

# AGENDA

## EDEN PRAIRIE CITY COUNCIL MEETING

**TUESDAY, MAY 24, 2016**

**7:00 PM, CITY CENTER  
Council Chambers  
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, 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. SENIOR AWARENESS PROCLAMATION**
  - B. HERITAGE PRESERVATION AWARD**
  - C. HUMAN RIGHTS AWARDS**
  - D. ACCEPT TREE DONATION (RESOLUTION)**
- V. APPROVAL OF AGENDA AND OTHER ITEMS OF BUSINESS**
- VI. MINUTES**
  - A. COUNCIL WORKSHOP HELD TUESDAY, MAY 3, 2016**
  - B. CITY COUNCIL MEETING HELD TUESDAY, MAY 3, 2016**
- VII. REPORTS OF ADVISORY BOARDS & COMMISSIONS**
- VIII. CONSENT CALENDAR**
  - A. CLERK'S LICENSE LIST**
  - B. APPROVE SECOND READING OF ORDINANCE AMENDING CITY CODE CHAPTER 4 TO LICENSE SALE OF ALCOHOL IN RESTAURANT MOVIE THEATERS AND ADOPT RESOLUTION APPROVING PUBLICATION OF SUMMARY ORDINANCE**
  - C. ADOPT RESOLUTION APPROVING FINAL PLAT OF SHADY OAK CROSSTOWN SECOND ADDITION**

**CITY COUNCIL AGENDA**

May 24, 2016

Page 2

- D. **DECLARE ABANDONED PROPERTY**
- E. **AWARD CONTRACT FOR 2016 CONCRETE SUPPLY TO CEMSTONE**
- F. **APPROVE CHANGE ORDER NO. 2 FOR SOUTHERN SEGMENT OF THE SHADY OAK RD. IMPROVEMENTS**
- G. **APPROVE CHANGE ORDER NO. 1 FOR WEST 70TH ST. EXTENSION IMPROVEMENT PROJECT**
- H. **APPROVE PROFESSIONAL SERVICES AGREEMENT WITH WENCK ASSOCIATES, INC. FOR PURGATORY CREEK BANK STABILIZATION NEAR 11193 BLUESTEM LANE**
- I. **APPROVE AGREEMENT WITH WENCK ASSOCIATES FOR PHASE VI POND INVENTORY AND INSPECTION PROGRAM**
- J. **APPROVE LEASE FOR COMMUNITY GARDENS AT PIONEER TRAIL**
- K. **REJECT BIDS FOR MILLER PARK STORAGE BUILDING**
- L. **APPROVE PROFESSIONAL SERVICES AGREEMENT WITH HTPO FOR ROUND LAKE PHASE II**
- M. **APPROVE PROFESSIONAL SERVICES AGREEMENT WITH HTPO FOR MILLER FIELD 8 IMPROVEMENTS**
- N. **APPROVE PROFESSIONAL SERVICES AGREEMENT WITH HTPO FOR RECONSTRUCTION OF FIELD 10 AT MILLER PARK**
- O. **AWARD CONTRACT FOR STARING LAKE PLAY AREA RENOVATION**
- P. **APPROVE MAINTENANCE AGREEMENT WITH RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT FOR ROUND LAKE PHASE II**
- Q. **AWARD CONTRACT FOR WATERFORD ROAD AREA AND LARKSPUR LANE AREA SUMP PUMP COLLECTION SYSTEM PROJECT TO VALLEY RICH CO., INC.**
- IX. **PUBLIC HEARINGS / MEETINGS**
  - A. **RESOLUTION VACATING PUBLIC DRAINAGE & UTILITY EASEMENTS OVER LOT 1, BLOCK 1, SHADY OAK CROSSTOWN ADDITION**
  - B. **CLIMATECH** by Climatech. Request for Site Plan Review on 6.98 acres. Location: 6950 Washington Ave. S. (**Resolution for Site Plan Review**)
- X. **PAYMENT OF CLAIMS**

**CITY COUNCIL AGENDA**

May 24, 2016

Page 3

**XI. ORDINANCES AND RESOLUTIONS**

- A. FIRST READING OF AN ORDINANCE AMENDING CITY CODE SECTIONS 6.01 TO 6.03 AND 6.05 TO 6.07, RELATING TO RIGHT-OF-WAY**

**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**
- 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**

## 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 2016 to be

### SENIOR AWARENESS MONTH

**ADOPTED BY** the Eden Prairie City Council on this 24<sup>th</sup> day of May 2016.



Nancy Tyra Lukens, Mayor  
on behalf of Council Members:

Brad Aho  
Sherry Butcher Wickstrom  
Ron Case  
Kathy Nelson

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Presentations		May 23, 2016
<b>DEPARTMENT/DIVISION:</b> Community Development/Planning Janet Jeremiah/ Lori Creamer	<b>ITEM DESCRIPTION:</b>  Heritage Preservation Award	<b>ITEM NO.:</b> IV.B.

### Synopsis

Heritage Preservation Commission Chair, Steve Olson, will introduce the Heritage Preservation Award, which recognizes an individual, family or business that has gone above and beyond their usual responsibilities to promote, preserve, rehabilitate or restore Eden Prairie's heritage resources. The Mayor will present the award.

The recipient of the 2016 Heritage Preservation Award is Steven Schussler for the preservation of the Goodrich- Ramus Barn now known as the Green Acres Event Center. Steve will be on hand to accept the award.

### Background

In 2009, the old barn was destined for the wrecking ball since it stood in the way of a Hennepin County road widening project on Pioneer Trail. The City of Eden Prairie and the Eden Prairie Historical Society wanted to save the oldest standing barn (the Goodrich-Ramus Barn) in the City, so it was put up for bid to anyone who had the money, courage and vision to buy it. Hopes were dimming when it seemed there might be no 'takers'. It seems there isn't high demand for an old barn on a small parcel of land in an affluent suburb! One person read of the old barn's plight in an article in the Mpls Star Tribune, and stepped forward to save it. Steven Schussler - creator of the Rainforest Café, Yak & Yeti, T Rex and the Boat House in Disneyworld, among other successful pursuits - was the sole bidder for the old barn. He had a vision...he took a risk... and the transformation began! After several years of meticulous restoration and a personal investment of over \$1.5 million dollars, Steve and his team at Schussler Creative opened the barn doors of Green Acres on March 1, 2013.

Heritage Preservation Commission members are:

- Steve Olson, Chair
- Tara Kalar, Vice Chair
- Cindy Cofer Evert
- Valerie Ross
- Pamela Spera
- Paul Thorp
- Ed Muehlberg
- Lori Creamer, Staff Liaison

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Presentations		May 24, 2016
<b>DEPARTMENT/DIVISION:</b> Community Development Patricia Fenrick, Housing and Community Services	<b>ITEM DESCRIPTION:</b>  Human Rights Awards	<b>ITEM NO.:</b> IV.C.

### Synopsis

Several Human Rights & Diversity Commissioners will present the three Human Rights Awards.

The Eden Prairie Manifesto intends to continue the development of a multicultural community which will not tolerate acts of harassment and intolerance and establishes, communicates and encourages community standards that respect diversity and promote acceptance and respect for individuals in an atmosphere of caring for others.

#### **Business Award: World Auto, Wynne Anderson**

Reading the Award: HRDC Commissioner Greg Leeper

*World Auto was nominated because of their inclusive, fair-minded, and 'above and beyond' support to many residents who access the car repair assistance program. The staff at World Auto model what it looks like to offer respectful, sensitive and compassionate service to families who are facing barriers and are often in a time of crisis. Along with their extra mile support to families, World Auto is an outstanding partner with PROP and has proactively built relationships with the case management team there to best serve their mutual customers.*

#### **Business Award: Brunswick Zone**

Reading the Award: Student Commissioner Turner Gunderson

*We would like to recognize Brunswick Zone and its staff for being an inclusive, accommodating, and supportive business for adults and children with disabilities. The Brunswick Zone staff works with AR&LE that serves individuals with disabilities in Bloomington, Edina, Eden Prairie and Richfield and TRAIL, a local nonprofit. Brunswick staff are welcoming, know many of the participants by name, and make each of their adaptive bowlers feel comfortable and very special.*

#### **Individual Award: Hanadi Chehabeddine**

Presenting the Award: Student Commissioner Adrienne Retzlaff

*Hanadi upholds the values of the Manifesto through her work to build bridges of unity by dismantling mis-information and fear about Muslims. She seeks to counteract the negativity in much of the media by living out and speaking about the peacefulness of Islam.*

Human Rights and Diversity Commission members are:

- PG Narayanan, Chair
- Sana Elassar, Vice Chair
- Greg Leeper
- Leslie Philmon
- Shahrar Messaghi
- Ann Martinka
- Joan Howe-Pullis
- Patricia Fenrick, Staff Liaison

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Proclamations and Presentations		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> IV.D.
Jay Lotthammer, Director, Parks and Recreation	Donation from the VanLangendon Family for Trees at Rice Marsh Lake Park	

**Requested Action**

Move to:        Adopt the Resolution accepting the donation in the amount of \$510 from the VanLangendon family towards the purchase and planting of three Serbian Spruce trees at Rice Marsh Lake Park.

**Synopsis**

In the spirit of Arbor Day, the VanLangendon family would like to donate \$510 to purchase three new trees that could be planted at Rice Marsh Lake Park.

**Attachment**

Resolution

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

**RESOLUTION NO. 2016-**

**RESOLUTION RELATING TO ACCEPTANCE OF GIFTS**

**BE IT RESOLVED BY THE EDEN PRAIRIE CITY COUNCIL THAT:**

The gift to the City in the amount of \$510.00 to be used for three Serbian Spruce trees to be planted at Rice Marsh Lake Park from the VanLangendon Family is hereby recognized and accepted by the Eden Prairie City Council.

