to be paid by Tenant up to the time of such termination or Repossession, and thereafter Tenant, until the end of what would have been the Term in the absence of such termination or Repossession, shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Minimum Rent and such other sums and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds, if any, of any reletting effected pursuant to the provisions of Section 13.02(d) after deducting all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, attorneys' fees, alteration costs, and expenses of preparation for such reletting. Tenant shall pay such current damages to Landlord monthly on the days on which the Minimum Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover the same from Tenant on each such day. At any time after such termination or Repossession, whether or not Landlord shall have collected any current damages as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the then present value of the excess of the Minimum Rent and other sums or charges reserved under this Lease from the day of such termination or Repossession for what would be the then unexpired term if the same had remained in effect, over the amount of rent Tenant demonstrates that Landlord could in all likelihood actually collect for the Premises for the same period, said present value to be arrived at on the basis of a discount of four percent (4%) per annum.

(f) Landlord may, at Landlord's option, enter into and upon the Premises after providing 24 hours' notice, except in the case of an emergency or where immediate action is necessary in which events no notice is required, if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom. To the extent practical Landlord shall schedule such entry so as to minimize interference with Tenant's business and permit Tenant to safeguard confidential files in the Premises. If Tenant shall have vacated the Premises, Landlord may at Landlord's option re-enter the Premises at any time during the last six months of the then current Term of this Lease and make any and all such changes, alterations, revisions, additions and tenant and other improvements in or about the Premises as Landlord shall elect, all without any abatement of any of the rent otherwise to be paid by Tenant under this Lease.

(g) Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

(h) No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or to accept a surrender of said Premises shall be valid, unless in writing signed by Landlord. No waiver by Landlord of any violation or breach or Default of any of the terms, provisions and covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach or Default of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of the payment of rental or other payments after the occurrence of a violation, breach or Default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord in enforcing one or more of the remedies provided in this Lease upon a violation, breach or Default shall not be deemed or construed to constitute a waiver of such violation, breach or Default or of Landlord's right to enforce any such remedies with respect to such violation, breach or Default or any subsequent violation, breach or Default.

(i) In addition to all other remedies of Landlord, Landlord shall be entitled to reimbursement upon demand of all reasonable attorneys' fees incurred by Landlord in connection with any Default.

### **Section 13.03 - Default by Landlord:**

Landlord shall in no event be charged with a default hereunder unless Landlord shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant.

## **ARTICLE XIV. BANKRUPTCY OR INSOLVENCY**

### **Section 14.01 – Tenant's Interest Not Transferable:**

Neither Tenant's interest in this Lease, nor any interest therein of Tenant nor any estate hereby created in



Tenant, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law.

**Section 14.02 – Landlord’s Option to Terminate:**

In the event the estate created in Tenant hereby shall be taken, in execution or by other process of law, or if Tenant or Tenant’s Guarantor or their respective executors, administrators or assigns, if any, shall be adjudicated insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy act, or if a receiver or trustee of the property of Tenant or Tenant’s Guarantor, if any, shall be appointed by reason of the insolvency or inability of Tenant or Tenant’s Guarantor, if any, to pay its debts, or if any assignment shall be made of the property of Tenant or Tenant’s Guarantor, if any, for the benefit of creditors, then and in any such events, Landlord may at its option terminate this Lease and all rights of Tenant hereunder, by giving to Tenant notice in writing of the election of Landlord to so terminate, in which event this Lease shall cease and terminate with the same force and effect as though the date set forth in said notice were the date originally set forth herein and fixed for the expiration of the Term, and Tenant shall vacate and surrender the Premises but shall remain liable as herein provided.

**Section 14.03 – Tenant’s Obligation to Avoid Creditors’ Proceedings:**

Tenant or Tenant’s Guarantor, if any, shall not cause or give cause for the institution of legal proceedings seeking to have Tenant or Tenant’s Guarantor, if any, adjudicated bankrupt, reorganized or rearranged under the bankruptcy laws of the United States, and shall not cause or give cause for the appointment of a trustee or receiver for the assets of Tenant or Tenant’s Guarantor, if any, and shall not make any assignment for the benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under the bankruptcy law, or the appointment of a trustee or receiver of Tenant or Tenant’s Guarantor, if any, or its assets, shall be conclusive evidence that Tenant caused, or gave cause therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is vacated within thirty (30) days after such allowance or appointment. Any act described in this Section 14.03 shall be deemed a material breach of Tenant’s obligation hereunder, and upon such breach by Tenant, Landlord may, at its option and in addition to any other remedy available to Landlord, terminate this Lease and all rights of Tenant hereunder, by giving to Tenant notice in writing of the election of Landlord to so terminate.

**Section 14.04 - Application of Bankruptcy Proceeds:**

Notwithstanding anything to the contrary contained in this Article XIV, in the event, for any reason whatsoever, the interest of Tenant in this Lease is subject to assignment or sale by the Bankruptcy Court, then, and in that event, all proceeds of such sale or assignment shall be paid to Landlord and not to Tenant nor to the bankruptcy estate.

**Section 14.05 - Bankruptcy:**

(a) Neither Tenant’s interest in this Lease, nor any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law, except as may specifically be provided pursuant to the Bankruptcy Code (11 USC §101 et.seq.), as the same may be amended from time to time.

(b) Rights and Obligations Under the Bankruptcy Code. (1) It is understood and agreed that this Lease is a lease of real property in a shopping center as such lease is described in Section 365 of the Bankruptcy Code, as the same may be amended from time to time. (2) Upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed with respect to the assets of or estate in bankruptcy of Tenant, agree to pay monthly in advance on the first day of each month, as reasonable compensation for the use and occupancy of the Premises, an amount equal to all Minimum Rent and Additional Rent and other charges otherwise due pursuant to this Lease. (3) Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of the assumption and/or assignment of this Lease are the following: (i) the cure of any monetary defaults and reimbursement of pecuniary loss within not more than thirty (30) days of assumption and/or assignment; (ii) the deposit of an additional sum equal to not less than three (3) months’ Minimum Rent and Additional Rent to be held by Landlord as a security deposit, which sum shall be determined by Landlord, in its sole discretion, to be a necessary deposit to secure the future performance under the Lease of Tenant or its assignee; (iii) the use of the Premises as set forth in Section 4.01 of this Lease and the quality, quantity and/or lines of merchandise, goods or services required to be offered for the sale are unchanged; and (iv) the prior written consent of any mortgagee to which this Lease has been assigned as collateral security.

**ARTICLE XV. RIGHT OF ACCESS**

**Section 15.01 - Right of Access:**

Landlord may, upon at least 24 hours’ prior notice to Tenant (except in the case of an emergency, in which case no such notice is required), enter upon the Premises for the purpose of inspecting, making repairs, replacements or alterations, and showing the Premises to prospective purchasers, lenders or lessees; provided, however, any such entry shall be accomplished with as minimal interference with or interruption of Tenant’s business as possible. During the last six (6) months of the term, Landlord shall have the right to display one (1) or more “For Rent” signs on or about the Premises.

**ARTICLE XVI. DELAYS**

**Section 16.01 - Delays:**

If Landlord or Tenant is delayed from performing any of their respective obligations during the term of this Lease because of acts of God or other cause beyond their control, then the period of such delays shall be deemed

added to the time herein provided for the performance of any such obligation and the breaching party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid by Tenant hereunder. Subject to the foregoing, time is of the essence with respect to all obligations to be performed by Tenant pursuant to the terms of this Lease.

## **ARTICLE XVII. END OF TERM**

### **Section 17.01 - Return of Premises:**

Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Premises to Landlord, in good order, broom clean, normal wear and tear and acts of God excepted. Subject to the other terms of this Lease, Tenant shall, at its expense, remove all property of Tenant, all alterations to the Premises not wanted by Landlord and repair damage caused by such removal and return the Premises to the condition in which they were prior to the installation of the article so removed. Upon the expiration or termination of this Lease, Tenant shall execute and acknowledge a quit-claim deed to Tenant's interest in the Premises, in recordable form, in favor of Landlord ten (10) days after written notice and demand therefor by Landlord, and Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver such quit claim deed.

### **Section 17.02 - Holding Over:**

If Tenant shall hold possession of the Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month at one hundred twenty-five percent (125%) of the highest Minimum Rent in effect during the term of this Lease or any extensions thereof and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over.

## **ARTICLE XVIII. COVENANT OF QUIET ENJOYMENT**

### **Section 18.01 - Covenant of Quiet Enjoyment:**

Landlord covenants that Tenant shall at all times during the term hereof peaceably have, hold and enjoy the Premises, without any interruption or disturbance from Landlord, or anyone claiming through or under Landlord, subject to the terms hereof, and any prior liens to which this Lease is subordinate.

## **ARTICLE XIX. MISCELLANEOUS**

### **Section 19.01 - Interpretation:**

This Lease contains the entire agreement between the parties hereto with respect to the matters contained herein and there are no covenants, promises, agreements, conditions, understandings, or warranties or representations, oral or written, between them other than as herein set forth. The Lease or any part of it may not be changed, altered, modified, limited, terminated, or extended orally or by any agreement between the parties unless such agreement is in writing and signed by the parties hereto, their legal representatives, successors or permitted assigns. Tenant agrees and acknowledges that any estimates and/or projections of charges and/or stated minimum charges that may have been provided by Landlord prior to entry into this Lease may not be representative of the actual charges that will ultimately be billed to Tenant hereunder. Tenant acknowledges and agrees that these estimates and/or projections of charges and/or stated minimum charges are provided for budgeting purposes only and are not to be construed in any fashion as being indicative of the actual charges that will ultimately be billed to Tenant hereunder. Tenant acknowledges and agrees that the actual charges may be more or less than the estimates and/or projections and/or may be more than the stated minimum charges.

### **Section 19.02 - Notice:**

No notice or other communications given under this Lease shall be effective unless the same is in writing and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid, or delivered via over-night courier, addressed: (1) if to Landlord, attention: City Clerk at the address set forth on page 1 of this Lease, and a separate duplicate notice to the Finance Manager at the address set forth on page 1 of this Lease, or to such other address as Landlord shall designate by giving notice thereof to Tenant, or (2) if to Tenant, at the address set forth on page 1 of this Lease or such other address as Tenant shall designate by giving notice thereof to Landlord. Any such notice, statement, certificate, request or demand shall, be deemed to have been given upon receipt or refusal of receipt.

### **Section 19.03 - Applicable Laws:**

It is the intent of the parties hereto that all questions and/or disputes with respect to the construction of this Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the State of Minnesota located, in the court of competent jurisdiction in the jurisdiction in which the Shopping Center is located.

### **Section 19.04 - Successors:**

This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

### **Section 19.05 - Brokers:**

Landlord and Tenant warrant and represent that, with the exception of Carrol Balfanz Realty, Tenant's

broker, whose commission shall be paid by Landlord pursuant to a separate written agreement, there was no broker or agent instrumental in consummating this Lease. Each party agrees to indemnify and hold the other harmless against any claims for brokerage or other commission arising by reason of a breach by such party of this representation and warranty.

**Section 19.06 - Landlord Assignment:**

Landlord hereunder shall have the right to freely assign this Lease without notice to or consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer except with respect to any security deposit referred to in Section 2.06 of this Lease upon assignment of the same to the transferee. Upon the termination of any Lease in a sale-leaseback transaction prior to termination of this Lease, the former lessee thereunder shall become and remain liable as Landlord hereunder until a further transfer. No holder of a mortgage or deed of trust to which this Lease is, or may be subordinate, shall be responsible in connection with the security deposited hereunder, unless such mortgagee or holder of such deed of trust of lessor shall have actually received the security deposited hereunder.

**Section 19.07 - Relationship of the Parties:**

The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint ventures.

**Section 19.08 - Waiver of Right of Redemption:**

Tenant hereby expressly waives for itself and all persons claiming by or through it, any right of redemption or for the restoration of the operation of this Lease under any present or future law in case Tenant shall be dispossessed for any cause.

**Section 19.09 - Waiver of Jury Trial:**

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises and/or any claim of injury or damage.

**Section 19.10 - Invalidity of Particular Provisions:**

If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 19.11 - Strict Performance:**

No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

**Section 19.12 - Execution in Counterparts:**

This Lease may be executed in one or more counterparts, any one or all of which shall constitute but one agreement.

**Section 19.13 - Execution of Lease by Landlord:**

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or an option for, the Premises, and this document shall be effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

**Section 19.14 - Effect of Captions:**

The captions or legends in this Lease are inserted for convenient reference or identification of the particular paragraphs. They are in no way intended to describe, interpret, define or limit the scope, extent or interest of this Lease, or any paragraph or provision thereof.

**Section 19.15 - Attorney's Fees:**

In the event either party commences litigation against the other party as a result of a monetary Default by such party, the prevailing party in such litigation shall be entitled to recover its reasonable costs and attorney's fees incurred in such litigation from the other party.

**Section 19.16 - Execution by Facsimile:**

If a party returns this Lease (or a portion of this Lease with instructions to insert said portion into the Lease), the signing party intends the copy of its signature or initials, said portion of the Lease printed by the receiving facsimile machine to automatically be deemed to be said parties original signature or initials.

**Section 19.17 - Exhibits:**

The following Exhibits are attached to and made a part of this Lease by this reference hereto:

- a) Exhibit A                               - Site Plan
- b) Exhibit B                               - Tenant Work

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed effective the day and year first above written.

**LANDLORD:**

**TENANT:**

CITY OF EDEN PRAIRIE

NGUYEN FAMILY INC.

By: \_\_\_\_\_  
Nancy Tyra-Lukens, Its Mayor

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

By: \_\_\_\_\_  
Rick Getschow, Its City Manager

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

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

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EXHIBIT A - SITE PLAN

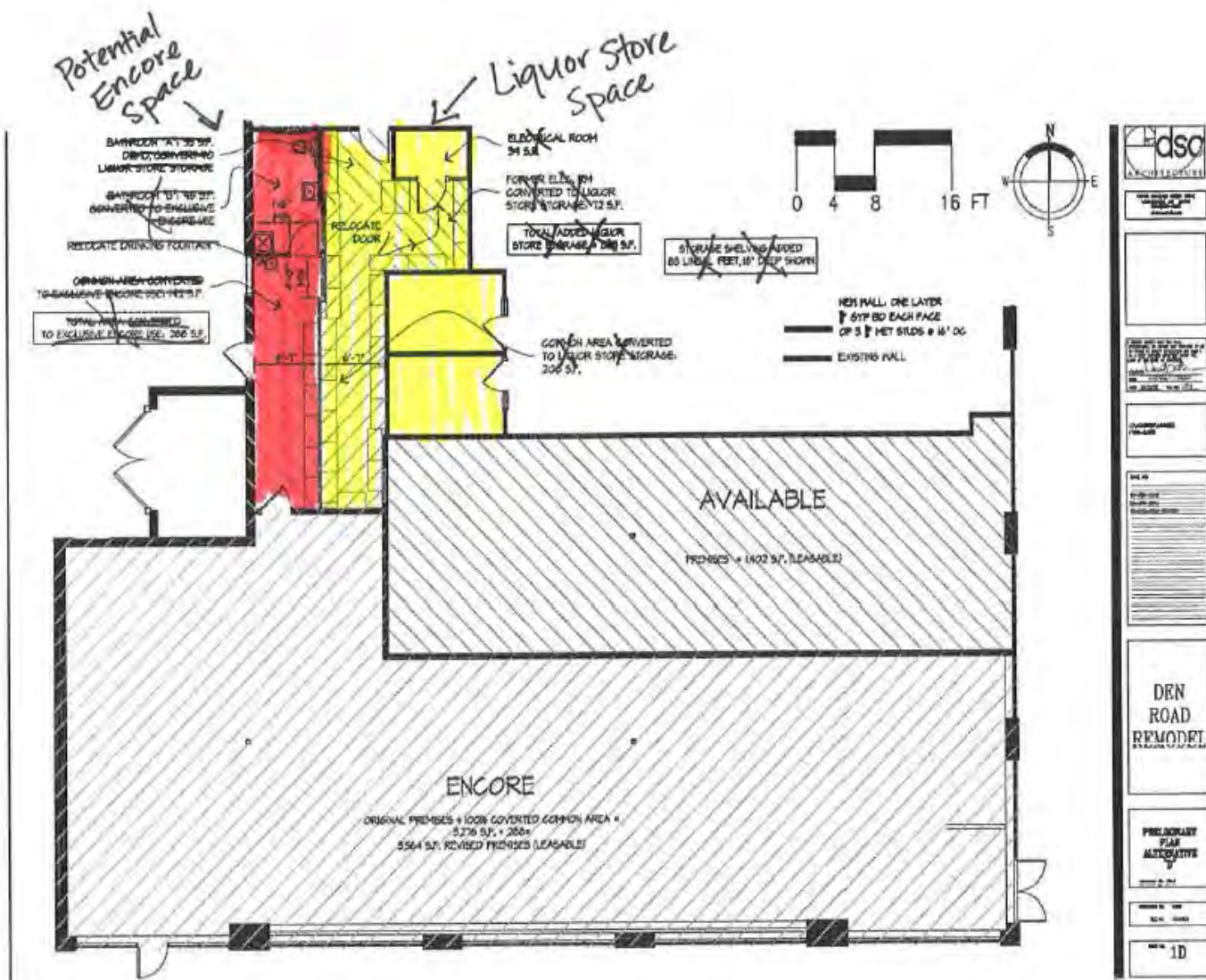
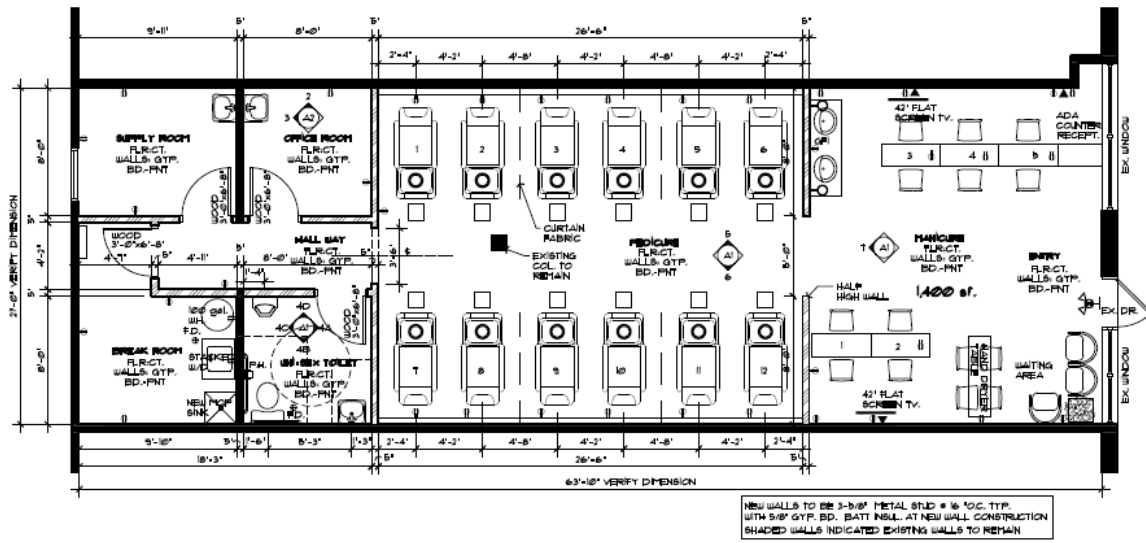


EXHIBIT B - TENANT'S WORK



<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Agenda		May 6, 2014
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION: I.C. 08-5731</b>	<b>ITEM NO.:</b>
Rick Wahlen Public Works/Utilities	Approve Professional Services Agreement with HTPO for Engineering Services to Reconstruct Red Rock Lift Station	VIII.H.

**Requested Action**

Move to: Approve a professional services agreement for engineering services with HTPO for the reconstruction of the Red Rock Sanitary Sewer Lift Station (Lift Station No. 6).

**Synopsis**

The City of Eden Prairie Utilities Division has planned for the major reconstruction of the last remaining old-style sanitary lift station among the 21 lift stations in the system. This project was approved in the last capital improvement plan and will significantly improve the performance and reliability of the sanitary sewer system for this neighborhood.

**Background Information**

HTPO has assisted with the redesign and reconstruction of several Eden Prairie older lift stations supporting the sanitary sewer system. The last remaining station of the design no longer used in Eden Prairie is Lift Station No. 6 on Village Woods Drive, commonly referred to as Red Rock Lift. This lift station will be reconstructed to match the city’s modern lift station configuration used in all other lift stations in town. Eden Prairie Utilities is standardizing the mechanical, electrical, and control systems of all of our lift stations in a systematic manner, and this major renovation project will also include the standardized upgrades. Sanitary Sewer systems are exposed to very harsh environmental conditions, including severe corrosion from hydrogen sulfide (sewer gas), and after two or three decades, system components like lift stations require major component replacement. Utility Division’s Sanitary Sewer Capital Improvement Budget currently includes one sanitary sewer lift station upgrade project per year, and our operating budget includes funds for the ongoing annual preventive maintenance of these lift stations to mitigate the long-term damages to the system and extend the useful life of our lift stations.

**Attachments**

- Professional Services Agreement
- Proposal

## Standard Agreement for Professional Services

This Agreement ("Agreement") is made on the 6th day of May, 2014, between the City of Eden Prairie, Minnesota (hereinafter "City"), whose business address is 8080 Mitchell Road, Eden Prairie, MN 55344, and Hansen Thorp Pellinen Olson, Inc. (HTPO), a Minnesota Corporation (hereinafter "Consultant") whose business address is 7510 Market Place Drive, Eden Prairie, MN 55344.

### Preliminary Statement

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Consultant for Engineering, Surveying, and Bid Administration Services for the Reconstruction of Lift Station No. 6 (Red Rock Lift Station) at 15688 Village Woods Drive, Eden Prairie, MN 55344 hereinafter referred to as the "Work".

The City and Consultant agree as follows:

1. **Scope of Work.** The Consultant agrees to provide the professional services shown in Exhibit A (Estimate for Engineering and Surveying Services) in connection with the Work. The terms of this Agreement shall take precedence over any provisions of the Consultants proposal and/or general conditions. If the Consultants proposal is attached as the Exhibit A Scope of Work, City reserves the right to reject any general conditions in such proposal.
2. **Term.** The term of this Agreement shall be from May 6, 2014 through May 5, 2015 the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** City agrees to pay the Consultant on an hourly basis plus expenses in a total amount not to exceed \$ 22,400 for the services as described in Exhibit A.
  - A. Any changes in the scope of the work which may result in an increase to the compensation due the Consultant shall require prior written approval by an authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.
  - B. Special Consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by the City.
  - C. If Consultant is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental



actions, actions of a third party, or actions or inactions of City, the time for performance shall be extended by a period of time lost by reason of the delay. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.

4. **City Information.** The City agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
  - A. Access to the Area. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, the City shall obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the Work.
  - B. Consideration of the Consultant's Work. The City shall give thorough consideration to all reports, sketches, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of City within a reasonable time so as not to delay the work of the Consultant.
  - C. Standards. The City shall furnish the Consultant with a copy of any standard or criteria, including but not limited to, design and construction standards that may be required in the preparation of the Work for the Project.
  - D. City's Representative. A person shall be appointed to act as the City's representative with respect to the work to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
  
5. **Method of Payment.** The Consultant shall submit to the City, on a monthly basis, an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the City for:
  - A. Progress Payment. For work reimbursed on an hourly basis, the Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation as reasonably required by the City. Each invoice shall contain the City's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract.
  - B. Suspended Work. If any work performed by the Consultant is suspended in whole or in part by the City, the Consultant shall be paid for any services set forth on Exhibit A performed prior to receipt of written notice from the City of such suspension.

- C. Payments for Special Consultants. The Consultant shall be reimbursed for the work of special consultants, as described herein, and for other items when authorized in writing by the City.
- D. Claims. To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
6. **Project Manager and Staffing.** The Consultant has designated Charles Howley to serve on the Project. They shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace the designated staff from the Project without the approval of the City.
7. **Standard of Care.** Consultant shall exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by members of the profession under similar circumstances in Hennepin County, Minnesota. Consultant shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Consultant's breach of this standard of care. Consultant shall put forth reasonable efforts to complete its duties in a timely manner. Consultant shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Agreement. Consultant shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
8. **Audit Disclosure and Data Practices.** Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential, shall not be made available to any individual or organization without the City's prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement. This Agreement is subject to the Minnesota Government Data Practice Act, Minnesota Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practices Act Section 13.02, Subd 7, which is created, collected, received, stored, used, maintained, or disseminated by Consultant in performing any of the functions of the City during performance of this Agreement is subject to the requirements of the Data Practice Act and Consultant shall comply with those requirements as if it were a government entity. All subcontracts entered into by Consultant in relation to this Agreement shall contain similar Data Practices Act compliance language.
9. **Termination.** This Agreement may be terminated by either party by seven (7) days written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the City terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to the Consultant, and the City may retain another consultant to undertake or complete the Work identified herein.

10. **Subcontractor.** The Consultant shall not enter into subcontracts for services provided under this Agreement except as noted in the Scope of Work, without the express written consent of the City. The Consultant shall pay any subcontractor involved in the performance of this Agreement within ten (10) days of the Consultant's receipt of payment by the City for undisputed services provided by the subcontractor. If the Consultant fails within that time to pay the subcontractor any undisputed amount for which the Consultant has received payment by the City, the Consultant shall pay interest to the subcontractor on the unpaid amount at the rate of 1.5 percent per month or any part of a month. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Consultant shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Consultant shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

11. **Independent Consultant.** Consultant is an independent contractor engaged by City to perform the services described herein and as such (i) shall employ such persons as it shall deem necessary and appropriate for the performance of its obligations pursuant to this Agreement, who shall be employees, and under the direction, of Consultant and in no respect employees of City, and (ii) shall have no authority to employ persons, or make purchases of equipment on behalf of City, or otherwise bind or obligate City. No statement herein shall be construed so as to find the Consultant an employee of the City.

12. **Insurance.**

a. **General Liability.** Prior to starting the Work, Consultant shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations by Consultant or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law.

b. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Commercial General Liability	\$1,500,000 property damage and bodily injury per occurrence \$2,000,000 general aggregate \$2,000,000 Products – Completed Operations Aggregate \$100,000 fire legal liability each occurrence \$5,000 medical expense
Comprehensive Automobile	

Liability \$1,000,000 combined single limit each accident  
(shall include coverage for all owned, hired and  
non-owned vehicles.)

Umbrella or Excess Liability \$1,000,000

- c. Commercial General Liability. The Commercial General Liability Policy shall be on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.
- d. Professional Liability Insurance. In addition to the coverages listed above, Consultant shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name the City as an additional insured. It shall be Consultant's responsibility to pay any retention or deductible for the professional liability insurance. Consultant agrees to maintain the professional liability insurance for a minimum of two (2) years following termination of this Agreement.
- e. Consultant shall maintain "stop gap" coverage if Consultant obtains Workers' Compensation coverage from any state fund if Employer's liability coverage is not available.
- f. All policies, except the Worker's Compensation Policy, Automobile Policy, and Professional Liability Policy, shall name the "City of Eden Prairie" as an additional insured on ISO forms CG 20 10 07 04 or CG 20 10 04 13; and CG 20 37 07 04 or CG 20 37 04 13, or their equivalent.
- g. All policies, except the Professional Liability Policy, shall apply on a "per project" basis.
- h. All policies shall contain a waiver of subrogation in favor of the City.
- i. All policies, except for the Worker's Compensation Policy and the Professional Liability Policy, shall be primary and non-contributory.
- j. All policies, except the Worker's Compensation Policy, shall insure the defense and indemnity obligations assumed by Consultant under this Agreement.
- k. Consultant agrees to maintain all coverage required herein throughout the term of the Agreement and for a minimum of two (2) years following City's written acceptance of the Work.
- l. It shall be Consultant's responsibility to pay any retention or deductible for the coverages required herein.
- m. All policies shall contain a provision or endorsement that coverages afforded thereunder shall not be cancelled or non-renewed or restrictive modifications added,

without thirty (30) days' prior notice to the City, except that if the cancellation or non-renewal is due to non-payment, the coverages may not be terminated or non-renewed without ten (10) days' prior notice to the City.

- n. Consultant shall maintain in effect all insurance coverages required under this Paragraph at Consultant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing.
- o. **A copy of the Consultant's Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with City prior to the start of Consultant's Work.** Upon request a copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, City's right to enforce the terms of Consultant's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph.
- p. **Effect of Consultant's Failure to Provide Insurance.** If Consultant fails to provide the specified insurance, then Consultant will defend, indemnify and hold harmless the City, the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the City (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Consultant, its subcontractors, agents, employees or delegates. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the City may require Consultant to:

- i. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- ii. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company.

Consultant will take the action required by the City within fifteen (15) days of receiving notice from the City.

13. **Indemnification.** Consultant will defend and indemnify City, its officers, agents, and employees and hold them harmless from and against all judgments, claims, damages, costs and expenses, including a reasonable amount as and for its attorney's fees paid, incurred or for which it may be liable resulting from any breach of this Agreement by Consultant, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Consultant, its agents, contractors and employees, relative to this Agreement. City will indemnify and hold Consultant harmless from and against any loss for injuries or damages arising out of the negligent acts of the City, its officers, agents or employees.
14. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement ("Information") shall become the property of the City, but Consultant may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of the Consultant, but any use of the Information by the City or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.
15. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
16. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant shall abide by statutes, ordinances, rules, and regulations pertaining to the provisions of services to be provided. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
17. **Mediation.** Each dispute, claim or controversy arising from or related to this agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Eden Prairie unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated

settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

18. **Assignment.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
19. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be honored by the City.
20. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
21. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
22. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.
23. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.
24. **Conflicts.** No salaried officer or employee of the City and no member of the Council of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision renders the Agreement void.
25. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

**Executed as of the day and year first written above.**

CITY OF EDEN PRAIRIE

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

HANSEN THORP PELLINEN OLSON, INC.

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

Its:



March 24, 2014

John Carlon  
City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN 55344

Re: Red Rock Lift Station

Dear John,

As requested, the following estimate for engineering and surveying services are provided for your consideration.

<u>Estimate</u>	<u>Scope of Service</u>
\$ 3,100.00	<b>Existing conditions survey of lift station area.</b> Boundary and topographic survey of the lift station area (approx. 0.25 ac). Easements will be shown based on information provided by the City.
\$ 16,000.00	<b>Lift station reconstruction design and preparation of bidding documents.</b> Fee includes cost estimate and assumes reuse of the existing wet well. Scope includes incorporating the City's new standard electrical control panel and addition of a grinder.
\$ 2,300.00	<b>Bid administration.</b> Includes posting bid documents, answering bidder questions, attending bid opening, compiling a bid tabulation, and a letter of recommendation.
\$ 1000.00	<b>Reimbursables</b>
<u>\$ 22,400.00</u>	<b>TOTAL</b>

7510 Market Place Drive  
Eden Prairie, MN 55344  
952-829-0700  
952-829-7806 fax  
www.htpo.com

Invoices will be submitted based on actual hours worked using a 2.4 multiplier times direct personal expense, and reimbursable expenses incurred (printing, courier, and other out-of-house documents and fees). We will keep you informed of our work progress and the above fee estimate will not be exceeded without prior approval from your office. We invoice our services monthly payable within 30 days.



Howley/Carlton  
March 24, 2014  
Page 2

Thank you for this opportunity to provide our services and feel free to call with any questions.

Sincerely,

**Hansen Thorp Pellinen Olson, Inc.**



Charles J. Howley, P.E., CPESC, LEED AP  
Project Manager



Laurie A. Johnson, P.E.  
Principal

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Agenda		May 6, 2014
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b>
Rick Wahlen Public Works/Utilities	Approve Minnesota Department of Health Source Water Protection Program Grant for \$10,000	VIII.I.

**Requested Action**

Move to: Approve a grant from the State of Minnesota in the amount of \$10,000 for further defining the City’s Source Water Protection Program.

**Synopsis**

The attached Grant Agreement with the Department of Health authorizes the acceptance of \$10,000 to be used for improving the City’s required Source Water Protection Program. The City will apply this grant money towards the cost of monitoring the city’s two new observation wells, the cost of evaluating the data obtained from these wells, the cost of studying the impact of municipal pumping on the city’s water supply aquifers, and the cost of developing a technical report of the above studies.

**Background Information**

Beginning in 2010, the State of Minnesota has made Source Water Protection grants available to qualified water supply systems with the passage of the Minnesota Clean Water Land and Legacy Amendment. This 2013 grant is the third \$10,000 award from the Clean Water Land and Legacy fund to the City of Eden Prairie, and the grant funding has assisted city staff in the important role of pro-actively protecting the source of our public drinking water supply. Public Water Supplies by law must identify potential sources of contamination and take approved steps to prevent contamination of the City’s water supply, and these grants have been instrumental in supporting this endeavor. This year’s grant will support our growing understanding of the direct impact of our own water use on the Jordan-Prairie du Chien aquifer system.

**Attachment**

Grant Agreement

## Minnesota Department of Health Grant Agreement

This grant agreement is between the State of Minnesota, acting through its Commissioner of the Department of Health ("State") and City of Eden Prairie ("Grantee"). Grantee's address is 14100 Technology Drive, Eden Prairie, MN 55344.

### Recitals

1. Under Minnesota Statutes §114D.50 Clean Water Fund, the State is empowered to enter into this Grant Agreement.
2. The State is in need of assisting public water suppliers to protect the source of drinking water.
3. The Grantee represents that it is duly qualified and will perform all the duties described in this agreement to the satisfaction of the State. Pursuant to Minnesota Statutes §16B.98, subd. 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

### Grant Agreement

#### 1. *Term of Agreement*

**1.1 *Effective date*** May 1, 2014, or the date the State obtains all required signatures under Minnesota Statutes §16C.05, subd. 2, whichever is later.

**The Grantee must not begin work until this contract is fully executed and the State's Authorized Representative has notified the Grantee that work may commence.**

**1.2 *Expiration date*** June 30, 2015, or until all obligations have been fulfilled to the satisfaction of the State, whichever occurs first.

**1.3 *Survival of Terms*** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10.1 Government Data Practices; 10.2 Data Disclosure; 14.1 Publicity; 14.2 Endorsement; and 15. Governing Law, Jurisdiction, and Venue.

#### 2. *Grantee's Duties* The Grantee, who is not a State employee, shall:

- Complete to the satisfaction of the State all of the following duties:
  - Observation wells monitoring: the City will obtain surveyed elevations of the top of casing at each monitoring well; perform monthly downloads of water level transducers installed in each well for a period of 12 months and prepare a technical memorandum evaluating observation well data in relation to municipal well flow rates and drawdown data measurements within those municipal wells.
- The Grantee shall use the Clean Water Land and Legacy Amendment logo on all materials that are purchased or produced under this Grant Agreement (equipment, reports to the public, publications, displays, videos). An electronic copy of the logo will be made available to the Grantee. Failure to display the logo may render the Grantee ineligible for reimbursement.

- Upon completion of the project Grantee shall submit a Grant Narrative Report (Exhibit A) and a Grant Invoice (Exhibit B). The Grant Narrative Report and the Grant Invoice shall be due no later than the expiration day of this Grant Agreement.
- On or before the end date of this Agreement, the Grantee shall provide the State with one electronic copy of all final products produced under this Grant Agreement, including reports, publications, software and videos.
- The Grantee shall pay in full any licensed contractor hired for the purpose of completing any work under this Grant Agreement within 10 days of receiving payment from the State.
- The Grantee shall submit an itemized invoice for the total cost of the project.
- In the event the Grantee is unable to begin grant activities or to satisfactorily perform the duties specified in this grant agreement, including but not limited to paying the licensed contractor in full for all work performed by the contractor, the Grantee shall remit to the State within five days of demand all amounts paid to the Grantee pursuant to this Grant Agreement minus any actual expenses incurred and specifically authorized, in advance, by the State and which are documented by adequate invoices acceptable to the State.

**3. Time** The Grantee must comply with all duties within the time requirements described in this Grant Agreement. The State is not obligated to extend this Agreement. In the performance of this Grant Agreement, time is of the essence, and failure to meet a deadline may be a basis for a determination by the State's Authorized Representative that the Grantee has not complied with the terms of the Grant Agreement and require the Grantee to remit to the State all amounts previously paid to the Grantee.

**4. Consideration and Payment**

**4.1 Consideration** The State will pay for all services performed by the Grantee under this Grant Agreement as follows:

**(a) Compensation** The Grantee will be paid according to the following breakdown of costs:

Activity	Grant Amount
Survey groundwater observation wells (consultant, city staff)	\$1,000
Download transducer data (12 months, consultant)	\$4,000
Data evaluation, technical memorandum (consultant)	\$5,000
<b>TOTAL</b>	<b>\$10,000</b>

**(b) Travel Expenses** The Grantee shall not be reimbursed for any travel or subsistence expenses whatsoever

**(c) Total Obligation** The total obligation of the State for all compensation and reimbursements to the Grantee under this Grant Agreement will not exceed \$10,000 (ten thousand dollars).