**ADOPTED** by the City Council of the City of Eden Prairie this 24th day of May, 2016.

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

**ATTEST:**

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



**UNAPPROVED MINUTES****CITY COUNCIL WORKSHOP & OPEN PODIUM****TUESDAY, MAY 3, 2016****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 Recorders Lorene McWaters and Jan Curielli

***Workshop - Heritage Room II***

Mayor Tyra-Lukens and Council Member Nelson were absent. Council Member Butcher Wickstrom joined the meeting at 5:45 p.m.

**I. 2015 COMPREHENSIVE ANNUAL FINANCIAL REPORT/AUDIT**

Chris Knopik, principal with CliftonLarsonAllen, presented the results of the City's annual audit. Knopik said the City received an unmodified (clean) opinion for the 2015 financial statement audit. There were no findings in the area of internal control items. The auditors conducted applicable testing and completed a 25-page checklist to verify that the City complied with applicable Minnesota State Statutes. There was one minor finding in the area of contract compliance, which Knopik said can easily be corrected.

Knopik said general fund revenues and expenditures have remained consistent over the years, and the general fund balance has remained stable year after year. He said there was a \$551,000 change in the fund balance for 2015. He said the City is also meeting all policy thresholds. Revenues came in over budget by 3.6 percent. Property taxes accounted for 72 percent of revenues, charges for services approximately 11 percent, and licenses and permits approximately 11 percent. Total expenditures came in at 99.8 percent of budgeted expenditures.

Knopik said water operations revenues decreased from the prior year as a result of usage decreasing more than the rate increase. Sewer operations saw a slight increase in revenues due to the rate increase offsetting the decrease in usage for 2015. Storm drainage operations covered 80 percent of depreciation in the current year and 35 percent in the previous year. Operations provided \$984,000. The fund received an advance of \$1.4 million to cover operations and projects.

Although liquor operations saw a sales decrease of 7.6 percent, the City was able to transfer \$800,000 to the Capital Improvement/Maintenance Fund. Knopik noted that many municipalities experienced sales decreases in 2015, and Eden Prairie was bucking the trend because our gross profit percentage was up slightly over the previous year.

Estimated market values increased \$451 million from 2014 to \$9.1 billion. 2016 continues to show improvements to \$9.6 billion.

Knopik noted that there is an inverse relationship between tax capacity and tax capacity rate. The net levy includes general fund levy and debt service levy. The 2016 tax rate is 32.14 percent. The City continues to have a lower tax range than surrounding cities and the state. Per capita revenues increased \$160 from 2014, primarily due to special assessments and “other” revenues (Hennepin County Shady Oak Road South). Compared to other cities of similar size, the largest difference is between intergovernmental and property taxes.

Per capital expenditures increased \$22 from 2014, primarily due to increased community development (Shady Oak Road and the Community Center Aquatics Expansion).

## **II. POLICE DEPARTMENT UPDATE**

Detective Carter Staaf gave a presentation on sex trafficking and abatement. Staaf said the time-tested formula for recruiting victims involves fraud, coercion and force. He said prostitution is a sex act for commerce. Sex trafficking introduces a third party into the transaction.

Staaf said sex trafficking occurs in both private and public places. He noted that many people are surprised to learn that sex for commerce is not illegal when conducted on private property. He said when the Police Department is made aware prostitution taking place on private property, they attempt to intercept buyers as they leave the premises to discuss what is taking place.

Staaf said sex trafficking is about money and control. A woman who is being trafficked typically performs an average of five sex acts a day, seven days a week, at an average of \$100 per transaction. This translates into about \$15,000 a month, almost none of which the sex worker sees. He said it is surprisingly inexpensive to put a woman to work as a prostitute as it requires only a pre-paid phone, a \$4 online ad and minimal clothing, food and shelter. He said sex trafficking is less expensive than selling drugs and carries less risk.

Staaf said traffickers obtain victims by targeting, tricking, turning and traumatizing them. Typical victims of traffickers include:

- Youth
- Homeless

- Women who are pregnant or who have young children
- Youth in the foster care system
- Past or current victims of molestation or other sexual abuse
- Young people of color
- Native youth
- LGBT
- Usually girls, but also boys and transgender youth
- Individuals lacking relationships, support and engagement in school or work

Targeting of vulnerable individuals occurs in public places such as schools, parks, libraries and shopping malls. The Internet – social media and relationship/chat websites – is also used to target victims. Once a victim is being trafficked, they are forced to fulfill quotas and are isolated from family and friends.

Staaf said people are surprised to learn that trafficking occurs in affluent communities like Eden Prairie. Staaf provided examples of women who have been brought into the community to work or who have been recruited to work in other cities and states.

Staaf said the Eden Prairie police department is aggressively fighting sex trafficking in the community and throughout the metro area. In 2015, the department conducted two “john stings,” and has carried out another one already in 2016. These operations resulted in 17 arrests. More than 300 different phone numbers called the decoy advertisements, and decoy officers had more than 1,800 communications to their phones during just three details.

Staaf said the Eden Prairie Police Department has created a street crimes unit. It provides outreach, enforcement and training to reduce trafficking. He said community members can help by contributing to the Crime Prevention Fund and participating in the annual Stop the Trafficking 5K Walk/Run for Justice on June 11.

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

### **III. OPEN PODIUM**

#### **A. TOM MADDEN – TOBACCO SAMPLING ORDINANCE**

Tom Madden, 19260 Lake Avenue in Deephaven, said he would like the Council to amend the ordinance regarding e cigarettes. He has a retail establishment in the Eden Prairie/Minnetonka area and would like to be able to offer sampling of e cigarettes at his business. He reviewed research on the safety of e cigarettes and the benefits of using that product to lifetime smokers.

Case asked if his interest is from a business perspective. Mr. Madden replied he would like to offer the service in the community.

Aho asked if Mr. Madden was asking the Council to change the ordinance to allow sampling of e cigarettes within a retail environment. Mr. Madden said he would like the ordinance to be amended to be similar to the ordinance in Minneapolis.

Case noted he remains adamant against the use of e cigarettes, but he appreciated that Mr. Madden shared his concerns with the Council.

**IV. ADJOURNMENT**

**UNAPPROVED MINUTES**

**EDEN PRAIRIE CITY COUNCIL MEETING**

**TUESDAY, MAY 3, 2016**

**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**

Acting Mayor Case called the meeting to order at 7:00 PM. Mayor Tyra-Lukens was absent.

**II. PLEDGE OF ALLEGIANCE**

**III. OPEN PODIUM INVITATION**

**IV. PROCLAMATIONS / PRESENTATIONS**

**A. TOUR DE TONKA PRESENTATION**

Jenny Bodurka, Coordinator of Youth & Adult Programs, Minnetonka Community Education, distributed brochures about the Tour de Tonka to be held on August 6, 2016. She gave an update about this year's event, and reviewed information on participation in the event over the years. In 2015 the event raised \$40,000 for the Intercongregation Communities Association (ICA) Food Shelf. She thanked the Council for the help Eden Prairie gives to the annual event, especially the support from the Police and Fire Departments.

**B. 2015 COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR)**

Case said our budget is a very important part of Eden Prairie, and this item will present our annual financial report.

Chris Knopik, principal at Clifton Larson Allen, gave a PowerPoint presentation about the 2015 CAFR, and noted his firm issued an unmodified opinion on the report, the highest level of opinion the City can receive. He reviewed the General

Fund revenue and expenditures, fund balances, and the enterprise funds, including the water and sewer fund, storm drainage fund and the liquor fund. He noted the City was under budget for the year by \$76,000. He also reviewed the Estimated Market Value (EMV) of property in the City and commented it is \$485,000,000 over the market value in 2006. Eden Prairie continues to have a lower tax rate than surrounding cities and throughout the State and has an Aaa bond rating. He reviewed some emerging standards issues that will affect the City in the future. He praised staff for being very accommodating and very prepared for the audit.

**MOTION:** Aho moved, seconded by Nelson, to accept the 2015 Comprehensive Annual Financial Report (CAFR). **Motion carried 4-0.**

Aho thanked Mr. Knopik's team and City staff for a great job.

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

Getschow said **Item IX.A.** should be removed from the agenda. The proponent needs additional time to make changes to the plan. The item may come back to the Planning Commission but at an undetermined date. He said staff was able to get notices out about removing the public hearing from tonight's meeting agenda.

Case added **Item XIV.A.1.**

**MOTION:** Nelson moved, seconded by Butcher Wickstrom, to approve the agenda as amended. **Motion carried 4-0.**

**VI. MINUTES**

**A. COUNCIL GOAL SETTING WORKSHOP HELD TUESDAY, MARCH 22, 2016**

**MOTION:** Butcher Wickstrom moved, seconded by Aho, to approve the minutes of the Council goal setting workshop held Tuesday, March 22, 2016, as published. **Motion carried 4-0.**

**B. COUNCIL WORKSHOP HELD TUESDAY, APRIL 5, 2016**

**MOTION:** Aho moved, seconded by Nelson, to approve the minutes of the Council workshop held Tuesday, April 5, 2016, as published. **Motion carried 4-0.**

**C. CITY COUNCIL MEETING HELD TUESDAY, APRIL 5, 2016**

**MOTION:** Nelson moved, seconded by Butcher Wickstrom, to approve the minutes of the City Council meeting held Tuesday, April 5, 2016, as published. **Motion carried 4-0.**

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

**VIII. CONSENT CALENDAR**

Case asked that **Item E. Optum PUD Amendment** be considered separately as he planned to abstain from voting on that item

**A. CLERK'S LICENSE LIST**

**B. STARBUCKS** by Told Development Company. Second Reading of Ordinance 7-2016-PUD-4-2016 for Planned Unit Development District Review with waivers on 1.38 acres and Zoning District Change from R1-13.5 to Highway Commercial (C-HWY) on 0.44 acres; Site Plan Review on 1.38 acres and Preliminary Plat of three lots into two lots on 1.38 acres. Location: 11190 West 62<sup>nd</sup> St. (**Ordinance 7-2016-PUD-4-2016 for PUD District Review with waivers and Zoning District Change; Resolution 2016-58 for Site Plan Review**)

**C. PARK NICOLLET HEALTH SERVICES** by BWBR. Second Reading of Ordinance 8-2016-PUD-5-2016 for Planned Unit Development District Review with waivers on 4.61 acres and Zoning District Amendment within the Office Zoning District on 4.61 acres and Site Plan Review on 4.61 acres. Location: 8455 Flying Cloud Drive (**Ordinance 8-2016-PUD-5-2016 for PUD District Review with waivers and Zoning District Amendment; Resolution 2016-59 for Site Plan Review**)

**D. CAMP EDEN WOOD RESPITE CENTER** by True Friends. Second Reading of Ordinance 9-2016-PUD-6-2016 for Planned Unit Development District Review with waivers on 51.81 acres and Zoning District Amendment within the Public Zoning District on 51.81 acres and Site Plan Review on 51.81 acres. Location: 6350 Indian Chief Rd. (**Ordinance 9-2016-PUD-6-2016 for PUD District Review with waivers and Zoning District Amendment; Resolution 2016-60 for Site Plan Review**)

**E. OPTUM PUD AMENDMENT** by United Health Group. Second Reading of Ordinance 10-2016-PUD-7-2016 for Planned Unit Development District Review with waivers on 89.63 acres and Zoning District Amendment within the I-5 Zoning District on 89.63 acres and Site Plan Review on 89.63 acres. Location: 13625 Technology Drive (**Ordinance 10-2016-PUD-7-2016 for PUD District Review with waivers and Zoning District Amendment; Resolution 2016-61 for Site Plan Review**)

**F. ADOPT RESOLUTION 2016-62 APPROVING LIMITED-USE PERMIT FOR MUNICIPAL ENTRY MONUMENT SIGNS IN THE RIGHT- OF-WAY OF TH 169 AT ANDERSON LAKES PARKWAY, TH 5 AT DELL RD., AND TH 212 AT DELL RD.**

**G. AWARD CONTRACT FOR MILLER PARK #8 IMPROVEMENTS TO MINNESOTA ROADWAYS**

- H. AWARD CONTRACT FOR MILLER PARK #10 RENOVATION TO DUNINICK
- I. APPROVE MAINTENANCE AGREEMENT WITH RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT FOR MILLER PARK #10 PROJECT
- J. AWARD CONTRACT FOR ROUND LAKE IRRIGATION TO GREEN ACRES SPRINKLER COMPANY
- K. AWARD CONTRACT FOR WILLOW PARK TENNIS COURT RENOVATION TO DERMCO-LAVINE CONSTRUCTION
- L. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH HTPO FOR TRAIL PROJECT DESIGN
- M. REJECT BIDS FOR STARING LAKE PLAY AREA RENOVATION
- N. AWARD CONTRACT FOR 4TH OF JULY FIREWORKS TO RES SPECIALTY PYROTECHNICS
- O. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH WEITZMAN STUDIOS, INC. FOR LRT BRIDGE PIER RELIEF DESIGNS
- P. ADOPT RESOLUTION 2016-63 IN SUPPORT OF IMPROVEMENTS TO HIGHWAY 101 BETWEEN PIONEER TRAIL AND FLYING CLOUD DRIVE IN THE CITY OF CHANHASSEN
- Q. DECLARE POLICE VEHICLE #265 AS SURPLUS EQUIPMENT AND AUTHORIZE PURCHASE OF A REPLACEMENT VEHICLE
- R. AWARD CONTRACT FOR 2016 SEALCOAT PROJECT TO ALLIED BLACKTOP COMPANY
- S. AWARD CONTRACT FOR 2016 BITUMINOUS MILL & OVERLAY PROJECT TO PARK CONSTRUCTION, INC.
- T. AWARD CONTRACT FOR 2016 BITUMINOUS CRACK SEAL PROJECT TO AMERICAN PAVEMENT SOLUTIONS
- U. APPROVE LICENSE AGREEMENT WITH HENNEPIN COUNTY FOR ELECTION EQUIPMENT
- V. ADOPT RESOLUTION 2016-64 SUPPORTING APPOINTMENT OF PETER IVERSEN TO THE RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT BOARD OF MANAGERS



**MOTION:** Nelson moved, seconded by Aho, to approve Items A-D and F-V on the Consent Calendar. **Motion carried 4-0.**

Regarding Item V, Aho thanked Peter Iversen for being willing to volunteer to serve on the Riley-Purgatory-Bluff Creek Watershed District Board of Managers. Case noted to his knowledge this is the first time the City Council has sent in a recommendation for a name to serve on that Board.

**MOTION:** Nelson moved, seconded by Butcher Wickstrom, to approve Item E on the Consent Calendar. **Motion carried 3-0-1, with Case abstaining.**

**IX. PUBLIC HEARINGS / MEETINGS**

- A. EDEN PRAIRIE SENIOR LIVING** by Kaas Wilson Architects. Request for Comprehensive Guide Plan Change from Low Density Residential and Office to High Density Residential on 3.11 acres; Planned Unit Development Concept Review on 3.11 acres; Planned Unit Development District Review with waivers on 3.11 acres; Zoning District Change from Rural to Office and RM-2.51 on 3.11 acres; Site Plan Review on 3.11 acres and Preliminary Plat of five lots into one lot and one outlot on 3.11 acres. Location: 10220, 10240 & 10280 Hennepin Town Rd. (**Resolution for Guild Plan Change; Resolution for PUD Concept; Ordinance for PUD District Review with waivers and Zoning District Change; Resolution for Preliminary Plat**)

(Removed from Agenda)

**X. PAYMENT OF CLAIMS**

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

**XI. ORDINANCES AND RESOLUTIONS**

**XII. PETITIONS, REQUESTS AND COMMUNICATIONS**

**XIII. APPOINTMENTS**

**XIV. REPORTS**

**A. REPORTS OF COUNCIL MEMBERS**

**1. Minnesota River Erosion – Council Member Case**

Case said he recently toured the Minnesota River bottoms area near Grass and Rice Lakes. His tour was led by Sever Peterson and was done in preparation for a trolley tour of historic places along the river bottoms that

were mentioned in the book, *One Stayed at Welcome*, by Maud Hart Lovelace. The trolley tour will take place on a weekend in May. The historic places include the site of a battle between the Sioux and Chippewa in 1857 and native encampment sites. During the tour Mr. Peterson noted the river has eroded 50 feet into the bank just in his lifetime. Case asked staff to check into the erosion to see what is happening there and to see if there is something we could be doing such as advocating for grant money.

**B. REPORT OF CITY MANAGER**

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

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

**E. REPORT OF PUBLIC WORKS DIRECTOR**

**1. Policy for Vegetation Management within Right-of-way and Drainage, Utility or Trail Easements**

Ellis said the purpose of this policy is to provide for the safety and protection of right-of-way users and their property, to allow for the proper maintenance of roads, trails, sidewalks, and utilities, and to protect below ground and above ground utility infrastructure. This policy establishes standards that should be considered when pruning or removing vegetation which conflicts with intended uses of the right-of-way and drainage, utility or trail easements. For safety purposes, vegetation would be pruned to allow 16 feet of right of way above the road and 10 feet above the trails. He reviewed the typical reasons for vegetation removal, and noted the pruning and removal service would be performed at no cost to the property owner. He said the policy formalizes what our practices have been for years.

Case asked how we would exercise control if a property owner did not want to have a tree pruned that is blocking the line of sight. Ellis replied they schedule trimming a year in advance of scheduled street maintenance, so a neighborhood would receive notice in the fall before the project that there would be tree trimming the next year. He said they would explain our standard and would conduct a house by house assessment of the neighborhood. Staff would place a hanger on the door of the property regarding pruning of those trees in the yard marked with yellow ribbons. He noted they would trim only what is on the right of way, but will ask for, and would prefer to get, the property owner's written permission to trim the tree back to the trunk. Case noted that process sounds very appropriate and respectful.

**MOTION:** Butcher Wickstrom moved, seconded by Aho, to adopt the policy for vegetation management within the right-of-way and drainage, utility or trail easements. **Motion carried 4-0.**

**F. REPORT OF POLICE CHIEF**

**G. REPORT OF FIRE CHIEF**

**H. REPORT OF CITY ATTORNEY**

**XV. OTHER BUSINESS**

Getschow said the trolley tour event in the river bottoms will take place on May 21. Case noted participants who want to take the tour will meet at the Cummins Grill House.

**XVI. ADJOURNMENT**

**MOTION:** Aho moved, seconded by Nelson, to adjourn the meeting. **Motion carried 4-0.** Acting Mayor Case adjourned the meeting at 7:35 PM.

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b> Christy Weigel, Police/ Support Unit	<b>ITEM DESCRIPTION:</b> Clerk's License Application List	<b>ITEM NO.:</b> VIII.A.

**These licenses have been approved by the department heads responsible for the licensed activity.**

**Requested Action**

**Motion:** Approve the licenses listed below

**Temporary Liquor**

Organization: City of Eden Prairie

Event: Beer Tasting

Date: August 10, 2016

Place: Staring Lake Park

14800 Pioneer Trail

Organization: City of Eden Prairie

Event: Wine Tasting

Date: September 22, 2016

Place: Garden Room

8080 Mitchell Road

Organization: City of Eden Prairie

Event: Wine Tasting

Date: November 3, 2016

Place: Garden Room

8080 Mitchell Road

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b> May 24, 2016
<b>SECTION:</b> Consent Agenda		
<b>DEPARTMENT/DIVISION:</b> City Attorney Richard Rosow	<b>ITEM DESCRIPTION:</b> Approve Second Reading of Ordinance Relating to License Sale of Alcohol in Restaurant Movie Theaters	<b>ITEM NO:</b> VIII.B.

### **Requested Action**

Move to: Approve the second reading of an ordinance amending City Code Chapter 4 to license the sale of alcohol in restaurant movie theaters and adopt resolution approving publication of summary ordinance.

### **Background**

AMC is intending to remodel the existing AMC Eden Prairie 18 theater. AMC would like to a dedicated bar at which only alcohol will be served to be consumed on the premises in the screening rooms as well as at the bar itself. Anyone purchasing alcohol will be required to show proof of age.