**4.2 Terms of Payment**

**(a) Invoices** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted in a timely fashion, upon completion of the services.

The State does not pay merely for the passage of time.

(b) All the grant documentation (Grant Narrative Report, Grant Invoice, itemized invoice(s), electronic copies) must be submitted in one packet by either email or mail. The Grantee shall use the following mailing address:

Attn: Cristina Covalschi  
Source Water Protection  
Minnesota Department of Health  
PO Box 64975  
St. Paul, MN 55164-0975

(c) If the final invoice is not received by the State before the end date of this Grant Agreement, the Grantee may forfeit the final payment.

(d) If necessitated by the nature of the project, the Grantee is allowed to reallocate up to 10% of the amount originally awarded for a given expense category to another approved category without obtaining permission from the State. Should the Grantee find it necessary to re-budget the Grant beyond the 10% reallocation allowance, a written or e-mail request must be submitted to the State for approval.

**5. Conditions of Payment** All services provided by Grantee pursuant to this Agreement must be performed to the satisfaction of the State, as determined in the sole discretion of its Authorized Representative. Further, all services provided by the Grantee must be in accord with all applicable federal, State, and local laws, ordinances, rules and regulations. The Grantee will not be paid for work that the State deems unsatisfactory, or performed in violation of federal, State or local law, ordinance, rule or regulation.

## **6. Authorized Representatives**

**6.1 State's Authorized Representative** The State's Authorized Representative for purposes of administering this agreement is Cristina Covalschi, SWP Grants Coordinator, address: 625 Robert Street N, PO Box 64975, Saint Paul, MN 55164-0975, phone: 651-201-4696, email address: Cristina.Covalschi@State.mn.us, or her successor, and has the responsibility to monitor the Grantee's performance and the final authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

**6.2 Grantee's Authorized Representative** The Grantee's Authorized Representative is Robert Ellis, Public Works Director and Rick Wahlen, Manager of Utilities, address: 14100 Technology Drive, Eden Prairie, MN 55344, phone: 952 294 5908. The Grantee's Authorized Representative has full authority to represent the Grantee in fulfillment of the terms, conditions, and requirements of this agreement. If the Grantee selects a new Authorized Representative at any time during this agreement, the Grantee must immediately notify the State.

## **7. Assignment, Amendments, Waiver, and Merger**

**7.1 Assignment** The Grantee shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the same parties who executed and approved this Agreement, or their successors in office.

**7.2 Amendments** If there are any amendments to this Agreement, they must be in writing. Amendments will not be effective until they have been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

**7.3 Waiver** If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or the State's right to enforce it.

**7.4 Merger** This Agreement contains all the negotiations and agreements between the State and the Grantee. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**8. Liability** Each party will be responsible for its own acts and behavior and the results thereof. The liability of the State is as set forth in Minnesota Statutes Section 3.736 and other applicable laws and is subject to the limitations thereof. The liability of the Grantee is as set forth in Minnesota Statutes Chapter 466 and other applicable laws and is subject to the limitations thereof. Nothing herein shall be construed to limit either party from asserting against third parties any defenses or immunities (including common law, statutory and constitutional) it may have or be construed to create a basis for a claim or suit when none would otherwise exist. This provision shall survive the termination of this Agreement.

**9. State Audits** Pursuant to Minnesota Statutes § 16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee, or any other relevant party or transaction, are subject to examination by the State, the State Auditor, and the Legislative Auditor, as appropriate, for a minimum of six

(6) years from the end of this Grant Agreement, receipt and approval of all final reports, or the required period of time to satisfy all State and program retention requirements, whichever is later.

## **10. Government Data Practices and Data Disclosure**

**10.1 Government Data Practices** The Public Entity agrees with respect to any data that it possesses regarding the Grant, the Project, or the operation of the Real Property or Facility, if applicable, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

**10.2 Data Disclosure** Pursuant to Minnesota Statutes § 270C.65, subd. 3, and all other applicable laws, the Grantee consents to disclosure of its social security number, federal employee tax identification number, and Minnesota tax identification number, all of which have already been provided to the State, to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Grantee to file State tax returns and pay delinquent State tax liabilities, if any.

## **11. Ownership of Materials and Intellectual Property Rights**

**11.1 Ownership of Materials** The State shall own all rights, title and interest in all of the materials conceived or created by the Grantee, or its employees or sub-Grantees, either individually or jointly with others and which arise out of the performance of this grant agreement, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form ("materials").

The Grantee hereby assigns to the State all rights, title and interest to the materials. The Grantee shall, upon request of the State, execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights, patents or other forms of protection provided by law for the materials. The materials created under this grant agreement by the Grantee, its employees or sub-Grantees, individually or jointly with others, shall be considered "works made for hire" as defined by the United States Copyright Act. All of the materials, whether in paper, electronic, or other form, shall be remitted to the State by the Grantee. Its employees and any sub-Grantees shall not copy, reproduce, allow or cause to have the materials copied, reproduced or used for any purpose other than performance of the

Grantee's obligations under this grant agreement without the prior written consent of the State's Authorized Representative.

**11.2 Intellectual Property Rights** Grantee represents and warrants that materials produced or used under this grant agreement do not and will not infringe upon any intellectual property rights of another including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Grantee shall indemnify and defend the State, at Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or parts of the materials infringe upon the intellectual property rights of another. Grantee shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this grant agreement, amendments and supplements thereto, which are attributable to such claims or actions. If such a claim or action arises or in Grantee's or the State's opinion is likely to arise, Grantee shall at the State's discretion either procure for the State the right or license to continue using the materials at issue or replace or modify the allegedly infringing materials. This remedy shall be in addition to and shall not be exclusive of other remedies provided by law.

**12. Workers' Compensation** The Grantee certifies that it is in compliance with Minnesota Statutes §176.181, subd. 2, which pertains to workers' compensation insurance coverage. The Grantee's employees and agents, and any contractor hired by the Grantee to perform the work required by this Grant Agreement and its employees, will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees, and any claims made by any third party as a consequence of any act or omission on the part of these employees, are in no way the State's obligation or responsibility.

### **13. Publicity and Endorsement**

**13.1 Publicity** Any publicity given to the program, publications, or services provided resulting from this grant agreement, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee or its employees individually or jointly with others, or any sub-Grantees shall identify the State as the sponsoring agency and shall not be released without prior written approval by the State's Authorized Representative, unless such release is a specific part of an approved work plan included in this grant agreement.

**13.2 Endorsement** The Grantee must not claim that the State endorses its products or services.

### **14. Termination**

**14.1 Termination by the State** The State or Grantee may cancel this Grant Agreement at any time, with or without cause, upon thirty (30) days written notice to the other party.

**14.2 Termination for Cause** If the Grantee fails to comply with any of the provisions of this Grant Agreement, the State may terminate this Grant Agreement without prejudice to the right of the State to recover any money previously paid. The termination shall be effective five business days after the State mails, by certified mail, return receipt requested, written notice of termination to the Grantee at its last known address.

**14.3 Termination for Insufficient Funding** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the work scope covered in this Agreement. Termination must be by written or facsimile notice to the Grantee. The State is not obligated to pay for any work performed after notice and effective date of the termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota legislature, or other funding source, not to appropriate funds.

The State must provide the Grantee notice of the lack of funding within a reasonable time of the State receiving notice of the same.

**15. Governing Law, Jurisdiction, and Venue** This Grant Agreement, and amendments and supplements to it, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this grant agreement, or for breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

IN WITNESS WHEREOF, the parties have caused this grant agreement to be duly executed intending to be bound thereby.

APPROVED:

1. **Grantee**  
*The Grantee certifies that the appropriate persons(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: ABP

Title: Director of Public Works

Date: 4-28-14

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

2. **STATE AGENCY**  
*Grant Agreement approval and certification that STATE funds have been encumbered as required by Minn. Stat. §§16A.15 and 16C.05.*

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Distribution:*

*Agency – Original (fully executed) Grant Agreement  
Grantee  
State Authorized Representative*



<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION: I.C. 14-5856</b>	<b>ITEM NO.:</b>
Mary Krause Public Works/Engineering	Award Contract for Supply of Bituminous Crack Sealant Material to Midstates Equipment and Supply	VIII.J.

**Requested Action**

Move to: Award contract for Supply of Bituminous Crack Sealant Material to Midstates Equipment and Supply in the amount of \$78,462.04.

**Synopsis**

Quotes were received for the supply of bituminous crack sealant material for use in the 2014 Crack Sealing project. Three quotes were received as follows:

Midstates Equipment and Supply	\$ 78,462.04
Brock White Construction Materials	\$ 84,165.00
Sherwin Industries, Inc.	\$ 87,187.50

**Background Information**

Street bituminous crack sealing is an annual street maintenance project in preparation for the 2014 sealcoat project. Crack sealing of bituminous trails, parking lots and recent overlay areas is also done.

The 2014 operating and maintenance budget for street crack sealing is \$135,000 under budget item 1707-6339, with the balance of the funding coming from the CIP Pavement Management fund. The trail and parking lots crack sealing portion of the project is funded through the Parks Division under maintenance. The contract for installation of the crack sealant material was awarded by City Council on April 22 to ASTECH Corporation in the amount of \$169,450.00.

Staff recommends award of the contract for supply of the sealant material to Midstates Equipment and Supply.

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION: #11-5799</b>	<b>ITEM NO.:</b>
Carter Schulze Public Works / Engineering	Approve Additional In-Construction Services Budget with SRF Consulting Group for the northern segment of the Shady Oak Road Improvements	VIII.K.

### **Requested Action**

Move to: Approve additional in-construction services budget with SRF Consulting Group for the northern segment of the Shady Oak Road Improvements in the amount of \$31,250.

### **Synopsis**

SRF Consulting Group is requesting a \$31,250 budget extension for in-construction services for the northern segment of the Shady Oak Road Improvements. The request is a result of unexpected, but necessary changes in the work scope that occurred after execution of the Professional Services Agreement dated August 12, 2012. Staff recommends approval of the additional in-construction services budget.

### **Background Information**

Construction on the project began in October 2012 and has been substantially complete since November of 2013. Final project wrap-up and approval is expected this summer 2014.

The original Professional Services Agreement with SRF Consulting Group for in-construction services for the northern segment of the Shady Road Improvements was for \$802,127. With the 31,250 budget extension, the maximum value of the contract will be revised to \$833,377. More details on the changes are included in the attached letter from SRF Consulting Group.

### **Financial Implications**

As defined in the UHG Developer's Agreement, UHG is responsible for the majority of the costs for the project. In addition Hennepin County will provide a maximum contribution of \$300,000 and the City of Eden Prairie will have a share of approximately \$750,000 which will be funded by Municipal State Aid. The additional in-construction services fees have been accounted for in the overall project budget and the project remains on budget.

### **Attachment**

SRF Consulting Group Letter



ENGINEERS  
PLANNERS  
DESIGNERS

SRF No. 0127891 0090

April 25, 2014

Mr. Carter Schulze, PE  
Senior Project Engineer  
CITY OF EDEN PRAIRIE  
8080 Mitchell Road  
Eden Prairie, MN 55344

SUBJECT: IN-CONSTRUCTION SERVICES FOR PHASE ONE IMPROVEMENTS TO  
SHADY OAK ROAD (HENNEPIN COUNTY CSAH 61) – BUDGET AMENDMENT REQUEST

Dear Mr. Schulze:

As you are aware, our contract for the in-construction services on this project includes a total, not to exceed, fee of \$802,127. We continue to closely monitor project costs -- during peak construction we kept you apprised of progress versus budget, and we have pro-actively worked with the Contractor to complete the project documentation and punch-list in an efficient manner. However, at this time, it has become apparent that we will not be able to complete the project for our current contract amount due to factors beyond our control. We estimate that work completed through the end of April will have exhausted our authorized budget and we respectfully request a budget amendment. The following items have contributed to us over-running our budget amount:

- **Small utility relocations:** Construction staking and observation of small utility relocations was expected. However, a portion of these relocations took place between October of 2012 and March of 2013, during a time when the construction contractor was doing little work on the project. Our staff made project visits and provided staking for the small utility companies at times when the construction contractor was not working.
- **Construction Contractor scheduling and efficiency:** In our opinion, for a majority of the project duration, the Contractor's scheduling of their own crews, as well as subcontractor crews, has resulted in additional time spent on the project. In the fall of 2012 there were several weeks where the Contractor worked on the project, but with a small crew or one subcontractor; the Contractor worked most Saturdays, but with a reduced crew; and the Contractor worked inefficiently through most of the project by continually changing their work plan and the areas they planned to work in. We anticipated certain efficiencies in our staff's work by being able to observe several Contractor operations at the same time. These efficiencies were generally not realized.
- **Project management:** As a result of the Contractor's inefficiencies and difficult scheduling described above, we spent more time than expected reviewing the Contractor's schedule, reviewing options related to staging to assist the Contractor in expediting the project, and holding meetings to keep the Contractor on task to complete this project on time.

[www.srfconsulting.com](http://www.srfconsulting.com)

One Carlson Parkway North, Suite 150 | Minneapolis, MN 55447-4443 | 763.475.0010 Fax: 763.475.2429

*An Equal Opportunity Employer*

Mr. Carter Schulze, PE  
City of Eden Prairie

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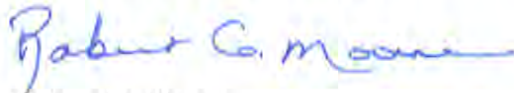
April 25, 2014

At this time we estimate an additional 250 hours will be needed to complete the final project documentation, signal timing tasks and punch-list items. We respectfully request a budget extension of \$31,250.00 to cover the remaining project tasks. We would be happy to meet with you, at your convenience, to discuss this request.

Thank you for your consideration of this contract amendment.

Sincerely,

SRF CONSULTING GROUP, INC.

A handwritten signature in blue ink that reads "Robert G. Moore". The signature is written in a cursive style with a long horizontal flourish at the end.

Robert G. Moore  
Principal

RGM/bls

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Carter Schulze Public Works / Engineering	<b>ITEM DESCRIPTION:</b> #11-5800 Adopt Resolution Approving Cooperative Construction Agreement for the southern segment of the Shady Oak Road Improvements	<b>ITEM NO.:</b> VIII.L.

**Requested Action**

Move to: Adopt resolution approving Cooperative Construction Agreement with MnDOT for the southern segment of the Shady Oak Road Improvements

**Synopsis**

This Cooperative Construction Agreement defines the construction, financial and maintenance responsibilities associated with the southern segment of the Shady Oak Road Improvements (State Project No. 2763-49).

**Background Information**

The Cooperative Construction Agreement details the responsibilities of the City of Eden Prairie and MnDOT in implementing and maintaining the southern segment of the Shady Oak Road Improvements. In regards to maintenance responsibilities, the agreement is consistent with other similar agreements that have been previously approved with MnDOT including the northern Shady Oak Road Improvements. In addition, this agreement references and is consistent with the Construction Cooperative Agreement that was previously approved with Hennepin County.

The southern segment of the Shady Road Improvements will provide additional capacity along Shady Oak Road and includes the widening and reconstruction of Shady Oak Road from approximately 800 feet north of Rowland Road to 600 feet east Flying Cloud Drive. The proposed project will add turn lanes, trails and a median along Shady Oak Road as well as new ramps and a new bridge over Hwy 212. In addition, new traffic signals will be provided at the City West Parkway (Bryant Lake Dr), Highway 212 north and south ramp and Flying Cloud Drive intersections. Construction is anticipated to begin in June of this year and extend through 2015.

**Financial Implications**

The Construction Cooperative Agreement provides for \$7,000,000.00 in cost participation through the State Transportation Economic Development Program.

**Attachments**

- Resolution
- MnDOT Construction Cooperative Agreement

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**RESOLUTION NO. 2014-**

**APPROVE COOPERATIVE CONSTRUCTION AGREEMENT WITH MNDOT  
FOR THE SOUTHERN SEGMENT OF THE  
SHADY OAK ROAD (CSAH 61) IMPROVEMENTS**

**I.C. 11-5800**

**WHEREAS**, the City of Eden Prairie has prepared construction plans for the construction of Shady Oak Road (CSAH 61) from approximately 800 feet north of Rowland Road to 600 east of Flying Cloud Drive; and

**WHEREAS**, a Cooperative Construction Agreement No. 05776 has been prepared by MnDOT to provide for maintenance obligations as well as payment by the State to the City of the State's share of the costs of the Shady Oak road interchange improvements and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 212 at Shady Oak Road within the corporate City Limits under state project No. 2763-49 (T.H. 212=005).

**NOW, THEREFORE, BE IT RESOLVED** by the Eden Prairie City Council that said Cooperative Construction Agreement for State Project No. 2763-49 (T.H. 212=005)(City Project 11-5800) is hereby approved and the Mayor and City Manager are authorized to execute the Agreement on behalf of the City of Eden Prairie.

**ADOPTED** by the Eden Prairie City Council on May 6, 2014

\_\_\_\_\_  
Nancy Tyra-Lukens, Mayor

**ATTEST:**

**SEAL**

\_\_\_\_\_  
Kathleen Porta, City Clerk

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
And  
CITY OF EDEN PRAIRIE  
COOPERATIVE CONSTRUCTION  
AGREEMENT**

<b>State Project Number (S.P.):</b>	<u>2763-49</u>	<b>Original Amount Encumbered</b>
<b>Trunk Highway Number (T.H.):</b>	<u>212=005</u>	<b><u>\$7,000,000.00</u></b>
<b>Bridge No.</b>	<u>2763-27W10</u>	
<b>State Aid Number (S.A.P.):</b>	<u>027-661-050</u>	
<b>State Aid Number (S.A.P.):</b>	<u>181-020-030</u>	
<b>State Aid Number (S.A.P.):</b>	<u>181-106-004</u>	
<b>City Project Number:</b>	<u>11-5800</u>	
<b>Lighting System Feed Point No.</b>	<u>City</u>	
	<u>22216, 22117, 22116,</u>	
<b>Signal System ID</b>	<u>22175</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Eden Prairie acting through its City Council ("City").

**Recitals**

1. The City will perform grading, bituminous surfacing, storm sewer, concrete curb and gutter, water main and sanitary sewer, traffic signals, lighting, landscaping, signing, striping, retaining walls, bridge 27W10, TMS and ADA improvements construction and other associated construction upon, along and adjacent to Trunk Highway No. 212 from 700 feet south of Shady Oak Road to 700 feet north of Shady Oak Road, and on Shady Oak Road from 850 feet north of Rowland Road to 600 feet east of Flying Cloud Drive according to City-prepared plans, specifications and special provisions designated by the City as 11-5800 and by the State as State Project No. 2763-49 (T.H. 212=005)("Project"); and
2. The City has applied for funding through the State Transportation Economic Development ("TED") Program allowing State Trunk Highway funds to be used for the State's share of the Project's construction costs based on MnDOT's Cost Participation Policy. The maximum amount of "TED" funds to be made available for the State's share of the Project's construction, right-of-way, design engineering and construction engineering costs will be capped at \$7,000,000.00; and
3. The City requests the State participate in the costs of the grading, bituminous surfacing, storm sewer, concrete curb and gutter, water main and sanitary sewer, traffic signals, lighting, landscaping, signing, striping retaining walls, bridge 27W10, TMS and ADA improvements construction and the State is willing to participate in the costs of said construction, right-of-way, design engineering and associated construction engineering in amount not to exceed \$7,000,000.00; and
4. A separate traffic signal systems agreement No. 05638, between the State the City of Eden Prairie and Hennepin County will address ownership, operation and maintenance responsibilities associated with this Project; and
5. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

**Agreement**

## 1. Term of Agreement; Survival of Terms; Plans;

- 1.1. **Effective date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 2.4. State Ownership of Improvements; 5. Maintenance by the City; 9. Liability; Worker Compensation Claims; Insurance; 11. State Audits; 12. Government Data Practices; 13. Governing Law; Jurisdiction; Venue; and 15. Force Majeure.
- 1.4. **Plans, Specifications, Special Provisions.** State-approved City plans, specifications and special provisions designated by the City as 11-5800 and by the State as State Project No. 2763-49 (T.H. 212=005) are on file in the office of the City's Engineer and incorporated into this Agreement by reference. ("Project Plans")
- 1.5. **Exhibit.** Exhibit "Hennepin County Agreement No. PW 29-49-13" between Hennepin County and the City of Eden Prairie" is attached and incorporated into this Agreement.

## 2. Right-of-Way Use

- 2.1. **Limited Right to Occupy.** The State grants to the City (and its contractors and consultants) the right to occupy trunk highway right-of-way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction, and may be revoked by the State at any time, with or without cause. Cause for revoking this right of occupancy includes, but is not limited to, breaching the terms of this or any other agreement (relevant to this project) with the State, failing to provide adequate traffic control or other safety measures, failing to perform the construction properly and in a timely manner, and failing to observe applicable environmental laws or terms of applicable permits. The State will have no liability to the City (or its contractors or consultants) for revoking this right of occupancy.
- 2.2. **State Access; Suspension of Work; Remedial Measures.** The State's District Engineer or assigned representative retains the right to enter and inspect the trunk highway right-of-way (including the construction being performed on such right-of-way) at any time and without notice to the City or its contractor. If the State determines (in its sole discretion) that the construction is not being performed in a proper or timely manner, or that environmental laws (or the terms of permits) are not being complied with, or that traffic control or other necessary safety measures are not being properly implemented, then the State may direct the City (and its contractor) to take such remedial measures as the State deems necessary. The State may require the City (and its contractors and consultants) to suspend their operations until suitable remedial action plans are approved and implemented. The State will have no liability to the City (or its contractors or consultants) for exercising its rights under this provision.
- 2.3. **Traffic Control; Worker Safety.** While the City (and its contractors and consultants) are occupying the State right-of-way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (<http://www.dot.state.mn.us/trafficeng/workzone/index.html>). All City, contractor, and consultant personnel occupying the State's right-of-way must be provided with required reflective clothing and hats.
- 2.4. **State Ownership of Improvements.** The State will retain ownership of its trunk highway right-of-way, including any improvements made to such right-of-way under this Agreement, unless otherwise noted. The warranties and guarantees made by the City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City's consultants, and contractor (including its sureties) for non-performance of contract work, for design errors and omissions, and for defects in materials and workmanship. Upon request of the State, the City will undertake such actions as are reasonably necessary to transfer or assign contract



rights to the State and to permit subrogation by the State with respect to claims against the City's consultants and contractors.

### 3. Contract Award and Construction

- 3.1. *Bids and Award.*** The City will receive bids and award a construction contract to the lowest responsible bidder (or best value proposer), subject to concurrence by the State in that award, according to the Project Plans. The contract construction will be performed according to the Project Plans.
- 3.2. *Bid Documents furnished by the City.*** The City will, within 7 days of opening bids for the construction contract, submit to the State's State Aid Agreements Engineer a copy of the low bid and an abstract of all bids together with the City's request for concurrence by the State in the award of the construction contract. The City will not award the construction contract until the State advises the City in writing of its concurrence.
- 3.3. *Rejection of Bids.*** The City may reject and the State may require the City to reject any or all bids for the construction contract. The party rejecting or requiring the rejection of bids must provide the other party written notice of that rejection or requirement for rejection no later than 30 days after opening bids. Upon the rejection of all bids, a party may request, in writing, that the bidding process be repeated. Upon the other party's written approval of such request, the City will repeat the bidding process in a reasonable period of time, without cost or expense to the State.
- 3.4. *Contract Terms.*** The City's contract with its construction contractor(s) must include the following terms:
- A. A clause making the State of Minnesota, acting through its Commissioner of Transportation, an intended third-party beneficiary of the contract with respect to the portion of work performed on the State's right-of-way; and
  - B. A clause requiring the State to be named as an additional insured on any insurance coverage which the contractor is required to provide; and
  - C. A clause stating that any warranties provided by the contractor, for the work performed on the trunk highway, will flow to, and be enforceable by, the State as the owner of such improvements.
- 3.5. *Direction, Supervision and Inspection of Construction***
- A. The contract construction will be under the direction of the City and under the supervision of a registered professional engineer; however, the State participation construction covered under this Agreement will be open to inspection by the State District Engineer's authorized representatives. The City will give the State Aid Agreements Engineer at Roseville five days notice of its intention to start the contract construction.
  - B. Responsibility for the control of materials for the contract construction will be on the City and its contractor and will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".
- 3.6. *Contaminated Soils and Groundwater within the State's Cost Participation Limits.***
- A. ***24 Hour Notification.*** The City will notify the State District Engineer's authorized representative a minimum of 24 hours prior to the contractor beginning the excavation and removal of any contaminated soils that have been identified within the Project limits.
  - B. ***Immediate Notification.*** The City will notify the State District Engineer's authorized representative immediately upon the contractor encountering contaminated soils and/or groundwater in areas that are within the Project limits. The City will confer with the State as to the handling, disposal, and any other issues related to contaminated materials found on State Right-of-Way or import of materials onto State Right-of-Way.
  - C. ***Environmental Consultant.*** The City will provide for an Environmental Consultant to be on site to observe and document the excavation, handling and disposal of contaminated soils that have been

identified within the Project limits. If the contractor encounters contaminated materials in areas not previously identified and upon notification by the City, the Environmental Consultant will be provided to collect and analyze soil and/or groundwater samples to determine contaminant levels and provide oversight of any soil and groundwater handling and disposal. The City will not allow the contractor to excavate any contaminated soil unless the Environmental Consultant is present.

- 3.7. Completion of Construction.** The City will cause the contract construction to be started and completed according to the time schedule in the construction contract special provisions. The completion date for the contract construction may be extended, by an exchange of letters between the appropriate City official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.
- 3.8. Plan Changes.** All changes in the Project Plans and all addenda, change orders and supplemental agreements entered into by the City and its contractor for contract construction must be approved in writing by the State District Engineer's authorized representative.
- 3.9. Compliance with Laws, Ordinances, Regulations.** The City will comply and cause its contractor to comply with all Federal, State and Local laws, and all applicable ordinances and regulations. With respect only to that portion of work performed on the State's trunk highway right-of-way, the City will not require the contractor to follow local ordinances or to obtain local permits.
- 3.10. Construction Documents Furnished by the City.** The City will keep records and accounts that enable it to provide the State, when requested, with the following:
- A. Copies of the City contractor's invoice(s) covering all contract construction.
  - B. Copies of the endorsed and canceled City warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued, certified by an appropriate City official that final construction contract payment has been made.
  - C. Copies of all construction contract change orders and supplemental agreements.
  - D. A certification form, provided by the State, signed by the City's Engineer in charge of the contract construction attesting to the following:
    - i. Satisfactory performance and completion of all contract construction according to the Project Plans.
    - ii. Acceptance and approval of all materials furnished for the contract construction relative to compliance of those materials to the State's current "Standard Specifications for Construction".
    - iii. Full payment by the City to its contractor for all contract construction.
  - E. Copies, certified by the City's Engineer, of material sampling reports and of material testing results for the materials furnished for the contract construction.
  - F. A copy of the "as built" plan sent to the State Aid Agreements Engineer.

#### **4. Right-of-Way; Easements; Permits**

- 4.1.** The City will, without cost or expense to the State, obtain all rights-of-way, easements, construction permits and any other permits and sanctions that may be required in connection with the local and trunk highway portions of the contract construction. Before payment by the State, the City will furnish the State with certified copies of the documents for rights-of-way and easements, construction permits and other permits and sanctions required for State participation construction covered under this Agreement.
- 4.2.** The City will convey to the State by quit claim deed, all newly acquired rights needed for the continuing operation and maintenance of the Trunk Highway, if any, upon completion of the Project, at no cost or expense to the State.
- 4.3.** The City will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings and depiction of utilities affected by the contract construction.

- 4.4. The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City of Eden Prairie to be constructed upon and within the trunk highway right-of-way. Applications for permits will be made on State form "Application for Utility Permit on Trunk Highway Right Of Way" (Form TP2525).
- 4.5. The City will submit to the Minnesota Pollution Control Agency the plans and specifications for the construction or reconstruction of its sanitary sewer facilities to be performed under the construction contract and obtain, under Minnesota Statutes § 115.07 or Minnesota Rules 7001.1030, subpart 2C, either a permit or written waiver from that agency for that construction or reconstruction. The City is advised that under Minnesota Rules 7001.1040, a written application for the permit or waiver must be submitted to the Minnesota Pollution Control Agency at least 180 days before the planned date of the sanitary sewer facility construction or reconstruction.
- 4.6. **Limited Use Permit.** Limited Use Permit No. 2763-0149 between the City and the State has been executed through the District's Right of Way Area Manager, and covers the City's liability responsibilities for the shared use path to be constructed upon the State right-of-way.

## 5. Maintenance by the City

Upon completion of the project, the City will provide the following without cost or expense to the State:

- 5.1. **Roadways.** Maintenance of Shady Oak Road. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing and seal coating and any other maintenance activities according to accepted City maintenance practices.
- 5.2. **Storm Sewers.** Routine maintenance of all non-trunk highway storm sewer facilities construction. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from structures, grates and pipes; repair of minor erosion problems; minor structure repair; and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities.
- 5.3. **Stormwater Treatment Pond and Infiltration Basin Major Maintenance.** Upon completion of S.P. 2763-49 on State right-of-way, the City of Eden Prairie shall share in the cost of future major maintenance of the Pond and Infiltration basin at the southeast quadrant of the interchange between the ramp and Flying Cloud Drive at a rate equal to 72% of the contributing flow. Major maintenance includes, but is not limited to, removal of sediment, repair of erosion problems, structure, apron and pipe repair and replacement and any other major maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities. The City of Eden Prairie shall share in all responsibilities, obligations and liabilities arising out of or by reason of the drainage collecting into and being discharged from the treatment facility. The City of Eden Prairie shall share such responsibilities, obligations and liabilities at rates based on contributing flow as outlined in this paragraph. These ratios may change based on development and alteration of land use in the vicinity. The City of Eden Prairie shall not discharge more drainage into the treatment facility without the written consent of MnDOT.
- 5.4. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 5.5. **Sidewalks.** Maintenance of all sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk markings, mowing grass boulevards (if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
- 5.6. **Shared Use Trails.** Maintenance of all shared use trails construction. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, pavement replacement, mowing, trimming, signing, pavement markings, and any other maintenance activities necessary to perpetuate the shared use trails in a safe and usable condition.

- 5.7. Retaining Walls.** Maintenance of all retaining wall construction. Maintenance includes graffiti removal and any other maintenance activities necessary to perpetuate the walls in a safe, usable and aesthetically acceptable condition.
- 5.8. Lighting.** Maintenance and ownership of the lighting facilities construction. Maintenance includes but is not limited to; replacing faulty luminaries and knocked down or otherwise damaged poles; repairing or replacing underground facilities and wiring; repairing service cabinets, photocells, and all other miscellaneous hardware to keep the lighting facilities in working order; cleaning and re-lamping the luminaries; and if needed, painting the lighting facilities. The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting facility. As owner of the lighting facilities, the City will be responsible for all "Gopher State One Call" locates.
- 5.9. Bridges (over Trunk Highway).** Maintenance and repair of the bridge construction carrying Shady Oak Road traffic over the Trunk Highway. Maintenance and repair includes, but is not limited to, keeping the roadway, bridge deck, shoulders, medians, gutters, sidewalks and trails clear of ice, snow, litter and debris, appropriate disposal of such material, pavement markings, guardrail, and nonstructurally supported signing and any other maintenance activities necessary to perpetuate the bridge in a safe, usable and aesthetically acceptable condition. The State is responsible for inspection and structural maintenance of the bridge, including concrete surfacing, abutments and non-ornamental railings, from bridge approach panel to bridge approach panel.
- 5.10. Additional Drainage.** Neither party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party. The drainage areas served by the storm sewer facilities constructed under the construction contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics Unit at Roseville and is incorporated into this Agreement by reference.

## **6. State Cost and Payment by the State**

- 6.1. State Cost.** \$7,000,000.00 is the State's full and complete lump sum cost for T.H. 212 at Shady Oak Road interchange construction, design engineering and associated construction engineering.
- 6.2. Conditions of Payment.** The State will pay the City the full and complete lump sum amount, in two equal payments, according to the Payment Schedule in paragraph D below, or in the case of low bids, the payment will be the eligible T.H. cost, eligible right of way cost, appropriate design and construction engineering, up to the TED maximum allowable, after the following conditions have been met:
- A.** Encumbrance by the State of the State's full and complete State funded lump sum cost share.
  - B.** Approval by the State's Land Management Director at St. Paul of certified documentation, submitted by the City, for all right-of-way and easement acquisitions required for the contract construction.
  - C.** Execution of this Agreement and transmittal to the City, including a letter advising of the State's concurrence in the award of the construction contract.
  - D.** The State's receipt of a written request from the City for the payment of funds according to the following Payment Schedule. The request will include certification by the City that all necessary parties have executed the construction contract.

### **Payment Schedule**

1<sup>st</sup> Payment = 50 Percent of State's total cost share upon award of the construction contract.

2<sup>nd</sup> Payment = Remainder of State's total cost share upon completion of 50 Percent of the contract construction.

**6.3. Limitations of State Payment; No State Payment to Contractor**

The State's participation in the contract construction is limited to the lump sum amount shown in Article 6, and the State's participation will not change except by a mutually agreed written amendment to this Agreement. The State's payment obligation extends only to the City. The City's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The City's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the City by the City's contractor.

**7. Authorized Representatives**

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

**7.1. The State's Authorized Representative will be:**

Name/Title: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)  
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155  
 Telephone: (651) 366-4634  
 E-Mail: maryanne.kellysonnek@state.mn.us

**7.2. The City's Authorized Representative will be:**

Name/Title: Rod Rue, City Engineer (or successor)  
 Address: 8080 Mitchell Road, Eden Prairie, MN 55344  
 Telephone: 952-949-8314

**8. Assignment; Amendments; Waiver; Contract Complete**

- 8.1. Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 8.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 8.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 8.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**9. Liability; Worker Compensation Claims; Insurance**

- 9.1.** Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

9.3. The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

**10. Nondiscrimination**

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

**11. State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

**12. Government Data Practices**

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

**13. Governing Law; Jurisdiction; Venue**

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**14. Termination; Suspension**

14.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

14.2. *Termination for Insufficient Funding.* The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

14.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

**15. Force Majeure**

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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**STATE ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Purchase Order: \_\_\_\_\_

**CITY OF EDEN PRAIRIE**

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.**

**DEPARTMENT OF TRANSPORTATION**

Recommended for Approval:

By: \_\_\_\_\_  
(District Engineer)

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
(State Design Engineer)

Date: \_\_\_\_\_

**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_  
(With delegated authority)

Date: \_\_\_\_\_

**Agreement No. PW 29-49-13  
County Project No. 1125  
County State Aid Highway No. 61  
City of Eden Prairie  
County of Hennepin**

## **COOPERATIVE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the **County of Hennepin**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "County", and the **City of Eden Prairie**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "City".

### **WITNESSETH:**

**WHEREAS**, the United Health Group (UHG) is building a 1,500,000 square foot development on 72 acres along County State Aid Highway No. (CSAH) 61 (Shady Oak Road) south of Trunk Highway (TH) 62 and north of City West Parkway in the City of Eden Prairie; and

**WHEREAS**, the proposed UHG development will house approximately 6,700 employees and will significantly increase the amount of daily traffic in the area; and

**WHEREAS**, in order to provide the necessary public infrastructure improvement required by the construction of the above mentioned UHG development, the City, the County and the Minnesota Department of Transportation (MnDOT) have been working together to make transportation system improvements along the County State Aid Highway No. (CSAH) 61 (Shady Oak Road) corridor, and at its intersection with Trunk Highway 212 (Flying Cloud Drive); and

**WHEREAS**, the City, in consultation with the County, has hired the consultant firm of SRF Consulting Group Inc. (SRF) to perform preliminary and detail design for the reconstruction of CSAH 61 from south of Trunk Highway 212 to north of Rowland Road as shown in the plans for City Project No. 11-5800 (County Project No. 1125; State Project No. 2763-49; State Aid Project No. 027-661-050; State Aid Project No. 181-106-004; State Aid Project No. 181-020-030), and hereinafter referred to as the Project; and

**WHEREAS**, the City shall be responsible to develop the plans and specifications for the Project and has requested that the County approve said plans and specifications; and

**WHEREAS**, the County has indicated its willingness to approve said plans and specifications; and



**WHEREAS**, the City shall be responsible for all right of way acquisition required for construction of the Project; and

**WHEREAS**, the City and the County desire to establish the terms and conditions by which the right of way and easements required for the Project are to be acquired, and the manner and means by which private utilities located within County right of way are to be relocated as needed to construct the Project; and

**WHEREAS**, it is anticipated that construction of the Project will start in 2014; and

**WHEREAS**, the City or its agents will be responsible for administering construction of the Project and has adequate personnel available to perform the construction staking, testing, inspection and development of as-builts required on the Project; and

**WHEREAS**, the City has requested County participation in the costs to acquire right of way, design and construct the Project; and

**WHEREAS**, the County desires to participate in the costs of the Project; and

**WHEREAS**, included in the Project is the installation of permanent traffic control signal systems at the intersections of CSAH 61 at City West Parkway/Bryant Lake Drive, CSAH 61 at TH 212 West Ramp, CSAH 61 at TH 212 East Ramp, and Shady Oak Road at Flying Cloud Drive; and

**WHEREAS**, the maintenance and operation of the above mentioned traffic control signal systems will be covered in separate agreements between the City, County and the State of Minnesota; and

**WHEREAS**, it is contemplated that said work be carried out by the parties hereto under the provisions of Minnesota Statutes 2005, Section 162.17, Subdivision 1 and Section 471.59.