No alcohol would be served at the regular food and beverage counters. The proposed remodel contemplates upgrades including luxury power recliners in 17 of the screening rooms (not the IMAX), sight and sound upgrades, and reserved seating. The remodel would result in fewer seats (3,145 to 1,238), but AMC projects increased attendance based on similar remodels which have occurred elsewhere.

The proposed ordinance provides a new category of a "restaurant movie theater." A restaurant movie theater is permitted under the proposed ordinance to obtain a beer, wine or intoxicating liquor license under the City's authority to license a restaurant. In addition, the proposed ordinance requires a minimum of 50 tables spread evenly between the screening rooms which allow alcohol. All existing alcohol regulations such as licensing, financial responsibility, proof of age, overserving and days and hours of sales shall apply. The proposed ordinance requires that a licensed restaurant movie theater be conducted in such manner that the principal part of the business for a license year is the serving of food and the sale of movie tickets. For restaurant movie theaters, "principal part" shall mean seventy percent (70%) or more of the gross receipts.

The council in 2015 expressed concern over the serving of alcohol in all screening rooms. In discussions with AMC representative they identified the operating procedures AMC adheres to in the sale of alcohol in other similar venues. The AMC operating procedures have been incorporated into the ordinances by declaring it unlawful to do any of the following:

- A. Offer any discounts or happy hours.
- B. Allow any alcoholic beverage in any movie screening room where there are no tables.
- C. Offer or sell wine or distilled spirits by the bottle.

- D. Offer or sell wine in any amount exceeding 8 fluid ounces per serving.
- E. Offer or sell distilled spirits in any amount exceeding 3 fluid ounces per serving.
- F. Offer or sell malt liquor in any amount exceeding 24 fluid ounces per serving.
- G. Offer or sell any alcoholic beverages containing more than 50% alcohol by volume.
- H. Offer or sell any alcoholic beverage not in the original packaging without using a measuring device.
- I. Offer or sell any alcoholic beverage to any person without requiring adequate proof of age. Such proof of age may be established only as set forth in Minnesota Statutes Section 340A.503, Subd. 6.
- J. Offer or sell any more than 2 alcoholic beverages to one person in the same sale transaction.

## **Attachment**

Ordinance

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

**ORDINANCE NO. \_\_-2016**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA AMENDING CITY CODE CHAPTER 4, SECTION 4.01 BY ADDING SUBDIVISION 28 DEFINING RESTAURANT MOVIE THEATER; AMENDING CITY CODE CHAPTER 4 BY ADDING SECTION 4.61 RELATING TO RESTAURANT MOVIE THEATERS; AMENDING SECTION 4.07, SUBDIVISION 4, SECTION 4.30, AND SECTION 4.40, SUBDIVISION 1 TO INCLUDE RESTAURANT MOVIE THEATERS; AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 4.99 WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS**

The City Council of the City of Eden Prairie, Minnesota, ordains:

**Section 1.** City Code Chapter 4, Section 4.01 is amended by renumbering existing Subdivisions 28, 29 and 30 as 29, 30 and 31 respectively and adding a new Subdivision 28 to read as follows:

**Subd. 28. “Restaurant Movie Theater”** is an establishment that is both a Restaurant, as defined in Section 4.01, Subd. 27 of this Chapter, and a movie theater in which movies or motion pictures are shown.

**Section 2.** City Code Chapter 4, Section 4.07, Subdivision 4 is amended by adding D to read as follows:

D. Restaurant Movie Theater: A licensed restaurant movie theater shall be conducted in such manner that the principal part of the business for a license year is the serving of food and the sale of movie tickets. For restaurant movie theaters, "principal part" shall mean seventy percent (70%) or more of the gross receipts.

**Section 3.** City Code Chapter 4, Section 4.30 is amended by adding the phrase “restaurant movie theater,” after the word “restaurant,”.

**Section 4.** City Code Chapter 4, Section 4.40, Subdivision 1 is amended by adding the phrase “or restaurant movie theater” after the word “restaurant”.

**Section 5.** City Code Chapter 4, is amended by adding a new Section 4.61 to read as follows:

**SECTION 4.61. RESTAURANT MOVIE THEATER LICENSEE REQUIREMENTS AND RESTRICTIONS.**

**Subd. 1. Requirements.** The following are in addition to all other requirements set forth in this Chapter. Every restaurant movie theater shall:

A. Be under the control and ownership of a single person. No part of the restaurant or the movie theater, including but not limited to the property, equipment and operations, shall be owned or controlled by separate persons.

- B. Consist of one stand-alone structure containing a minimum of 70,000 square feet.
- C. Have a minimum of 50 tables, each with a table top containing a minimum of 433 square inches. The tables shall be permanently attached to the floor and the seats shall be permanently attached to the floor or the table. The tables shall be divided proportionately between the movie screening rooms in which alcoholic beverages are allowed.
- D. Appoint a manager pursuant to Section 4.05, Subd. 2 of this Chapter, which manager shall operate both the restaurant and the movie theater.

**Subd. 2. Unlawful Acts.** The following are in addition to all other unlawful acts set forth in this Chapter. It is unlawful for any restaurant movie theater licensee to:

- A. Offer any discounts or happy hours.
- B. Allow any alcoholic beverage in any movie screening room where there are no tables.
- C. Offer or sell wine or distilled spirits by the bottle.
- D. Offer or sell wine in any amount exceeding 8 fluid ounces per serving.
- E. Offer or sell distilled spirits in any amount exceeding 3 fluid ounces per serving.
- F. Offer or sell malt liquor in any amount exceeding 24 fluid ounces per serving.
- G. Offer or sell any alcoholic beverages containing more than 50% alcohol by volume.
- H. Offer or sell any alcoholic beverage not in the original packaging without using a measuring device.
- I. Offer or sell any alcoholic beverage to any person without requiring adequate proof of age. Such proof of age may be established only as set forth in Minnesota Statutes Section 340A.503, Subd. 6.
- J. Offer or sell any more than 2 alcoholic beverages to one person in the same sale transaction.

**Section 6.** City Code Chapter 1 entitled “General Provisions and Definitions Applicable to the Entire City Code including Penalty for Violation” and Section 4.99 entitled “Violation a Misdemeanor or Petty Misdemeanor” are hereby adopted in their entirety by reference as though repeated verbatim herein.

**Section 7.** 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 \_\_\_\_\_, 2016, and finally read and adopted and ordered published at a regular meeting of the City Council of said City on the \_\_\_\_ day of \_\_\_\_\_, 2016.

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

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

**PUBLISHED** in the *Eden Prairie News* on the \_\_\_\_ day of \_\_\_\_\_, 2016.



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

**RESOLUTION NO. 2016- \_\_\_\_**

**A RESOLUTION APPROVING THE SUMMARY  
OF ORDINANCE NO. 11-2016 AND ORDERING THE  
PUBLICATION OF SAID SUMMARY**

**WHEREAS**, Ordinance No. 11-2016 was adopted and ordered published at a regular meeting of the City Council of the City of Eden Prairie held on the 24<sup>th</sup> day of May, 2016.

**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. 11-2016 is lengthy.
- B. The text of summary of Ordinance No. 11-2016, 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 11-2016 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 24, 2016.

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

**ATTEST:**

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

**EXHIBIT A**

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

**SUMMARY OF ORDINANCE 11-2016**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA AMENDING CITY CODE CHAPTER 4, SECTION 4.01 BY ADDING SUBDIVISION 28 DEFINING RESTAURANT MOVIE THEATER; AMENDING CITY CODE CHAPTER 4 BY ADDING SECTION 4.61 RELATING TO RESTAURANT MOVIE THEATERS; AMENDING SECTION 4.07, SUBDIVISION 4, SECTION 4.30, AND SECTION 4.40, SUBDIVISION 1 TO INCLUDE RESTAURANT MOVIE THEATERS; AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 4.99 WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS**

The following is only a summary of Ordinance No. 11- 2016. The full text is available for public inspection by any person during regular business hours in the office of the City Clerk.

Summary: This ordinance amendment establishes a definition for Restaurant Movie Theater in the liquor code and sets forth requirements regarding issuance of a liquor license to a Restaurant Movie Theater.

**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 \_\_\_\_\_.

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>IEM NO.:</b> VIII.C.
Randy L. Slick Public Works / Engineering	Final Plat Report of Shady Oak Crosstown Second Addition	

**Requested Action**

Move to: Adopt the resolution approving the final plat of Shady Oak Crosstown Second Addition.

This proposal is for the plat located at 11190 West 62<sup>nd</sup> Street. This two lot 1.38 acre project proposes the construction of a new carwash facility for the existing BP Station on Lot 1. Lot 2 proposal is for a new freestanding Starbucks.

**Background Information**

The preliminary plat was approved by the City Council on March 8, 2016. Second reading of the Rezoning Ordinance and final approval of the Developer’s Agreement was completed on May 3, 2016.

Approval of the final plat is subject to the following conditions:

- Receipt of engineering fee in the amount of \$425.00
- Prior to release of the final plat, Developer shall submit payment for connection fees in the amount of \$40,832.00
- Prior to the release of the final plat, Developer shall provide a Cross Access Easement, Private Utility and Maintenance Agreement between Lots 1 and 2 of the property.
- The requirements as set forth in the Developer’s Agreement.
- Prior to release of the final plat, Developer shall provide to the City a current title insurance policy.
- Prior to release of final plat, Developer shall submit a 1” = 200’ scale reduction of final plat.
- Completion of the vacation of underlying drainage and utility easements.
- Prior to the release of the final plat, Developer shall convey to the City easements for the proposed sidewalk.

**Attachments**

- Resolution
- Drawing of final plat

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

**RESOLUTION NO. 2016-**

**A RESOLUTION APPROVING FINAL PLAT OF SHADY OAK CROSSTOWN  
SECOND ADDITION**

**WHEREAS**, the plat of Shady Oak Crosstown Second Addition has been submitted in a manner required for platting land under the Eden Prairie Ordinance Code and under Chapter 462 of the Minnesota Statutes and all proceedings have been duly had thereunder; and

**WHEREAS**, said plat is in all respects consistent with the City plan and the regulations and requirements of the laws of the State of Minnesota and ordinances of the City of Eden Prairie.

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

- A. Plat approval request for Shady Oak Crosstown Second Addition is approved upon compliance with the recommendation of the Final Plat Report on this plat dated May 24, 2016.
- B. That the City Clerk is hereby directed to supply a certified copy of this resolution to the owners of the subdivision of the above named plat.
- C. That the Mayor and City Manager are hereby authorized to execute the certificate of approval on behalf of the City Council upon compliance with the foregoing provisions.

**ADOPTED** by the Eden Prairie City Council on May 24, 2016.

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

**ATTEST:**

**SEAL**

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

# SHADY OAK CROSSTOWN SECOND ADDITION

R.T. DOC. No. \_\_\_\_\_  
C.R. DOC. No. \_\_\_\_\_

### SURVEYS CERTIFICATION

I, Henry D. Nelson, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 555.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat, and all public ways are shown and labeled on this plat.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

Henry D. Nelson, Licensed Land Surveyor  
Minnesota License No. 17255

State of Minnesota  
County of Hennepin

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by Henry D. Nelson, a Licensed Land Surveyor.

(Signature)  
  
(Printed Name)  
Henry D. Nelson, County, Minnesota  
My Commission Expires January 31, 20\_\_

### EDEN PRAIRIE, MINNESOTA

The plat of SHADY OAK CROSSTOWN SECOND ADDITION was approved and accepted by the City Council of Eden Prairie, Minnesota, at a regular meeting thereof held this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ if applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the presarred 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minn. Statutes, Section 555.03, Subd. 2.

CITY COUNCIL OF EDEN PRAIRIE, MINNESOTA

By \_\_\_\_\_, Mayor  
By \_\_\_\_\_, Manager

### RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota

I hereby certify that taxes payable in 201\_\_ and prior years have been paid for land described on this plat, dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Mark V. Chapin, Hennepin County Auditor

By \_\_\_\_\_, Deputy

### SURVEY DIVISION, Hennepin County, Minnesota

Pursuant to MIN. STAT. SEC. 363B.965 (1989) this plat has been approved this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Chris F. Martin, Hennepin County Surveyor

By \_\_\_\_\_

### REGISTRAR OF TITLES, Hennepin County, Minnesota

I hereby certify that the within plat of SHADY OAK CROSSTOWN SECOND ADDITION was filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Martin McCormick, Registrar of Titles

By \_\_\_\_\_, Deputy

### COUNTY RECORDER, Hennepin County, Minnesota

I hereby certify that the within plat of SHADY OAK CROSSTOWN SECOND ADDITION was recorded in this office this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Martin McCormick, County Recorder

By \_\_\_\_\_, Deputy



LEGEND:  
○ DENOTES 1/2" INCH X 1/4" IRON MONUMENT SET, MARKED "R.L.S. 17255"  
● DENOTES IRON MONUMENT FOUND  
—A— DENOTES RIGHT OF ACCESS  
BASIS FOR BEARINGS:  
N LINE OF NW 1/4 OF NW 1/4 SEC. 1, T. 116, R. 22, BEARS N 87°27'40" E

KNOW ALL PERSONS BY THESE PRESENTS: That P & T Ventures, LLC, a Minnesota limited liability company, fee owner, of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

That part of Lot 1, Shady Oak Crosstown Addition, embraced within the West 282.5 feet of the Northwest Quarter of the Northwest Quarter of Section 1, Township 116, Range 22 as measured along the North and South lines of said Northwest Quarter of the Northwest Quarter (Owner's property).

Together with:  
That part of the Southwest Quarter of the Southwest Quarter of Section 36, Township 117, Range 22, Hennepin County, Minnesota, described as follows: Commencing at the Northwest corner of Section 1, Township 116, Range 22, thence on an assumed bearing of North 87 degrees 01 minute 59 seconds East along the South line of said Southwest Quarter of the Southwest Quarter, a distance of 47.27 feet to the point of beginning of the tract of land to be described; thence North 6 degrees 18 minutes 29 seconds West, a distance of 7.74 feet; thence North 59 degrees 19 minutes 59 seconds East, a distance of 95.99 feet; thence North 77 degrees 08 minutes 08 seconds East, a distance of 198.83 feet; thence South 29 degrees 35 minutes 59 seconds East, a distance of 102.01 feet to the South line of said Southwest Quarter of the Southwest Quarter; thence South 87 degrees 01 minute 59 seconds West along said South line, a distance of 324.20 feet to the point of beginning. (Abstract property)

Together with:  
Lot 1, Block 1, Shady Oak Crosstown Addition, according to the recorded plat thereof, and situate in Hennepin County, Minnesota, EXCEPTING that portion embraced within the West 282.5 feet of the Northwest Quarter of the Northwest Quarter of Section 1, Township 116, Range 22 as measured along the North and South lines of said Northwest Quarter of the Northwest Quarter. (Abstract property)

Has caused the same to be surveyed and platted as SHADY OAK CROSSTOWN SECOND ADDITION, and does hereby dedicate to the public for public use forever the easements for drainage and utility purposes as shown on this plat.

In witness whereof said P & T Ventures, LLC, has caused these presents to be signed by its proper officer this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

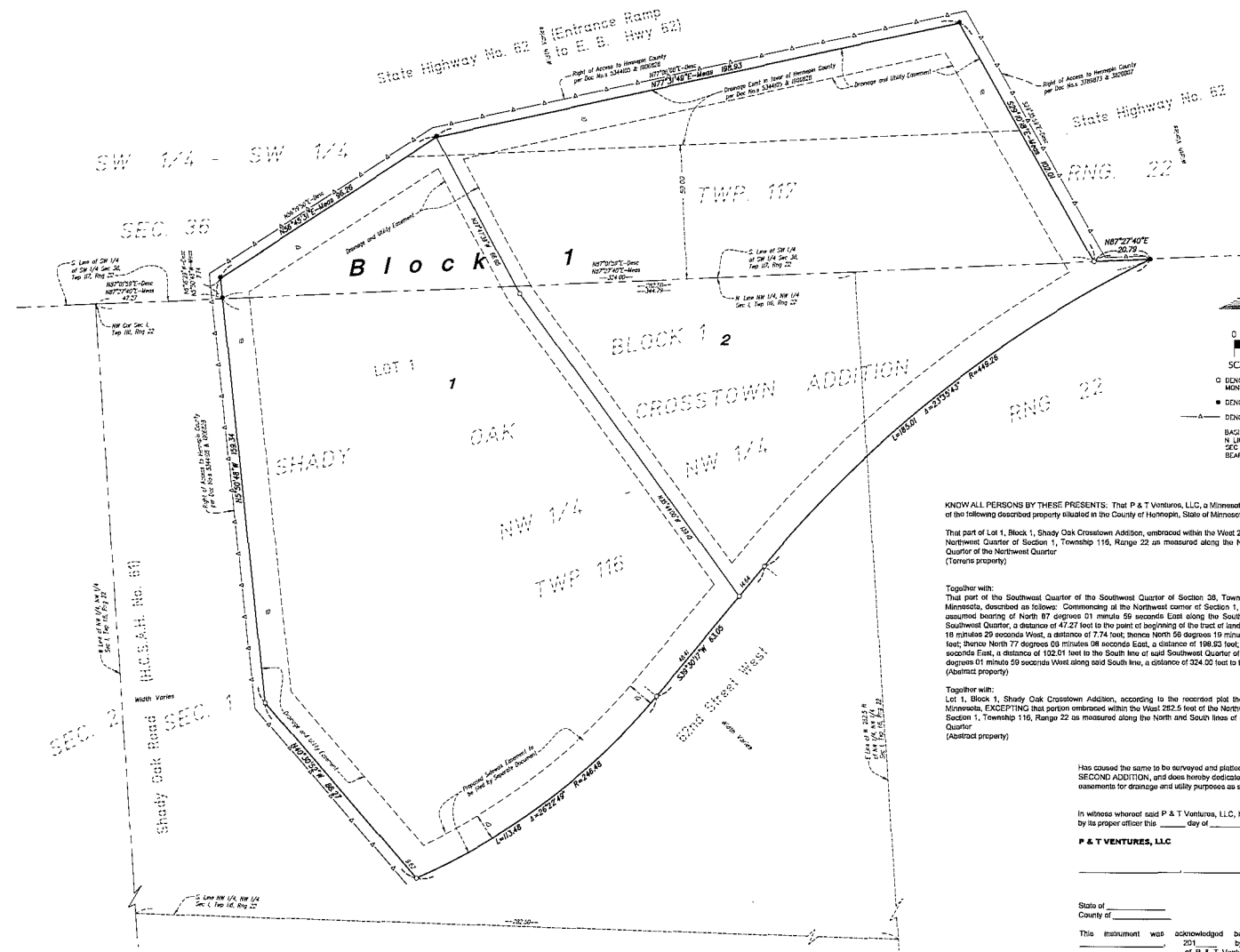
**P & T VENTURES, LLC**

State of \_\_\_\_\_  
County of \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by \_\_\_\_\_ of P & T Ventures, LLC, a Minnesota limited liability company, on behalf of the Company.

(Signature)

(Printed Name)  
Notary Public \_\_\_\_\_ County, Minnesota  
My Commission Expires January 31, 20\_\_



**LOUCKS**

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b> Police Department Lieutenant Greg Weber	<b>ITEM DESCRIPTION:</b> Declare Abandoned Property	<b>ITEM NO.:</b> VIII.D.

**Requested Action**

Move to: Declare property as abandoned.

**Synopsis**

The Eden Prairie Police Department has accumulated a quantity of bicycles, stereo/electronic equipment and miscellaneous items that remain unclaimed.

**Background Information**

In the course of municipal operations, the Eden Prairie Police Department's Evidence/Property Room has several items that have lawfully come into its possession that remain unclaimed by the owners and have been in its possession for at least 90 days.