**NOW THEREFORE, IT IS HEREBY AGREED:**

**I**

The City shall be responsible for the acquisition of all new rights of way, permanent easements, and temporary easements required for the construction the Project.

It is hereby understood that the phrase "responsible for the acquisition of" as used in this Agreement shall be construed to mean the performance of all tasks and duties necessary and legally required to obtain the right to use the subject properties for the purposes set forth in this Agreement.

Said rights may be obtained by, but are not limited to, direct purchase, dedication, donation, or eminent domain.

All new right of way, permanent easements, and temporary easements acquired by the City to construct the Project must meet the approval of the Administrative Manager for the County's Land Acquisition Group or designated representative prior to being incorporated into the plans for the Project.

Upon completion of the Project, all permanent right of way acquired for CSAH 61 as provided herein shall be conveyed to the County by the City. Said conveyance shall be within one year after completion of the Project.

## II

The City and the County recognize that in order to carry out the joint project work, the facilities of one or more private utilities in the Project area rights-of-way (ROW) will need to be relocated due to interference with the means and methods the City and/or the County has selected to carry out the Project work. The City acknowledges that the County is the primary ROW manager of CSAH 61 within the Project. The County acknowledges that the City has an interest in the management of the County ROW within the Project boundaries and may be required to exercise certain rights in the ROW to carry out the Project work.

Accordingly, the County hereby authorizes and delegates to the City any and all ROW management authority that the City deems necessary to carry out the Project work, including but not limited to, the right to require private utilities to relocate their facilities. Prior to the City's exercise of this right, the City shall provide the County twenty-four (24) hours written notice of the City's intended exercise of such a right, including, but not limited to, a description of the scope, duration, and object of the City action. The County further reserves the right to withdraw this delegation at any time or carry out the County's ROW management rights concurrently with the City. The County and City agree that each will cooperate with the other to carry out the intended purposes of the Project and the County will act in ROW management matters to further those purposes as reasonably requested by the City.

If any portion of this provision is deemed unenforceable, all surviving provisions will remain in full force and effect. Nothing herein is intended to limit the authority of the City or the County under Minnesota law to manage ROW in which they have an interest.

## III

The City or its agents shall prepare the necessary plans, specifications and proposals; shall advertise for bids for the construction; receive and open bids pursuant to said advertisement and enter into a contract with the successful bidder at the unit prices specified in the bid of such bidder. The contract will include plans and specifications approved by the County and by the Minnesota Department of Transportation Division of State Aid for Local Transportation, also referenced and

identified State Aid Project No. 027-661-050, State Aid Project No. 181-106-004, State Aid Project No. 181-020-030 and State Project No. 2763-49 respectively, and which said plans and specifications are by this reference made a part hereof.

The City shall also apply for, and comply with, at its sole cost and expense, all permits and approvals from all other governmental or regulatory agencies as may be required to accomplish the Project. Said permits and approvals shall be obtained prior to start of any construction. Copies of said permits shall be given to the County Engineer or designated representative prior to the start of construction activities.

#### IV

The City or its agents will administer the contract and inspect the construction of all the contract work contemplated herewith. However, the County Engineer or designee shall have the right, as the work progresses, to enter upon the job site to make any inspections deemed necessary and shall cooperate with the City's Project Engineer and staff at their request to the extent necessary, but will have no responsibility for the supervision of the work.

The County agrees that the City may make changes in the aforereferenced approved plans or in the character of said contract construction which are reasonably necessary to cause said construction to be in all things performed and completed in a satisfactory manner. It is further agreed by the County that the City may enter into any change orders or supplemental agreements with the City's contractor for the performance of any additional construction or construction occasioned by any necessary, advantageous or desirable changes in plans, within the original scope of the Project. The City shall obtain the approval of the County Engineer or designated representative on said change orders or supplemental agreements. The County will respond to the City's request for approvals within seven (7) calendar days.

#### V

The County will participate in the right of way, construction and engineering costs for the Project. It is understood by the City that the County intends to use County State Aid funds to reimburse the City for the County's share of the Project costs.

It is further understood and agreed by the City that the County's cost participation must be eligible for County State Aid funding and that the County's contribution to the Project's costs must be for right of way, construction and engineering that benefits CSAH 61. The City will to the extent possible first apply the County's contribution to right of way acquisition, then construction costs and lastly engineering.

Accordingly, it is understood and agreed that the County reserves the right not to make payment to the City for its share of the costs for the Project if any action or inaction of the City causes

MnDOT's State Aid Engineer to determine that the County's costs are not eligible for State Aid funding.

The County's cost participation shall be a lump sum amount of Five Million Dollars and No Cents (\$5,000,000.00). The City understands and agrees that the County's total and only cost participation for the Project shall be \$5,000,000.00.

The City shall submit an invoice for one hundred percent (100%) of the County's share of the costs for the Project. The City understands and agrees that submittal of said invoice shall be after an award of a construction contract by the City to the successful bidder for the Project and after January 2, 2015. The City further understands and agrees that said invoice shall include a summary of all Project costs and revenue sources.

Upon approval of said invoice, and attached Project costs and revenue summary, the County will within forty five (45) days, deposit with the City funds totaling the amount of the invoice.

## VI

The City also agrees that any contract let by the City or its agents for the performance of the work included in the Project as provided herein shall include clauses that will: 1) Require the Contractor to defend, indemnify, and hold the County and its officials, officers, agents and employees harmless from any liability, causes of action, judgments, damages, losses, costs or expenses including, without limitation, reasonable attorneys' fees, arising out of or by reason of the acts and/or omissions of the said Contractor, its officers, employees, agents or subcontractors; 2) Require the Contractor to be an independent contractor for the purposes of completing the work provided for in this Agreement; and 3) Require the Contractor to provide and maintain insurance in accordance with the following:

1. Commercial General Liability on an occurrence basis with Contractual Liability and Explosion, Collapse and Underground Property Damage (XCU) Liability coverages:

	<u>Limits</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,500,000
Each Occurrence - Combined Bodily Injury and Property Damage	\$1,500,000

**Hennepin County shall be named as an additional insured for the Commercial General Liability coverage with respect to operations covered under this Agreement.**

2. Automobile Liability:

Combined Single limit each occurrence coverage or the

equivalent covering owned, non-owned, and hired automobiles: \$1,000,000

3. Workers' Compensation and Employer's Liability:

A. Workers' Compensation Statutory

If the Contractor is based outside the State of Minnesota, coverages must apply to Minnesota laws.

B. Employer's Liability – Bodily injury by:

Accident – Each Accident	\$500,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$500,000

4. Professional Liability – Per Claim \$1,500,000  
Aggregate \$2,000,000

It understood and agreed by the parties hereto that the above listed Professional Liability insurance will not be required in any construction contract let by City if the City's Contractor is not required to perform design engineering as part of said construction contract.

An umbrella or excess policy over primary liability coverages is an acceptable method to provide the required insurance limits.

The above subparagraphs establish minimum insurance requirements. It is the sole responsibility of the City's Contractor to determine the need for and to procure additional insurance which may be needed in connection with said Project.

All insurance policies shall be open to inspection by the County and copies of policies shall be submitted to the County upon written request.

## VII

It is understood and agreed that upon completion of any and all improvements proposed herein, all street lighting, water distribution system components, sanitary sewer, concrete sidewalk, bituminous walks and trails, concrete driveway, benches, landscaping and associated landscaping structures, fencing and all municipal street construction included in said improvement shall be the property of the City and all maintenance, restoration, repair, replacement or other work or services required thereafter shall be performed by the City at no expense to the County.

It is further understood and agreed that upon completion of the project the City, at its sole cost and expense, will perform all routine maintenance on the retaining walls and retaining wall fencing constructed as a part of the Project. In the event, at any time in the future, that the retaining walls constructed as a part of the Project are rehabilitated and/or replaced the County agrees to participate in fifty (50) percent of the costs of rehabilitation and/or replacement for said retaining walls and/or integral retaining wall fencing.

Upon completion of the Project the County shall, at its own cost and expense, retain ownership and maintenance responsibilities for those portions of the roadway storm sewer drainage system functioning as catch basins and associated lead pipes that are within or between the outermost curb lines of the County roadways as well as those within the radius return limits of intersecting municipal streets. All other components of the roadway storm sewer drainage system, constructed as a part of this Project including but not limited to all trunk lines, manholes and drainage ponds shall become the property of the City or MnDOT, and shall be maintained by the City or MnDOT. In the event, at any time in the future, the storm water trunk lines constructed as part of this Project are reconditioned and/or replaced, the costs of reconditioning and/or replacement shall be apportioned between the County and the City by contributing flow.

It is hereby understood that the County requires an operational clear zone behind the face of curb for storage of snow removed from County roadways. The City hereby agrees that the City shall be responsible for the removal of any snow including that placed on the sidewalks and/or pedestrian/bicycle paths as a result of the County's snow removal operations on CSAH 61 within the limits of the Project. This paragraph is not intended to confer a benefit upon any third party and the City's decision to remove snow from the sidewalks and/or pedestrian/bicycle paths shall be made by the City at its sole discretion pursuant to its policy on removal of snow and ice from sidewalks and/or pedestrian/bicycle paths.

All questions of maintenance responsibilities that may arise shall be jointly resolved by the City's Director of Public Works and the County's Road and Bridge Operations Division Engineer.

## VIII

The City shall install, cause the installation of, or perpetuate the existence of an adequate three wire, 120/240 volt, single phase, alternating current electrical power connection to the traffic control signals and integral street lights located on CSAH 61 and included in the Project, at the sole cost and expense of the City. Further, the City shall provide the electrical energy for the operation for said traffic control signals and integral streetlights, at its sole cost and expense.

## IX

The City shall not revise by addition or deletion, nor alter or adjust any component, part, sequence, or timing of the traffic control signals located on CSAH 61 and included in the Project,

however, nothing herein shall prohibit prompt, prudent action by properly constituted authorities in situations where a part of such traffic control signals may be directly involved in an emergency.

## X

It is understood that the EVP Systems provided with the traffic control signals located on CSAH 61 and included in the Project, shall be installed, operated, maintained or removed in accordance with the following conditions and requirements:

1. Emitter units may be installed and used only on vehicles responding to an emergency as defined in Minnesota Statutes Chapter 169.01, Subdivision 5 and 169.03. Upon request, the City will provide the County Engineer or his designated representative a list of all such vehicles with emitter units.
2. Malfunctions of EVP Systems shall be reported to the County immediately.
3. In the event said EVP Systems or components are, in the opinion of the County, being misused or the conditions set forth herein are violated, and such misuse or violation continues after receipt by the City of written notice thereof from the County, the County shall remove the EVP Systems. Upon removal of the EVP Systems pursuant to this paragraph, the field wiring, cabinet wiring, detector receivers, infrared detector heads, indicator lamps and all other components shall become the property of the County.
4. All timing of said EVP Systems shall be determined by the County.

## XI

As part of said Project, "No-Parking" signs will be installed as represented in the plans and the City, at its expense, shall provide the enforcement for the prohibition of on-street parking on those portions of CSAH 61 constructed under this Project recognizing the concurrent jurisdiction of the Sheriff of Hennepin County.

Any modification of the above parking restrictions shall not be made without first obtaining a resolution from the Hennepin County Board of Commissioners permitting said modification.

It is further agreed that the City shall, at its own expense, remove and replace all City owned signs that are within the construction limits of said Project.

## XII

Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. The County's and the City's liability is governed by the provisions of Minnesota Statutes, Chapter 466.

The County and the City each warrant that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program.

### XIII

The City agrees to defend, indemnify and hold harmless the County, its officials, officers, agents, volunteers and employees, from any liabilities, claims, causes of action, judgments, damages, losses, costs or expenses, including, reasonable attorneys' fees, resulting directly or indirectly from any act or omission of the City, its contractors, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable for related to the ownership, maintenance, existence, restoration, repair or replacement of the afore defined City owned improvements constructed as part of the Project. The City's liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 or other applicable law.

The County agrees to defend, indemnify, and hold harmless the City, its officials, officers, agents, volunteers, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorneys' fees, resulting directly or indirectly from any act or omission of the County, its contractors, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable related to the ownership, maintenance, existence, restoration, repair or replacement of the afore defined County owned improvements constructed as part of the Project. The County's liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 or other applicable law.

### XIV

All records kept by the City and the County with respect to the Project shall be subject to examination by the representatives of each party hereto.

### XV

It is further agreed that any and all employees of the City and all other persons engaged by the City in the performance of any work or services required or provided for herein to be performed by the City shall not be considered employees of the County, and that any and all claims that may or might arise under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the County.

Also, any and all employees of the County and all other persons engaged by the County in the performance of any work or services required or provided for herein to be performed by the County shall not be considered employees of the City, and that any and all claims that may or might arise under



the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the City.

**XVI**

In order to coordinate the services of the County with the activities of the City so as to accomplish the purposes of this Agreement, the Hennepin County Engineer or designated representative shall manage this Agreement on behalf of the County and serve as liaison between the County and the City.

In order to coordinate the services of the City with the activities of the County so as to accomplish the purposes of this Agreement, the City Engineer or designated representative shall manage this Agreement on behalf of the City and serve as liaison between the City and the County.

**XVII**

It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

**XVIII**

The whereas clauses are incorporated herein and are hereby made a part of this Agreement.

**XIX**

The provisions of Minnesota Statutes 181.59 and of any applicable local ordinance relating to civil rights and discrimination and the Affirmative Action Policy statement of Hennepin County shall be considered a part of this Agreement as though fully set forth herein.

*(this space left intentionally blank)*

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

**CITY OF EDEN PRAIRIE**

(Seal)

By: [Signature]  
Mayor

Date: 1/7/14

And: [Signature]  
Manager

Date: 1/7/14

**COUNTY OF HENNEPIN**

**ATTEST:**

By: [Signature]  
Deputy Clerk of the County Board

Date: 4.1.14

By: [Signature]  
Chair of its County Board

Date: 4.1.14

**APPROVED AS TO FORM:**

By: [Signature]  
Assistant County Attorney

Date: 12/5/13

And: [Signature]  
County Administrator

Date: [Signature]

And: [Signature]  
Assistant County Administrator, Public Works

Date: 2/24/2014

**APPROVED AS TO EXECUTION:**

By: [Signature]  
Assistant County Attorney

Date: 4/8/14

**RECOMMENDED FOR APPROVAL**

By: [Signature]  
Director, Transportation Department  
and County Highway Engineer

Date: 2/7/14



OFC 952 949 8300  
FAX 952 949 8390  
TDD 952 949 8399

8080 Mitchell Rd  
Eden Prairie, MN  
55344-4485

[edenprairie.org](http://edenprairie.org)

**RESOLUTION NO. 2014-11**

**STATE OF MINNESOTA )  
COUNTY OF HENNEPIN ) ss  
CITY OF EDEN PRAIRIE )**

I, the undersigned, being the duly qualified and acting City Clerk of the City of Eden Prairie, hereby certify that the attached and foregoing is a true and correct copy of a resolution duly adopted by the City Council of Eden Prairie at its meeting on January 7, 2014, as the same is recorded in the minutes of the meeting of such Council for said date, on file and of record in my office.

Dated this 8<sup>th</sup> day of January, 2014.

Kathleen A. Porta, City Clerk  
City of Eden Prairie

**SEAL**

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**RESOLUTION NO. 2014-11**

**APPROVE CONSTRUCTION COOPERATIVE AGREEMENT  
WITH HENNEPIN COUNTY FOR THE  
SOUTHERN SEGMENT OF THE  
SHADY OAK ROAD (CSAH 61) IMPROVEMENTS  
I.C. 11-5800**

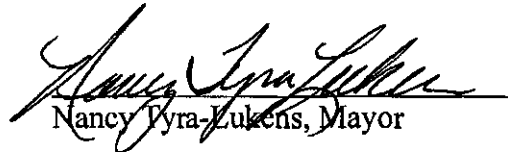
**WHEREAS**, the City of Eden Prairie is preparing construction plans for the construction of Shady Oak Road (CSAH 61) from approximately 850 feet north of Rowland Road to 600 feet east of Flying Cloud Drive; and

**WHEREAS**, the construction plans are consistent with the approved layout; and

**WHEREAS**, a Construction Cooperative Agreement has been prepared by Hennepin County which identifies the maintenance and financial obligations for the construction of said improvements.

**NOW, THEREFORE, BE IT RESOLVED** by the Eden Prairie City Council that said Construction Cooperative Agreement No. PW 29-49-13 for County Project No. 1125 (City Project 11-5800) is hereby approved and the Mayor and City Manager are authorized to execute the Agreement on behalf of the City of Eden Prairie.

**ADOPTED** by the Eden Prairie City Council on January 7, 2014.

  
Nancy Tyra-Lukens, Mayor

**ATTEST:**

**SEAL**

  
Kathleen Porta, City Clerk

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Carter Schulze Public Works / Engineering	<b>ITEM DESCRIPTION:</b> #11-5800 Approve acquisition of Parcel 31 for the southern segment of the Shady Oak Road Improvements	<b>ITEM NO.:</b> VIII.M.

**Requested Action**

Move to: Approve acquisition of Parcel 31 for the southern segment of the Shady Oak Road Improvements in the amount of \$105,393.

**Synopsis**

In addition to the negotiated value of the land for parcel 31, the total agreed amount includes the value of two mature Oak trees affected by the project, tree protection measures for the remaining trees adjacent to the project such as root and fertilizer treatment and pre-root trimming, mainline irrigation relocation, and appraisal costs incurred by the property owner.

**Background Information**

The City Council previously authorized the City Engineer and City Attorney to pursue the acquisition of easements for the southern segment of the Shady Oak Road Improvements. After negotiations between the City and the property owner over the value of the land and trees, a settlement amount was agreed to by both parties.

**Attachment**

Memorandum of Agreement



ENGINEERS  
PLANNERS  
DESIGNERS

SRF No. 7577-0290

## MEMORANDUM OF AGREEMENT

### Shady Oak Road Improvements Phase II

Project No.: SAP 181-020-030; SAP 027-661-050; CP 11-5800/ City of Eden Prairie  
Parcel No. 31  
Fee Owner(s): Wooddale Church

On this 28<sup>th</sup> day of April, 2014, Wooddale Church (sometimes hereinafter referred to as "Owner"), owner of the above described parcel of property located in the City of Eden Prairie, State of Minnesota (sometimes hereinafter referred to as the "City"), did execute conveyances of certain permanent and temporary easements over, across and under the aforesaid real estate to the City of Eden Prairie and, as directed by the City of Eden Prairie, to the County of Hennepin (the "County").

This agreement is now made and entered as a Memorandum of all the terms, and the only terms, agreed upon in connection with the above transaction. It is hereby acknowledged and agreed upon between the parties that:

1. The Owner has been furnished with the approved estimate of just compensation for the property acquired and a summary statement of the basis for the estimate. The Owner understands that the acquired property is for use in connection with the construction of the Shady Oak Road project.
2. The Owner has no knowledge of any direct, indirect, present or contemplated future personal interest in the property or in any benefits from the acquisition of the property on the part of SRF's Representatives.
3. That in full compensation for the conveyance of said property, the City of Eden Prairie shall pay the sum of **\$89,848.00** for land owned and damages suffered by all interested parties. Owner understands that payment by the City of Eden Prairie must await processing of a voucher. Payment shall be made payable to both Wooddale Church and Wells Fargo Bank, National Association ("Wells Fargo"), or as otherwise directed by Wooddale Church and Wells Fargo.
4. If requested by the acquiring agency, the Owner will cooperate and adjust for clerical errors any or all documentation if deemed necessary or desirable at the reasonable discretion of the acquiring agency. The Owner agrees to comply with this request within 30 days from the date of mailing the request.
5. Additional:
  - a. In addition to the payment listed above, the City shall make payment to Wooddale Church in the amount of \$4,530.00 for root bed treatment and deep root fertilizer treatment for trees which are adjacent to the acquired property and may be affected by the Shady Oak Road project. The City shall also make payment to Wooddale Church of \$2,215.00 for root pruning of these trees in an area where construction digging is going to be taking place. Wooddale Church is solely responsible for conducting such treatments and the City has no responsibility to do so.
  - b. In addition to the payment listed above, the City shall make payment to Wooddale Church in the amount of \$3,800.00 for relocation of the main water line for the sprinkler system along Shady Oak Road, which runs adjacent and parallel to Shady Oak Road within the acquired property (the "Main Sprinkler Supply Line"). Wooddale Church is solely responsible for relocating the Main

Sprinkler Supply Line and the City has no responsibility to do so. Wooddale Church shall relocate the Main Sprinkler Supply Line to a location outside of the acquired property and existing rights-of-way, in a location suitable for use after the construction for the Shady Oak Road project is completed.

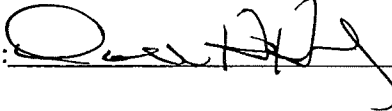
- c. In addition to the payment listed above, the City shall make payment to Wooddale Church in the amount of \$5,000.00 as reimbursement for appraisal costs incurred by Wooddale in connection with the Shady Oak Road project.
- d. The City shall, at its own expense, remove the trees identified as trees to be removed in **Exhibit A**, attached hereto. The City shall not be liable to Wooddale Church for other trees which die as a result of construction activity in the acquired property or existing rights-of-way, except to the extent caused by construction activity beyond the Construction Fencing (defined below) or a breach of the City's obligations under this Agreement.
- e. The City shall, at its own expense, place temporary construction fencing ("Construction Fencing") along the line labeled "Construction Limits" on Exhibit A, with adjustments as are needed to protect the trees that are to remain, as shown on Exhibit A (the "Retained Trees"). Placement of the fence will be coordinated with Wooddale Church. Such fencing shall be removed between construction periods on the Shady Oak Road project in 2014 and 2015, and after completion of construction activities in the area of the Retained Trees.
- f. The City shall, at its own expense, restore all disturbed areas within the temporary and permanent easements to their original condition, including replacing or repairing sprinkler systems and turf, except that the Main Sprinkler Supply Line shall be relocated by Wooddale Church as provided in Section 5.b above. For avoidance of doubt, the City's obligations under this paragraph shall include replacing and/or repairing sprinkler heads that are disturbed by construction activities along with the feeder supply lines that run from the Main Sprinkler Supply Line to the sprinkler heads. The City and Wooddale Church shall cooperate and coordinate with respect to all restoration activities, including determining the location of sprinkler heads after relocation activities.
- g. Wooddale Church has deposited with Gregerson, Rosow, Johnson & Nilan, Ltd. an executed Quit Claim Deed in favor of Hennepin County and an executed Temporary Construction Easement Grant in favor of the City (together, the "Conveyance Documents"), in trust, to be held until such time as (i) consent to the conveyances has been obtained from Wells Fargo, and (ii) payment of all sums due from the City to Wooddale Church under this agreement has been delivered to Wooddale Church (collectively, the "Pre-Delivery Requirements"). The parties acknowledge and agree that such deposit of the Conveyance Documents shall not constitute delivery of the same to the City or the County. In the event that the Pre-Delivery Requirements are not satisfied within ninety (90) days after the date of this agreement, the Conveyance Documents shall promptly be returned to Wooddale Church and shall be void, and of no effect, and this agreement shall automatically terminate and the parties shall have no further rights or obligations hereunder, except with respect to any breach of this agreement prior to such termination. Gregerson, Rosow, Johnson & Nilan, Ltd. will not deliver the Conveyance Documents to the City or County, or record or register them, without written approval from either Wooddale Church or its counsel.
- h. The City will not begin any construction in, or alter in any way, the acquired property until the deeds have been delivered to the City and/or County in accordance with Section 5.g above.
- i. Wooddale Church will undertake in good faith to promptly use reasonable efforts to acquire consent from Wells Fargo to the conveyances reflected in the Conveyance Documents.
- j. Construction shall be substantially in conformance with the plans attached hereto as **Exhibit A**, except that the plans shall be revised to steepen the slope adjacent to the new recreational trail to increase the distance from the construction limits to the trunks of Retained Trees numbered 6 through 10 on **Exhibit B** attached hereto. Any material change to these plans which pertains to the Wooddale Church property or access thereto shall be presented to Wooddale Church. Any material change to these plans pertaining to the Wooddale Church property or access thereto shall

be subject to the advance written approval of Wooddale Church, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that there shall be no change to the plans that would eliminate construction of the new turn lanes for traffic entering the Wooddale Church property from Shady Oak Road and Bryant Lake Road, or that would eliminate construction of the planned drainage improvements at the entrance to the Wooddale Church property from Shady Oak Road.

- k. The City, at its cost, will coordinate and cooperate with Wooddale Church on traffic diversion, direction, and congestion during the Shady Oak Road project so as to maintain commercially reasonable access to Wooddale Church, including without limitation posting temporary signage as is reasonably required from time to time.
- l. In the event of a breach of this agreement, each party shall have available to it all remedies available at law and in equity. Any prevailing party in litigation over this agreement shall be entitled to recover reasonable costs, including without limitation consultants' and attorneys' fees.

It is understood and agreed that the entire agreement of the parties is contained in this Memorandum of Agreement and the conveyance documents dated as of the date of this Agreement, and that these Agreements supersede all oral agreements and negotiations between the parties.

Wooddale Church

By: 

Its: Senior Pastor

City of Eden Prairie

By: 

Its: Public Works Director



**EXHIBIT A**

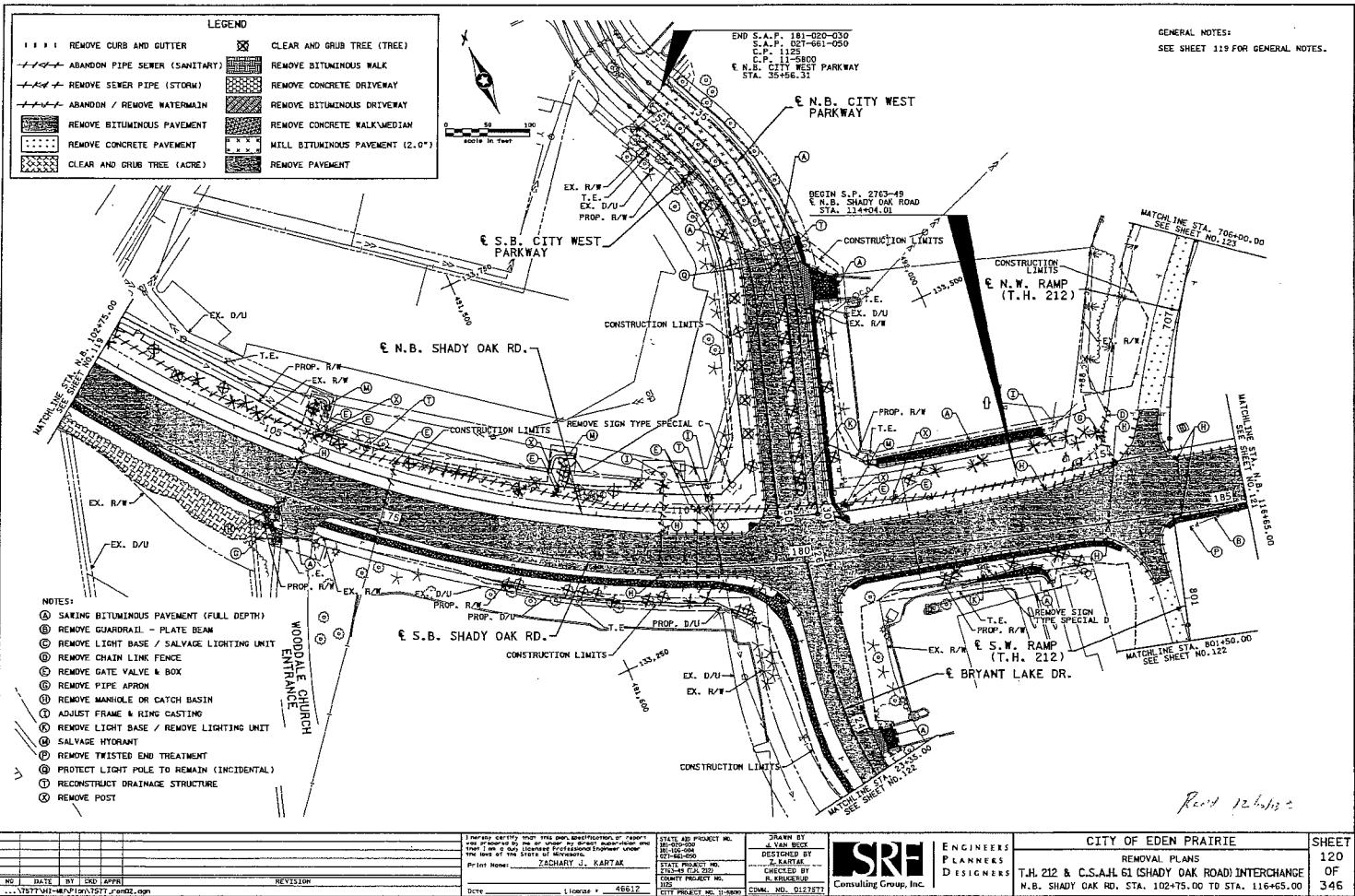
**Construction Plans**

[See the following 5 pages]

**EXHIBIT B**

**Depiction of Trees**

[See the following page]



**LEGEND**

--- --- --- ---	REMOVE CURB AND GUTTER	☒	CLEAR AND GRUB TREE (TREE)
--- --- --- ---	ABANDON PIPE SEWER (SANITARY)	▨	REMOVE BITUMINOUS WALK
--- --- --- ---	REMOVE SEWER PIPE (STORM)	▩	REMOVE CONCRETE DRIVEWAY
--- --- --- ---	ABANDON / REMOVE WATERMAIN	▧	REMOVE BITUMINOUS DRIVEWAY
▨	REMOVE BITUMINOUS PAVEMENT	▩	REMOVE CONCRETE WALK/MEDIAN
▩	REMOVE CONCRETE PAVEMENT	▧	MELL BITUMINOUS PAVEMENT (2.0")
☒	CLEAR AND GRUB TREE (ACRE)	▨	REMOVE PAVEMENT

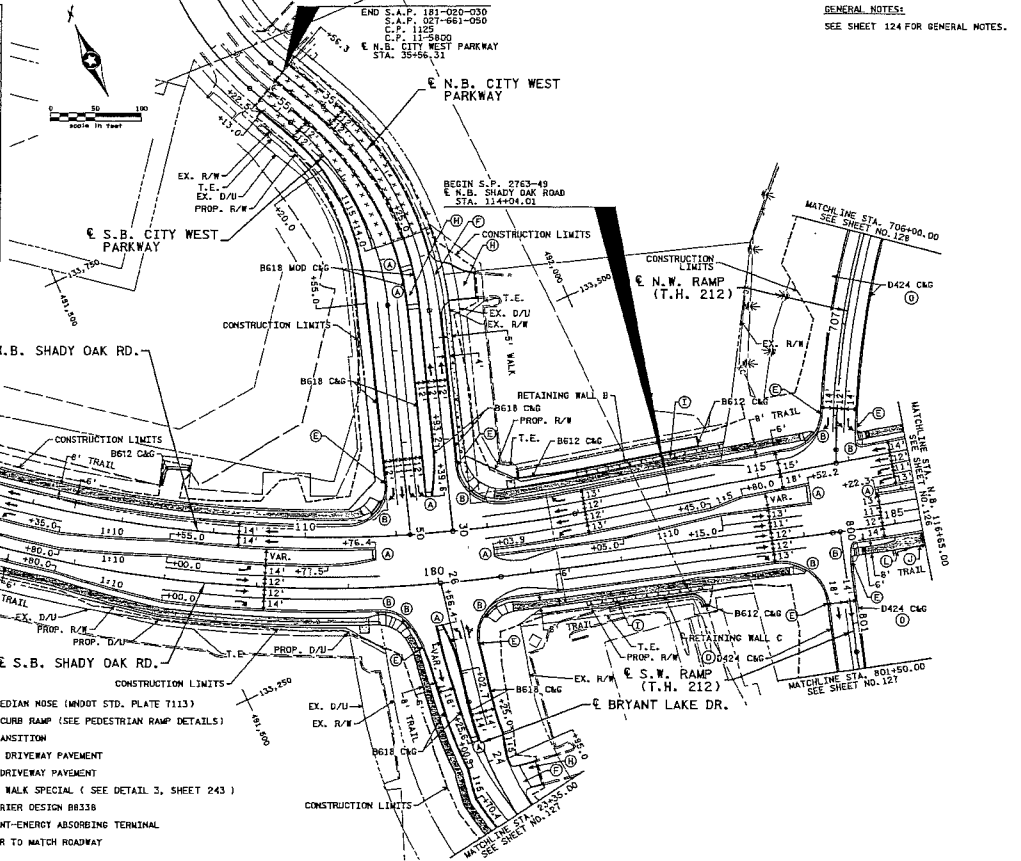
GENERAL NOTES:  
SEE SHEET 119 FOR GENERAL NOTES.