In accordance with City Code Section 2.86 Subdivision 2 C., the Police Department would like to dispose of this property by sale to the highest bidder at a public auction through the City of Eden Prairie. In addition, in accordance with City Code 2.86 Subdivision C, the Police Department would like to convert certain items for City use.

**Attachments**

- Exhibit A – Abandoned Property
- Exhibit B – Converted Property

## EXHIBIT A - ABANDONED PROPERTY

Tag #	Description of Property	Serial Number
5019	#05 - Black + Decker Cordless Drill recovered in SW 2004 Chev SUV	
5013	#08 - Orange Toolbox containing Screwdrivers + Misc Tools found in SW 2004 Chevrolet SUV	
5018	#09 - TomTom GPS w/Power Cord found in SW 2004 Chevrolet SUV	
15693	64GB SanDisk Ultra Plus	
15622	Anne Klein Brand Womens Watch, Silver/Gold Tone	
5128	Black Felt Bag w/Numerous Pieces of Scrap Jewelry	
2900	Black Mens Louis Vuitton Wallet	
15631	Black Nintendo DS(i)	TW42483546 2
0506EP0545	Blue & White Bandanas	
15903	Box containing Beats Executive Headphones	
7445	Brown Bag STC: (9) Perfume Boxes	
15621	Bulova Brand Womens Watch, Silver in Color w/Clear Stones around the Face	C876853
5630	DeMarini "Rogue" Alloy Baseball Bat	
15428	Diamondback Sorrento Mens Red and Black Bicycle w/Combination Lock Attached	U12U25143
15887	Huffy Disney Sparkle & Style Pink & White Children's Bicycle w/Training Wheels	SNHEJ11B02473
15311	Huffy Seastar Pink Bicycle.	SNHBC15C25050
15277	Magna Excitor Black-Red Adult Bike.	DJFJ102102
2910	Mens Louis Vuitton Black Wallet, Womens Black Coach Checkbook Cover & Womens Brown Louis Vuitton Checkbook Cover	
15676	Mongoose Mtn Bike, Black/Blu/Red . Front white light, rear red light. Bike lock around seat pole.	SNFSD15DE4538
15474	Next Chaos FS20 Green & Black 20" Boys Bike Trick Bicycle	JT130901293
13854	Nikon BuckMasters Rifle Scope	
1705	One Blue Nautica Suitcase	
15694	One Fit Bit Surge - Size Large	
8009	One Grey/Silver Shake Weight	
15632	One Pair of Post Gold colored Earrings w/Clear Stones	
14169	Paper bag containing (2) sealed Gillete 12 pack shaving razors	
14168	Paperbag containing (5) DVD box sets	
14167	Paperbag containing (9) DVD box sets	
6908	Pelican 2360 Flashlight, Black in Color	
0912EP0168	Pg 03 - #15i - Misc Jewelry	
0912EP0216	Pg 05 - #01 - Necklace	
0912EP0217	Pg 05 - #02 - Necklace	
0912EP0218	Pg 05 - #03 - Necklace	
0912EP0220	Pg 05 - #05 - (1) Pair of Earrings	
0912EP0221	Pg 05 - #06 - (1) Earring/Diamond in Middle	
0912EP0222	Pg 05 - #07 - (4) Earrings - Mismatched	
15322	Schwinn Pathway Hybrid Bicycle w/Parking Permit F-0405 (not U of M parking permit)	SNIDC08K05058
15264	Schwinn Searcher Outdoor Sport Bike, Navy Blue in Color, w/Rack above back Tire	F97062994
15271	Silver Colored w/Diamond-like Clear Stones around the Center Circumference of the Ring.	
4946	Stanley "Wonder Bar" with Yellow End	
15628	Timex Brand Watch w/Blue and Tan Band	
15693	Two 4-Pack A-Shirts	
15360	Two Pair of Black Headphones w/No Label or Model Number	
15369	Women's Ring, Gold Band w./Snowflake Center Diamond	

## EXHIBIT B - CONVERTED PROPERTY

Tag #	Description of Property	Serial Number
4539	27.48g Marijuana & Plastic Container (Destroyed)	
2404	#04b - 14.2g Hash Oil	
4988	\$10 Bill	
2411	11.7g Cocaine	
12923	12 suspected ecstasy pills from item # 01.	
12927	18 suspected ecstasy pills from 01B.	
12930	24 suspected ecstasy pills from 01-C.	
4629	278.36 grams Marijuana - tested positive by Frederick (located in Item #1)	
476	28g Cocaine, Pkg	
5103	3.97 grams Marijuana found in Item #10A (tested positive by L'Heureux).	
3470	Apple Mac Book Laptop	C02F80PFDMSG
15195	Black 1911BB Gun	
16512	Item #04 - \$467.00 U.S. Currency Found in MBR in the rt ft pocket of jeans w/Giovanni Montoya ID/Wallet in rear jacket - Irmiter	
15693	N-Pulse Pulse Pounding Sound Headset	
679	One Twenty Dollar Bill	
15693	Orben Backpack , Blue In Color	
3607	Pg 01 - #01a - 15.2g Heroin inside Plastic Baggie	
3929	Pg 01 - #03 - Approx. .61 grams of (NIK+) Methamphetamine located in small plastic baggies.	
5085	Pg 01 - #04A - 10.45 grams of Marijuana found in Item #4.	
0506EP0544	Pg 2 - #1A - \$20 Cash	
0705EP0116	Pg 2 - #1D - \$220 Cash (Note: Pkg says approx \$222 in Cash)	
0705EP0118	Pg 2 - #1E - \$217 Cash	
0705EP0119	Pg 2 - #1F-2 - \$423 Cash	
15693	Plantronics Voyager Legend Bluetooth Headset	
15693	Pocket Juice Portable Charger	
13854	Rifle Bi-Pod	
4246	Toshiba Laptop w/Charger	
11774	Two Digital Scales (Taler Model 3835 / Sharper Image)	
14075	US Currency (3) - \$20 Bills = \$60.00	
14079	US Currency (3) - \$20 Bills = \$60.00	



<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Agenda		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION: I.C. 16-5931</b>	<b>ITEM NO.: VIII.E.</b>
Mary Krause Public Works/Engineering	Award Contract for 2016 Concrete Supply to Cemstone	

**Requested Action**

Move to: Award the Contract for the 2016 supply of concrete to Cemstone at the unit prices in the attached quote summary.

**Synopsis**

Quotes were received on May 6, 2016, for the 2016 supply of concrete required to perform annual street maintenance projects including curb repair and replacement. Three quotes were received. A quote summary sheet and the unit prices of the material to be purchased are attached.

**Background Information**

The low quote for the different concrete mixes is from Cemstone. The concrete is purchased on a per cubic yard basis based on the quantity required to perform maintenance needs.

**Attachments**

- Quote Summary
- Contract

**I.C. 16-5931 2016 Concrete Quote results**

Suppliers providing quotes	MNDOT 2461 Concrete Mix 3A32 (no fly ash)	MNDOT mix 3A32F (with fly ash)	MNDOT 3A32HE High/Early
Cemstone	\$110.00/C.Y. #, ##	\$107.75 /C.Y.#, ##	\$120.00/C.Y. #, **
AVR, Inc. & Affiliates	\$136/C.Y.#, ##	\$133 /C.Y.#, ##	\$146/C.Y.#, ##
Rivers Edge Concrete, Inc.	No quote	\$124/C.Y. *,++	\$139/C.Y., *,++
Aggregate Industries	\$125.75/C.Y.#,##	\$122.55/C.Y. #,##	\$131.15/C.Y. #,##
Knife River	No quote	No quote	No quote

#Includes environmental fee

\*Environmental Fee\$15/load

## \$90/Load short load surcharge – less than 3 C.Y.

\*\*\$70/Load short load surcharge – less than 3 C.Y.

++ \$115/Load short load surcharge – less than 2.75C.Y.

## FORM OF CONTRACT

THIS AGREEMENT, made and executed this \_\_\_\_ day of \_\_\_\_\_ 2016, by and between City of Eden Prairie hereinafter referred to as the "CITY", and Cemstone, hereinafter referred to as the "SUPPLIER",

### WITNESSETH:

CITY AND SUPPLIER, for the consideration hereinafter stated, agrees as follows:

- I. SUPPLIER hereby covenants and agrees to perform and execute all the provisions of the Plans and Specifications prepared by the Public Works Department referred to in Paragraph IV, as provided by the CITY for:

I.C. 16-5931, 2016 Concrete Supply

SUPPLIER further agrees to do everything required by this Agreement and the Contract Documents.

- II. CITY agrees to pay and SUPPLIER agrees to receive and accept payment in accordance with the prices bid for the unit or lump sum items as set forth in the Proposal Form attached hereto which prices conform to those in the accepted SUPPLIER'S proposal on file in the office of the City Engineer. The unit price of \$110.00/Cu. Yd. in the amount to be determined of MnDOT 2461 concrete mix 3A32, \$107.50/Cu.Yd. in the amount to be determined of MnDOT 2461 concrete mix 3A32F and \$120.00 Cu.Yd. in the amount to be determined of MnDOT 2461 mix 3A32HE shall be paid to the SUPPLIER.
- III. Payments to SUPPLIER by City shall be made as provided in the Contract Documents.
- IV. The Contract Documents consist of the following component parts:

- (1) Legal and Procedural Documents
  - a. Request for Quotes
  - b. Accepted Quote
  - c. Contract Agreement
- (2) Addenda and Supplemental Agreements

The Contract Documents are hereby incorporated with this Agreement and are as much a part of this Agreement as if fully set forth herein. This Agreement and the Contract Documents are the Contract.

- V. SUPPLIER agrees to fully and satisfactorily complete the work contemplated by this Agreement in accordance with the following schedule:

Unit bid prices for those items awarded shall remain in effect until November 11, 2016.

VI. This Agreement shall be executed in two (2) copies.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals as of the date first above written.

In Presence Of:

CITY OF EDEN PRAIRIE, MN.