- NOTES:**
- ① SARKING BITUMINOUS PAVEMENT (FULL DEPTH)
  - ② REMOVE GUARDRAIL - PLATE BEAM
  - ③ REMOVE LIGHT BASE / SALVAGE LIGHTING UNIT
  - ④ REMOVE CHAIN LINK FENCE
  - ⑤ REMOVE GATE VALVE & BOX
  - ⑥ REMOVE PIPE APRON
  - ⑦ REMOVE MANHOLE OR CATCH BASIN
  - ⑧ ADJUST FRAME & KING CASTING
  - ⑨ REMOVE LIGHT BASE / REMOVE LIGHTING UNIT
  - ⑩ SALVAGE HYDRANT
  - ⑪ REMOVE TWISTED END TREATMENT
  - ⑫ PROTECT LIGHT POLE TO REMAIN (INCIDENTAL)
  - ⑬ RECONSTRUCT DRAINAGE STRUCTURE
  - ⑭ REMOVE POST

Rev'd 12/6/13

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly licensed professional engineer under the laws of the State of Illinois.		STATE AID PROJECT NO. 11-5800 COUNTY PROJECT NO. 212	DRAWN BY: J. VAN RICE DESIGNED BY: ALBERTA CHECKED BY: R. BRUNERUP CONSULTING GROUP, INC.	<b>CITY OF EDEN PRAIRIE</b> REMOVAL PLANS T.H. 212 & C.S.A.H. 61 (SHADY OAK ROAD) INTERCHANGE N.B. SHADY OAK RD. STA. 102+75.00 TO STA. 116+65.00	SHEET 120 OF 346
NO. DATE BY (E)D (A)P(R)	REVISION	DATE: 1/28/13 LICENSE NO. 48612	STATE AID PROJECT NO. 11-5800 COUNTY PROJECT NO. 212 CITY PROJECT NO. 11-5800	SHEET NO. 112 SEE SHEET NO. 112	MATCH LINE STA. 106+00.00 SEE SHEET NO. 123

STREET RADII				
RADIUS	ALIGNMENT	STATION	OFFSET	DESCRIPTION
20.0'	S.B. SHADY OAK ROAD	175+45.19	44.0' (RT)	ROADWAY
20.0'	S.B. SHADY OAK ROAD	175+26.07	14.0' (RT)	ROADWAY
200.0'	S.B. SHADY OAK ROAD	178+77.48	226.0' (L)	MEDIAN
40.0'	S.B. SHADY OAK ROAD	172+20.58	66.0' (RT)	ROADWAY
40.0'	S.B. SHADY OAK ROAD	162+76.45	65.0' (RT)	ROADWAY
150.0'	S.B. SHADY OAK ROAD	182+09.32	135.0' (RT)	DRIVEWAY ENTRANCE
15.0'	S.B. SHADY OAK ROAD	182+71.87	65.0' (RT)	DRIVEWAY CURB
50.0'	S.B. SHADY OAK ROAD	183+65.77	76.0' (RT)	ROADWAY
5.0'	S.B. SHADY OAK ROAD	184+55.64	12.0' (RT)	ROADWAY
40.0'	N.B. SHADY OAK ROAD	110+44.11	64.0' (LT)	ROADWAY
45.0'	N.B. SHADY OAK ROAD	112+22.40	70.0' (LT)	ROADWAY
40.0'	N.B. SHADY OAK ROAD	114+00.39	68.0' (LT)	ROADWAY
5.0'	N.B. SHADY OAK ROAD	116+17.28	13.0' (LT)	ROADWAY
150.0'	BRYANT LAKE DRIVE	25+00.11	181.0' (L)	ROADWAY
200.0'	BRYANT LAKE DRIVE	25+40.74	202.0' (L)	MEDIAN
5.0'	BRYANT LAKE DRIVE	25+88.21	25.0' (RT)	DRIVEWAY ENTRANCE
5.0'	BRYANT LAKE DRIVE	25+81.78	25.0' (RT)	DRIVEWAY ENTRANCE
200.0'	N.B. CITY WEST PARKWAY	30+33.20	212.0' (LT)	MEDIAN
15.0'	N.B. CITY WEST PARKWAY	31+33.82	21.0' (RT)	DRIVEWAY ENTRANCE
15.0'	N.B. CITY WEST PARKWAY	33+01.82	21.0' (RT)	DRIVEWAY ENTRANCE
24.5'	N.B. CITY WEST PARKWAY	33+46.37	16.7' (RT)	DRIVEWAY ENTRANCE
150.0'	S.B. RAMP T.H. 212	800+45.40	138.0' (LT)	ROADWAY

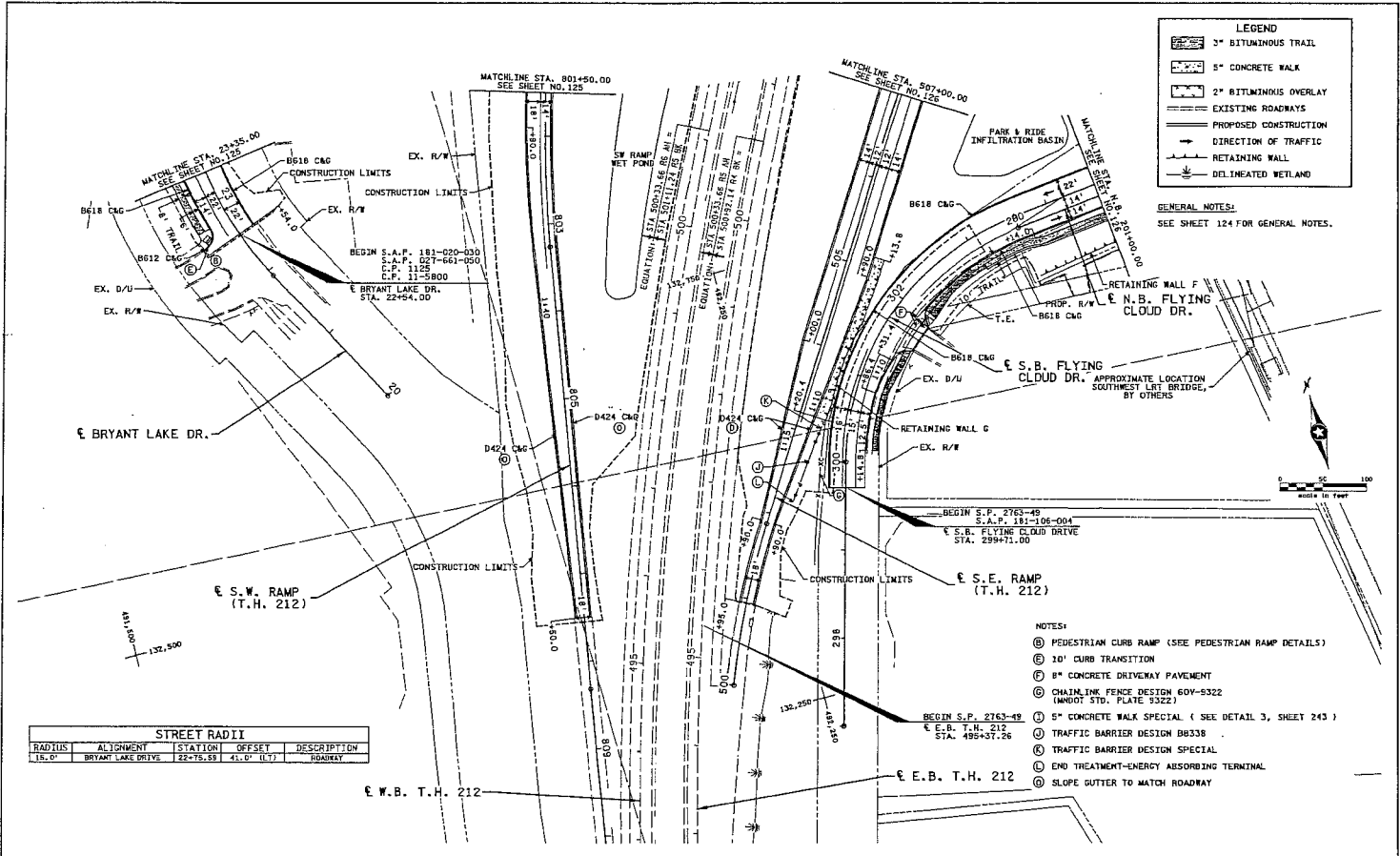


GENERAL NOTES:  
SEE SHEET 124 FOR GENERAL NOTES.

LEGEND	
	3" BITUMINOUS TRAIL
	5" CONCRETE WALK
	2" BITUMINOUS OVERLAY
	EXISTING ROADWAYS
	PROPOSED CONSTRUCTION
	DIRECTION OF TRAFFIC
	RETAINING WALL
	DELINEATED WETLAND

- NOTES:
- (A) CONSTRUCT MEDIAN NOSE (WOOD STD. PLATE 7113)
  - (B) PEDESTRIAN CURB RAMP (SEE PEDESTRIAN RAMP DETAILS)
  - (C) 10" CURB TRANSITION
  - (D) 8" CONCRETE DRIVEWAY PAVEMENT
  - (E) BITUMINOUS DRIVEWAY PAVEMENT
  - (F) 5" CONCRETE WALK SPECIAL (SEE DETAIL 3, SHEET 243)
  - (G) TRAFFIC BARRIER DESIGN B8338
  - (H) END TREATMENT-ENERGY ABSORBING TERMINAL
  - (I) SLOPE CUTTER TO MATCH ROADWAY

I hereby certify that the preparation of these plans was done by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Wisconsin. Print Name: ZACHARY J. KARTAK Date: _____ License # 45612		STATE AID PROJECT NO. 10-00000 DESIGNED BY J. KARTAK CHECKED BY B. BRUNSON CITY PROJECT NO. 0-9806 COMM. NO. 0121211	DRAWN BY S. VAN NEST DESIGNED BY J. KARTAK CHECKED BY B. BRUNSON		ENGINEERS PLANNERS DESIGNERS	CITY OF EDEN PRAIRIE CONSTRUCTION PLANS T.H. 212 & C.S.A.H. 61 (SHADY OAK ROAD) INTERCHANGE N.B. SHADY OAK RD. STA. 102+75.00 TO STA. 116+45.00	SHEET 125 OF 346
--	--	--	--	--	------------------------------------	--	---------------------------



**LEGEND**

- 3" BITUMINOUS TRAIL
- 5" CONCRETE WALK
- 2" BITUMINOUS OVERLAY
- EXISTING ROADWAYS
- PROPOSED CONSTRUCTION
- DIRECTION OF TRAFFIC
- RETAINING WALL
- DELINEATED WETLAND

**GENERAL NOTES:**  
SEE SHEET 124 FOR GENERAL NOTES.

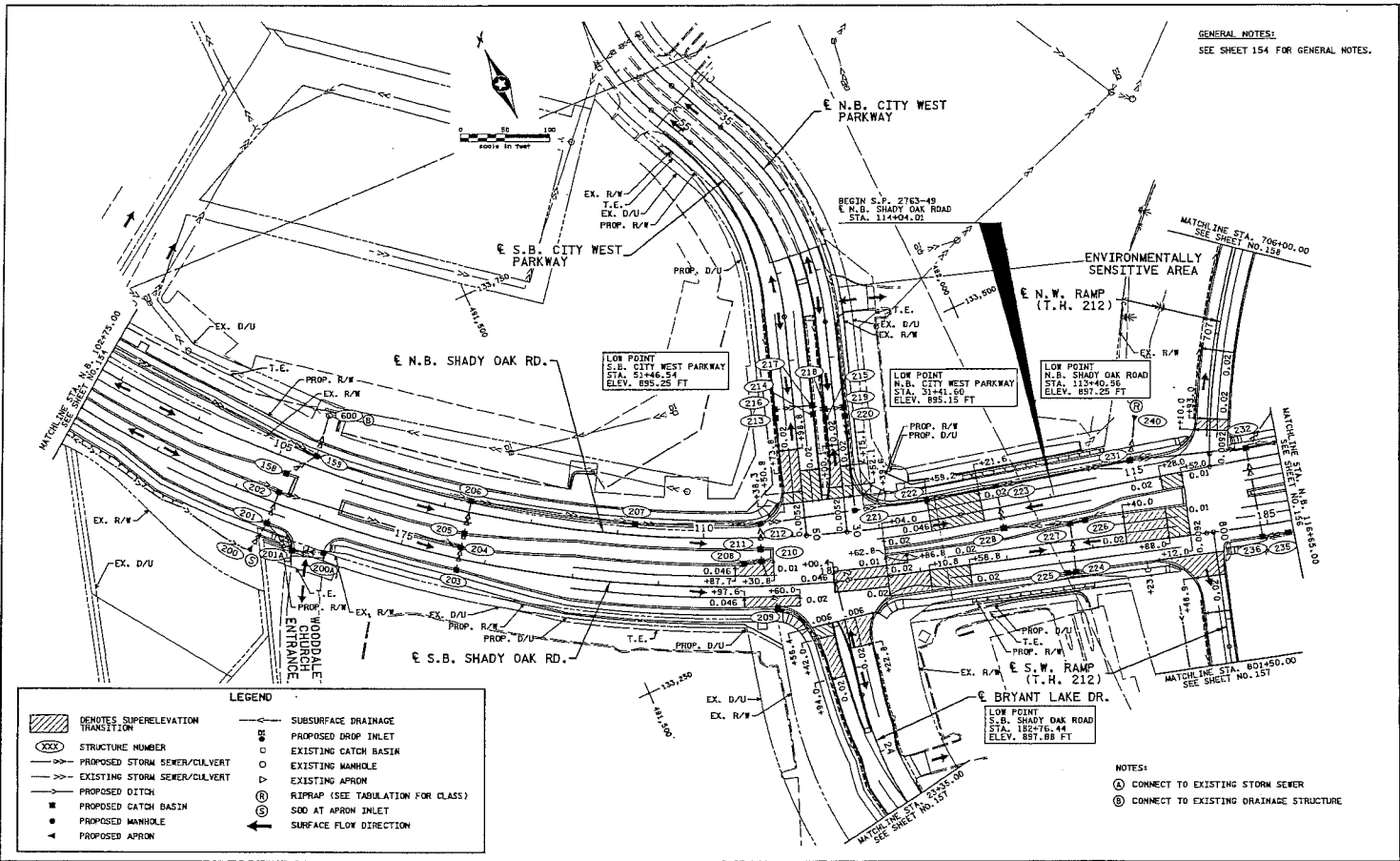
**STREET RADII**

RADIUS	ALIGNMENT	STATION	OFFSET	DESCRIPTION
15.0'	BRYANT LAKE DRIVE	22+75.55	41.0' (L/T)	ROADWAY

- NOTES:**
- Ⓢ PEDESTRIAN CURB RAMP (SEE PEDESTRIAN RAMP DETAILS)
  - Ⓣ 10' CURB TRANSITION
  - Ⓤ 8" CONCRETE DRIVEWAY PAVEMENT
  - Ⓥ CHAIN-LINK FENCE DESIGN 60Y-5322 (WOOD STD. PLATE 3322)
  - Ⓦ 5" CONCRETE WALK SPECIAL (SEE DETAIL 3, SHEET 243)
  - Ⓧ TRAFFIC BARRIER DESIGN DB338
  - Ⓨ TRAFFIC BARRIER DESIGN SPECIAL
  - Ⓩ END TREATMENT-ENERGY ABSORBING TERMINAL
  - ⓐ SLOPE GUTTER TO MATCH ROADWAY

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Wisconsin. My license number is: <b>ZACHARY J. KARTAN</b>		STATE AND PROJECT NO. WISCONSIN 18-025006 COUNTY PROJECT NO. TOWN OF EDEN PRAIRIE CITY PROJECT NO. 312605	DRAWN BY J. VAN BECK DESIGNED BY J. KARTAN CHECKED BY S. SHENBERG		<b>CITY OF EDEN PRAIRIE</b> CONSTRUCTION PLANS T.H. 212 & C.S.A.H. 61 (SHADY OAK ROAD) INTERCHANGE BRYANT LAKE DR., S.W. RAMP, S.E. RAMP & FLYING CLOUD DR.	<b>SHEET</b> 127 OF 346
NO. DATE BY CDR. TAPWH 1377 W-REV 1007371.dwg04.dwg	REVISION	DATE 1/25/17	NAME Zachary J. Kartan	LICENSE NO. 45612	CITY PROJECT NO. 312605	SHEET NO. 0127377

GENERAL NOTES:  
SEE SHEET 154 FOR GENERAL NOTES.



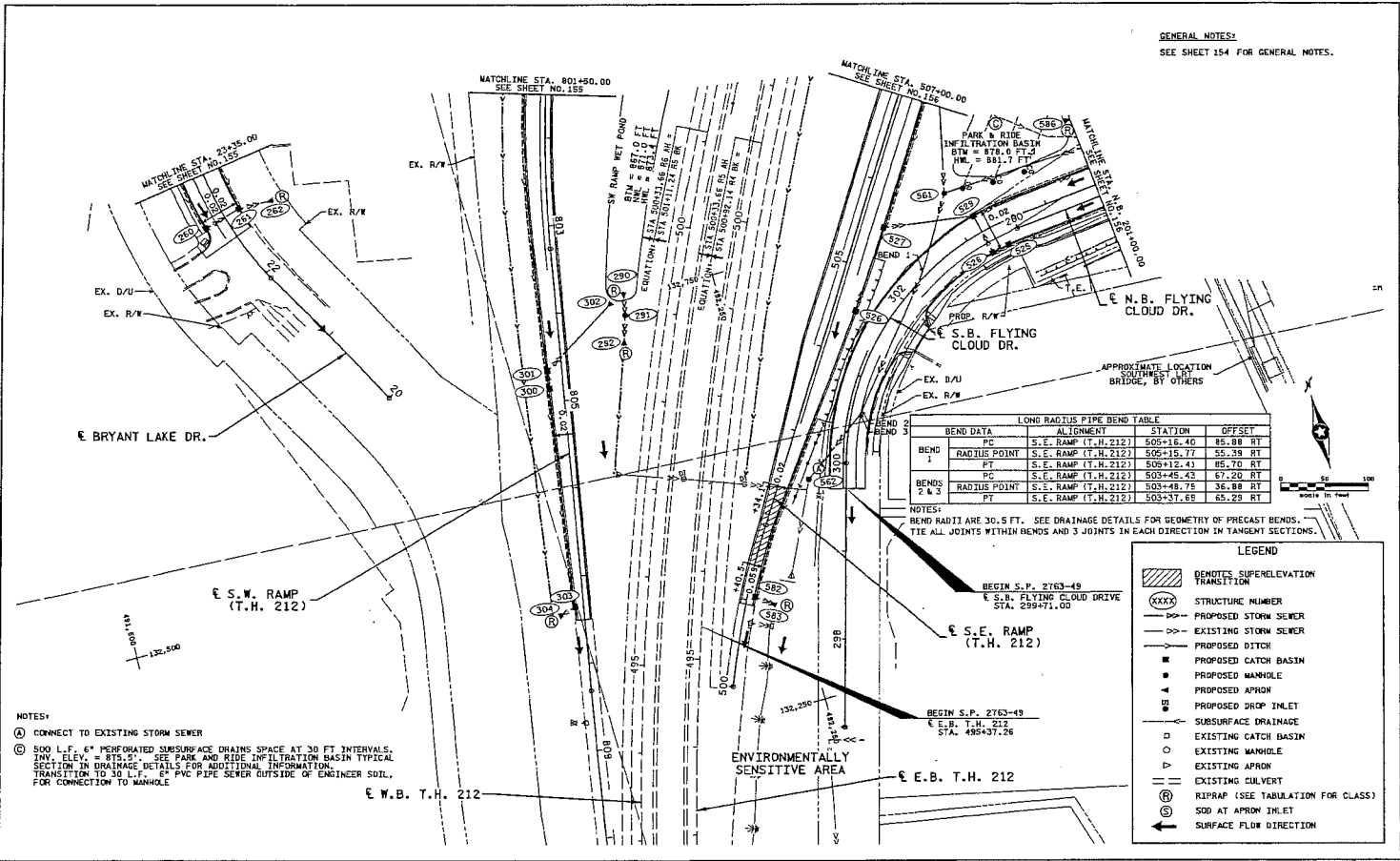
**LEGEND**

	NOTES SUPERELEVATION TRANSITION		SUBSURFACE DRAINAGE
	STRUCTURE NUMBER		PROPOSED DROP INLET
	PROPOSED STORM SEWER/CULVERT		EXISTING CATCH BASIN
	EXISTING STORM SEWER/CULVERT		EXISTING MANHOLE
	PROPOSED DITCH		EXISTING APRON
	PROPOSED CATCH BASIN		RIPRAP (SEE TABULATION FOR CLASS)
	PROPOSED MANHOLE		SOD AT APRON INLET
	PROPOSED APRON		SURFACE FLOW DIRECTION

NOTES:  
 (A) CONNECT TO EXISTING STORM SEWER  
 (B) CONNECT TO EXISTING DRAINAGE STRUCTURE

STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS PROJECT NO. 116+65.00 TO 102+75.00 COUNTY PROJECT NO. 116+65.00 TO 102+75.00 CITY PROJECT NO. 116+65.00 TO 102+75.00		DRAWN BY J. VAN BEEK DESIGNED BY P. JENSEN CHECKED BY L. NIELSEN		<b>SRF</b> ENGINEERS PLANNERS DESIGNERS Consulting Group, Inc.	CITY OF EDEN PRAIRIE DRAINAGE AND SUPERELEVATION PLANS T.H. 212 & C.S.A.H. 61 (SHADY OAK ROAD) INTERCHANGE N.B. SHADY OAK RD. STA. 102+75.00 TO STA. 116+65.00	SHEET 155 OF 346
DATE: 08/11/09 REVISION:		PROJECT NO. 116+65.00 TO 102+75.00 COUNTY PROJECT NO. 116+65.00 TO 102+75.00 CITY PROJECT NO. 116+65.00 TO 102+75.00				

GENERAL NOTES:  
SEE SHEET 154 FOR GENERAL NOTES.



BEND DATA	ALIGNMENT	STATION	OFFSET
BEND 1	PC S.E. RAMP (T.H. 212)	505+16.40	85.88 RT
	RADIUS POINT S.E. RAMP (T.H. 212)	505+15.77	55.38 RT
	PT S.E. RAMP (T.H. 212)	505+12.43	85.70 RT
BENDS 2 & 3	PC S.E. RAMP (T.H. 212)	503+45.43	67.20 RT
	RADIUS POINT S.E. RAMP (T.H. 212)	503+48.75	36.88 RT
	PT S.E. RAMP (T.H. 212)	503+37.66	65.29 RT

NOTES:  
BEND RADII ARE 30.5 FT. SEE DRAINAGE DETAILS FOR GEOMETRY OF PRECAST BENDS.  
TIE ALL JOINTS WITHIN BENDS AND 3 JOINTS IN EACH DIRECTION IN TANGENT SECTIONS.

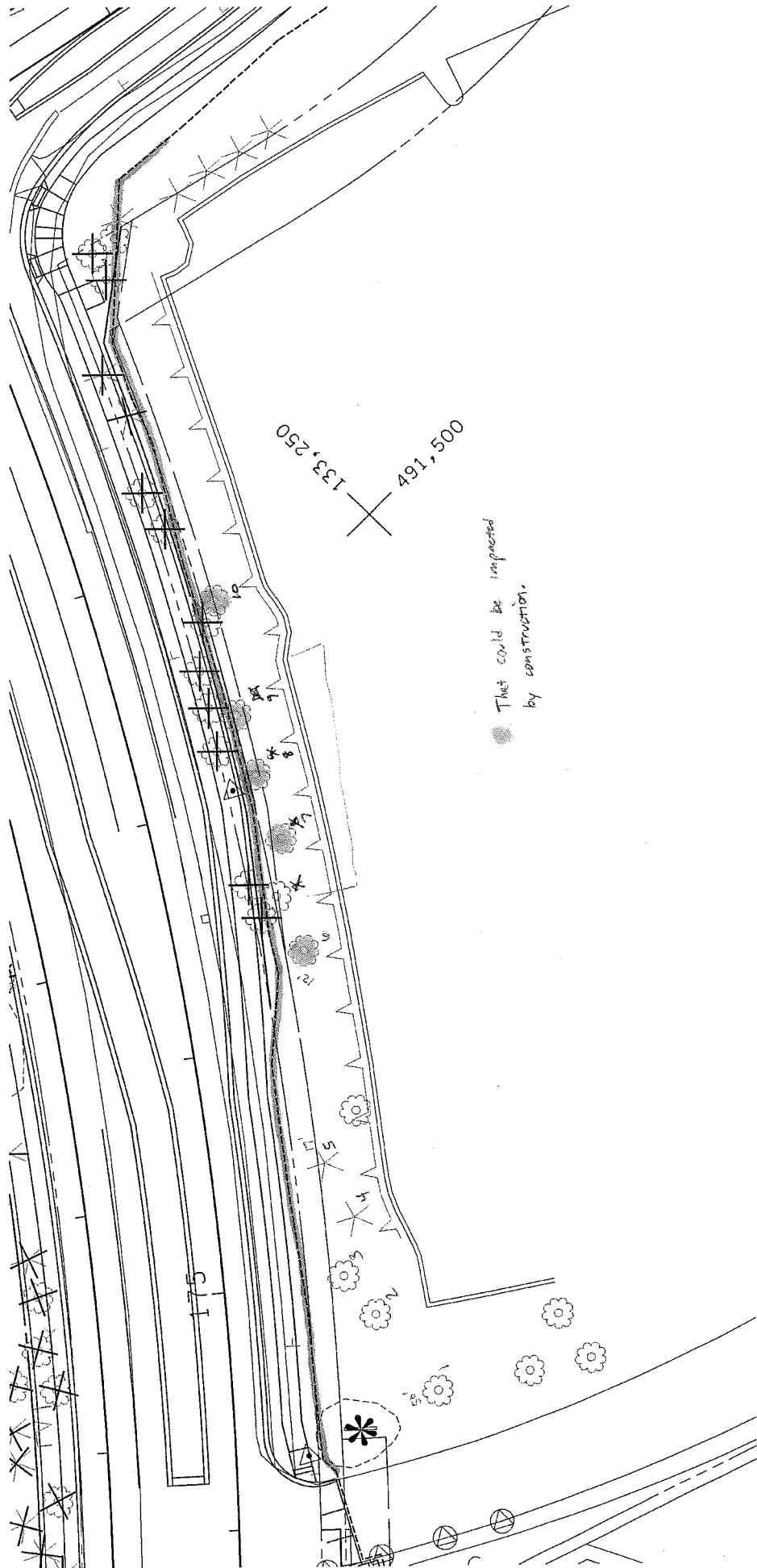
LEGEND

- DENOTES SUPERELEVATION TRANSITION
- STRUCTURE NUMBER
- PROPOSED STORM SEWER
- EXISTING STORM SEWER
- PROPOSED DITCH
- PROPOSED CATCH BASIN
- PROPOSED MANHOLE
- PROPOSED APRON
- PROPOSED DROP INLET
- SUBSURFACE DRAINAGE
- EXISTING CATCH BASIN
- EXISTING MANHOLE
- EXISTING APRON
- EXISTING CULVERT
- RIPRAP (SEE TABULATION FOR CLASS)
- SOD AT APRON INLET
- SURFACE FLOW DIRECTION

NOTES:  
A) CONNECT TO EXISTING STORM SEWER  
C) 500 L.F. 6" PERFORATED SUBSURFACE DRAINS SPACE AT 30 FT INTERVALS. INV. ELEV. = 875.0'. SEE PARK AND RIDE INFILTRATION BASIN TYPICAL SECTION IN DRAINAGE DETAILS FOR ADDITIONAL INFORMATION. TRANSITION TO 30 L.F. 6" PVC PIPE SEWER OUTSIDE OF ENGINEER SOIL. FOR CONNECTION TO MANHOLE

STATE AND PROJECT NO. STATE PROJECT NO. 201-000000 COUNTY PROJECT NO. 001-000000 CITY PROJECT NO. 11-5800		DRAWN BY J. VAN BECK DESIGNED BY J. FROST-MOYER CHECKED BY J. HILF-SEW		<b>SRF</b> ENGINEERS PLANNERS DESIGNERS Consulting Group, Inc.	CITY OF EDEN PRAIRIE DRAINAGE AND SUPERELEVATION PLANS T.H. 212 & C.S.A.H. 61 (SHADY OAK ROAD) INTERCHANGE BRYANT LAKE DR. S.E. RAMP, S.E. RAMP & FLYING CLOUD DR.	SHEET 157 OF 346
DATE: 01/14/09 BY: SGO/AVP/REVISION:		PROJECT NAME: JEREMY L. NIELSEN DATE: License # 45047				

A  
H  
40 scale



133,250  
491,500

That could be impacted  
by construction.



<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Community Development Janet Jeremiah, Director Molly Koivumaki, Housing and Human Services Manager	<b>ITEM DESCRIPTION:</b> Development Agreement Between Fairway Woods II Condominium Association and the City of Eden Prairie.	<b>ITEM NO.:</b> VIII.N.

### **Requested Action**

Approve the Development Agreement Fairway Woods II Condominium Association and the City of Eden Prairie.

### **Synopsis**

On December 3, 2013, the City Council adopted Resolution 2013-101 approving the Housing Improvement Fee for the Fairway Woods II Condominium Association Housing Improvement Area, pursuant to Minnesota Statutes 428A.11 to 428A.21.

The Development Agreement outlines 20 specific areas: Plans, Construction, Permits Licenses and Approvals, Construction Operation and Maintenance, City Code Compliance, Performance standards, Association's Responsibility for its Contractors, Annual Reports, Insurance, No Warranty, Disbursement of Funds, special Assessment, Event of Default, Remedies on Event of Default, No Remedy Exclusive, Costs & Fees, Waiver, No City Liability, Recording, No Third Party Beneficiary, and Notice.

### **Attachment**

Development Agreement

# DEVELOPMENT AGREEMENT

## Fairway Woods HIA

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into as of \_\_\_\_\_, 2014, by Fairway Wood Homeowners Association 2, a Minnesota nonprofit corporation, hereinafter referred to as "Association," its successors and assigns, and the **CITY OF EDEN PRAIRIE**, a municipal corporation, hereinafter referred to as "City”:

### WITNESSETH:

WHEREAS, The City is authorized under Minn. Stat. 428A.11 to 428A.21, as amended to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area;

WHEREAS, after a petition and duly held public hearings the City established a housing improvement area on the property legally described as “Fairway Condominium No. 2, Hennepin County, Minnesota” (“Property”) known as the “Fairway Woods II Condominium Association Housing Improvement Area” (“Fairway HIA”) by adoption of Ordinance No. 18-2013 and Ordinance No. \_\_\_\_\_ (collectively the “Enabling Ordinance”);

WHEREAS, by adoption of Resolution No. 2013-101 (“Fee Resolution”), the City agreed to provide funds in the amount of \$145,000 (“Funds”) to construct the housing improvements, which Funds will be reimbursed by fees imposed on the housing units.

**NOW, THEREFORE**, in consideration of the City providing the Funds, Association agrees as follows:

1. **IMPROVEMENTS:** Association may use the Funds only for construction and installation of the following "Housing Improvements" on the Property:

- A. Siding
- B. Shutters
- C. Window Wrap
- D. Gutters
- E. Front Entry Doors
- F. Garage Doors
- G. Asphalt
- H. Bat Proofing
- I. Exterior Lighting

2. **PLANS:** Prior to disbursement of any Funds and prior to the construction of the Housing Improvements, Association shall provide Construction Plans to the City for review and approval. The Construction Plans shall provide for the construction of the Housing Improvements and shall be in conformity with this Agreement, and all applicable Federal, State and local laws and regulations. The City's approval or rejection of the Construction Plans shall be in writing. If the Construction Plans are rejected the rejection shall set forth in detail the reasons for the rejection. The Construction Plans may be approved or rejected in whole or in part. If the Construction Plans are rejected in whole or in part, the Association shall submit new or corrected Construction Plans within 30 days after written notification of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved.

If the Association desires to make any material change in the Construction Plans after their approval, the Association shall submit the proposed change to the City for approval following the same process as set forth in this Agreement for initial approval of the Construction Plans. For the purposes of this Section, a "material change" means any change that (i) increases or decreases the total cost of the Housing Improvements by more than \$10,000 or (ii) involves any change in construction materials or design that reasonably requires review for compliance with federal, state and local laws and regulations.

3. **CONSTRUCTION:** Association shall construct the Housing Improvements in accordance with the approved Construction Plans and all applicable Federal, State and local laws and regulations. Subject to Unavoidable Delays, the Association shall complete the construction of the Housing Improvements by the end of the 2014 calendar year. Until construction of the Housing Improvements has been completed, the Association shall make reports, in such commercially reasonable detail and at such times as may reasonably be requested by the City as to the actual progress of the Association with respect to such construction.

4. **PERMITS, LICENSES AND APPROVALS:** Association will obtain, in a timely manner, all required permits, licenses and approvals, and will 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 Housing Improvements may be lawfully constructed

5. **CONSTRUCTION, OPERATION AND MAINTENANCE:** Association will construct, operate and maintain the Housing Improvements in accordance with the terms of this Agreement, and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, the City stormwater management plan and watershed district requirements).
6. **CITY CODE COMPLIANCE:** Association acknowledges that Association is familiar with the requirements of Chapter 11, Zoning, and Chapter 12, Subdivision Regulations, of the City Code and other applicable City ordinances affecting the development of the Property. Association agrees to develop the Property in accordance with the requirements of all applicable City Code requirements and City Ordinances.
7. **PERFORMANCE STANDARDS:** Association agrees that the Property will be operated in a manner meeting all applicable noise, vibration, dust and dirt, smoke, odor and glare laws and regulations.
8. **ASSOCIATION'S RESPONSIBILITY FOR ITS CONTRACTORS:** Association shall release, defend and indemnify City, its elected and appointed officials, employees and agents from and against any and all claims, demands, lawsuits, complaints, loss, costs (including attorneys' fees), damages and injunctions relating to any acts, failures to act, errors, omissions of Association or Association's consultants, contractors, subcontractors, suppliers and agents. Association shall not be released from its responsibilities to release, defend and indemnify because of any inspection, review or approval by City.
9. **ANNUAL REPORTS:** Association agrees to furnish to the City by August 15 of each year the Fairway HIA is in existence, a copy of the Association's audited financial statements
10. **INSURANCE:** Association shall maintain, during the term of this Agreement and for two years following the completion of the Housing Improvements, a general liability insurance policy with limits of at least \$1,500,000.00 for each person, and each occurrence, for both personal injury and property damage. Association shall provide City with a Certificate of Insurance verifying insurance coverage before construction of the Housing Improvements.
11. **NO WARRANTY:** The City does not make any warranty, either express or implied regarding the construction or quality of the Housing Improvements. The City does not make any warranty, either express or implied, as to the design or capacity of the Housing Improvements, as to the suitability for operation of the Housing Improvements or that they will be suitable for the Association's purposes or needs. The Association releases the City from, agrees that the City shall not be liable for, and agrees to hold the City, its Council and its respective officers and employees, harmless against, any claim, cause of action, suit or liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Housing Improvements or the Property or the use thereof, except for those that arise from the actions of the City.

The Association further agrees to indemnify and hold harmless the City, its Council, its officers and employees against any and all losses, claims, damages or liability to which the City, its Council, its officers and employees may become subject under any law arising out of any act, omission, representation or misrepresentation of the Association in connection with the carrying out of the transactions contemplated by this Agreement, and to reimburse the City, its Council, its officers and employees for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the City, its Council, its officers and employees, in connection with investigating any such losses, claims, damages or liabilities or in connection with defending any actions relating thereto.

12. **DISBURSMENT OF FUNDS:** The City shall not disburse any Funds except directly to a contractor who has performed work on the Housing Improvements. The City shall not disburse any Funds except upon presentation to the City of all of the following for each requested disbursement: (i) a draw request in the form provided by the City; (ii) an executed contract between the Association and the contractor; (iii) written action, approved by the Fairway Wood Homeowners Association 2, which action: certifies that the contract complies with Minn. Stat. 471.345; certifies that none of the items in the request have been the basis for any prior disbursement; accepts the completed work; and approves the payment; (iv) written lien waivers for the work completed to the date of the requested payment; and (v) any other supporting evidence requested by the City. The City shall not disburse any Funds if an Event of Default exists. The City shall not disburse any Funds in excess of \$145,000.
13. **SPECIAL ASSESSMENT:**
  - A. The City shall reimburse itself for the Funds disbursed by special assessing the amount pro rata on the housing units on the Property pursuant to the terms set forth in the Enabling Ordinance and Fee Resolution.
  - B. If any owner of a housing unit shall fail to pay any installment of the special assessment, City shall provide thirty days' written notice to the housing unit owner and to the Association of the failure to pay. If the housing unit owner fails to pay any installment due and payable in said 30 days, the amount of the full special assessment and any accrued interest shall become immediately due and payable by the Association (hereinafter referred to as the "Payment Obligation"). Interest shall continue to accrue on the assessment until paid in full.
  - C. As security for Association's Payment Obligation, the Association hereby grants, and the City shall and hereby does have, a lien on all Common Areas of the Property as defined in the Declaration of Apartment Ownership dated April 12, 1973 and recorded as document no. 1072887 at the Office of the Hennepin County Recorder, together with all hereditament and appurtenances thereto, in the full amount necessary to satisfy Association's Payment Obligation and the cost, including reasonable attorney fees of collecting the same. If the Association fails to pay such Payment Obligation, the City may, in its sole discretion, foreclose on the Common Elements of the Property by judicial proceedings or sell the Common Elements of the Property at public auction and convey

the same to the purchaser in fee simple in accordance with Minnesota statutes, and out of the moneys arising from such sale retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney fee permitted by law, which costs, charges and fees Association herein agrees to pay.

14. **EVENT OF DEFAULT:** the term "Event of Default" shall mean, whenever it is used in this Agreement, any failure of the Association to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder, including but not limited to failure to make any payment required under Paragraph 13.
15. **REMEDIES ON EVENT OF DEFAULT:** In addition to the remedies set forth in Paragraph 13, whenever any Event of Default occurs under this Agreement, the City may immediately suspend its performance under the Agreement until it receives assurances that the Association will cure its default and continue its performance under the Agreement. In addition, whenever any Event of Default occurs under this Agreement, the City may provide seven days written notice to the Association of the Event of Default, and if Association fails to cure the Event of Default within said seven days, may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
16. **NO REMEDY EXCLUSIVE:** No remedy herein conferred upon or reserved to the City or Association is intended to 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 this 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.
17. **COSTS AND FEES:** Whenever any Event of Default occurs and if the City shall employ attorneys, financial advisors or other consultants, or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Association under this Agreement, the Association agrees that it shall, within ten days of written demand by the City pay to the City the reasonable fees of such attorneys, financial advisors or consultants, and such other expenses so incurred by the City.
18. **WAIVER:** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, 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.
19. **NO CITY LIABILITY:** No failure of the City to comply with any term, condition, covenant or agreement herein shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charges. No execution on any claim, demand, cause of action or

judgment shall be levied upon or collected from the general credit, general fund or taxing powers of the City.

20. **RECORDING:** Within 10 days of the approval of the Development Agreement, the Association shall record the Development Agreement at the County Recorder and / or Registrar of Titles.
21. **NO THIRD PARTY BENEFICIARY:** This Agreement is a contract agreement between the City and the Association. No provision of this Agreement inures to the benefit of any third person, including the public at large, so as to constitute any such person as a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.
22. **NOTICE:** Required notices to the Association shall be in writing, and shall be either hand-delivered to the Association, its employees or agents, or mailed to the Association by certified mail at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices to the City shall be in writing and shall be either hand-delivered or mailed to the City by certified mail at the following address:

\_\_\_\_\_  
City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN 55344

Notices shall be deemed effective on the date of receipt. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

23. **ASSIGNMENT:** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
24. **AUDIT DISCLOSURE AND DATA PRACTICES:** Any reports, information, data, etc. given to, or prepared or assembled by the Association under this Agreement which the City requests to be kept confidential, shall not be made available to any individual or organization without the City's prior written approval. The books, records, documents and accounting procedures and practices of the Association or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement. This Agreement is subject to the Minnesota Government Data Practice Act, Minnesota

Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practices Act Section 13.02, Subd 7, which is created, collected, received, stored, used, maintained, or disseminated by Association in performing any of the functions of the City during performance of this Agreement is subject to the requirements of the Data Practice Act and Association shall comply with those requirements as if it were a government entity. All subcontracts entered into by Association in relation to this Agreement shall contain similar Data Practices Act compliance language.

- 25. **NON-DISCRIMINATION:** During the performance of this Agreement, the Association shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Association shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Association shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Association further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
- 26. **GOVERNING LAW:** This Agreement shall be controlled by the laws of the State of Minnesota.
- 27. **SEVERABILITY:** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Contract.
- 28. **ENTIRE AGREEMENT:** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

**IN WITNESS WHEREOF**, the parties to this Agreement have caused these presents to be executed as of the day and year aforesaid.

**ASSOCIATION**

**CITY OF EDEN PRAIRIE**

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

By \_\_\_\_\_  
Nancy Tyra-Lukens



Its Mayor

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

By \_\_\_\_\_  
Rick Getschow  
Its City Manager

**STATE OF MINNESOTA )**  
**) ss.**  
**COUNTY OF HENNEPIN )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Nancy Tyra-Lukens and Rick Getschow, respectively the Mayor and the City Manager of the City of Eden Prairie, a Minnesota municipal corporation, on behalf of said corporation.

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

**STATE OF MINNESOTA )**  
**) ss.**  
**COUNTY OF HENNEPIN )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, a Minnesota \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

THIS INSTRUMENT WAS DRAFTED BY:

City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN 55344

<b>CITY COUNCIL AGENDA</b> <b>SECTION:</b> Public Hearing		<b>DATE:</b> May 6, 2014
<b>DEPARTMENT/DIVISION:</b> Leslie Stovring Public Works / Environmental	<b>ITEM DESCRIPTION:</b> IC # 08-5713 Approve First Reading of an Ordinance Amending City Code Section 11.51, Standards for Protection of Wetland	<b>ITEM NO.:</b> IX.A.

### **Requested Action**

Move to: Close the Public Hearing; and  
Approve First Reading of an Ordinance Amending City Code Section 11.51, Standards for Protection of Wetlands

### **Synopsis**

City Code Section 11.51 is being amended in response to an audit conducted by the Board of Water & Soil Resources. The revisions bring the Wetland code up to date with current state law and clarify process and procedures related to Wetland applications and review.

### **Background Information**

Eden Prairie adopted the wetland protection code (City Code Section 11.51) on February 10, 2000. The Wetland Protection Code was developed to conserve and protect wetlands and their wetland buffers. The intent is to avoid the alteration and destruction of wetlands and their buffer strips. The proposed revision is in response to an audit conducted by the Board of Water & Soil Resources which requested that the City clarify and update the city code. In addition to a number of editorial changes, the following specific changes were made:

- Clarifies and updates application submittal and review processes. In addition, a section was added to consolidate and clarify submission, decision and appeal processes.
- Definitions that are not used in this section were deleted and other definitions were updated. Definitions for “City Engineer” and “Environmental Coordinator” were added.
- The process for reviewing and approving wetland replacement plans was modified so that the Environmental Coordinator will review and approve all Wetland Replacement Plans. The City Council would be the body that would hear any appeals, in accordance with State Rules.
- A process to receive Preliminary Approval for wetland determinations during the non-growing season was added. All Preliminary Approvals must be verified during the growing season before any work can commence. The Applicant would assume the risk if changes to the plans are required after verification during the growing season.

Attached are copies of the draft ordinance and the existing code language. The existing code language includes the proposed changes for the Commission’s reference.

The Planning Commission reviewed the City Code Amendment on April 14, 2014, and was approved with a unanimous vote of 7 to 0.

### **Attachments**

- City Code - Redline Version
- Ordinance

## **SECTION 11.51. STANDARDS FOR THE PROTECTION OF WETLANDS**

### **Subd. 1. Preamble.**

This Code hereby incorporates by reference the Wetlands Conservation Act [Minnesota Statutes 103G.221 et seq. (herein after referred to as the WCA)] ~~as amended~~ and Minnesota Rules Chapter 8420 ~~as amended~~. All wetlands, as defined in Section 11.51, Subd. 3 of this Code, including Public Waters and Public Waters Wetlands governed by Minn. Stat. 103G.005 and those governed by the ~~Department of Natural Resources and U.S. Army Corps of Engineers~~, are covered by this Code. Standards outlined in this Code have precedence over WCA in situations where the City Code is more restrictive than WCA. The following watershed districts are located in the City:

1. Lower Minnesota River
2. Nine Mile Creek
3. Riley Purgatory Bluff Creek

The City is the acting Local Government Unit (LGU) for the Lower Minnesota River and Riley Purgatory Bluff Creek Watershed Districts.

Each reference in this Section to statutes, codes, regulations or rules constitutes a reference to the statute, code, regulation or rule as may be amended from time to time.

### **Subd. 2. Purpose.**

Through the adoption and enforcement of this Code, the City shall promote the general health, safety, and welfare of its residents by both conserving and protecting wetlands and requiring sound management practices as provided for in the WCA when development occurs in the vicinity of wetlands. The intent of this Code is to avoid alteration and destruction of wetlands. By implementation of this Code, the City seeks to accomplish the following:

1. Balance the need to preserve and protect natural resources and systems with both the rights of private property owners and the need to support the efficient use of developable land within the City;
2. Promote water quality by maintaining the ability of wetlands to recharge ground water and receive the discharge of ground water, to prevent soil erosion, and to retain sediment, nutrients and toxicants in wetland buffer strip areas before it discharges into community wetlands, lakes and streams, thus avoiding the contamination and eutrophication of these water features;
3. Reduce human disturbances to wetlands by providing a visual and physical transition from surrounding yards; and
4. Provide wildlife habitat and thereby support the maintenance of diversity of both plant and animal species within the City.

### Subd. 3. Definitions.

The following terms, as used in this Section, shall have the meanings stated. Terms not defined shall have the meaning as stated in Section 11.02 [of this Code](#):

A. “Applicant” – The “Applicant” means the person submitting a Development Application to the City.

~~B. “Bog” – A “Bog” is a Type 8 Wetland as defined by U.S. Fish and Wildlife Circular 39.~~

~~CB. “City [ManagerEngineer](#)” – The “City [ManagerEngineer](#)” means the City [Manager-Engineer](#) or his/her designee.”~~

~~DB. “City Wetland Map” – The “City Wetland Map” is referenced as the City’s Water Body Map as developed for the City’s Local Water Management Plan and as amended from time to time as wetland, lake and stormwater pond conditions change or new information is collected. The City map adopted by this ordinance shall be prima facie evidence of the location and classification of a wetland.~~

~~EC. Combined Wetland Permit Application – An application form provided by the Minnesota Board of Water and Soil Resources (BWSR) for water and wetland projects affecting lakes, rivers, streams or wetlands. The Combined Wetland Permit Application is a single form that is completed and submitted to the Local Government Unit (LGU), the Department of Natural Resources (DNR), the Hennepin Conservation District (Hennepin County) and the U.S. Army Corps of Engineers (USACOE) for review and approval.~~

~~FD. “Development Application” – “Development Application” includes but is not limited to applications for Land Development, Site Plan Review, Planned Unit Development, rezoning, platting, land alteration, wetland alteration, wetland no-loss determination or Wetland Replacement.~~

~~GE. “[Environmental Coordinator](#)” – The “[Environmental Coordinator](#)” means the [Environmental Coordinator](#) or his/her designee.~~

~~“Hydroperiod” – The extent and duration of inundation and/or saturation of wetland systems.~~

~~HF. “Local Government Unit” – The “Local Government Unit” (LGU) is a city council, town board, watershed management organization under Minnesota Statutes Section 103B.205, soil and water conservation district or their delegate. In cases where activity or replacement will occur on state [or federal](#) land, the agency with administrative responsibility for that land is the LGU.~~

~~IG. “MinRAM” – The Minnesota Routine Assessment Methodology (MinRAM) as referenced in Minnesota Rules Chapter 8420. MinRAM is a field tool used to assess wetland functions on a qualitative basis. Functions include items such as vegetative diversity and integrity; wildlife habitat; water quality protection; flood & stormwater attenuation; recreation, aesthetics, education & science; fishery habitat; shoreline protection; groundwater interaction; and commercial uses.~~

JH. “Native Vegetation” - Plant species indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity, and are classified as native in the Minnesota Plant Database (Minnesota DNR, 2002 or as amended). Native Vegetation does not include Weeds.

KI. “No-Loss Determination” – An application to the Local Government Unit (LGU) to evaluate whether the proposed work will result in a loss of wetland within the property. This would include activities listed in Minnesota Rules Section 8420.0415. The landowner is responsible for submitting the proof necessary to show qualification for the claim. The LGU may evaluate evidence for a no-loss claim without making a determination.

~~L. “NURP Pond” – A stormwater pond constructed to meet National Urban Runoff Program (NURP) requirements.~~

MJ. “Public Value Credit (PVC)” – Wetland replacement credit that can only be used for the portion of wetland replacement requiring greater than a 1:1 ratio of wetland fill to wetland replacement as allowed by Minnesota Rules 8420.

NK. “Setback” – The minimum horizontal distance between a structure and the nearest edge of the wetland buffer strip.

~~O. “Scientific or Natural Area” – An area designated by local, state or federal action as providing unique qualities such as recreational, scientific or educational uses. This would include, but is not limited to areas that:~~

- ~~• Have resources restored for specific purposes, such as water quality improvement, wetland replacement or wildlife habitat,~~
- ~~• Have a direct hydrologic association with a designated trout stream,~~
- ~~• Border the Minnesota River,~~
- ~~• Are recognized as an Outstanding Resource Value Water (Minnesota Rules Chapter 7050)~~
- ~~• Are within an environmental corridor identified in a local water management plan,~~
- ~~• Are part of a sole source aquifer recharge area,~~
- ~~• Provide endangered species habitat, or~~
- ~~• Have biological communities or species that are listed in the Natural Heritage inventory database.~~

PL. “Sequencing Flexibility” – Sequencing Flexibility is implemented after all alternatives have been considered in accordance with Minnesota Rules 8420.0520 and [Subd. 11.51](#), Section 4 of this Code. A “Sequencing Flexibility Report” must be provided if sequencing flexibility is requested to document that these conditions have been met and the proposed action or alternative.

**QM.** “Structure” – A “Structure” means a Structure as defined in Section 11.02, 59 of this Code.

**RN.** “Technical Evaluation Panel” – A “Technical Evaluation Panel” (TEP) is established for each LGU under Minnesota Rules 8420.0240. The TEP assists the LGU in making technical findings and provides recommendations for projects involving wetland alteration or wetland impacts at the request of the LGU, landowner or a member of the TEP.

The TEP must include at least one technical representative from each of the following:

- Board of Water and Soil Resources (BWSR)
- Hennepin Conservation District (Hennepin County)
- Local Government Unit (LGU)

For projects involving public wetlands or affecting wetlands adjacent to public waters or public waters wetlands, the TEP shall include a technical professional employee of the DNR. The LGU or TEP may invite additional expertise to assist in the decisions. The TEP shall be coordinated by the LGU.

**SO.** “Weeds” - Weeds are (i) noxious weeds as defined and designated pursuant to the “Minnesota noxious weed law”, Minnesota Statutes, Sections 18.76-18.88, ~~as amended from time to time~~, or (ii) any volunteer plants, such as but not limited to spotted knapweed (Centaurea maculosa) or burdock (Arctium minus). For the purposes of this definition, weeds do not include dandelions or clover. The City Weed Inspector and/or Assistant City Weed Inspector shall maintain a current list of volunteer plants that are prohibited.

**TP.** “Wetland” - Lands transitional between terrestrial and aquatic systems, either created or natural, where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must:

- Have a predominance of hydric soils;
- Be inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- Under normal circumstances support a prevalence of hydrophytic vegetation.

**UQ.** “Wetland Alteration” – Alteration of a wetland includes changes to the wetland and/or wetland buffer strip in regards to size, depth or contour; dredging; tilling; damming; alteration of the watercourse; ditching; tiling; grading; draining; discharge of water; appropriation of water; changes in vegetation; or otherwise altering or destroying a wetland or wetland buffer or their functions. Alterations would not include Native Vegetation plantings or selective clearing or pruning of prohibited or restricted noxious weeds as defined in Minnesota Rules Sections 1505.0730 to 1505.0750, unless within a Conservation Easement in which case submission of and written approval by the City of a Vegetation Management Plan on a form provided by the City is required.

[VR](#). “Wetland Buffer Strip” - An area of vegetated ground cover around the perimeter of a wetland that, either in its natural condition or through intervention, has the characteristics of a Buffer as defined in Section 11.02, Subd. 7 of this Code, “Buffer”. A “Wetland Buffer Strip Evaluation Report” is a report summarizing the results of an evaluation of the wetland and Wetland Buffer Strip in relation to the requirements defined in Section 11.51 Subd. 8 of this Code.

[WS](#). “Wetland Delineation” – An assessment tool utilized to determine the boundary of a wetland using the US Army Corps of Engineers Wetland Delineation Manual (January 1987) as well as any additional boundary determination requirements established in Minnesota Rules Chapter 8420. A “Wetland Delineation Report” is a document that summarizes the observations, results and conclusions performed during the assessment when wetlands are present on the property.

[XT](#). “Wetland Determination” – An assessment conducted utilizing the US Army Corps of Engineers Wetland Delineation Manual (January 1987) to determine whether a wetland is present within the property that may be impacted by a proposed project. A “Wetland Determination Report” documents the conditions that lead to the conclusion that wetlands may or may not be present on the property.

[YU](#). “Wetland Plan” – A summary of all work items to be completed in relation to any wetland alteration, [hydrology monitoring](#), or wetland or wetland buffer strip restoration, replacement, or construction and the estimated cost for each item. Work items include, but are not limited to, wetland buffer strip monument purchase and installation; Weed control; landscaping within the wetland or wetland buffer strip; wetland or wetland buffer strip restoration; wetland and wetland buffer strip monitoring; wetland replacement monitoring; or any items determined to be incomplete during the development review process.

[ZV](#). “Wetland Replacement” – Wetland habitat enhancement; wetland creation; restoration of wetland habitat or functions; [wetland](#) construction; [wetland](#) replacement; [wetland](#) banking; wetland buffer habitat creation; wetland enhancement; or stormwater system construction [to enhance water quality](#). As a result New Wetland Credit (NWC) and/or Public Value Credit (PVC) are established for replacement of wetland impacts, loss of public values of the wetland functions or Wetland Alterations. A Wetland Replacement Plan summarizes the Wetland Alteration and the method in which the Wetland Alteration and/or loss of wetland function will be replaced as required in Minnesota Rules 8420.

[AAW](#). “Wetlands, Exceptional Quality” - Exceptional Quality wetlands have an exceptional vegetative diversity and integrity function, based on the results of MinRAM. They typically have an undisturbed plant community or a plant community that is sufficiently recovered from past disturbances such that it closely represents pre-European settlement conditions. The wetlands contain an abundance of different plant species with dominance evenly spread among several species. They will contain very few non-native species and they may have or previously had rare, threatened or endangered plant species. Invasive or exotic plant species are either absent or limited to small areas where some disturbance has occurred. These wetlands exhibit no evidence of significant man-induced water level fluctuation. Reference wetlands established in the City’s “Comprehensive Wetland Protection and Management Plan” [or “Local Water Management Plan”](#) are also included in this category.

BBX. “Wetlands, High Quality” - High quality wetlands have a high vegetative diversity and integrity function, based on the results of MinRAM, and are still generally in their natural state. They tend to show less evidence of adverse effects of surrounding land uses. Exotic and invasive plant species may be present and species dominance may not be evenly distributed among several species. There tends to be little evidence of water level fluctuation due to storms and their shorelines are stable with little evidence of erosion. They show little if any evidence of human influences resulting in higher levels of species diversity, wildlife habitat and ecological stability.

EEY. “Wetlands, Moderate Quality” - Moderate quality wetlands have a moderate vegetative diversity and integrity function, based on the results of MinRAM. They have a slightly higher number of native, non-invasive plant species present than low quality wetlands, often with small pockets of indigenous species within larger areas dominated by non-native, invasive, exotic or weed species. Their relatively greater species diversity results in slightly better wildlife habitat. They exhibit evidence of relatively less fluctuation in water level in response to storms and less evidence of shoreline erosion than low quality wetlands. They also exhibit relatively less evidence of human influences and therefore, tend to be of a higher aesthetic quality than low quality wetlands.

DDZ. “Wetlands, Low Quality” - Wetlands included in this category have a low vegetative diversity and integrity functions, based on MinRAM, and have been substantially altered by activities such as agricultural or urban development that caused over-nitrification, soil erosion, sedimentation and/or water quality degradation. As a result of these factors these wetlands exhibit low levels of vegetation diversity; overcrowding and dominance of invasive or non-native species such as reed canary grass, cattails and purple loosestrife; and a related reduction in the quality of wildlife habitat. These wetlands may also tend to exhibit extreme water level fluctuations in response to rain events and show evidence of shoreline erosion. These wetlands do provide for water quality and serve an important role in protecting water quality downstream.

EEBB. “Wetland Type” – The “Wetland Type” for each water regime will be determined in accordance with United States Fish and Wildlife Service Circular No. 30 (1971 Edition), Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979), Eggers and Reed (1997) and Minnesota Rules Chapter 8420. Each wetland type, which represents at least 10% of the vegetated wetland, including submergent vegetation, must be classified. For Wetland Replacement Plans, the wetland community classification listed in Minnesota Rules 8420.0111 Subp. 75 must be used to determine wetland replacement ratios.

FFCC. “Wildlife Habitat” - Plant communities that support wildlife in a natural, undomesticated state.

GG. “Yard” – That portion of a lot not occupied by a Structure. Yard does not include any wetlands or wetland buffer strips on the property.

~~HH. “Yard Front” – The portion of a Yard extending across the front of the lot between the side lines of the lot and lying between the front line of the lot and the nearest line of a building.~~

~~H. “Yard Rear” – The portion of a Yard between the rear lines of the building and the rear line of the lot, for the full width of the lot.~~



~~JJ. “Yard Side” The portion of a Yard between the building and the side lot line, and extending from the front lot line to the furthest extent of the rear lot line.~~

**Subd. 4. General Provisions – Identification, Evaluation, Delineation, Replacement, Testing and Reporting Requirements.**

A. This Code shall apply to all lands containing wetlands and lands within the setback and wetland buffer strips required by this Code. Wetlands shall be subject to the requirements established herein, as well as restrictions and requirements established by other applicable Federal, State, and City ordinances and regulations. Nothing herein shall be construed to allow anything otherwise prohibited in the zoning district where the wetland is located. This Code establishes four wetland classifications as defined in Section 11.51, Subd. 3 of this Code; Exceptional Quality, High Quality, Moderate Quality, and Low Quality.

B. The presence or absence of a wetland on the City Wetland Map does not represent a definitive determination as to whether a wetland covered by this Code is or is not present. Wetlands that are identified during site specific delineation activities but do not appear on the City Wetland Map are still subject to the provisions of this Code.

C. Additional requirements for wetland identification, delineation, replacement, testing, reporting and bonding within areas where the City is the acting LGU shall be in accordance with the requirements outlined in Section 11.51, Subd. 11 of this Code as well as those set forth in [Section 11.51, Subd. 4 of this Code](#).

D. Activities including, but not limited to, Wetland Alteration, digging, building, paving, mowing, cutting, dumping, yard waste disposal, fertilizer application, placing of debris, [planting of non-native vegetation](#) and removal of vegetation are prohibited in wetland areas. Invasive non-Native Vegetation, such as European or glossy buckthorn and noxious weeds may be removed unless the area is in a Conservation Easement, in which case a Vegetation Management Plan on a form provided by the City is required.

E. ~~An~~~~Every~~~~The~~ Applicant must determine whether a wetland exists on a subject property or within the setback from a wetland on an adjacent property. The following report(s) must be provided based on site conditions.

1. If no wetlands are present, the Applicant must document site conditions in a Wetland Determination Report that includes evaluation of vegetation, hydrology and soil conditions.
2. If a wetland is present, the Applicant must delineate and document the boundary of the wetland(s) and the Wetland Type(s) in a Wetland Delineation Report in accordance with City and WCA requirements and document the conditions of the wetland buffer strip in a Wetland Buffer Strip Evaluation Report in accordance with [Subdivision Section 11.51, Subd. 8](#) of this Code.

F. ~~If a wetland(s) is present, A~~ determination of the function and value of the wetland(s) using the most recent version of MinRAM or other approved assessment methodology under Minnesota Rules Chapter 8420 must be completed by the Applicant.;

1. ~~For wetlands which are not identified on the City Wetland Map;~~
2. ~~For wetlands for which the Applicant's wetland information is significantly different in function, size or position from the City's assessment; or~~
3. ~~If required by the City Manager.~~

The MinRAM assessment must be submitted to the ~~Environmental Coordinator~~City Manager with the Wetland Delineation Report.

G. Wetland Determination, Wetland Delineation and Wetland Buffer Strip Evaluation Reports shall be valid for ~~no more than~~ 3 years from the date of the field delineation for these reports unless ~~the Environmental Coordinator determines that the report is no longer valid on a sooner date a report expires sooner due to required earlier by the Environmental Coordinator due to~~ changes in site conditions such as in hydrology, soils or vegetation.

H. Wetland Delineation and Wetland Determination Reports shall be prepared as outlined in Minnesota Rules Chapter 8420 and in the U.S. Army Corps of Engineers "Guidelines for Submitting Wetland Delineations to the St. Paul District Corps of Engineers and Local Units of Government in the State of Minnesota" (Publication 96-01078-SDE) and the 2010 "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, Version 2" (Publication ERDC/EL TR-10-16) and must include information necessary for the City to determine the wetland boundary and Wetland Type, including wetland delineation field data sheets, survey of the wetland evaluation area, soil analysis data, vegetation data and hydrology information both within and outside of the proposed wetland boundary.

I. Wetland Delineation, Wetland Delineation Reports, Wetland Determination Reports and MinRAM assessments conducted or completed outside of the growing season will not be accepted for final review and approval by the City until the following growing season. Determination of non-growing season conditions will be in accordance with the "Guidelines for Submitting Wetland Delineations to the St. Paul District Corps of Engineers (COE) and Local Units of Government in the State of Minnesota" issued on April 17, 1996 (Publication 96-01078-SDE), unless the vegetation cataloging or hydrology conditions are, in the judgment of the Environmental Coordinator, unreliable.

Approvals may be granted for Wetland Delineation, Wetland Delineation Reports, Wetland Determination Reports and MinRAM assessments conducted during the growing season, but submitted during the non-growing season, if the Environmental Coordinator determines there is sufficient information in the report and visible in the field at the time of the field verification to assess the three wetland parameters (hydrophytic vegetation, hydric soils and hydrology) in relation to placement of the wetland delineation line. If proper assessment of the delineation is not possible during the non-growing season, the City would consider the ~~application~~ Development Application incomplete until such time that appropriate field verification is possible. A Preliminary Approval may be requested during the non-growing season. Preliminary Approvals to allow the project to go forward as complete. However, Preliminary approvals Approvals granted during the non-growing season must be verified during the growing season before any work on the project may can commence. The applicant bears all risk that revisions may be required to Development Application

~~and the Preliminary Approval due to the fact that the review occurred during the non-growing season. Final approval by the Environmental Coordinator during the growing season is required before the Development Application can be considered complete.~~

If a MinRAM assessment is not ~~provided~~ conducted during the growing season or if it is determined to be incomplete, the quality will be assumed as High Quality.

J. An Applicant shall not be required to field delineate wetlands ~~or determine Wetland Type~~ on adjacent property. An Applicant will be required to review available information, including but not limited to the City Wetland Map, County Soil Survey Map, U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps, and visual information such as the presence of wetland vegetation and hydrologic evidence on an adjacent property which can be viewed from the subject property, to estimate the wetland boundary and Wetland Type.

K. ~~All applications, information, analyses and reports required pursuant to City Code Section 11.51 shall be in the form required by the City and shall be submitted to the City Manager. Written documentation identifying the presence or absence of wetlands on the property or the wetland conditions if wetland conditions are present, including all Wetland Determination, Wetland Delineation, No-Loss Determination and Wetland Buffer Strip Evaluation Reports, shall be provided to the City by the Applicant with the Development Application. Prior to submission of the Wetland Determination Report or Wetland Delineation Report~~ the Applicant must contact the City Environmental Coordinator to obtain a wetland or water body identification number and any information regarding the documented wetland, including any existing MinRAM information, for inclusion with documentation provided to the City by the Applicant. The Applicant must also contact the City Environmental Coordinator to obtain a water body identification number for any existing or proposed stormwater pond, or stormwater infiltration areas, or wetland replacement areas within the Development.

L. Water quality testing results must be provided by the Applicant for any Development Application involving a wetland buffer strip of less than 100 feet for Exceptional Quality Wetlands which contain standing water during the growing season. One water sample must be collected each month between June and August from the surface water (within the upper 12 inches of water) and analyzed using a methodology pre-approved in writing by the City by an accredited laboratory for pH, conductivity, total phosphorus, soluble reactive phosphorus, total dissolved solids, total suspended solids and chlorides. The water quality testing results must be submitted to the ~~Environmental Coordinator~~ City Manager with the Wetland Delineation Report.

M. For Development Applications involving Wetland Alteration, the Applicant must provide written documentation to the City Environmental Coordinator with the Development Application that the sequencing steps set forth in Minnesota Rule 8420.0520 have been met. In following these steps, the Applicant must first demonstrate that alternatives to avoid and minimize wetland impacts have been evaluated. A minimum of three alternative plans must be evaluated and provided to the City Environmental Coordinator for review, one of which must be a “no-impact” alternative. Wetland restoration or expansion of existing or historic wetlands is preferred rather than ~~creating~~ creation of new wetlands or other methods of Wetland Replacement.

N. Unavoidable impacts to wetlands must be restored or replaced on-site unless the alternatives are not reasonably or practically available from an engineering standpoint or if the only feasible and

prudent sites available have greater ecosystem function and public value than the proposed wetland and it is an area that is to be preserved by a Conservation Easement or other such instrument. If impacts cannot be restored or replaced on-site, the Applicant must evaluate alternate sites in the following order of priority:

1. Within the City of Eden Prairie
2. Within the same subwatershed
3. Within the same watershed (Nine Mile Creek, Lower Minnesota River, ~~or~~ [Riley Creek](#), ~~Purgatory Creek~~, [or](#) ~~Bluff Creek~~ watershed)
4. Within the seven-county metropolitan area of the Minnesota River – Shakopee major surface water watershed (No. 33)
5. Within the Minnesota River – Shakopee major surface water watershed (No. 33)

Wetland restoration or replacement must at a minimum meet the ratio requirements under Minnesota Rules 8420.0522 to achieve full replacement of wetland function and value unless minimum replacement ratios established by the Watershed Districts or USACOE are greater than the WCA requirements.

O. Sequencing flexibility will not be implemented unless alternatives have been considered and unless the proposed replacement wetland will provide equal or greater functions and public values as determined based on a functional assessment reviewed by the Technical Evaluation Panel using a methodology approved by the Minnesota Board of Water and Soil Resources (BWSR). [If sequencing flexibility is requested, the Applicant must provide all necessary information to the Environmental Coordinator with the Wetland Replacement Plan.](#) Flexibility in application of the sequencing steps will be considered only if the criterion set forth in Minnesota Rule 8420.0520 Subp. 7a are met and the wetland to be impacted has been degraded to the point where replacement would result in a gain in function and public value or preservation of the wetland would result in degradation of the wetland's function and values.

P. Conceptual Wetland Replacement Plans for any proposed impacts that require replacement under WCA or U.S. Army Corps of Engineers regulatory programs must be provided to the City by the Applicant with the Development Application. The Applicant must contact the [City Environmental Coordinator](#) to obtain a water body identification number for use in the Wetland Replacement Plans for any replacement wetlands constructed within the City. Final Wetland Replacement Plans must be submitted to the [City Environmental Coordinator](#) for review and approval prior to ~~submission~~ [submittal](#) of the Development Plans to the City Council for review and approval [or, if the plans are not submitted do not go to the City Council, prior to issuance of a Building Permit for the property.](#)

Q. If the Applicant disputes whether a wetland exists or its classification, the Applicant has the burden to supply detailed information [to the Environmental Coordinator](#) ~~City Manager~~ supporting the Applicant's assertion. This includes, but is not limited to, historical aerial photography, topographic, hydrologic, floristic, and/or soil data deemed necessary by the City or LGU under the WCA to determine the jurisdictional status of the wetland, its exact boundary and its classification.

R. Wetland Buffer Strip Evaluation, Wetland Delineation, Wetland Determination, No-Loss Determination, and Sequencing Flexibility Reports and Wetland Replacement Plans supplied by the Applicant shall be prepared by a Minnesota Certified Wetland Delineator in accordance with current state and federal regulations. Wetland delineators must satisfy all certification requirements that are established by the U.S. Army Corps of Engineers and/or BWSR or, in the absence of such certification, are determined by the ~~City Manager~~Environmental Coordinator to be a qualified wetland delineator.

S. An Annual Wetland and Wetland Buffer Strip Evaluation Report (“Annual Buffer Report”) is required if a wetland or any wetland buffer required by Section 11.51 of this Code is located on the subject property. The Annual Buffer Report shall include an evaluation of the Wetland and Wetland Buffer and a plan for resolving any insufficiencies including any information the Environmental Coordinator specifically requests. If an Annual Buffer Report is required the Prior to release of the final plat for any portion of the subject property or if there is no plat prior to approval the issuance of Development Application the applied for approval. Developer shall submit an executed contract with a qualified wetland consultant, as determined by the ~~City Manager~~Environmental Coordinator, who will prepare the ~~Annual Wetland and Wetland Buffer Strip Evaluation Report (“Annual Buffer Report”)~~ which evaluates the condition of the wetland(s) and wetland buffer strip(s) prior to release of the final plat for any portion of the subject property, or if there is no plat prior to approval of the Development Application. The Annual Buffer Report shall provide both an action plan and proposed cost for correction of all problems identified. The first Annual Buffer Report shall be submitted no later than November 1 of the calendar year in which construction, preparation, grading, seeding, planting and/or monumentation of the wetland(s) and/or wetland buffer strip(s) is completed. Thereafter, this report shall be submitted by November 1 each year until two full growing seasons following completion of the development have passed, at which point a Final Annual Buffer Report shall be submitted. The Final Annual Buffer Report shall evaluate the wetland(s) and /or wetland buffer strip(s) to determine if the wetland(s) and/or wetland buffer strip(s) remain in compliance with all City requirements. If any unacceptable conditions or vegetation are identified within the Annual Buffer Reports or the Final Annual Buffer Report, the Developer shall correct the area(s) identified within ninety (90) days of submission of the Report, or by June 15<sup>th</sup> of the following year if submitted during the non-growing season.

T. Wetland Replacement Monitoring Reports are due by November 1 each year until the wetland replacement is determined to be complete by the LGU with advice from the Technical Evaluation Panel as outlined in Minnesota Rules Chapter 8420 and ~~Subdivision~~Section 11.51, Subd. 11 of this Code.

~~U. An Applicant may request an exemption or no-loss determination from the applicable LGU in accordance with Minnesota Rules 8420.0420 and Minnesota Rules 8420.0315 and 8420.0415 and 8420.0320.~~

~~U. It is unlawful for any person to intentionally make a false statement or omission on any application or report. Any false statement in such application or report shall be grounds for denial of the application or report, or form shall, upon discovery of such falsehood, work an automatic denial or, if already approved, shall be grounds for revocation of the approval render the approval void and of no effect to protect the applicant from prosecution for violation of this.~~

## Subd. 5. General Standards

The following standards apply to all lands that contain and/or abut a wetland or a wetland buffer strip:

A. Structures intended to provide access to or across a wetland or wetland buffer strip shall be prohibited unless a permit is obtained from the City and is in conformance with Minnesota Statutes and applicable state rules and regulations.

B. The Minnesota Pollution Control Agency's Urban Best Management Practices shall be followed to avoid erosion and sedimentation during the construction process. In addition, the Applicant shall follow the regulations set forth in ~~City Code~~ Section 11.55 of this Code.

C. Where wetland replacement or a wetland buffer strip is required, the Applicant shall, before the City releases the final plat or, if there is no plat approval involved, the first building permit for the entire subject property:

1. Submit to the ~~City Manager~~Environmental Coordinator~~City Engineer~~ and receive the ~~City Manager~~Environmental Coordinator's~~City Engineer's~~ approval of a conservation easement for protection of the wetland and approved wetland buffer strip. The easement must describe the boundaries of the wetland and wetland buffer strips, monuments and monument locations and prohibit any Structures, paving, mowing, introduction of non-native vegetation, cutting, filling, dumping, yard waste disposal, fertilizer application or removal of the wetland buffer strip monuments within the wetland buffer strip or wetland.

2. Submit evidence to the ~~City Manager~~Environmental Coordinator~~City Engineer~~ that the approved easement document has been recorded in the Hennepin County Recorder's/Registrar of Titles' office.

3. Submit a duplicate original of the easement document executed and acknowledged and otherwise in form and substance acceptable for filing with the Hennepin County Recorder/Registrar of Titles office.

4. Submit to the ~~City Manager~~Environmental Coordinator~~City Engineer~~ and receive the ~~City Manager~~Environmental Coordinator's~~City Engineer's~~ approval of a Declaration of Covenants and Restrictions for any wetland replacement in accordance with Minnesota Rules Chapter 8420.

5. Submit evidence to the ~~City Manager~~Environmental Coordinator~~City Engineer~~ that the approved Declaration of Covenants and Restrictions has been recorded in the Hennepin County Recorder's / Registrar of Title's office.

D. Yards shall be sodded, seeded and/or mulched within six months of ceasing land alterations in accordance with Section 11.55, Subd. 5.H Subdivision G.8 of this Code. Wetlands, wetland buffer strips and wetland replacement areas shall be seeded and/or planted in accordance with Subdivision Section 11.51, Subd. 8 of this Code within sixty (60) days of completion of land alteration. All sodding, seeding or planting must be completed prior to removal of any erosion control. If construction is completed after the end of the growing season, erosion control shall be

left in place and all disturbed areas shall be mulched to protect these areas over the winter or during the non-growing season.

Variances for sod outside of the wetland buffer strip areas, in accordance with City Code Section 9.71, shall be considered on a case by case basis.

E. Stormwater shall not be discharged directly into any natural water bodies such as wetlands, lakes or creeks without pre-settlement, infiltration, filtration or other pre-approved method. The pre-treatment must be approved in writing by the Environmental Coordinator~~City Manager~~.

#### **Subd. 6. Wetland Buffer Strips and Setbacks**

A. For a Lot of record or a Development Application approved by the City Council after February 1, 2000, the Applicant shall maintain a wetland buffer strip around the perimeter of all wetlands and all stormwater ponds which are constructed as part of a Wetland Replacement Plan. The setback and wetland buffer strip provisions of this Code shall not apply to a Lot of record as of February 1, 2000 or for Development Applications for which site plans, preliminary plats, final plats or planned unit development plans have been approved by the City Council prior to this date. The City strongly encourages the use of a wetland buffer strip and setback on all lots in the City. In addition, any property located in the Nine Mile Creek or Riley Purgatory Bluff Creek Watershed Districts shall comply with any additional buffer requirements imposed-issued by the Watershed Districts. 7

B. Wetland buffer strips and structure setbacks shall apply regardless of whether or not the wetland is on the same parcel as a proposed Development Application. For parcels in which the wetland is on an adjacent parcel, the setback and wetland buffer strip requirements for the parcel shall be reduced by the distance between the property line of the parcel and the wetland on the adjacent parcel. This provision in no way reduces or eliminates any other setbacks required by the City Code or any other law or regulation.

C. The Applicant shall establish and maintain wetland and wetland buffer strip vegetation in accordance with the requirements found in Section 11.51, Subd. 8 of this Code. Wetland buffer strips shall be identified within each Lot by permanent monumentation approved by the Environmental Coordinator~~City Manager~~ in accordance with Section 11.51, Subd. 7 of this Code.

D. Non-native or invasive vegetation, such as European buckthorn, purple loosestrife and reed canary grass, or dead or diseased trees that pose a hazard may be removed as long as a Vegetation Management Plan is submitted to the Environmental Coordinator~~City Manager~~ on a form provided by the City for review and written approval. The Vegetation Management Plan must maintain the wetland and wetland buffer strip standards found in Section 11.51, Subd. 8 or as required by the Environmental Coordinator~~City Manager~~. The Vegetation Management Plan form must be obtained from the City.

E. All other Structures, including retaining walls, roadways and trails, shall meet the setbacks and wetland buffer strip standards established in Table 1 below. The use of a meandering wetland buffer strip to maintain a natural appearance is preferred.