\_\_\_\_\_

By \_\_\_\_\_  
Its City Mayor

\_\_\_\_\_

And \_\_\_\_\_  
Its City Manager

CONTRACTOR

In Presence Of:

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_  
Title

\_\_\_\_\_

And \_\_\_\_\_  
Title

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION: #11-5800</b>	<b>ITEM NO.:</b> VIII.F.
Randy Newton Public Works / Engineering	Approve Change Order No. 2 for the southern segment of the Shady Oak Road Improvements	

**Requested Action**

Move to: Approve Change Order No. 2 for the southern segment of the Shady Oak Road Improvements in the amount of \$24,384.38.

**Synopsis**

Change Order 2 consists of a supplemental agreement and multiple work orders grouped together into a single change order. These additional costs are a result of a number of changed, unknown or unanticipated conditions that occur with a construction project. The change order includes a savings for the value engineering of the one of the projects retaining walls. Staff recommends approval of the changes.

**Background Information**

Construction on the project began in July 2014 and was fully opened to traffic in December 2015. Final completion of the project is scheduled to occur in June 2016. Change Order 2 is an accumulation of changes that have occurred since late last spring. These changes have also been reviewed and approved by MnDOT. In general, changes resulting in additional cost stem from unforeseen existing conditions and additional work unidentified in the original bid documents. More detail on each change is included with the attached change order form.

Included in this change order is a \$65,000 credit for the value engineering of the retaining wall on the east side of Flying Cloud Drive north of Shady Oak Road. Due to the potential impacts to the adjacent property the contractor re-designed the wall from a sheet pile wall to a large modular block wall.

**Financial Implications**

With this change order, the total contract amount increases from \$15,769,043.84 to \$15,793,428.22. As defined in the UHG Developer’s Agreement, UHG is responsible for a percentage of the costs for the project including change order costs. MnDOT, Hennepin County and the City make up the remainder of the cost share.

**Attachment**

Change Order No. 2

**CHANGE ORDER NO. 2**

Project: T.H. 212 & C.S.A.H. 61 (Shady Oak Road) Interchange  
Eden Prairie, Minnesota  
SP 2763-49  
City Project No. 11-5800

---

To: C.S. McCrossan Construction, Inc.

You are hereby directed to make the changes noted below in the contract.

**ITEM            DESCRIPTION OF CHANGES**

**1. SUPPLEMENTAL AGREEMENT NO. 2**

a. Wall D Value Engineering:

It was determined that the installation of Retaining Wall D would severely impact the canopy and root system of two (2) large trees. Due to the close proximity of a house to the proposed sheet piling and possible damages that could result from vibratory installation, the Contractor re-designed the wall. The location of the wall moved 10' to the west and the type of wall changed to a large modular block retaining wall. These changes would not impact the structure of the house or tree canopies and would minimize impacts to the root systems. Payment for this work will be made at contract and negotiated unit prices.

**2. WORK ORDER NO. 7**

a. Watermain Depth at Bryant Lake Drive:

During construction, it was determined that the depth of the existing watermain at S.B. Shady Oak Road sta. 179+53 was 20', standard depth is 8'. The additional depth was not known prior to bidding. The Contractor will be compensated for the additional time spent to excavate and compact the additional material. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**3. WORK ORDER NO. 8**

a. City West Parkway Temporary Drainage:

Due to delays in private utility relocation, it was determined that the drainage system for N.B. City West Parkway could not be completed prior to the 2014 winter. A temporary drainage outlet will be constructed for the City West Parkway storm sewer so the water can be pumped as needed. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**4. WORK ORDER NO. 9**

a. Watermain Installation Utility Conflict:

During construction, relocation of private utilities was behind schedule and in conflict with the installation of the proposed watermain along S.B. Shady Oak Road sta. 195+40. Additional time was spent by the Contractor to excavate, backfill and compact around the existing utilities. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**5. WORK ORDER NO. 10**

a. Traffic Control:

The guardrail in the median of Highway 212 was hit and damaged prior to the reconstruction of the Shady Oak Road bridge. An additional temporary lane closure was needed to install a portion of the portable concrete median barrier prior to stage 3. Payment for this item was determined on negotiated unit price.

**6. WORK ORDER NO. 11**

a. Remove and Dispose of Debris (SE Ramp):

During excavation, buried debris was encountered in the roadway section and storm sewer trench along the S.E. Ramp, sta. 507+00 to sta. 508+00. The debris consisted of tree branches and stumps. These were not shown in the plans and had to be removed from the project. Payment for this item was determined on negotiated unit price.

**7. WORK ORDER NO. 12**

a. Temporary Pavement Markings:

It was determined that the final lift of bituminous pavement would be delayed until 2016. Temporary pavement messages are necessary until the final lift of bituminous is placed. Payment for this item was determined on negotiated unit price.

**8. WORK ORDER NO. 13**

a. Watermain and Storm Sewer Replacement:

During construction, it was determined that there is a leak in an existing hydrant in the boulevard near N.B. Shady Oak Road sta. 94+00. It was also determined that an existing storm sewer catch basin near this location has deteriorated. The Contractor will repair the watermain leak and catch basin structure. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**9. WORK ORDER NO. 14**

a. Additional Traffic Control:

During construction, due to a restricted work area, it was determined that the watermain crossing of the S.E. Ramp needed to be completed under a 1-day closure. Closure of the S.E. Ramp required installation and removal of the detour signs shown in the plan. Payment for this item was determined on negotiated lump sum price.

**10. WORK ORDER NO. 15**

a. Bonded Fiber Matrix:

Per MnDOT Water Resources SWPPP Field Report dated November 19, 2015, Hydraulic Matrix Type Bonded Fiber is required to stabilize exposed soils for the winter. This was not shown in the plan. Payment for this item was determined on negotiated unit price.

**11. WORK ORDER NO. 16**

a. Parking Lot Striping:

During construction, it was determined that parking lot striping was needed in the 6600 City West Parkway parking lot where the pavement was removed for watermain and retaining wall construction. The Contractor will place parking stall striping that matches pre-construction conditions. Payment for this item was determined on negotiated lump sum price.

**12. WORK ORDER NO. 17**

a. Remove Watermain Casing:

During construction, it was discovered that the existing watermain at S.B. Shady Oak Road sta. 169+43 was in a steel casing pipe. This was not shown in the plan. Additional time was spent to cut and remove the steel casing pipe to allow for a connection to the new watermain. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**13. WORK ORDER NO. 18**

a. E8H Joint:

The plan requires an Expansion Joint Design E8H at the end of each approach panel and states this is to be paid for separately. The plan did not include a pay item for Expansion Joint Design E8H. Payment for this item was determined on negotiated unit price.

14. **WORK ORDER NO. 19**

a. Locate Relocated Buried Electrical (Xcel Energy):

During construction, an existing private utility line was relocated and found to be at a greater depth than expected (3'-4'). The utility line was relocated to a depth of approximately 20' below the existing grade at the proposed sanitary sewer line to be directionally drilled below Flying Cloud Drive sta. 306+50. The Contractor will excavate and locate the buried power at the location of the proposed crossing. Payment for this item was determined on negotiated lump sum price.

15. **WORK ORDER NO. 20**

a. Source of Power for Temporary Signal System D:

Xcel Energy did not locate the source of power for Signal System D (Flying Cloud Drive intersection) per plan. Additional overhead wire was required to supply power to the temporary signal system. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

<b>ADD the following costs to the contract:</b>		<u>Unit</u>	<u>Unit Price</u>	<u>Measured Quantity</u>	<u>Amount</u>
<b>1.</b>	<b>Supplemental Agreement #2</b>				
a.	Ornamental Metal Rail Type Special 1	Lin Ft	\$140.00	-186	(\$26,040.00)
b.	Structural Concrete (3Y43)	Cu Yd	\$850.00	-63	(\$53,550.00)
c.	Reinforcement Bars (Epoxy Coated)	Pound	\$1.20	-3,192	(\$3,830.40)
d.	Architectural Color System	Sq Yd	\$21.00	-165	(\$3,465.00)
e.	Special Surface Finish	Sq Ft	\$1.60	-660	(\$1,056.00)
f.	Anti-Graffiti Coating	Sq Ft	\$1.00	-2,144	(\$2,144.00)
g.	Arch Concrete Texture (Ashlar Stone)	Sq Ft	\$10.50	-1,484	(\$15,582.00)
h.	Steel Sheet Piling (Permanent)	Sq Ft	\$30.00	-5,349	(\$160,470.00)
i.	Additional Shipping Cost	Load	\$1,700.00	3	\$5,100.00
j.	CSM Loadout Cost	Load	\$200.00	3	\$600.00
k.	Sheet Piling Re-Stock Fee	Lump Sum	\$61,791.73	1	\$61,791.73
l.	Geotextile Fabric Type I	Sq Yd	\$5.00	350	\$1,750.00
m.	Drainage System Wall 7	Lump Sum	\$2,000.00	1	\$2,000.00
n.	Concrete Footing	Lin Ft	\$85.00	154	\$13,090.00
o.	Modular Block Retaining Wall	Sq Ft	\$30.00	1,174	\$35,220.00
p.	Coarse Filter Aggregate	Cu Yd	\$35.00	48	\$1,680.00
q.	Wire Fence Design Special Vinyl Coated	Lin Ft	\$50.00	154	\$7,700.00
r.	Select Granular Embankment (CV)	Cu Yd	\$21.00	139	\$2,919.00
s.	Architectural Color System	Sq Yd	\$21.00	105	\$2,205.00
t.	Anti-Graffiti Coating	Sq Ft	\$1.00	945	\$945.00
u.	Value Engineering Incentive	Lump Sum	\$65,568.34	1	\$65,568.34
				<b>Subtotal</b>	<b>(\$65,568.33)</b>
<b>2.</b>	<b>Work Order #7</b>				
a.	Force Account No. 6	Lump Sum	\$11,195.26	1	\$11,195.26
<b>3.</b>	<b>Work Order #8</b>				
a.	Force Account No. 7	Lump Sum	\$3,737.91	1	\$3,737.91
<b>4.</b>	<b>Work Order #9</b>				
a.	Force Account No. 8	Lump Sum	\$4,407.11	1	\$4,407.11
<b>5.</b>	<b>Work Order #10</b>				
a.	Traffic Control Special	Each	\$820.81	1	\$820.81
<b>6.</b>	<b>Work Order #11</b>				
a.	Remove and dispose of debris	Load	\$612.53	6	\$3,675.18
<b>7.</b>	<b>Work Order #12</b>				
a.	Pavement Message (Arrow) Paint	Each	\$137.50	40	\$5,500.00