~~EF.~~ For roadways ~~or other Structures~~ where the City determines that there is no practical alternative except to be aligned either adjacent to or across wetlands, additional wetland filling to create a wetland buffer strip shall not be required.

~~F.~~ Trails that are intended to serve an interpretive function are exempted from the wetland buffer strip requirement.

~~All other areas and Structures, including retaining walls, roadways and trails, shall meet the setbacks and wetland buffer strip standards established in Table 1 below. The use of a meandering wetland buffer strip to maintain a natural appearance is preferred.~~

~~G.~~ Trails that are intended to serve an interpretive function, as determined by the Environmental Coordinator, are exempted from the wetland buffer strip requirement.

~~GH.~~ An existing Structure, driveway or parking area would be considered a legal nonconforming Structure if a later WCA delineation shows that the wetland is closer than the required setback.

**Table 1 - Wetland Buffer Strips and Setbacks**

	<u>Exceptional</u>	<u>High</u>	<u>Moderate</u>	<u>Low</u>
Wetland Buffer Strip Minimum Width	40'	30'	20'	10'
Wetland Buffer Strip Minimum Average Width	60'	60'	40'	20'
Structure Setback (from Wetland Buffer Strip)	25'	25'	15'	15'
Total Minimum Average	85'	85'	55'	35'

~~IH.~~ The wetland buffer strip width for constructed stormwater ponds or infiltration areas utilized for Public Value (PVC) or New Wetland (NWC) Credit shall be measured from the Ordinary High Water Level (OHWL) of the pond or infiltration area and shall be considered of moderate quality.

### **Subd. 7. Monumentation**

A monument is required at each Lot line where it crosses a wetland buffer strip and shall have a maximum spacing of 200 feet along the edge of the wetland buffer strip. Additional monuments shall be placed as necessary to accurately define the edge of the wetland buffer strip. If no wetland buffer strip is required, monuments shall be placed at the wetland boundary. The monument shall consist of a post and a wetland buffer strip sign. The post shall be a 1.12 to 2.0 pounds per foot (1.12 pounds per foot is preferred) green steel channel post or other material pre-approved in writing by the ~~Environmental Coordinator~~City Manager. The post shall be a minimum of 2.25 inches wide and 6 feet 6 inches long (2.25" x 6.5'). The sign shall have a minimum size of 3 inch by 8 inch (3" x 8"). The sign shall be mounted flush with the top of the post and shall include the statement "Wetland Buffer: No Mowing Allowed" or "Wetland Buffer: Vegetation Clearing Limit" ~~or other statement approved in writing by the Environmental Coordinator~~City Manager. The post shall be mounted to a height of four feet above grade and set at least 2.5 feet in the ground. Monuments may be waived in unusual circumstances where the ~~Environmental Coordinator~~City Manager determines that such signs would not serve a practical purpose.

### **Subd. 8. Vegetation Performance Standards**



A. Where acceptable native, non-invasive vegetation exists in wetland, wetland replacement and wetland buffer strip areas, the retention of such vegetation in an undisturbed state is required unless an Applicant receives written approval from the City Environmental Coordinator or any other agency which may regulate the removal or replacement of ~~vegetation to replace~~ such vegetation. A wetland and/or wetland buffer strip has acceptable natural vegetation if it:

1. Has a continuous, dense layer of perennial grasses that have been uncultivated or unbroken for at least 5 consecutive years, or
2. Has an overstory of trees and/or shrubs with at least 80 percent canopy closure that have been uncultivated or unbroken for at least 5 consecutive years, or
3. Contains a mixture of the plant communities described in (1) and (2) above that have been uncultivated or unbroken for at least 5 consecutive years.

B. Notwithstanding the performance standards set forth above in Subdivision Section 11.51, Subd. 8 (A) of this Code, the Environmental Coordinator~~City Manager~~ may determine existing wetland and/or wetland buffer strip vegetation to be unacceptable if the wetland and/or wetland buffer:

1. Is composed of Weeds (including, but not limited to common buckthorn, purple loosestrife, leafy spurge and/or noxious weeds as defined by Minnesota Statutes, Sections 18.76-18.88), or
2. Has topography that tends to channelize the flow of surface runoff, or
3. For some other reason it is unlikely to retain nutrients and sediment.

C. Areas with unacceptable vegetation shall be re-graded, re-seeded and/or re-planted as needed and maintained in accordance with Section 11.51, Subd. 8 of this Code. The wetland, wetland replacement and wetland buffer strip planting requirements must be ~~identified~~included in the Wetland Delineation, ~~Report or~~ Wetland Buffer Strip Evaluation or Wetland Replacement Plan Monitoring Report. Wetland, wetland alteration, wetland replacement and wetland buffer strip landscaping shall be according to the following standards:

1. Planted with a diverse native, non-invasive seed mix appropriate for the specific site conditions that contains 100 percent perennial native vegetation. A one-time planting of an annual nurse or cover crop such as oats or rye may be included.
2. Seed mix used shall be a BWSR seed mix appropriate for the area requiring reseeded or other alternative pre-approved in writing by the Environmental Coordinator~~City Manager~~. The seeding rate shall be at the rate recommended by the BWSR seed mix criteria or other pre-approved alternative.
3. Native shrubs may be substituted for the native seed mix where appropriate. All substitutions must be pre-approved in writing by the Environmental Coordinator~~City Manager~~. Such shrubs may be bare root seedlings and shall be planted at a minimum rate of

60 plants per acre. Shrubs shall be distributed so as to provide a natural appearance and shall not be planted in rows.

4. Any groundcover or shrub plantings installed within the wetland or wetland buffer strip are independent of landscaping required elsewhere by the City Code.

5. Native prairie grasses and forbs shall be seeded or planted in accordance with "Restoring & Managing Native Wetland & Upland Vegetation" (published January 2006 by the Minnesota Department of Transportation (MnDOT) and BWSR) or other alternate method pre-approved by the ~~City Manager~~ Environmental Coordinator by a qualified contractor. Determination of the contractor's qualifications shall be made by the ~~City Manager~~ Environmental Coordinator. It is the responsibility of the Applicant to have the contractor and method used approved by the ~~City Manager~~ Environmental Coordinator prior to planting or seeding.

6. No fertilizer shall be used in establishing new wetland buffer strips, except when deemed necessary to establish acceptable wetland and/or wetland buffer strip vegetation and then limited to amounts indicated by an accredited soil testing laboratory. Determination of proper accreditation shall be made by the ~~City Manager~~ Environmental Coordinator.

7. All seeded areas shall be mulched immediately with clean straw at a rate of 1.5 tons per acre. Mulch shall be anchored with a disk or tackifier.

8. Wetland, wetland replacement and wetland buffer strip areas (both natural and created), shall be protected by erosion control during construction in accordance with Section 11.5455, Subd. 7-5 of this Code.

9. The erosion control shall remain in place until the cover crop is established.

D. The Applicant shall establish and maintain the wetland and wetland buffer strip vegetation in accordance with the requirements found in this Section, both during development and for two full growing seasons after completion of the development. During this time, the Applicant must replant or reseed any wetland and/or wetland buffer strip vegetation that does not survive.

E. After the second full growing season following completion of the development, if the condition of the wetland and/or wetland buffer strip diminishes, the Applicant shall not be required to reestablish the wetland and/or wetland buffer strip to meet the standards contained in Section 11.51, Subd. 8 of this Code. However, wWetlands created for Wetland Replacement must be monitored and maintained by the Applicant until the wetland is reviewed and approved by the LGU in accordance with the requirements established by ~~Subdivision~~ Section 11.51, Subd. 11 of this Code and Minnesota Rules Chapter 8420.

After such times, the property owner on which the wetland and/or wetland buffer strip is located shall be responsible for the maintenance of the wetland, wetland alteration, wetland replacement and/or wetland buffer strip areas and must:

1. Maintain and repair damage to wetland and/or wetland buffer strip areas from activities such as mowing, cutting, grading or other prohibited activities unless approved by the City in writing as a Vegetation Management Plan.
2. Maintain only vegetation permitted in the Vegetation Management Plan or as found in Section 11.51, Subd. 8 of this Code in the wetland and wetland buffer strip, including the removal of all Weeds, unless allowed otherwise in writing by the ~~City Manager~~Environmental Coordinator.
3. Ensure that all soil surfaces in wetland and wetland buffer strip areas are planted with permitted vegetation and that there are no open soil surfaces that may result in erosion.
4. Maintain the wetland and wetland buffer strip as a “no mow” area.

### **Subd. 9. Encroachment in Required Setback and Wetland Buffer Strip Areas**

- A. Wetlands, wetland buffer strips and structure setback areas must be kept free of all Structures. A maximum of ten percent (10%) of the Structure Setback area may be occupied by any Structures. The acceptability of the proposed Structures within the Structure Setback area shall be made by the ~~City Manager~~Environmental Coordinator.
- B. Wetlands and wetland buffer strips must not be mown except as pre-approved in writing by the ~~City Manager~~Environmental Coordinator for maintenance practices. The acceptability of the proposed maintenance practices shall be made by the ~~City Manager~~Environmental Coordinator.
- C. Variances / Waivers
  1. Only variances meeting the standards and criteria set forth in Section 11.76, Subd. 1 of this Code and waivers approved pursuant to Section 11.40, Subd. 8 of this Code for a Planned Unit Development (PUD) process shall be granted. All variance requests must be made to the Board of Adjustments and Appeals. All waiver requests must be made to the Planning Commission and the City Council.
  2. Variances or waivers shall not be granted which would circumvent the intent and purposes of Section 11.51 of this Code.

### **Subd. 10. ~~Surety Performance Bond~~ Required.**

If a Development Application includes wetland alteration, wetland or wetland buffer strip landscaping or construction of a wetland buffer strip the Applicant must file with the ~~City Manager~~Environmental Coordinator prior to release of the final plat, or, if there is no plat approval involved, prior to the first building permit for the entire subject property, a performance bond, cash escrow or letter of credit (~~“Surety”~~)—with a corporation approved by the ~~City Manager~~Environmental Coordinator, as surety thereon, or other guarantee acceptable to the ~~City Manager~~Environmental Coordinator and in an amount determined by the ~~City Manager~~Environmental Coordinator as set forth below (~~“Surety”~~). ~~Surety Performance Bond~~ requirements for Development Applications for areas where the City is the LGU are set forth in Section 11.51 ~~Subdivision~~Subd. 11 of this Code.

A. Amount - The amount shall be for no less than one and one-half (1 ½) times the amount estimated by the ~~City Manager~~Environmental Coordinator as the cost of completing a Wetland Plan for monument installation and replacement and restoration and/or correction of the wetland and/or wetland buffer strip.

B. Schedule - The ~~Surety performance bond~~ for the Wetland Plan must cover two complete growing seasons following completion of the development and full and final restoration of all corrective actions identified in the Final Annual Report and is conditioned upon complete and satisfactory implementation of the approved Wetland Plan or Vegetation Management Plan and final inspection of the wetland and wetland buffer strip by the City.

C. Submissions~~ittals~~ - The Applicant shall provide one copy of a signed contract with an environmental consultant to monitor construction activities and annual compliance and certify final completion of the wetland, wetland buffer strip and wetland replacement requirements to the City Manager~~Environmental Coordinator~~.

D. Form of Application - The ~~performance bond, cash escrow, letter of credit or other guarantee acceptable to the Surety~~ City Manager~~Environmental Coordinator~~ shall be posted within 10 days of approval of the Development Application and prior to the commencement of the Development or the preparations thereof.

#### **Subd. 11 - Special Requirements for Wetland Conservation Act (WCA) Services**

The following provisions apply to areas for which the City of Eden Prairie is Local Government Unit (LGU). ~~All wetland review requests, permit applications, information, analyses and reports required pursuant to City Code Section 11.51, Subd. 11 must be submitted to the Environmental Coordinator.~~ All survey information must be provided in the Minnesota County Coordinate System, Hennepin County North American Datum 1983 (NAD83) (1996) projection in U.S. Survey feet. All vertical elevations shall be in North American Datum 1988 (NAVD88).

A. Wetland Evaluation / Wetland Determination Review - An Applicant submitting a Development Application must provide a report documenting site conditions; wetland delineation review procedures; a statement as to whether wetlands are present on site; whether an exemption is requested; and whether the development proposal will result in a loss of wetland. ~~All reports required in this section must be approved by the Environmental Coordinator. The decision of the Environmental Coordinator shall be final unless within 30 days of the date of mailing of the decision the Applicant files an appeal with the City Council pursuant to City Code Section 2.80.~~ Reports must be prepared in accordance with paragraph B.

B. Wetland Delineation, Wetland Determination, Wetland Exemption and No Loss Determination Review Application - The Applicant shall complete and file with the Environmental Coordinator an Application for Review of Wetland Determinations in the form required by the Environmental Coordinator. The Application, including the following information, must be filed with the Environmental Coordinator a minimum of one week prior to scheduling a field review by the Environmental Coordinator:

1. Wetland Delineation Report, Wetland Determination, [Wetland Exemption](#) or No Loss Determination Report, one print copy and one electronic (PDF) version in color (all maps in the PDF version need to be developed for an 11" x 17" printable format with sufficient detail so all features are legible);
2. Wetland Buffer Strip Report, one print and one electronic copy (PDF) must be submitted with the Wetland Delineation ~~or No Loss Determination~~ Report;
3. Scaled public land survey map of the wetland delineation and boundary, transect locations and sample points;
4. Survey data in a format compatible with ArcView software;
5. A minimum of two wetland [field](#) data forms per wetland representing the wetland parameters at two locations along with a data form documenting upland conditions at each location;
6. Color copies of current and historical aerial photographs as required to define current and historic wetland conditions or wetland boundaries;
- ~~7. Field data sheets documenting soil, vegetation and hydrology conditions at a minimum of two locations; and~~
- ~~87.~~ Such other information as required by the Environmental Coordinator.

Source: Ordinance No. 8-2009  
Effective Date: 8-27-2009

[An Applicant may request an exemption or no-loss determination in accordance with Minnesota Rules 8420.0315, 8420.0320, 8420.0410, 8420.0415 and 8420.0420.](#)

C. Permit Application Requirements – Wetland Alteration, constructing boardwalks, removing healthy native vegetation or otherwise altering or destroying any wetland or wetland function, either wholly or partially, by any person requires ~~submission~~~~submittal~~ of a Combined Wetland Permit Application for review and approval by the City. Except for those wetlands exempt under Minnesota Rule 8420.0420, any alteration to a wetland must result in a zero net loss.

D. Wetland Replacement Plan Application – A Combined Wetland Permit Application for Wetland Replacement shall be made in writing to the City. The Application shall set forth the location and plan for the proposed project. The Applicant must provide ~~seven~~~~one~~ printed and one electronic (PDF) version in color (all maps in PDF version need to be developed for an 11" x 17" printable format with sufficient detail so all features are legible). The Application must include:

1. The name and address of the person(s) applying for the permit (Applicant).
2. The name and address of the owner(s) of the land where the project will occur.

3. The name and address of the managing agents or consultants that are or may be involved with the wetland alteration and/or replacement activities.
4. The estimated period of time within which the project will be conducted.
5. A topographic map of the proposed project area(s) to a minimum scale of one inch equals 50 feet showing existing ground elevation contours at two-foot intervals. The map shall show:
  - a. The size and location of the wetland in relation to the property boundaries, including a scaled public land survey with the coordinates of the approximate wetland center and sample locations.
  - b. The property and a minimum of 50 feet of land abutting the property, as it existed prior to the proposed land alteration.
  - c. The proposed ground elevation contours at 2 foot intervals on the property when the land alteration is completed.
  - d. Locations of any surface inlets or outlets draining into or out of the wetlands.
  - e. Pre- and post-drainage areas for all existing and proposed wetlands.
  - f. Photographic reference points and proposed transect or sampling locations for wetland replacement or wetland banking plans.
  - g. Survey data in a digital shapefile or comma delimited ASCII file format compatible with ArcView software.
6. Wetland Type of all existing and proposed wetlands, including a comparison to the Eggers and Reed “Wetland Plant Community Types” document.
7. Recent color aerial photograph of the proposed impact area.
8. Grading plan of the proposed project area(s) to a minimum scale of one inch equals 50 feet prepared by a registered professional engineer that includes appropriate drainage areas and drainage calculations, proposed two-foot contours of the land when the project is complete and erosion control to be used during construction. Construction details, including the proposed elevations and contours, for any control structures must be included on the plans.
9. A list of dominant or abundant vegetation in each stratum, utilizing the “50/20 rule” in the proposed impacted/altered wetland areas, including scientific and common names, and of vegetation exceeding 10% coverage and an estimated percentage of coverage for each.
10. A soils map of the site showing soil type and substrate.
11. Landscaping or revegetation plan at the same scale as the topographic map.
12. Such other information as may be necessary to evaluate the proposed wetland alteration and wetland replacement plans and to determine the amount and types of wetland to be impacted.

13. Evidence of ownership or property rights to the affected area.
14. Such other information as required by Minnesota Rule 8420.0330 and the City.

E. Wetland Replacement Plan Approval - Wetland Replacement Plan Applications shall be allowed subject to approval by the ~~City Council unless the area to be altered or impacted is less than 5,000 square feet in size in which case the Plans shall be subject to approval by the~~ Environmental Coordinator. If the City determines that a feasible and prudent alternative exists that would avoid or minimize impacts to the wetland it shall deny the Application.

The City shall make its decision regarding the Wetland Replacement Plans in accordance with Minnesota Statutes 15.99, Subd. 3.

Approval of the Application shall be valid for a period of no more than three years. If the work has not begun within three years of the date of approval of the Application, the approval shall be void.

Approval of an Application for Wetland Alteration and/or Wetland Replacement does not exempt the Applicant from obtaining any and all other necessary permits for work within a wetland and/or wetland buffer.

F. Wetland Replacement Annual Reports – Annual reports shall be prepared in accordance with Minnesota Rules 8420.0810 and must include the following information:

1. Reference photographs taken within 4 weeks of completion of the grading and within 4 weeks of completion of the landscaping.
2. A description of activities completed in the current year
3. A list of activities planned for the following year
4. As-built plans (for the first year only) to a minimum scale of one inch equals 50 feet showing existing ground elevation contours at two-foot intervals
5. A comparison of actual conditions with the as-built specifications and proposed plans
6. Monthly hydrology measurements from April through October
7. A list of vegetation that have 10% coverage or more
8. A comparison of proposed versus actual Wetland Types within the wetland and wetland replacement areas
9. Map of the plant communities within the wetland, wetland replacement and wetland buffer areas included in the Wetland Replacement Plan. The map shall be overlain on the topographic map provided for the Wetland Replacement Plan.

10. Monthly color photographs from the photographic reference points from April to October.
11. All information required by Minnesota Rules 8420 for wetland replacement reporting.

Wetland Replacement Annual Reports must be submitted by November 1 each monitoring year. If the City does not receive either: 1) an annual monitoring report; or 2) notification that the report will be provided prior to December 31st by the November 1<sup>st</sup> deadline the City will charge the Applicant for cost incurred by the City, including staff time, to collect the information needed to complete the Wetland Replacement Annual Report. One print and one electronic (PDF) copy in color (all maps in PDF version need to be developed for an 11" x 17" printable format with sufficient detail so all features are legible) shall be submitted for review.

G. Fees – ~~Submission~~~~Submittal~~ of requests for wetland determinations, sequencing flexibility, wetland delineation reviews, field or technical reviews of current or historic wetland and/or wetland buffer conditions, or an application for a Wetland Replacement Plan shall be accompanied by a non-refundable application fee and a cash deposit in such amounts as determined by the City Council and fixed by Ordinance. The cash deposit, or a portion thereof, will be refunded after ~~final City Council action on the Development Application, or if there is no Development Application,~~ final ~~after~~ completion of City review and approval of the submittal, unless the total sum is greater than the administrative review cost. Costs may include, but are not limited to:

1. Consultant fees assisting in City review, providing technical assistance or other services required to meet WCA requirements.
2. City staff time expended in review, approval and processing of the Application or other services required to meet WCA requirements.
3. Consultant fees or City staff time expended in coordinating and holding Technical Evaluation Panel meetings.
4. Mailing, legal notices and other administrative costs.
5. Any other reasonable costs incurred by the City in review of the proposal.

Full payment of the fees and cash deposit must be made by the Applicant prior to consideration of the Development Application. All costs incurred by the City greater than the cash deposit balance will be billed to the permit holder.

H. ~~Surety. Performance Bond~~ – The ~~Surety performance bond, cash escrow or letter of credit~~ required in Section 11.51, Subd. 10 shall include costs associated with the City and WCA requirements for Wetland Alteration or Wetland Replacement projects, including but not limited to construction, seeding, planting, monument installation and annual monitoring. The Surety shall be retained by the City until the later of (i) approval of the project as is approved as final by the Environmental Coordinator; or (ii), it shall be retained for for a minimum period of 5 years ~~and until the project is approved as final by the Environmental Coordinator.~~ The ~~Surety Bond~~ must include costs associated with re-grading or purchase of off-site Wetland Replacement if on-site



Wetland Replacement is unsuccessful. The ~~performance bond, cash escrow or letter of credit~~ Surety shall be extended beyond the required monitoring period for up to an additional five-year period if, in the written opinion of the Technical Evaluation Panel, the goal of the replacement plan has not been achieved but may be achieved with more time. The amount of security shall be 150% of the estimated cost to complete the scope of work associated with the Wetland Plan and Wetland Replacement Plan.

I. Wetland construction or replacement must be conducted as required in Minnesota Rules 8420 and the Minnesota Wetland Restoration Guide (BWSR).

Source: Ordinance No. 9-2008  
Effective Date: 3-27-2008

Prev. Source: Ordinance No. 6-2003  
Effective Date: 4-10-2003

Prev. Source: Ordinance No. 6-2000  
Effective Date: 2-10-2000

### **Subd. 12 – Submissionsmittals, Decisions, and Appeals**

A. ~~\_\_\_\_\_~~  
~~J. All applications, information, analyses and reports required pursuant to City Code Section 11.51 shall be in the form required by the City and shall be submitted to the Environmental Coordinator by the Applicant in conjunction with the submissionsubmittal of the Development Application. The Environmental Coordinator shall confirm that all required information has been provided before the Development Application is considered complete.~~

B. All applications, information, analyses and reports required pursuant to City Code Section 11.51 shall be subject to review and approval by tThe Environmental Coordinator in accordance with the procedures set forth in Minnesota Rules 8420.0255. All decisions made by the Environmental Coordinator are final unless a timely appeal is filed with the City Council.—shall approve all reports and make all decisions. The decisions shall beare final and shall comply with the procedures set forth in Minnesota Rules 8420.0255.

C. All decisions made by A decision of the Environmental Coordinator may be appealed to the City Council in accordance with Minnesota Rules 8420.0905. The appeal must be in writing, must be accompanied by payment of all applicable fees, and must be filed with the City—City EngineerEnvironmental Coordinator within 30 days of the date the Notice of Decision is sent. The City Council shall make a ruling on the appeal within 30 days of the date of the filing of the appeal unless the City Council and the appellant mutually agree in writing to an extension. The appeal shall comply with the procedures set forth in Minnesota Rules 8420.0905.

D. A decision of the City Council may be appealed to the Minnesota Board of Water and Soil Resources (BWSR) pursuant to Minnesota Rules 8420.0905.

E. An applicant proceeds at their own risk if they proceed prior to expiration of the 30-day appeal window. If the decision is reversed or revised under appeal, the Applicant is responsible for restoring and replacing all wetland impacts.

**Subd. 13 – Enforcement and Remedy.**

In addition to the remedy provided for in City Code Section 11.99, the provisions of ~~The provisions of City Code Section 11.515~~ may be enforced in accordance with ~~through the procedures set forth in the City Code, the procedure set forth in~~ Minnesota Rule 8420.0900, or any other remedy provided for in law or equity.

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, AMENDING CITY CODE CHAPTER 11 BY AMENDING SECTION 11.51 RELATING TO WETLAND PROTECTION; AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 11.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.**

**THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA ORDAINS:**

**Section 1. City Code Chapter 11, Section 11.51 is hereby amended by deleting the Section in its entirety and replacing it with the following:**

**SECTION 11.51. STANDARDS FOR THE PROTECTION OF WETLANDS**

**Subd. 1. Preamble.**

This Code hereby incorporates by reference the Wetlands Conservation Act [Minnesota Statutes 103G.221 et seq. (herein after referred to as the WCA)] and Minnesota Rules Chapter 8420. All wetlands, as defined in Section 11.51, Subd. 3 of this Code, including Public Waters and Public Waters Wetlands governed by Minn. Stat. 103G.005 and those governed by the U.S. Army Corps of Engineers, are covered by this Code. Standards outlined in this Code have precedence over WCA in situations where the City Code is more restrictive than WCA. The following watershed districts are located in the City:

1. Lower Minnesota River
2. Nine Mile Creek
3. Riley Purgatory Bluff Creek

The City is the acting Local Government Unit (LGU) for the Lower Minnesota River and Riley Purgatory Bluff Creek Watershed Districts.

Each reference in this Section to statutes, codes, regulations or rules constitutes a reference to the statute, code, regulation or rule as may be amended from time to time.

**Subd. 2. Purpose.**

Through the adoption and enforcement of this Code, the City shall promote the general health, safety, and welfare of its residents by both conserving and protecting wetlands and requiring sound management practices as provided for in the WCA when development occurs in the vicinity of wetlands. The intent of this Code is to avoid alteration and destruction of wetlands. By implementation of this Code, the City seeks to accomplish the following:

1. Balance the need to preserve and protect natural resources and systems with both the rights of private property owners and the need to support the efficient use of developable land within the City;
2. Promote water quality by maintaining the ability of wetlands to recharge ground water and receive the discharge of ground water, to prevent soil erosion, and to retain sediment, nutrients and toxicants in wetland buffer strip areas before it discharges into community wetlands, lakes and streams, thus avoiding the contamination and eutrophication of these water features;
3. Reduce human disturbances to wetlands by providing a visual and physical transition from surrounding yards; and
4. Provide wildlife habitat and thereby support the maintenance of diversity of both plant and animal species within the City.

### **Subd. 3. Definitions.**

The following terms, as used in this Section, shall have the meanings stated. Terms not defined shall have the meaning as stated in Section 11.02 of this Code:

- A. “Applicant” – The “Applicant” means the person submitting a Development Application to the City.
- B. “City Engineer” – The "City Engineer" means the City Engineer or his/her designee."
- C. “City Wetland Map” – The “City Wetland Map” is referenced as the City’s Water Body Map as developed for the City’s Local Water Management Plan and as amended from time to time as wetland, lake and stormwater pond conditions change or new information is collected. The City map adopted by this ordinance shall be prima facie evidence of the location and classification of a wetland.
- D. Combined Wetland Permit Application – An application form provided by the Minnesota Board of Water and Soil Resources (BWSR) for water and wetland projects affecting lakes, rivers, streams or wetlands. The Combined Wetland Permit Application is a single form that is completed and submitted to the Local Government Unit (LGU), the Department of Natural Resources (DNR), the Hennepin Conservation District (Hennepin County) and the U.S. Army Corps of Engineers (USACOE) for review and approval.
- E. “Development Application” – “Development Application” includes but is not limited to applications for Land Development, Site Plan Review, Planned Unit Development, rezoning, platting, land alteration, wetland alteration, wetland no-loss determination or Wetland Replacement.
- F. “Environmental Coordinator” – The “Environmental Coordinator” means the Environmental Coordinator or his/her designee.
- G. “Local Government Unit” – The “Local Government Unit” (LGU) is a city council, town board, watershed management organization under Minnesota Statutes Section 103B.205, soil and

water conservation district or their delegate. In cases where activity or replacement will occur on state or federal land, the agency with administrative responsibility for that land is the LGU.

H. “MinRAM” – The Minnesota Routine Assessment Methodology (MinRAM) as referenced in Minnesota Rules Chapter 8420. MinRAM is a field tool used to assess wetland functions on a qualitative basis. Functions include items such as vegetative diversity and integrity; wildlife habitat; water quality protection; flood & stormwater attenuation; recreation, aesthetics, education & science; fishery habitat; shoreline protection; groundwater interaction; and commercial uses.

I. “Native Vegetation” - Plant species indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity, and are classified as native in the Minnesota Plant Database (Minnesota DNR, 2002 or as amended). Native Vegetation does not include Weeds.

J. “No-Loss Determination” – An application to the Local Government Unit (LGU) to evaluate whether the proposed work will result in a loss of wetland within the property. This would include activities listed in Minnesota Rules Section 8420.0415. The landowner is responsible for submitting the proof necessary to show qualification for the claim. The LGU may evaluate evidence for a no-loss claim without making a determination.

K. “Public Value Credit (PVC)” – Wetland replacement credit that can only be used for the portion of wetland replacement requiring greater than a 1:1 ratio of wetland fill to wetland replacement as allowed by Minnesota Rules 8420.

L. “Setback” – The minimum horizontal distance between a structure and the nearest edge of the wetland buffer strip.

M. “Sequencing Flexibility” – Sequencing Flexibility is implemented after all alternatives have been considered in accordance with Minnesota Rules 8420.0520 and Subd. 11.51, Section 4 of this Code. A “Sequencing Flexibility Report” must be provided if sequencing flexibility is requested to document that these conditions have been met and the proposed action or alternative.

N. “Structure” – A “Structure” means a Structure as defined in Section 11.02, 59 of this Code.

O. “Technical Evaluation Panel” – A “Technical Evaluation Panel” (TEP) is established for each LGU under Minnesota Rules 8420.0240. The TEP assists the LGU in making technical findings and provides recommendations for projects involving wetland alteration or wetland impacts at the request of the LGU, landowner or a member of the TEP.

The TEP must include at least one technical representative from each of the following:

- Board of Water and Soil Resources (BWSR)
- Hennepin Conservation District (Hennepin County)
- Local Government Unit (LGU)

For projects involving public wetlands or affecting wetlands adjacent to public waters or public waters wetlands, the TEP shall include a technical professional employee of the DNR. The

LGU or TEP may invite additional expertise to assist in the decisions. The TEP shall be coordinated by the LGU.

P. “Weeds” - Weeds are (i) noxious weeds as defined and designated pursuant to the “Minnesota noxious weed law”, Minnesota Statutes, Sections 18.76-18.88, or (ii) any volunteer plants, such as but not limited to spotted knapweed (*Centaurea maculosa*) or burdock (*Arctium minus*). For the purposes of this definition, weeds do not include dandelions or clover. The City Weed Inspector and/or Assistant City Weed Inspector shall maintain a current list of volunteer plants that are prohibited.

Q. “Wetland” - Lands transitional between terrestrial and aquatic systems, either created or natural, where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must:

- Have a predominance of hydric soils;
- Be inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- Under normal circumstances support a prevalence of hydrophytic vegetation.

R. “Wetland Alteration” – Alteration of a wetland includes changes to the wetland and/or wetland buffer strip in regards to size, depth or contour; dredging; tilling; damming; alteration of the watercourse; ditching; tiling; grading; draining; discharge of water; appropriation of water; changes in vegetation; or otherwise altering or destroying a wetland or wetland buffer or their functions. Alterations would not include Native Vegetation plantings or selective clearing or pruning of prohibited or restricted noxious weeds as defined in Minnesota Rules Sections 1505.0730 to 1505.0750, unless within a Conservation Easement in which case submission of and written approval by the City of a Vegetation Management Plan on a form provided by the City is required.

S. “Wetland Buffer Strip” - An area of vegetated ground cover around the perimeter of a wetland that, either in its natural condition or through intervention, has the characteristics of a Buffer as defined in Section 11.02, Subd. 7 of this Code, “Buffer”. A “Wetland Buffer Strip Evaluation Report” is a report summarizing the results of an evaluation of the wetland and Wetland Buffer Strip in relation to the requirements defined in Section 11.51 Subd. 8 of this Code.

T. “Wetland Delineation” – An assessment tool utilized to determine the boundary of a wetland using the US Army Corps of Engineers Wetland Delineation Manual (January 1987) as well as any additional boundary determination requirements established in Minnesota Rules Chapter 8420. A “Wetland Delineation Report” is a document that summarizes the observations, results and conclusions performed during the assessment when wetlands are present on the property.

U. “Wetland Determination” – An assessment conducted utilizing the US Army Corps of Engineers Wetland Delineation Manual (January 1987) to determine whether a wetland is present within the property that may be impacted by a proposed project. A “Wetland Determination Report” documents the conditions that lead to the conclusion that wetlands may or may not be present on the property.

V. “Wetland Plan” – A summary of all work items to be completed in relation to any wetland alteration, hydrology monitoring, or wetland or wetland buffer strip restoration, replacement, or construction and the estimated cost for each item. Work items include, but are not limited to, wetland buffer strip monument purchase and installation; Weed control; landscaping within the wetland or wetland buffer strip; wetland or wetland buffer strip restoration; wetland and wetland buffer strip monitoring; wetland replacement monitoring; or any items determined to be incomplete during the development review process.

W. “Wetland Replacement” – Wetland habitat enhancement; wetland creation; restoration of wetland habitat or functions; wetland construction; wetland replacement; wetland banking; wetland buffer habitat creation; wetland enhancement; or stormwater system construction to enhance water quality. As a result New Wetland Credit (NWC) and/or Public Value Credit (PVC) are established for replacement of wetland impacts, loss of public values of the wetland functions or Wetland Alterations. A Wetland Replacement Plan summarizes the Wetland Alteration and the method in which the Wetland Alteration and/or loss of wetland function will be replaced as required in Minnesota Rules 8420.

X. “Wetlands, Exceptional Quality” - Exceptional Quality wetlands have an exceptional vegetative diversity and integrity function, based on the results of MinRAM. They typically have an undisturbed plant community or a plant community that is sufficiently recovered from past disturbances such that it closely represents pre-European settlement conditions. The wetlands contain an abundance of different plant species with dominance evenly spread among several species. They will contain very few non-native species and they may have or previously had rare, threatened or endangered plant species. Invasive or exotic plant species are either absent or limited to small areas where some disturbance has occurred. These wetlands exhibit no evidence of significant man-induced water level fluctuation. Reference wetlands established in the City’s “Comprehensive Wetland Protection and Management Plan” or “Local Water Management Plan” are also included in this category.

Y. “Wetlands, High Quality” - High quality wetlands have a high vegetative diversity and integrity function, based on the results of MinRAM, and are still generally in their natural state. They tend to show less evidence of adverse effects of surrounding land uses. Exotic and invasive plant species may be present and species dominance may not be evenly distributed among several species. There tends to be little evidence of water level fluctuation due to storms and their shorelines are stable with little evidence of erosion. They show little if any evidence of human influences resulting in higher levels of species diversity, wildlife habitat and ecological stability.

Z. “Wetlands, Moderate Quality” - Moderate quality wetlands have a moderate vegetative diversity and integrity function, based on the results of MinRAM. They have a slightly higher number of native, non-invasive plant species present than low quality wetlands, often with small pockets of indigenous species within larger areas dominated by non-native, invasive, exotic or weed species. Their relatively greater species diversity results in slightly better wildlife habitat. They exhibit evidence of relatively less fluctuation in water level in response to storms and less evidence of shoreline erosion than low quality wetlands. They also exhibit relatively less evidence of human influences and therefore, tend to be of a higher aesthetic quality than low quality wetlands.

AA. “Wetlands, Low Quality” - Wetlands included in this category have a low vegetative diversity and integrity functions, based on MinRAM, and have been substantially altered by

activities such as agricultural or urban development that caused over-nitrification, soil erosion, sedimentation and/or water quality degradation. As a result of these factors these wetlands exhibit low levels of vegetation diversity; overcrowding and dominance of invasive or non-native species such as reed canary grass, cattails and purple loosestrife; and a related reduction in the quality of wildlife habitat. These wetlands may also tend to exhibit extreme water level fluctuations in response to rain events and show evidence of shoreline erosion. These wetlands do provide for water quality and serve an important role in protecting water quality downstream.

BB. “Wetland Type” – The “Wetland Type” for each water regime will be determined in accordance with United States Fish and Wildlife Service Circular No. 30 (1971 Edition), Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979), Eggers and Reed (1997) and Minnesota Rules Chapter 8420. Each wetland type, which represents at least 10% of the vegetated wetland, including submergent vegetation, must be classified. For Wetland Replacement Plans, the wetland community classification listed in Minnesota Rules 8420.0111 Subp. 75 must be used to determine wetland replacement ratios.

CC. “Wildlife Habitat” - Plant communities that support wildlife in a natural, undomesticated state.

DD. “Yard” – That portion of a lot not occupied by a Structure. Yard does not include any wetlands or wetland buffer strips on the property.

#### **Subd. 4. General Provisions – Identification, Evaluation, Delineation, Replacement, Testing and Reporting Requirements.**

A. This Code shall apply to all lands containing wetlands and lands within the setback and wetland buffer strips required by this Code. Wetlands shall be subject to the requirements established herein, as well as restrictions and requirements established by other applicable Federal, State, and City ordinances and regulations. Nothing herein shall be construed to allow anything otherwise prohibited in the zoning district where the wetland is located. This Code establishes four wetland classifications as defined in Section 11.51, Subd. 3 of this Code; Exceptional Quality, High Quality, Moderate Quality, and Low Quality.

B. The presence or absence of a wetland on the City Wetland Map does not represent a definitive determination as to whether a wetland covered by this Code is or is not present. Wetlands that are identified during site specific delineation activities but do not appear on the City Wetland Map are still subject to the provisions of this Code.

C. Additional requirements for wetland identification, delineation, replacement, testing, reporting and bonding within areas where the City is the acting LGU shall be in accordance with the requirements outlined in Section 11.51, Subd. 11 of this Code as well as those set forth in Section 11.51, Subd. 4 of this Code.

D. Activities including, but not limited to, Wetland Alteration, digging, building, paving, mowing, cutting, dumping, yard waste disposal, fertilizer application, placing of debris, planting of non-native vegetation and removal of vegetation are prohibited in wetland areas. Invasive non-Native Vegetation, such as European or glossy buckthorn and noxious weeds may be removed



unless the area is in a Conservation Easement, in which case a Vegetation Management Plan on a form provided by the City is required.

E. An Applicant must determine whether a wetland exists on a subject property or within the setback from a wetland on an adjacent property. The following report(s) must be provided based on site conditions.

1. If no wetlands are present, the Applicant must document site conditions in a Wetland Determination Report that includes evaluation of vegetation, hydrology and soil conditions.
2. If a wetland is present, the Applicant must delineate and document the boundary of the wetland(s) and the Wetland Type(s) in a Wetland Delineation Report in accordance with City and WCA requirements and document the conditions of the wetland buffer strip in a Wetland Buffer Strip Evaluation Report in accordance with Section 11.51, Subd. 8 of this Code.

F. If a wetland(s) is present, a determination of the function and value of the wetland(s) using the most recent version of MinRAM or other approved assessment methodology under Minnesota Rules Chapter 8420 must be completed by the Applicant.

The MinRAM assessment must be submitted to the Environmental Coordinator with the Wetland Delineation Report.

G. Wetland Determination, Wetland Delineation and Wetland Buffer Strip Evaluation Reports shall be valid for 3 years from the date of the field delineation for these reports unless the Environmental Coordinator determines that the report is no longer valid on a sooner date due to changes in site conditions such as in hydrology, soils or vegetation.

H. Wetland Delineation and Wetland Determination Reports shall be prepared as outlined in Minnesota Rules Chapter 8420 and in the U.S. Army Corps of Engineers "Guidelines for Submitting Wetland Delineations to the St. Paul District Corps of Engineers and Local Units of Government in the State of Minnesota" (Publication 96-01078-SDE) and the 2010 "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, Version 2" (Publication ERDC/EL TR-10-16) and must include information necessary for the City to determine the wetland boundary and Wetland Type, including wetland delineation field data sheets, survey of the wetland evaluation area, soil analysis data, vegetation data and hydrology information both within and outside of the proposed wetland boundary.

I. Wetland Delineation, Wetland Delineation Reports, Wetland Determination Reports and MinRAM assessments conducted or completed outside of the growing season will not be accepted for final review and approval by the City until the following growing season. Determination of non-growing season conditions will be in accordance with the "Guidelines for Submitting Wetland Delineations to the St. Paul District Corps of Engineers (COE) and Local Units of Government in the State of Minnesota" issued on April 17, 1996 (Publication 96-01078-SDE), unless the vegetation cataloging or hydrology conditions are, in the judgment of the Environmental Coordinator, unreliable.

Approvals may be granted for Wetland Delineation, Wetland Delineation Reports, Wetland Determination Reports and MinRAM assessments conducted during the growing season, but submitted during the non-growing season, if the Environmental Coordinator determines there is sufficient information in the report and visible in the field at the time of the field verification to assess the three wetland parameters (hydrophytic vegetation, hydric soils and hydrology) in relation to placement of the wetland delineation line. If proper assessment of the delineation is not possible during the non-growing season, the City would consider the Development Application incomplete until such time that appropriate field verification is possible. A Preliminary Approval may be requested during the non-growing season. Preliminary Approvals must be verified during the growing season before any work on the project may commence. The applicant bears all risk that revisions may be required to Development Application and the Preliminary Approval due to the fact that the review occurred during the non-growing season.

If a MinRAM assessment is not conducted during the growing season or if it is determined to be incomplete, the quality will be assumed as High Quality.

J. An Applicant shall not be required to field delineate wetlands on adjacent property. An Applicant will be required to review available information, including but not limited to the City Wetland Map, County Soil Survey Map, U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps, and visual information such as the presence of wetland vegetation and hydrologic evidence on an adjacent property which can be viewed from the subject property, to estimate the wetland boundary and Wetland Type.

K. Prior to submission of the Wetland Determination Report or Wetland Delineation Report the Applicant must contact the Environmental Coordinator to obtain a wetland or water body identification number and any information regarding the documented wetland, including any existing MinRAM information, for inclusion with documentation provided to the City. The Applicant must also contact the Environmental Coordinator to obtain a water body identification number for any existing or proposed stormwater pond, stormwater infiltration areas, or wetland replacement areas within the Development.

L. Water quality testing results must be provided by the Applicant for any Development Application involving a wetland buffer strip of less than 100 feet for Exceptional Quality Wetlands which contain standing water during the growing season. One water sample must be collected each month between June and August from the surface water (within the upper 12 inches of water) and analyzed using a methodology pre-approved in writing by the City by an accredited laboratory for pH, conductivity, total phosphorus, soluble reactive phosphorus, total dissolved solids, total suspended solids and chlorides. The water quality testing results must be submitted to the Environmental Coordinator with the Wetland Delineation Report.

M. For Development Applications involving Wetland Alteration, the Applicant must provide written documentation to the Environmental Coordinator with the Development Application that the sequencing steps set forth in Minnesota Rule 8420.0520 have been met. In following these steps, the Applicant must first demonstrate that alternatives to avoid and minimize wetland impacts have been evaluated. A minimum of three alternative plans must be evaluated and provided to the Environmental Coordinator for review, one of which must be a “no-impact” alternative. Wetland restoration or expansion of existing or historic wetlands is preferred rather than creation of new wetlands or other methods of Wetland Replacement.

N. Unavoidable impacts to wetlands must be restored or replaced on-site unless the alternatives are not reasonably or practically available from an engineering standpoint or if the only feasible and prudent sites available have greater ecosystem function and public value than the proposed wetland and it is an area that is to be preserved by a Conservation Easement or other such instrument. If impacts cannot be restored or replaced on-site, the Applicant must evaluate alternate sites in the following order of priority:

1. Within the City of Eden Prairie
2. Within the same subwatershed
3. Within the same watershed (Nine Mile Creek, Lower Minnesota River, Riley Creek, Purgatory Creek, or Bluff Creek watershed)
4. Within the seven-county metropolitan area of the Minnesota River – Shakopee major surface water watershed (No. 33)
5. Within the Minnesota River – Shakopee major surface water watershed (No. 33)

Wetland restoration or replacement must at a minimum meet the ratio requirements under Minnesota Rules 8420.0522 to achieve full replacement of wetland function and value unless minimum replacement ratios established by the Watershed Districts or USACOE are greater than the WCA requirements.

O. Sequencing flexibility will not be implemented unless alternatives have been considered and unless the proposed replacement wetland will provide equal or greater functions and public values as determined based on a functional assessment reviewed by the Technical Evaluation Panel using a methodology approved by the Minnesota Board of Water and Soil Resources (BWSR). If sequencing flexibility is requested, the Applicant must provide all necessary information to the Environmental Coordinator with the Wetland Replacement Plan. Flexibility in application of the sequencing steps will be considered only if the criterion set forth in Minnesota Rule 8420.0520 Subp. 7a are met and the wetland to be impacted has been degraded to the point where replacement would result in a gain in function and public value or preservation of the wetland would result in degradation of the wetland's function and values.

P. Conceptual Wetland Replacement Plans for any proposed impacts that require replacement under WCA or U.S. Army Corps of Engineers regulatory programs must be provided to the City by the Applicant with the Development Application. The Applicant must contact the Environmental Coordinator to obtain a water body identification number for use in the Wetland Replacement Plans for any replacement wetlands constructed within the City. Final Wetland Replacement Plans must be submitted to the Environmental Coordinator for review and approval prior to submission of the Development Plans to the City Council for review and approval or, if the plans are not submitted to the City Council, prior to issuance of a Building Permit for the property.

Q. If the Applicant disputes whether a wetland exists or its classification, the Applicant has the burden to supply detailed information to the Environmental Coordinator supporting the Applicant's assertion. This includes, but is not limited to, historical aerial photography, topographic,

hydrologic, floristic, and/or soil data deemed necessary by the City or LGU under the WCA to determine the jurisdictional status of the wetland, its exact boundary and its classification.

R. Wetland Buffer Strip Evaluation, Wetland Delineation, Wetland Determination, No-Loss Determination, and Sequencing Flexibility Reports and Wetland Replacement Plans supplied by the Applicant shall be prepared by a Minnesota Certified Wetland Delineator in accordance with current state and federal regulations. Wetland delineators must satisfy all certification requirements that are established by the U.S. Army Corps of Engineers and/or BWSR or, in the absence of such certification, are determined by the Environmental Coordinator to be a qualified wetland delineator.

S. An Annual Wetland and Wetland Buffer Strip Evaluation Report (“Annual Buffer Report”) is required if a wetland or any wetland buffer required by Section 11.51 of this Code is located on the subject property. The Annual Buffer Report shall include an evaluation of the Wetland and Wetland Buffer and a plan for resolving any insufficiencies including any information the Environmental Coordinator specifically requests. If an Annual Buffer Report is required the Developer shall submit an executed contract with a qualified wetland consultant, as determined by the Environmental Coordinator, who will prepare the Annual Buffer Report which evaluates the condition of the wetland(s) and wetland buffer strip(s) prior to release of the final plat for any portion of the subject property, or if there is no plat prior to approval of the Development Application. . The Annual Buffer Report shall provide both an action plan and proposed cost for correction of all problems identified. The first Annual Buffer Report shall be submitted no later than November 1 of the calendar year in which construction, preparation, grading, seeding, planting and/or monumentation of the wetland(s) and/or wetland buffer strip(s) is completed. Thereafter, this report shall be submitted by November 1 each year until two full growing seasons following completion of the development have passed, at which point a Final Annual Buffer Report shall be submitted. The Final Annual Buffer Report shall evaluate the wetland(s) and /or wetland buffer strip(s) to determine if the wetland(s) and/or wetland buffer strip(s) remain in compliance with all City requirements. If any unacceptable conditions or vegetation are identified within the Annual Buffer Reports or the Final Annual Buffer Report, the Developer shall correct the area(s) identified within ninety (90) days of submission of the Report, or by June 15<sup>th</sup> of the following year if submitted during the non-growing season.

T. Wetland Replacement Monitoring Reports are due by November 1 each year until the wetland replacement is determined to be complete by the LGU with advice from the Technical Evaluation Panel as outlined in Minnesota Rules Chapter 8420 and Section 11.51, Subd. 11 of this Code.

U. It is unlawful for any person to make a false statement or omission on any application or report. Any false statement in such application or report shall be grounds for denial of the application or report, or if already approved, shall be grounds for revocation of the approval.

#### **Subd. 5. General Standards.**

The following standards apply to all lands that contain and/or abut a wetland or a wetland buffer strip:

A. Structures intended to provide access to or across a wetland or wetland buffer strip shall be prohibited unless a permit is obtained from the City and is in conformance with Minnesota Statutes and applicable state rules and regulations.

B. The Minnesota Pollution Control Agency's Urban Best Management Practices shall be followed to avoid erosion and sedimentation during the construction process. In addition, the Applicant shall follow the regulations set forth in Section 11.55 of this Code.

C. Where wetland replacement or a wetland buffer strip is required, the Applicant shall, before the City releases the final plat or, if there is no plat approval involved, the first building permit for the entire subject property:

1. Submit to the City Engineer and receive the City Engineer's approval of a conservation easement for protection of the wetland and approved wetland buffer strip. The easement must describe the boundaries of the wetland and wetland buffer strips, monuments and monument locations and prohibit any Structures, paving, mowing, introduction of non-native vegetation, cutting, filling, dumping, yard waste disposal, fertilizer application or removal of the wetland buffer strip monuments within the wetland buffer strip or wetland.

2. Submit evidence to the City Engineer that the approved easement document has been recorded in the Hennepin County Recorder's/Registrar of Titles' office.

3. Submit a duplicate original of the easement document executed and acknowledged and otherwise in form and substance acceptable for filing with the Hennepin County Recorder/Registrar of Titles office.

4. Submit to the City Engineer and receive City Engineer's approval of a Declaration of Covenants and Restrictions for any wetland replacement in accordance with Minnesota Rules Chapter 8420.

5. Submit evidence to the City Engineer that the approved Declaration of Covenants and Restrictions has been recorded in the Hennepin County Recorder's / Registrar of Title's office.

D. Yards shall be sodded, seeded and/or mulched within six months of ceasing land alterations in accordance with Section 11.55, Subd. 5.H of this Code. Wetlands, wetland buffer strips and wetland replacement areas shall be seeded and/or planted in accordance with Section 11.51, Subd. 8 of this Code within sixty (60) days of completion of land alteration. All sodding, seeding or planting must be completed prior to removal of any erosion control. If construction is completed after the end of the growing season, erosion control shall be left in place and all disturbed areas shall be mulched to protect these areas over the winter or during the non-growing season.

Variances for sod outside of the wetland buffer strip areas, in accordance with City Code Section 9.71, shall be considered on a case by case basis.

E. Stormwater shall not be discharged directly into any natural water bodies such as wetlands, lakes or creeks without pre-settlement, infiltration, filtration or other pre-approved method. The pre-treatment must be approved in writing by the Environmental Coordinator.

## **Subd. 6. Wetland Buffer Strips and Setbacks.**

A. For a Lot of record or a Development Application approved by the City Council after February 1, 2000, the Applicant shall maintain a wetland buffer strip around the perimeter of all wetlands and all stormwater ponds which are constructed as part of a Wetland Replacement Plan. The setback and wetland buffer strip provisions of this Code shall not apply to a Lot of record as of February 1, 2000 or for Development Applications for which site plans, preliminary plats, final plats or planned unit development plans have been approved by the City Council prior to this date. The City strongly encourages the use of a wetland buffer strip and setback on all lots in the City. In addition, any property located in the Nine Mile Creek or Riley Purgatory Bluff Creek Watershed Districts shall comply with any additional buffer requirements imposed by the Watershed Districts.

B. Wetland buffer strips and structure setbacks shall apply regardless of whether or not the wetland is on the same parcel as a proposed Development Application. For parcels in which the wetland is on an adjacent parcel, the setback and wetland buffer strip requirements for the parcel shall be reduced by the distance between the property line of the parcel and the wetland on the adjacent parcel. This provision in no way reduces or eliminates any other setbacks required by the City Code or any other law or regulation.

C. The Applicant shall establish and maintain wetland and wetland buffer strip vegetation in accordance with the requirements found in Section 11.51, Subd. 8 of this Code. Wetland buffer strips shall be identified within each Lot by permanent monumentation approved by the Environmental Coordinator in accordance with Section 11.51, Subd. 7 of this Code.

D. Non-native or invasive vegetation, such as European buckthorn, purple loosestrife and reed canary grass, or dead or diseased trees that pose a hazard may be removed as long as a Vegetation Management Plan is submitted to the Environmental Coordinator on a form provided by the City for review and written approval. The Vegetation Management Plan must maintain the wetland and wetland buffer strip standards found in Section 11.51, Subd. 8 or as required by the Environmental Coordinator. The Vegetation Management Plan form must be obtained from the City.

E. All other Structures, including retaining walls, roadways and trails, shall meet the setbacks and wetland buffer strip standards established in Table 1 below. The use of a meandering wetland buffer strip to maintain a natural appearance is preferred.

F. For roadways where the City determines that there is no practical alternative except to be aligned either adjacent to or across wetlands, additional wetland filling to create a wetland buffer strip shall not be required.

G. Trails that are intended to serve an interpretive function, as determined by the Environmental Coordinator, are exempted from the wetland buffer strip requirement.

H. An existing Structure, driveway or parking area would be considered a legal nonconforming Structure if a later WCA delineation shows that the wetland is closer than the required setback.

**Table 1 - Wetland Buffer Strips and Setbacks**

	<u>Exceptional</u>	<u>High</u>	<u>Moderate</u>	<u>Low</u>
Wetland Buffer Strip Minimum Width	40'	30'	20'	10'
Wetland Buffer Strip Minimum Average Width	60'	60'	40'	20'
Structure Setback (from Wetland Buffer Strip)	25'	25'	15'	15'
Total Minimum Average	85'	85'	55'	35'

I. The wetland buffer strip width for constructed stormwater ponds or infiltration areas utilized for Public Value (PVC) or New Wetland (NWC) Credit shall be measured from the Ordinary High Water Level (OHWL) of the pond or infiltration area and shall be considered of moderate quality.

**Subd. 7. Monumentation.**

A monument is required at each Lot line where it crosses a wetland buffer strip and shall have a maximum spacing of 200 feet along the edge of the wetland buffer strip. Additional monuments shall be placed as necessary to accurately define the edge of the wetland buffer strip. If no wetland buffer strip is required, monuments shall be placed at the wetland boundary. The monument shall consist of a post and a wetland buffer strip sign. The post shall be a 1.12 to 2.0 pounds per foot (1.12 pounds per foot is preferred) green steel channel post or other material pre-approved in writing by the Environmental Coordinator. The post shall be a minimum of 2.25 inches wide and 6 feet 6 inches long (2.25" x 6.5'). The sign shall have a minimum size of 3 inch by 8 inch (3" x 8"). The sign shall be mounted flush with the top of the post and shall include the statement "Wetland Buffer: No Mowing Allowed" or "Wetland Buffer: Vegetation Clearing Limit" or other statement approved in writing by the Environmental Coordinator. The post shall be mounted to a height of four feet above grade and set at least 2.5 feet in the ground. Monuments may be waived in unusual circumstances where the Environmental Coordinator determines that such signs would not serve a practical purpose.

**Subd. 8. Vegetation Performance Standards.**

A. Where acceptable native, non-invasive vegetation exists in wetland, wetland replacement and wetland buffer strip areas, the retention of such vegetation in an undisturbed state is required unless an Applicant receives written approval from the Environmental Coordinator or any other agency which may regulate the removal or replacement of such vegetation. A wetland and/or wetland buffer strip has acceptable natural vegetation if it:

1. Has a continuous, dense layer of perennial grasses that have been uncultivated or unbroken for at least 5 consecutive years, or
2. Has an overstory of trees and/or shrubs with at least 80 percent canopy closure that have been uncultivated or unbroken for at least 5 consecutive years, or
3. Contains a mixture of the plant communities described in (1) and (2) above that have been uncultivated or unbroken for at least 5 consecutive years.

B. Notwithstanding the performance standards set forth above in Section 11.51, Subd. 8 (A) of this Code, the Environmental Coordinator may determine existing wetland and/or wetland buffer strip vegetation to be unacceptable if the wetland and/or wetland buffer:

1. Is composed of Weeds (including, but not limited to common buckthorn, purple loosestrife, leafy spurge and/or noxious weeds as defined by Minnesota Statutes, Sections 18.76-18.88), or
2. Has topography that tends to channelize the flow of surface runoff, or
3. For some other reason it is unlikely to retain nutrients and sediment.

C. Areas with unacceptable vegetation shall be re-graded, re-seeded and/or re-planted as needed and maintained in accordance with Section 11.51, Subd. 8 of this Code. The wetland, wetland replacement and wetland buffer strip planting requirements must be included in the Wetland Delineation, Wetland Buffer Strip Evaluation or Wetland Replacement Plan Monitoring Report. Wetland, wetland alteration, wetland replacement and wetland buffer strip landscaping shall be according to the following standards:

1. Planted with a diverse native, non-invasive seed mix appropriate for the specific site conditions that contains 100 percent perennial native vegetation. A one-time planting of an annual nurse or cover crop such as oats or rye may be included.
2. Seed mix used shall be a BWSR seed mix appropriate for the area requiring reseeded or other alternative pre-approved in writing by the Environmental Coordinator. The seeding rate shall be at the rate recommended by the BWSR seed mix criteria or other pre-approved alternative.
3. Native shrubs may be substituted for the native seed mix where appropriate. All substitutions must be pre-approved in writing by the Environmental Coordinator. Such shrubs may be bare root seedlings and shall be planted at a minimum rate of 60 plants per acre. Shrubs shall be distributed so as to provide a natural appearance and shall not be planted in rows.
4. Any groundcover or shrub plantings installed within the wetland or wetland buffer strip are independent of landscaping required elsewhere by the City Code.
5. Native prairie grasses and forbs shall be seeded or planted in accordance with "Restoring & Managing Native Wetland & Upland Vegetation" (published January 2006 by the Minnesota Department of Transportation (MnDOT) and BWSR) or other alternate method pre-approved by the Environmental Coordinator by a qualified contractor. Determination of the contractor's qualifications shall be made by the Environmental Coordinator. It is the responsibility of the Applicant to have the contractor and method used approved by the Environmental Coordinator prior to planting or seeding.
6. No fertilizer shall be used in establishing new wetland buffer strips, except when deemed necessary to establish acceptable wetland and/or wetland buffer strip vegetation and



then limited to amounts indicated by an accredited soil testing laboratory. Determination of proper accreditation shall be made by the Environmental Coordinator.

7. All seeded areas shall be mulched immediately with clean straw at a rate of 1.5 tons per acre. Mulch shall be anchored with a disk or tackifier.

8. Wetland, wetland replacement and wetland buffer strip areas (both natural and created), shall be protected by erosion control during construction in accordance with Section 11.55, Subd. 5 of this Code.

9. The erosion control shall remain in place until the cover crop is established.

D. The Applicant shall establish and maintain the wetland and wetland buffer strip vegetation in accordance with the requirements found in this Section, both during development and for two full growing seasons after completion of the development. During this time, the Applicant must replant or reseed any wetland and/or wetland buffer strip vegetation that does not survive.

E. After the second full growing season following completion of the development, if the condition of the wetland and/or wetland buffer strip diminishes, the Applicant shall not be required to reestablish the wetland and/or wetland buffer strip to meet the standards contained in Section 11.51, Subd. 8 of this Code. However, wetlands created for Wetland Replacement must be monitored and maintained by the Applicant until the wetland is reviewed and approved by the LGU in accordance with the requirements established by Section 11.51, Subd. 11 of this Code and Minnesota Rules Chapter 8420.

After such times, the property owner on which the wetland and/or wetland buffer strip is located shall be responsible for the maintenance of the wetland, wetland alteration, wetland replacement and/or wetland buffer strip areas and must:

1. Maintain and repair damage to wetland and/or wetland buffer strip areas from activities such as mowing, cutting, grading or other prohibited activities unless approved by the City in writing as a Vegetation Management Plan.

2. Maintain only vegetation permitted in the Vegetation Management Plan or as found in Section 11.51, Subd. 8 of this Code in the wetland and wetland buffer strip, including the removal of all Weeds, unless allowed otherwise in writing by the Environmental Coordinator.

3. Ensure that all soil surfaces in wetland and wetland buffer strip areas are planted with permitted vegetation and that there are no open soil surfaces that may result in erosion.

4. Maintain the wetland and wetland buffer strip as a “no mow” area.

#### **Subd. 9. Encroachment in Required Setback and Wetland Buffer Strip Areas.**

A. Wetlands, wetland buffer strips and structure setback areas must be kept free of all Structures. A maximum of ten percent (10%) of the Structure Setback area may be occupied by any

Structures. The acceptability of the proposed Structures within the Structure Setback area shall be made by the Environmental Coordinator.

B. Wetlands and wetland buffer strips must not be mown except as pre-approved in writing by the Environmental Coordinator for maintenance practices. The acceptability of the proposed maintenance practices shall be made by the Environmental Coordinator.

C. Variances / Waivers

1. Only variances meeting the standards and criteria set forth in Section 11.76, Subd. 1 of this Code and waivers approved pursuant to Section 11.40, Subd. 8 of this Code for a Planned Unit Development (PUD) process shall be granted. All variance requests must be made to the Board of Adjustments and Appeals. All waiver requests must be made to the Planning Commission and the City Council.
2. Variances or waivers shall not be granted which would circumvent the intent and purposes of Section 11.51 of this Code.

**Subd. 10. Surety Required.**

If a Development Application includes wetland alteration, wetland or wetland buffer strip landscaping or construction of a wetland buffer strip the Applicant must file with the Environmental Coordinator prior to release of the final plat, or, if there is no plat approval involved, prior to the first building permit for the entire subject property, a performance bond, cash escrow or letter of credit with a corporation approved by the Environmental Coordinator, as surety thereon, or other guarantee acceptable to the Environmental Coordinator and in an amount determined by the Environmental Coordinator as set forth below (“Surety”). Surety requirements for Development Applications for areas where the City is the LGU are set forth in Section 11.51 Subd. 11 of this Code.

A. Amount - The amount shall be for no less than one and one-half (1 ½) times the amount estimated by the Environmental Coordinator as the cost of completing a Wetland Plan for monument installation and replacement and restoration and/or correction of the wetland and/or wetland buffer strip.

B. Schedule - The Surety for the Wetland Plan must cover two complete growing seasons following completion of the development and full and final restoration of all corrective actions identified in the Final Annual Report and is conditioned upon complete and satisfactory implementation of the approved Wetland Plan or Vegetation Management Plan and final inspection of the wetland and wetland buffer strip by the City.

C. Submissions – The Applicant shall provide one copy of a signed contract with an environmental consultant to monitor construction activities and annual compliance and certify final completion of the wetland, wetland buffer strip and wetland replacement requirements to the Environmental Coordinator.

D. Form of Application – The Surety Environmental Coordinator shall be posted within 10 days of approval of the Development Application and prior to the commencement of the Development or the preparations thereof.

**Subd. 11 - Special Requirements for Wetland Conservation Act (WCA) Services.**

The following provisions apply to areas for which the City of Eden Prairie is Local Government Unit (LGU). All survey information must be provided in the Minnesota County Coordinate System, Hennepin County North American Datum 1983 (NAD83) (1996) projection in U.S. Survey feet. All vertical elevations shall be in North American Datum 1988 (NAVD88).

A. Wetland Evaluation / Wetland Determination Review – An Applicant submitting a Development Application must provide a report documenting site conditions; wetland delineation review procedures; a statement as to whether wetlands are present on site; whether an exemption is requested; and whether the development proposal will result in a loss of wetland. Reports must be prepared in accordance with paragraph B.

B. Wetland Delineation, Wetland Determination, Wetland Exemption and No Loss Determination Review Application – The Applicant shall complete and file with the Environmental Coordinator an Application for Review of Wetland Determinations in the form required by the Environmental Coordinator. The Application, including the following information, must be filed with the Environmental Coordinator a minimum of one week prior to scheduling a field review by the Environmental Coordinator:

1. Wetland Delineation Report, Wetland Determination, Wetland Exemption or No Loss Determination Report, one print copy and one electronic (PDF) version in color (all maps in the PDF version need to be developed for an 11” x 17” printable format with sufficient detail so all features are legible);
2. Wetland Buffer Strip Report, one print and one electronic copy (PDF) must be submitted with the Wetland Delineation Report;
3. Scaled public land survey map of the wetland delineation and boundary, transect locations and sample points;
4. Survey data in a format compatible with ArcView software;
5. A minimum of two wetland field data forms per wetland representing the wetland parameters at two locations along with a data form documenting upland conditions at each location;
6. Color copies of current and historical aerial photographs as required to define current and historic wetland conditions or wetland boundaries and
7. Such other information as required by the Environmental Coordinator.

Source: Ordinance No. 8-2009  
Effective Date: 8-27-2009

An Applicant may request an exemption or no-loss determination in accordance with Minnesota Rules 8420.0315, 8420.0320, 8420.0410, 8420.0415 and 8420.0420.

C. Permit Application Requirements – Wetland Alteration, constructing boardwalks, removing healthy native vegetation or otherwise altering or destroying any wetland or wetland function, either wholly or partially, by any person requires submission of a Combined Wetland Permit Application for review and approval by the City. Except for those wetlands exempt under Minnesota Rule 8420.0420, any alteration to a wetland must result in a zero net loss.

D. Wetland Replacement Plan Application – A Combined Wetland Permit Application for Wetland Replacement shall be made in writing to the City. The Application shall set forth the location and plan for the proposed project. The Applicant must provide one printed and one electronic (PDF) version in color (all maps in PDF version need to be developed for an 11” x 17” printable format with sufficient detail so all features are legible). The Application must include:

1. The name and address of the person(s) applying for the permit (Applicant).
2. The name and address of the owner(s) of the land where the project will occur.
3. The name and address of the managing agents or consultants that are or may be involved with the wetland alteration and/or replacement activities.
4. The estimated period of time within which the project will be conducted.
5. A topographic map of the proposed project area(s) to a minimum scale of one inch equals 50 feet showing existing ground elevation contours at two-foot intervals. The map shall show:
  - a. The size and location of the wetland in relation to the property boundaries, including a scaled public land survey with the coordinates of the approximate wetland center and sample locations.
  - b. The property and a minimum of 50 feet of land abutting the property, as it existed prior to the proposed land alteration.
  - c. The proposed ground elevation contours at 2 foot intervals on the property when the land alteration is completed.
  - d. Locations of any surface inlets or outlets draining into or out of the wetlands.
  - e. Pre- and post-drainage areas for all existing and proposed wetlands.
  - f. Photographic reference points and proposed transect or sampling locations for wetland replacement or wetland banking plans.
  - g. Survey data in a digital shapefile or comma delimited ASCII file format compatible with ArcView software.
6. Wetland Type of all existing and proposed wetlands, including a comparison to the Eggers and Reed “Wetland Plant Community Types” document.
7. Recent color aerial photograph of the proposed impact area.

8. Grading plan of the proposed project area(s) to a minimum scale of one inch equals 50 feet prepared by a registered professional engineer that includes appropriate drainage areas and drainage calculations, proposed two-foot contours of the land when the project is complete and erosion control to be used during construction. Construction details, including the proposed elevations and contours, for any control structures must be included on the plans.
9. A list of dominant or abundant vegetation in each stratum, utilizing the “50/20 rule” in the proposed impacted/altered wetland areas, including scientific and common names, and of vegetation exceeding 10% coverage and an estimated percentage of coverage for each.
10. A soils map of the site showing soil type and substrate.
11. Landscaping or revegetation plan at the same scale as the topographic map.
12. Such other information as may be necessary to evaluate the proposed wetland alteration and wetland replacement plans and to determine the amount and types of wetland to be impacted.
13. Evidence of ownership or property rights to the affected area.
14. Such other information as required by Minnesota Rule 8420.0330 and the City.

E. Wetland Replacement Plan Approval - Wetland Replacement Plan Applications shall be allowed subject to approval by the Environmental Coordinator. If the City determines that a feasible and prudent alternative exists that would avoid or minimize impacts to the wetland it shall deny the Application.

The City shall make its decision regarding the Wetland Replacement Plans in accordance with Minnesota Statutes 15.99, Subd. 3.

Approval of the Application shall be valid for a period of no more than three years. If the work has not begun within three years of the date of approval of the Application, the approval shall be void.

Approval of an Application for Wetland Alteration and/or Wetland Replacement does not exempt the Applicant from obtaining any and all other necessary permits for work within a wetland and/or wetland buffer.

F. Wetland Replacement Annual Reports – Annual reports shall be prepared in accordance with Minnesota Rules 8420.0810 and must include the following information:

1. Reference photographs taken within 4 weeks of completion of the grading and within 4 weeks of completion of the landscaping.
2. A description of activities completed in the current year
3. A list of activities planned for the following year

4. As-built plans (for the first year only) to a minimum scale of one inch equals 50 feet showing existing ground elevation contours at two-foot intervals
5. A comparison of actual conditions with the as-built specifications and proposed plans
6. Monthly hydrology measurements from April through October
7. A list of vegetation that have 10% coverage or more
8. A comparison of proposed versus actual Wetland Types within the wetland and wetland replacement areas
9. Map of the plant communities within the wetland, wetland replacement and wetland buffer areas included in the Wetland Replacement Plan. The map shall be overlain on the topographic map provided for the Wetland Replacement Plan.
10. Monthly color photographs from the photographic reference points from April to October.
11. All information required by Minnesota Rules 8420 for wetland replacement reporting.

Wetland Replacement Annual Reports must be submitted by November 1 each monitoring year. If the City does not receive either: 1) an annual monitoring report; or 2) notification that the report will be provided prior to December 31st by the November 1<sup>st</sup> deadline the City will charge the Applicant for cost incurred by the City, including staff time, to collect the information needed to complete the Wetland Replacement Annual Report. One print and one electronic (PDF) copy in color (all maps in PDF version need to be developed for an 11" x 17" printable format with sufficient detail so all features are legible) shall be submitted for review.

G. Fees – Submission of requests for wetland determinations, sequencing flexibility, wetland delineation reviews, field or technical reviews of current or historic wetland and/or wetland buffer conditions, or an application for a Wetland Replacement Plan shall be accompanied by a non-refundable application fee and a cash deposit in such amounts as determined by the City Council and fixed by Ordinance. The cash deposit, or a portion thereof, will be refunded after completion of City review and approval of the submittal, unless the total sum is greater than the administrative review cost. Costs may include, but are not limited to:

1. Consultant fees assisting in City review, providing technical assistance or other services required to meet WCA requirements.
2. City staff time expended in review, approval and processing of the Application or other services required to meet WCA requirements.
3. Consultant fees or City staff time expended in coordinating and holding Technical Evaluation Panel meetings.

4. Mailing, legal notices and other administrative costs.
5. Any other reasonable costs incurred by the City in review of the proposal.

Full payment of the fees and cash deposit must be made by the Applicant prior to consideration of the Development Application. All costs incurred by the City greater than the cash deposit balance will be billed to the permit holder.

H. Surety – The Surety required in Section 11.51, Subd. 10 shall include costs associated with the City and WCA requirements for Wetland Alteration or Wetland Replacement projects, including but not limited to construction, seeding, planting, monument installation and annual monitoring. The Surety shall be retained by the City until the later of (i) approval of the project as final by the Environmental Coordinator; or (ii) a minimum period of 5 years. The Surety must include costs associated with re-grading or purchase of off-site Wetland Replacement if on-site Wetland Replacement is unsuccessful. The Surety shall be extended beyond the required monitoring period for up to an additional five-year period if, in the written opinion of the Technical Evaluation Panel, the goal of the replacement plan has not been achieved but may be achieved with more time. The amount of security shall be 150% of the estimated cost to complete the scope of work associated with the Wetland Plan and Wetland Replacement Plan.

I. Wetland construction or replacement must be conducted as required in Minnesota Rules 8420 and the Minnesota Wetland Restoration Guide (BWSR).

Source: Ordinance No. 9-2008  
Effective Date: 3-27-2008

Prev. Source: Ordinance No. 6-2003  
Effective Date: 4-10-2003

Prev. Source: Ordinance No. 6-2000  
Effective Date: 2-10-2000

### **Subd. 12 – Submissions, Decisions, and Appeals.**

A. All applications, information, analyses and reports required pursuant to City Code Section 11.51 shall be in the form required by the City and shall be submitted to the Environmental Coordinator by the Applicant in conjunction with the submission of the Development Application.

B. All applications, information, analyses and reports required pursuant to City Code Section 11.51 shall be subject to review and approval by the Environmental Coordinator in accordance with the procedures set forth in Minnesota Rules 8420.0255. All decisions made by the Environmental Coordinator are final unless a timely appeal is filed with the City Council.

C. All decisions made by the Environmental Coordinator may be appealed to the City Council in accordance with Minnesota Rules 8420.0905. The appeal must be in writing, must be accompanied by payment of all applicable fees, and must be filed with the City Engineer within 30

days of the date the Notice of Decision is sent. The City Council shall make a ruling on the appeal within 30 days of the date of the filing of the appeal unless the City Council and the appellant mutually agree in writing to an extension.

D. A decision of the City Council may be appealed to the Minnesota Board of Water and Soil Resources (BWSR) pursuant to Minnesota Rules 8420.0905.

E. An applicant proceeds at their own risk if they proceed prior to expiration of the 30-day appeal window. If the decision is reversed or revised under appeal, the Applicant is responsible for restoring and replacing all wetland impacts.

**Subd. 13 – Enforcement and Remedy.**

In addition to the remedy provided for in City Code Section 11.99, the provisions of City Code Section 11.51 may be enforced in accordance with Minnesota Rule 8420.0900, or any other remedy provided for in law or equity.

**Section 2.** City Code Chapter 1 entitled “General Provisions and Definitions Applicable to the Entire City Code Including Penalty for Violation” and Section 11.99 entitled “Violation a Misdemeanor” are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

**Section 3.** This ordinance shall become effective from and after its passage and publication.

FIRST READ at a regular meeting of the City Council of the City of Eden Prairie on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and finally read and adopted and ordered published at a regular meeting of the City Council of said City on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Kathleen Porta, City Clerk

\_\_\_\_\_  
Nancy Tyra-Lukens, Mayor

Published in the Eden Prairie News on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.



<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Public Hearing		May 6, 2014
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b>
Sue Kotchevar, Office of the City Manager	Resolution Approving Property Tax Abatement Related to Upgrades to the Eden Prairie Aquatics Center	IX.B.

**Requested Action**

Move to: Adopt Resolution Approving Property Tax Abatement Related to Upgrades to the Eden Prairie Aquatics Center.

**Synopsis**

Under Minnesota Statutes, Sections 469.1812 through 469.1815 (the "Abatement Act"), the City is authorized to grant a property tax abatement on specified parcels in order to accomplish certain public purposes, including situations where the abatement will increase or preserve tax base, provide or help acquire or construct public facilities, help redevelop or renew blighted areas, help provide access to services for City residents, or finance or provide public infrastructure.

We have determined that property tax abatement will allow the City to finance and provide public infrastructure at the Community Center. The upgrades will be financed at the lowest interest rate available to the City, the debt will not be subject to levy limits, and the debt will not count against the City's statutory debt limit.

The public hearing today is required as part of approving the property tax abatement.

**Attachments**

- Resolution
- Exhibit A – PID Listing
- Tax Abatement Map

**CITY OF EDEN PRAIRIE  
HENNEPIN COUNTY, MINNESOTA**

**RESOLUTION NO. 2014-\_\_**

**RESOLUTION APPROVING PROPERTY TAX ABATEMENT  
RELATED TO UPGRADES TO THE EDEN PRAIRIE AQUATICS CENTER**

BE IT RESOLVED by the City Council (the "Council") of the City of Eden Prairie, Minnesota (the "City") as follows:

Section 1. Recitals.

1.01. Under Minnesota Statutes, Sections 469.1812 through 469.1815 (the "Abatement Act"), the City is authorized to grant a property tax abatement on specified parcels in order to accomplish certain public purposes, including situations where the abatement will increase or preserve tax base, provide or help acquire or construct public facilities, help redevelop or renew blighted areas, help provide access to services for City residents, or finance or provide public infrastructure.

1.02. The City is also authorized under the Abatement Act to issue bonds to pay for public improvements that benefit the property that is the source of the abatement.

1.03. The City proposes to undertake public improvements consisting of the expansion of the Eden Prairie Aquatics Center (the "Project").

1.04. The City has identified certain parcels located within the City (the "Project Area") for which abatements will be granted and are hereafter referred to as the "Abatement Parcels". The Abatement Parcels are described in Exhibit A attached hereto. The City's share of taxes collected from those parcels are hereafter referred to as the "Abatement" or "Abatements," as further defined in Section 3.02 hereof.

1.05. Pursuant to the Abatement Act, on May 6, 2014, this Council conducted a public hearing on the granting of the Abatements. Notice of the public hearing was duly published by law on April 24, 2014 in accordance with the provisions of the Abatement Act.

1.06. The City has requested the Eden Prairie School District and Hennepin County to indicate willingness to participate in the Abatements.

Section 2. Findings. On the basis of information compiled by the City and elicited at the public hearing referred to in Section 1.05, is hereby found, determined and declared:

2.01. The City has determined that the benefits to the City from the Abatement will be at least equal to the costs to the City of the Abatement. The City expects to receive the benefits described in Section 2.02. These benefits are expected to equal or exceed the costs associated with the Abatement.

2.02. The Project is in the public interest because it will help to acquire and construct public facilities and will result in attracting and retaining residents and businesses that increase the tax base and provide jobs as well as expanding access to recreational services for residents.

2.03. The Abatement Parcels are not located in a tax increment financing district.

2.04. Granting the Abatement will not cause the aggregate amount of Abatements granted by the City under the Abatement Act in any year to exceed 10% of the City's net tax capacity for the taxes payable year to which the Abatement applies.

2.05. Under Section 469.1813, Subdivision 9 of the Abatement Act, it is not necessary for the City to obtain the consent of any owner of any of the Abatement Parcels to grant an abatement.

2.06. The Project benefits the properties in the Project Area through the public benefits described in Section 2.02 and through immediate access to these recreational facilities.

### Section 3. Actions Ratified; Abatement Approved.

3.01. Ratification. The Council hereby ratifies all actions of the City's staff and consultants in arranging for approval of this resolution in accordance with the Abatement Act.

3.02. Abatement Defined. The term "Abatement" means all or a portion of the City's share of the real property taxes generated from the Abatement Parcels. The annual Abatement collected by the City in any calendar year will not exceed the amount produced by extending the City's total tax rate for the applicable year against the tax capacity of the Abatement Parcels, as of January 2 in the prior year. The total amount of the Abatement collected during its duration will not exceed \$26,900,000. The City will add to its levy in each year during the term of the Abatement the total estimated amount of current year Abatement granted under this resolution.

3.03. Duration. Pursuant to Section 469.1813, subdivision 6, the Abatement is hereby granted for 20 years subject to one of the other political subdivisions in which the Abatement Parcels are located declining to grant an abatement or if 90 days passes after the receipt of the request to grant an abatement. Should another political subdivision agree to grant an abatement, then the Abatement will be granted for a period of fifteen (15) years. Abatements will be collected from the Abatement Parcels commencing with taxes payable in 2015.

3.04. In accordance with Section 469.1813, subdivision 8 of the Abatement Act, in no year shall the Abatement, together with all other abatements approved by the City under the Abatement Act and paid in that year exceed 10% of the City's net tax capacity for that year.

### Section 4. Abatement Bonds.

4.01. The City will issue the Abatement Bonds at the time and in the manner it deems appropriate, and in accordance with Section 469.1814, subdivision 5 of the Abatement Act, will use the proceeds to pay for costs of the Project and to pay costs of the issuance of the Abatement Bonds.

4.02. The City will pledge the Abatements to principal and interest on the Abatement Bonds and any bonds issued to refund the initial Abatement Bonds. The pledge of Abatement

will be further reflected in the resolution awarding sale of the Abatement Bonds (and any refunding bonds).

4.03. The maximum principal amount of Abatement Bonds to be secured by Abatements under this resolution (\$17,000,000) does not exceed the estimated sum of Abatement from the Abatement Parcels for the term authorized under this resolution. The projections of Abatement are based on reasonable assumptions regarding the Abatement Parcels.

4.04. In accordance with Section 469.1814, subdivision 4 of the Abatement Act, the amount of Abatement is not subject to periodic review by the City; provided that the actual maximum amounts of Abatement in each year and in total will be determined only upon issuance of the Abatement Bonds and any refunding bonds, which final determination will not constitute a modification of the Abatement amount.

Section 5. Further Proceedings.

5.01. City staff and consultants are authorized and directed to take all actions necessary to implement the Abatement approved under this Resolution, including without limitation the execution of documents and certificates necessary to carry out the Abatement.

**ADOPTED** by the City Council of the City of Eden Prairie, Minnesota this 6<sup>th</sup> day of May, 2014.

---

Nancy Tyra-Lukens, Mayor

**ATTEST:**

**SEAL**

---

Kathleen Porta, City Clerk

## **EXHIBIT A**

### Abatement Parcels

The Abatement Parcels consist of the following parcels, also illustrated on map following.

# Parcels Completely Within .75 Mile Radius of Eden Prairie Community Center

April 2014

5

## Legend

 Community Center Location

 .75 Mile Radius

 Parcels

 Parks

N



0 150 300 600 Meters

DISCLAIMER: The City of Eden Prairie does not warrant the accuracy nor the correctness of the information contained in this map. It is your responsibility to verify the accuracy of this information. In no event will The City of Eden Prairie be liable for any damages, including loss of business, lost profits, business interruption, loss of business information or other pecuniary loss that might arise from the use of this map or the information it contains. Map information is believed to be accurate but accuracy is not guaranteed. Any errors or omissions should be reported to The City of Eden Prairie.

Map was Updated/Created: Thursday, April 17, 2014

**EXHIBIT A**

**PROPERTY SUBJECT TO  
PROPOSED PROPERTY TAX ABATEMENT**

04-116-22-33-0005	05-116-22-33-0014	05-116-22-34-0005
04-116-22-33-0006	05-116-22-33-0015	05-116-22-34-0006
04-116-22-33-0007	05-116-22-33-0016	05-116-22-34-0007
04-116-22-33-0009	05-116-22-33-0017	05-116-22-34-0008
04-116-22-33-0010	05-116-22-33-0018	05-116-22-34-0009
04-116-22-33-0011	05-116-22-33-0019	05-116-22-34-0012
04-116-22-33-0014	05-116-22-33-0020	05-116-22-34-0013
04-116-22-33-0015	05-116-22-33-0021	05-116-22-34-0014
04-116-22-33-0016	05-116-22-33-0022	05-116-22-34-0015
05-116-22-31-0001	05-116-22-33-0023	05-116-22-34-0016
05-116-22-31-0002	05-116-22-33-0024	05-116-22-34-0017
05-116-22-31-0006	05-116-22-33-0025	05-116-22-34-0018
05-116-22-31-0009	05-116-22-33-0026	05-116-22-34-0019
05-116-22-31-0010	05-116-22-33-0027	05-116-22-34-0020
05-116-22-31-0011	05-116-22-33-0028	05-116-22-34-0021
05-116-22-31-0012	05-116-22-33-0029	05-116-22-34-0022
05-116-22-31-0013	05-116-22-33-0030	05-116-22-34-0023
05-116-22-31-0014	05-116-22-33-0031	05-116-22-34-0024
05-116-22-31-0016	05-116-22-33-0032	05-116-22-41-0046
05-116-22-31-0053	05-116-22-33-0033	05-116-22-41-0047
05-116-22-31-0054	05-116-22-33-0034	05-116-22-41-0048
05-116-22-31-0055	05-116-22-33-0035	05-116-22-41-0049
05-116-22-31-0056	05-116-22-33-0042	05-116-22-41-0050
05-116-22-31-0057	05-116-22-33-0043	05-116-22-41-0051
05-116-22-31-0058	05-116-22-33-0044	05-116-22-41-0052
05-116-22-31-0059	05-116-22-33-0045	05-116-22-41-0059
05-116-22-31-0065	05-116-22-33-0046	05-116-22-41-0060
05-116-22-31-0066	05-116-22-33-0047	05-116-22-41-0061
05-116-22-31-0067	05-116-22-33-0049	05-116-22-41-0062
05-116-22-31-0068	05-116-22-33-0050	05-116-22-41-0063
05-116-22-31-0069	05-116-22-33-0051	05-116-22-41-0064
05-116-22-31-0074	05-116-22-33-0052	05-116-22-41-0065
05-116-22-31-0075	05-116-22-33-0053	05-116-22-42-0002
05-116-22-31-0076	05-116-22-33-0054	05-116-22-42-0003
05-116-22-32-0062	05-116-22-33-0055	05-116-22-42-0021
05-116-22-32-0063	05-116-22-33-0056	05-116-22-42-0023
05-116-22-32-0069	05-116-22-33-0057	05-116-22-42-0024
05-116-22-32-0070	05-116-22-33-0058	05-116-22-42-0025
05-116-22-33-0003	05-116-22-33-0059	05-116-22-42-0026
05-116-22-33-0004	05-116-22-33-0060	05-116-22-42-0027
05-116-22-33-0005	05-116-22-33-0061	05-116-22-42-0028
05-116-22-33-0006	05-116-22-33-0062	05-116-22-42-0029
05-116-22-33-0007	05-116-22-33-0063	05-116-22-42-0030
05-116-22-33-0008	05-116-22-33-0064	05-116-22-42-0036
05-116-22-33-0009	05-116-22-33-0065	05-116-22-42-0054
05-116-22-33-0010	05-116-22-33-0066	05-116-22-43-0004
05-116-22-33-0011	05-116-22-34-0001	05-116-22-43-0005
05-116-22-33-0012	05-116-22-34-0003	05-116-22-43-0006
05-116-22-33-0013	05-116-22-34-0004	05-116-22-43-0007















09-116-22-22-0015	09-116-22-23-0046	09-116-22-32-0038
09-116-22-22-0016	09-116-22-23-0047	09-116-22-32-0039
09-116-22-22-0017	09-116-22-23-0048	09-116-22-32-0040
09-116-22-22-0018	09-116-22-23-0049	09-116-22-32-0041
09-116-22-22-0019	09-116-22-23-0052	09-116-22-32-0042
09-116-22-22-0020	09-116-22-23-0053	09-116-22-32-0043
09-116-22-22-0021	09-116-22-23-0054	09-116-22-32-0051
09-116-22-22-0022	09-116-22-23-0055	09-116-22-32-0052
09-116-22-22-0023	09-116-22-23-0056	09-116-22-32-0053
09-116-22-23-0001	09-116-22-23-0057	09-116-22-32-0054
09-116-22-23-0002	09-116-22-23-0058	09-116-22-33-0004
09-116-22-23-0003	09-116-22-23-0059	09-116-22-33-0005
09-116-22-23-0005	09-116-22-23-0060	09-116-22-33-0006
09-116-22-23-0006	09-116-22-23-0061	09-116-22-33-0007
09-116-22-23-0007	09-116-22-24-0004	09-116-22-33-0008
09-116-22-23-0008	09-116-22-24-0005	09-116-22-33-0026
09-116-22-23-0009	09-116-22-24-0006	09-116-22-33-0027
09-116-22-23-0010	09-116-22-32-0005	09-116-22-33-0028
09-116-22-23-0011	09-116-22-32-0006	09-116-22-33-0029
09-116-22-23-0012	09-116-22-32-0007	09-116-22-33-0030
09-116-22-23-0013	09-116-22-32-0008	17-116-22-12-0043
09-116-22-23-0014	09-116-22-32-0009	17-116-22-12-0048
09-116-22-23-0015	09-116-22-32-0010	17-116-22-12-0050
09-116-22-23-0016	09-116-22-32-0011	17-116-22-12-0051
09-116-22-23-0017	09-116-22-32-0012	17-116-22-12-0060
09-116-22-23-0018	09-116-22-32-0013	17-116-22-12-0061
09-116-22-23-0019	09-116-22-32-0014	17-116-22-12-0062
09-116-22-23-0022	09-116-22-32-0015	17-116-22-12-0063
09-116-22-23-0023	09-116-22-32-0016	17-116-22-12-0064
09-116-22-23-0024	09-116-22-32-0017	17-116-22-12-0065
09-116-22-23-0025	09-116-22-32-0018	17-116-22-12-0066
09-116-22-23-0026	09-116-22-32-0019	17-116-22-12-0067
09-116-22-23-0027	09-116-22-32-0020	17-116-22-12-0068
09-116-22-23-0028	09-116-22-32-0021	17-116-22-12-0069
09-116-22-23-0029	09-116-22-32-0022	17-116-22-12-0070
09-116-22-23-0030	09-116-22-32-0023	17-116-22-12-0071
09-116-22-23-0031	09-116-22-32-0024	17-116-22-12-0074
09-116-22-23-0032	09-116-22-32-0025	17-116-22-12-0075
09-116-22-23-0033	09-116-22-32-0026	17-116-22-12-0076
09-116-22-23-0034	09-116-22-32-0027	17-116-22-12-0077
09-116-22-23-0035	09-116-22-32-0028	17-116-22-12-0078
09-116-22-23-0036	09-116-22-32-0029	17-116-22-12-0079
09-116-22-23-0037	09-116-22-32-0030	17-116-22-12-0080
09-116-22-23-0038	09-116-22-32-0031	17-116-22-12-0101
09-116-22-23-0039	09-116-22-32-0032	17-116-22-12-0123
09-116-22-23-0040	09-116-22-32-0033	17-116-22-21-0001
09-116-22-23-0041	09-116-22-32-0034	17-116-22-21-0050
09-116-22-23-0044	09-116-22-32-0036	17-116-22-21-0051
09-116-22-23-0045	09-116-22-32-0037	17-116-22-21-0052

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Public Hearings / Meetings		May 6, 2014
<b>DEPARTMENT:</b> Jay Lotthammer, Parks and Recreation Director	<b>ITEM DESCRIPTION:</b> Award Bids, Assign Contracts and Enter into a Guaranteed Maximum Price with RJM Construction for the Aquatics Expansion Project	<b>ITEM NO.:</b> IX.C.

### **Requested Action**

- Motion: Award the base bids and alternates (to be reviewed and determined at the Council meeting) as described in Attachment 1 – Bid Descriptions and Prices.
- Motion: Assign contracts for the awarded bids to RJM Construction and enter into a guaranteed maximum price with RJM Construction as defined by the current agreement with RJM Construction and as illustrated in Attachment 1 – Bid Descriptions and Prices and Attachment 2 – Assignment of Contracts.

### **Synopsis**

Staff will present an overview of the project, the costs and the funding sources as a part of the presentation at the council meeting. The presentation will precede the public hearing followed by consideration to pursue bonding, consideration of the bids, assignment of the contracts and approval of a guaranteed maximum price.

A public hearing is required as a part of the bonding and approval process. The Mayor and Council Members have also expressed a desire to hear the residents thoughts and opinions about the project. The public hearing will precede all council actions.

Bids for a large portion of the project were publicly opened on Tuesday, April 29<sup>th</sup>. The bids and alternates make up the largest portion of the project costs. There are other smaller costs as such as; SAC, FFE, timing system, contingency, security system, etc. that make up the remainder of the project costs. Staff will review all areas of work and recommend certain alternates to the council during the presentation. One of the alternates for consideration is the water slide. The water slide, along with the building area that houses it and the plunge pool associated with it were listed as an alternate in order to identify the cost of this amenity. The total cost for all aspects associated with the water slide are \$1,344,957. This is by far the largest alternate that staff will be asking the council to consider. Other alternates include; Raised Concrete and Ceramic Tile Platforms for Diving Boards – Add \$9,311; Aquatic Climbing Wall – Add \$30,105; Waterproofing Under the Ceramic Tile at the Pool Areas - Add \$44,617; Provide Aluminum Ductwork at Pool Areas in Lieu of Galvanized - Add \$50,498; Provide LED Light Fixtures In Lieu of Standard Fixture – Add \$25,374; Aquatic Play Feature 1 – Add \$102,143; Provide an Alternate Manufacturer for the Pool Air Handling Units – Deduct (\$92,251); Substitute the Type of Linear Deck Drain with Alternate Product - Add \$0; Unit Price Per Cubic Yard to Correct Additional Soils - Add \$40/CY.

Once the bids are awarded, the Construction Management agreement calls for the city to assign the individual contracts to the Construction Manager (Attachment 2 - Assignment of Contracts).

The Guaranteed Maximum Price (GMP) consists of: all costs associated with the building and furnishing of the project. The method for determining this cost is illustrated in Attachment 1 - Bid Descriptions and Prices.

### **History**

During the Summer/Fall of 2012 staff conducted workshops and meetings with consultants, council members, commission members, users and facilities and programming staff to complete the feasibility study. The feasibility study was presented to the Parks, Recreation and Natural Resources Commission and the City Council in November of 2012.

In January of 2013, the PRNR Commission recommended and the City Council authorized moving forward with design and construction documents based on feasibility study and subsequent input from participants and staff. Between January and March of 2014 staff worked with HGA Architects and RJM Construction to finalize construction documents and complete the detailed design phase of the project. The following milestones have recently been accomplished:

March 12	Bids Advertised
March 18	City Council Public Hearing and Meeting - Approval of Site Plan
March 28	Completed Bid Documents
April 29	Bid Opening
May 5	Parks Commission Review and Recommendation

### **Attachments**

Bid Descriptions & Prices  
Assignment of Contracts





April 29, 2014

Mr. Jay Lotthammer  
Director of Parks and Recreation  
City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN

Re: Eden Prairie Community Center - Aquatics Addition

Dear Jay,

RJM is pleased to provide you a project bid summary for the Eden Prairie Community Center Aquatics Facility. This cost summary is based on public bids received on April 29, 2014 as well as quotes that were received on behalf of the City. Included in the Total Project Estimate are the costs for recommended alternates 3, 4, 7, 8 and 9.

**Total Project Estimate: \$19,636,946**

**ALTERNATES:**

No. 1:	Building Enclosure, Pool Systems and Foundations for the Waterslide.	<b>Add</b>	<b>\$1,109,508</b>
No. 2:	Provide and Install Waterslide	<b>Add</b>	<b>\$235,449</b>
No. 3:	Raised Concrete and Ceramic Tile Platforms for Diving Boards	<b>Add Included Above</b>	
No. 4:	Aquatic Climbing Wall	<b>Add Included Above</b>	
No. 5:	Waterproofing Under the Ceramic Tile at the Pool Areas	<b>Add</b>	<b>\$44,617</b>
No. 6:	Provide Aluminum Ductwork at Pool Areas in Lieu of Galvanized	<b>Add</b>	<b>\$50,498</b>
No. 7:	Provide LED Light Fixtures In Lieu of Standard Fixture	<b>Add Included Above</b>	
No. 8:	Aquatic Play Feature 1	<b>Add Included Above</b>	
No. 9:	Provide an Alternate Manufacturer for the Pool Air Handling Units	<b>Deduct Included Above</b>	
No. 10:	Substitute the Type of Linear Deck Drain with Alternate Product	<b>Add</b>	<b>\$0</b>
No. 11:	Unit Price Per Cubic Yard to Correct Additional Soils	<b>Add</b>	<b>\$40/CY</b>

If you should have any questions, please feel free to contact me. We would like to make the decisions on the City recommended alternates today if possible.

Sincerely,

Brian Recker  
Senior Vice President



**ESTIMATE DATE:** April 29, 2014  
**PROJECT:** Eden Prairie Community Center - Aquatics Addition  
**ARCHITECT:** HGA  
**DRAWING DATE:** April 1, 2014

DESCRIPTION	Sub Contractors	Final Estimate	\$/sf 58,000
<b>Construction Costs</b>			
Survey	Allowance	\$18,375	\$0.32
Final Cleaning	Eco Cleaning	\$21,728	\$0.37
2A - Selective Demolition	Kellington	\$104,475	\$1.80
3A - Concrete Systems	Gresser	\$904,000	\$15.59
3B - Precast Structural Concrete	Hanson	\$933,931	\$16.10
4A - Masonry	Gresser	\$1,809,300	\$31.19
5A - Structural and Misc Steel - Material	Thurnbeck	\$499,700	\$8.62
5B - Structural and Misc Steel - Install	Allowance	\$250,000	\$4.31
6A - Carpentry Systems	Kellington	\$403,000	\$6.95
7A - Metal Panel Systems	Specialty Systems	\$313,700	\$5.41
7B - Roofing Systems	Berwald Roofing	\$676,633	\$11.67
8A - Aluminum Entrances / Storefronts	Capital City	\$695,800	\$12.00
Doors, HM Frames, HDWR - Materials	TCH	\$44,614	\$0.77
Coiling Doors	IDC	\$1,900	\$0.03
9A - Ceramic Tile	CD Tile	\$410,760	\$7.08
9B - Acoustical Ceilings	Kirk	\$190,000	\$3.28
9C - Painting Systems	S & Y	\$198,889	\$3.43
9D - Gypsum Board	Mulcahy	\$459,800	\$7.93
Carpet & Resilient Flooring	Sonus	\$75,190	\$1.30
Wood Flooring	Anderson Ladd	\$44,308	\$0.76
Misc Specialties - Material Only	Bartley	\$44,703	\$0.77
Lockers - Material Only	The Locker Guy	\$77,507	\$1.34
Window Treatments	Midwest Blinds	\$30,990	\$0.53
13A - Aquatics	Global Specialty	\$2,602,500	\$44.87
Conveying	Schindler	\$58,393	\$1.01
21A - Fire Protection Systems	Frontier	\$143,400	\$2.47
22A - Plumbing Systems	Muska Plumbing	\$694,850	\$11.98
23A - HVAC	Area Mechanical	\$2,527,500	\$43.58
26A - Electrical	Gephart	\$995,000	\$17.16
31A - Building Demo / Earthwork / Site Utilities	New Look	\$393,400	\$6.78
Asphalt	Northland	\$13,575	\$0.23
Site Concrete	MN State Curb & Gutter	\$20,500	\$0.35
Retaining Walls	Sunram	\$67,101	\$1.16
Landscaping & Irrigation	By Owner	\$0	\$0.00
General Conditions		\$696,843	\$12.01
Preconstruction Services		\$43,750	\$0.75
Temporary Heating Allowance		\$50,000	\$0.86
General Liability Insurance		\$146,159	\$2.52
Builders Risk Insurance		\$23,327	\$0.40
Building Permit		\$0	\$0.00

Bond		\$92,571	\$1.60
<b>Subtotal Construction Costs</b>		<b>\$16,778,173</b>	<b>\$289.28</b>
Contingency		\$587,236	\$10.12
Contractors Fee		\$390,722	\$6.74
<b>Total Project Estimate</b>		<b>\$17,756,130</b>	<b>\$306.14</b>

<b>Owner Costs</b>			
SAC/WAC		\$57,155	\$0.99
Soil Borings		\$9,804	\$0.17
Site Survey		\$19,607	\$0.34
Fiber Optic Relocation		\$50,000	\$0.86
Gas Main Relocation		\$20,000	\$0.34
Testing & Special Inspections		\$27,777	\$0.48
Furniture, Fixtures & Equipment - FFE		\$204,241	\$3.52
Timing System		\$0	\$0.00
Office Equipment		\$24,509	\$0.42
Signage		\$24,509	\$0.42
PA Systems		\$11,949	\$0.21
Phone Systems ( Includes equipment )		\$73,527	\$1.27
Network Distribution		\$34,679	\$0.60
Computer Equipment		\$9,804	\$0.17
Keys / Cores Allowance		\$6,536	\$0.11
Security Systems		\$24,509	\$0.42
Department of Health Review Fee		\$15,000	\$0.26
Landscaping / Irrigation / Pavers		\$60,000	\$1.03
<b>Subtotal Owner Costs</b>		<b>\$673,606</b>	<b>\$11.61</b>
<b>Design Fees</b>			
Design Fees		\$1,177,210	\$20.30
Consultant Fees		\$30,000	\$0.52
<b>Subtotal Design Fees</b>		<b>\$1,207,210</b>	<b>\$20.81</b>
<b>Contingency</b>			
Design Contingency		\$0	\$0.00
Owner Contingency		\$0	\$0.00
<b>Subtotal Contingency</b>		<b>\$0</b>	<b>\$0.00</b>
<b>Total Project Costs</b>		<b>\$19,636,946</b>	<b>\$338.57</b>

## **ASSIGNMENT OF CONTRACT**

THIS AGREEMENT is made as of 6th day of May, 2014, by **City of Eden Prairie** a Minnesota municipal corporation (“City”), and **RJM Construction**, a Minnesota corporation (“Contractor”).

### RECITALS:

**WHEREAS** City and Contractor have entered into that certain Standard Form of Agreement Between Owner and Construction Manager dated as of March 26, 2014 whereby Contractor undertakes the construction management of project known as the “Eden Prairie Expansion and Renovation, Eden Prairie Community Center.”

**WHEREAS** the Contract requires that City assign to Contractor all of City’s rights in and to contracts for the construction of the Work (as defined in the Contract) which have been competitively bid and awarded by the City. A list of all such contracts is attached as Exhibit A hereto.

NOW, THEREFORE, in consideration of the mutual promise and agreements made in the Contract and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged:

1. City hereby grants, transfers and assigns to Contractor all of its right, title and interest in and to the contracts identified on Exhibit A hereto.
2. The undersigned Contractor hereby consents to this Assignment and agrees to perform all of its obligations under the Contract for the benefit of City
3. This Assignment shall be binding upon and inure to the benefit of the City and Contractor and their respective heirs, successors and assigns, as the case may be.
4. This Assignment may be signed in more than one counterpart, together which shall constitute an original document.



The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Robert Jossart, President of RJM Construction, a Minnesota corporation, on behalf of the corporation.

---

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Richard F. Rosow, (93592)  
Gregerson, Rosow, Johnson & Nilan, Ltd  
650 Third Avenue South, Suite 1600  
Minneapolis, MN 55402  
Telephone: (612) 338-0755  
Facsimile: (612) 349-6718



May 2, 2014

Mr. Jay Lotthammer  
 Director of Parks and Recreation  
**City of Eden Prairie**  
 8080 Mitchell Road  
 Eden Prairie, MN

**RE: Eden Prairie Community Center - Aquatic Addition  
 Recommendations for Award of Contract**

Dear Jay,

On April 29, 2014 bids were received at the City of Eden Prairie for the Eden Prairie Community Center Aquatic Addition. A total of 77 bids were received for twenty (20) advertised bid categories. Also, a total of 41 quotes were received by RJM Construction for thirteen (13) quote categories. Please find below a bid summary by trade for each bid and quote category.

After review with the City of Eden Prairie staff we understand it is recommended to accept Alternates 3, 4, 7, 8 and 9 resulting in a total guaranteed maximum price for construction of \$17,756,130. This results in a total project budget of \$19,636,946. The bid values of these recommended alternates are included in the award amount below.

RJM has completed its review of the bids and in addition to the bid review, we have also conducted a scope review with the apparent low bidder for each bid and quote category. RJM has verified each low bid contractor has the experience and ability to perform in the area they have bid. Based on the results of these reviews we recommend to the City Council that they award the contracts as follows:

<b><u>BID CATEGORY</u></b>	<b><u>AWARD AMOUNT</u></b>
<b>2A – Selective Demolition</b> Kellington Construction 2301 North 2 <sup>nd</sup> Street Minneapolis, MN 55411	\$104,475
<b>3A/4A – Concrete and Masonry</b> Gresser Concrete and Masonry 2905 Lexington Avenue South Eagan, MN 553121	\$2,713,300

<b>3B – Precast Structural Concrete</b> Hanson Structural Precast 9060 Zachary Lane, Suite 101 Maple Grove, MN 55369	\$933,931
<b>5A – Structural &amp; Misc. Steel – Material Only</b> Thurnbeck Steel Fabrication, Inc. 23790 Goodview Circle N. Forest Lake, MN 55025	\$499,700
<b>6A – Carpentry Systems</b> Kellington Construction 2301 North 2 <sup>nd</sup> Street Minneapolis, MN 55411	\$403,000
<b>7A – Metal Panel Systems</b> Specialty Systems 11901 Riverwood Drive Burnsville, MN 55337	\$313,700
<b>8A – Aluminum Entrances and Storefronts</b> Capital City Glass, Inc. 1521 93 <sup>rd</sup> Lane NE Blaine, MN 55449	\$695,800
<b>9A – Ceramic Tile</b> CD Tile and Stone Inc. 8080 Mitchell Road Blaine, MN 55344	\$410,760
<b>9B – Acoustical Ceilings</b> Kirk Acoustics 395 Bridgeport Way South St. Paul, MN 55075	\$190,000
<b>9C – Painting Systems</b> Swanson and Youngdale, Inc. 6565 West 23 <sup>rd</sup> Street Minneapolis, MN 55426	\$198,889
<b>13A – Aquatics Systems</b> Global Specialty Contractors, Inc. 3220 Terminal Drive Eagan, MN 55121	\$2,602,500



<b>21A – Fire Protection Systems</b>	\$143,400
Frontier Fire Protection, Inc. 75 County Road B East Little Canada, MN 55117	
<b>22A – Plumbing Systems</b>	\$694,850
Muska Plumbing, LLC. 1985 Oakcrest Ave Roseville, MN 55113	
<b>23A – HVAC Systems</b>	\$2,527,500
General Sheetmetal 2330 Louisiana Avenue North Minneapolis, MN 55427	
<b>26A – Electrical Systems</b>	\$995,000
Gephart Electric 3550 Labore Road St. Paul, MN 55110	
<b>31A – Building Demo/Earthwork/Site Utility</b>	\$393,400
New Look Contracting 14045 Northdale Blvd. Rogers, MN 55374	
<b><u>QUOTE CATEGORY</u></b>	<b><u>AWARD AMOUNT</u></b>
<b>1A – Final Cleaning</b>	\$21,728
Eco Solutions, LLC. 8312 Pillsbury Ave. S. Bloomington, MN 55431	
<b>8B – Doors/Frames/Hardware Material</b>	\$44,614
Commercial Door Systems, Inc. 7670 Commerce Street Corcoran, MN 55340	
<b>8C – Coiling Doors</b>	\$1,900
IDC Automatic 360 Coon Rapids Blvd. Coon Rapids, MN 55433	

<b>9E-Carpet&amp;Resilient Flooring</b>	\$75,190
Sonus Interiors, Inc. 6325 Sandburg Road, Suite 800 Golden Valley, MN 55427	
<b>9F – Wood Flooring</b>	\$44,308
Anderson-Ladd, Inc. 430 Industrial Blvd. Minneapolis, MN 55413	
<b>10A – Misc. Specialties Material</b>	\$44,703
Bartley Sales Company, Inc. 6509 Cambridge Street Minneapolis, MN 55426	
<b>10B – Locker Equipment Materials</b>	\$77,507
The Locker Guy 4308 Marigold Ave. N. Brooklyn Park, MN 55443	
<b>10C – Window Treatments</b>	\$30,990
Midwest Blinds 12700 Zenith Ave. S. Burnsville, MN 55337	
<b>14A – Elevator System</b>	\$58,393
Schindler Elevator 895 Blue Gentian Road Eagan, MN 55121	
<b>31B – Asphalt Paving</b>	\$13,575
Northland Paving 21716 Kenrick Ave, Suite A Lakeville, MN 55044	
<b>31C – Site Concrete</b>	\$20,500
MN State Curb-Gutter Division, AVR, Inc. 14698 Galaxie Ave. Apple Valley, MN 55124	

<b>31D – Retaining Walls</b>	\$67,101
Sunram Construction, Inc.	
20010 75 <sup>th</sup> Ave. N.	
Corcoran, MN 55340	

Should the City Council decide to award Alternate 1 to provide the additional building structure and pool systems for the waterslide, the recommended award for Bid Category 6A would change to the contractor noted below for the associated contract amount:

<b>6A – Carpentry Systems</b>	\$425,600
CM Construction Company	
12215 Nicollet Ave. S.	
Burnsville, MN 55337	

During the bid review process we were contacted by two contractors that have requested to have their bids rescinded.

National Excavation and Demolition provided a bid for Bid Category 2A – Selective Demolition. Because their bid was less than \$100,000 they were unclear if they needed to provide a payment and performance bond, of which they do not have the capability to provide. Because of the need for this payment and performance bond they are asking that their bid be rescinded and their bid security be returned. We are recommending that this request be approved. The above recommendations include the next lowest bidder for this bid category.

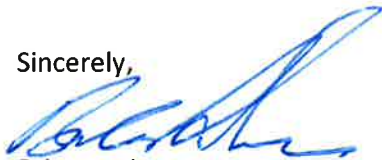
Steenburg-Watrud provided a bid for Bid Category 4A – Masonry. Due to a mathematical error in their bid spreadsheet their bid did not include the cost of the masonry reinforcing which was \$287,000. They have requested that their bid be rescinded and their bid security be returned. We are recommending that this be approved. The above recommendations include the next lowest bidder for this bid category.

During the bidding process many steel erection contractors were contacted to solicit bids for Bid Category 5B- Structural and Misc. Steel Erection. Despite efforts, no bids were received for this work. This Bid Category will be reissued for bid. Upon receipt of those bids, a recommendation will be made the City Council for award at a later time. An allowance for this cost has been included in the Guaranteed Maximum Price.

Also during the bidding process four (4) addenda were issued to the Construction Documents. The low bidders for Bid Category 7B – Roofing Systems and Bid Category 9D – Gypsum Systems only acknowledged three (3) addenda. These Bid Categories are not being recommended for award at this time. After review of the bids and the fourth addenda, recommendations for award for these Bid Categories will be made to the City Council for award at a later time. The costs for these Bid Categories has been included in the in the Guaranteed Maximum Price.

If you should have any questions regarding these recommendations for award, please feel free to contact me.

Sincerely,



Brian Recker  
Senior Vice President

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Report of Community Development Director		05/06/14
<b>DEPARTMENT/DIVISION:</b> Community Development/Planning Janet Jeremiah/	<b>ITEM DESCRIPTION:</b> Nine Mile Creek Water Resource Center Construction Update	<b>ITEM NO.:</b> XIV.C.1.

### **Synopsis**

Kevin Bigalke of the Nine Mile Creek Watershed District would like to update the City Council on the plans and construction schedule for the water resource center.

### **Background**

The Nine Mile Creek Water shed District has applied for building permits for the water resource center. The staff is in the process of reviewing these plans. There a number of changes which staff believes are administrative and result in a better plan for the property.

1. The building additions have been eliminated. The attached garage will be demolished and converted into meeting space. This reduces the size of the building.
2. Relocation of proposed parking to the east which results in less grading and tree removal.
3. Relocation of infiltration basins based on changes to parking.
4. Adding mowed trails to be used as part of onsite education.
5. Adding a buckthorn and other invasive species removal plan.