<b>8.</b>	<b>Work Order #13</b>				
a.	Force Account No. 9	Lump Sum	\$5,298.82	1	\$5,298.82
<b>9.</b>	<b>Work Order #14</b>				
a.	Additional Traffic Control	Lump Sum	\$1,980.00	1	\$1,980.00
<b>10.</b>	<b>Work Order #15</b>				
a.	Hydraulic Matrix Type Bonded Fiber	MGAL	\$605.00	29	\$17,545.00
<b>11.</b>	<b>Work Order #16</b>				
a.	Parking Lot Striping	Lump Sum	\$660.00	1	\$660.00
<b>12.</b>	<b>Work Order #17</b>				
a.	Force Account No. 10	Lump Sum	\$2,803.85	1	\$2,803.85
<b>13.</b>	<b>Work Order #18</b>				
a.	Expansion Joint Design E8H	Lin Ft	\$82.82	268	\$22,195.76
<b>14.</b>	<b>Work Order #19</b>				
a.	Excavation to Locate Utilities	Lump Sum	\$9,673.91	1	\$9,673.91
<b>15.</b>	<b>Work Order #20</b>				
a.	Force Account No. 11	Lump Sum	\$459.10	1	\$459.10

<b>TOTAL ADDITIONS</b>	<b>\$290,521.78</b>
<b>TOTAL DELETIONS</b>	<b>\$266,137.40</b>
<b>TOTAL CHANGE (THIS CHANGE ORDER)</b>	<b>\$24,384.38</b>

ORIGINAL CONTRACT AMOUNT	\$ 15,638,757.67
TOTAL ADDITONS (ALL CHANGE ORDERS)	\$ 463,489.95
TOTAL DELETIONS (ALL CHANGE ORDERS)	\$ 308,819.40
TOTAL CHANGE (ALL CHANGE ORDERS)	\$ 154,670.55

**TOTAL CONTRACT VALUE INCLUDING THIS CHANGE ORDER \$ 15,793,428.22**

**THE ABOVE CHANGES ARE APPROVED:**

SRF CONSULTING GROUP, INC.

CITY OF EDEN PRAIRIE

By \_\_\_\_\_  
Project Manager

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

Date \_\_\_\_\_

Date \_\_\_\_\_

**THE ABOVE CHANGES ARE ACCEPTED:**

C.S. McCROSSAN CONSTRUCTION, INC.

CITY OF EDEN PRAIRIE

By \_\_\_\_\_

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

Date \_\_\_\_\_

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b> Randy Newton Public Works / Engineering	<b>ITEM DESCRIPTION:</b> I.C. #14-5877 Approve Change Order No. 1 for the West 70 <sup>th</sup> Street Extension Project	<b>ITEM NO.:</b> VIII.G.

**Requested Action**

Move to: Approve Change Order No. 1 for the West 70<sup>th</sup> Street Extension Project in the amount of \$131,957.77.

**Synopsis**

Change Order 1 consists of multiple work orders grouped together into a single change order. These additional costs are primarily a result of additional areas of poor soils and higher than expected groundwater. Staff recommends approval of the changes.

**Background Information**

The West 70<sup>th</sup> Street Extension Improvement Project has resulted in the extension of West 70<sup>th</sup> Street to Flying Cloud Drive. The majority of the project construction occurred last fall and the roadway was opened to traffic in November. There are still several construction activities that need to be undertaken and completed in the spring and summer of this year including the final paving of the project.

The change order is primarily a result of higher than expected groundwater and additional areas of poor soils that required correction. In addition, there were several unspecified work tasks that were identified during the construction of the project.

More detail on each change is included with the attached change order form.

**Financial Implications**

With this change order, the total contract amount increases from \$1,277,800.80 to \$1,409,758.57. The project is being funded through special assessments and a Hennepin County Transit Oriented Development Grant.

**Attachment**

Change Order No. 1

**CHANGE ORDER NO. 1**

Project: West 70<sup>th</sup> Street  
Eden Prairie, Minnesota  
City Project No. 14-5877

---

To: Meyer Contracting, Inc.

You are hereby directed to make the changes noted below in the contract.

**ITEM            DESCRIPTION OF CHANGES****1. WORK ORDER NO. 1****a. Muck Excavation:**

During excavation, additional muck was discovered along West 70<sup>th</sup> Street from sta. 20+30 to 20+80. It was determined that all muck material could not be used on site as indicated in the plans. Payment for this item was determined on negotiated unit prices.

**2. WORK ORDER NO. 2****a. Spring Paving:**

The plans called for all paving to be completed in fall 2015. Due to soft subgrade that could not dry out due to consistent rain, the pavement section was revised and a portion delayed until spring 2016. To protect curb from being damaged by snow plowing, driveway entrances and median noses were ramped with bituminous. The ramping will be removed prior to placing the final lifts of pavement. Payment for this item was determined on negotiated unit prices.

**3. WORK ORDER NO. 3****a. Watermain:**

During construction, a 4" watermain service line was discovered near station 29+80. It was determined that the service line was no longer active and should be removed. The Contractor will provide all equipment, labor and material to remove and cap the service line. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**4. WORK ORDER NO. 4****a. Irrigation:**

During construction, it was determined that two (2) additional zones of irrigation would be added to the existing private irrigation system. The source of water for the additional zones will be the existing system while the timing will be connected to the new irrigation cabinet. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904 and negotiated unit prices.

**5. WORK ORDER NO. 5****a. Subgrade Preparation:**

During construction, unsuitable soils were discovered along W.B. West 70<sup>th</sup> Street from sta. 21+50 to 22+70. It was determined that an additional 18" of unsuitable material would be removed and replaced with 3" minus aggregate with fine particles. The Contractor will provide all equipment, labor and material to remove and replace the unsuitable material. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**6. WORK ORDER NO. 6****a. Buried Debris:**

During excavation, buried debris was encountered along West 70<sup>th</sup> Street near sta. 24+85. The debris consisted of concrete construction materials. These were not shown in the plans and had to be removed from the project. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**7. WORK ORDER NO. 7**

a. Subgrade Correction:

During construction, unstable soils were discovered along W.B. West 70<sup>th</sup> Street from sta. 21+50 to 22+70 and sta. 30+10 to 31+00. It was determined that an additional 12" of unstable material would be removed and replaced with Aggregate Base Class 5. The Contractor will provide all equipment, labor and material to remove and replace the unstable material. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**8. WORK ORDER NO. 8**

a. Irrigation Service:

During installation of the irrigation system, it was determined that a connection to the existing watermain was required. The Contractor will provide all equipment, labor and material to connect to the existing watermain. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**9. WORK ORDER NO. 9**

a. Subsurface Drain:

Due to continually wet subgrade, possibly from perched water, subsurface drains were installed along West 70<sup>th</sup> Street from sta. 20+70 to 22+70 and sta. 28+75 to 30+10. The Contractor will provide all equipment, labor and material to place subsurface drains and connect to the existing drainage structures. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**10. WORK ORDER NO. 10**

a. Sign Removal:

During construction, it was determined that the sign located along Flying Cloud Drive near sta. 62+90 was no longer needed and needs to be removed. The Contractor will provide all equipment, labor and material to remove the sign, place topsoil and sod. Payment for this work will be made on a Force Account basis per MnDOT Specification 1904.

**11. WORK ORDER NO. 11**

a. Class 5 Savings:

Based on test results, it was determined that the material reclaimed from the parking lot pavement and subbase met the requirements of Aggregate Base Class 5. This resulted in a savings from reduced trucking and material cost, the savings was shared between the Owner and Contractor. Payment for this item was determined on negotiated unit price.

<b>ADD the following costs to the contract:</b>		<u>Unit</u>	<u>Unit Price</u>	<u>Measured Quantity</u>	<u>Amount</u>
<b>1.</b>	<b>Work Order #1</b>				
	a. Muck Excavation	Cu Yd	\$11.71	2,178	\$25,504.38
<b>2.</b>	<b>Work Order #2</b>				
	a. Mobilization	Lump Sum	\$1,617.00	1	\$1,617.00
	b. Curb Ramping	Lin Ft	\$4.82	198	\$954.36
	c. Removal of Ramped Pavement	Lin Ft	\$5.78	198	\$1,144.44
	d. Type SP 9.5 Wearing Course Mix (3,C)	Ton	\$4.62	520	\$2,402.40
				<b>Subtotal</b>	<b>\$6,118.20</b>
<b>3.</b>	<b>Work Order #3</b>				
	a. Force Account	Lump Sum	\$1,736.29	1	\$1,736.29
<b>4.</b>	<b>Work Order #4</b>				
	a. Force Account	Lump Sum	\$8,837.68	1	\$8,837.68
<b>5.</b>	<b>Work Order #5</b>				
	a. Force Account	Lump Sum	\$35,681.32	1	\$35,681.32
<b>6.</b>	<b>Work Order #6</b>				
	a. Force Account	Lump Sum	\$5,475.78	1	\$5,475.78
<b>7.</b>	<b>Work Order #7</b>				
	a. Force Account	Lump Sum	\$21,733.48	1	\$21,733.48
<b>8.</b>	<b>Work Order #8</b>				
	a. Force Account	Lump Sum	\$6,566.37	1	\$6,566.37
<b>9.</b>	<b>Work Order #9</b>				
	a. Force Account	Lump Sum	\$21,583.75	1	\$21,583.75
<b>10.</b>	<b>Work Order #10</b>				
	a. Force Account	Lump Sum	\$2,414.87	1	\$2,414.87
<b>11.</b>	<b>Work Order #11</b>				
	a. Force Account	Lump Sum	\$3,694.35	-1	(\$3,694.35)

<b>TOTAL ADDITIONS</b>	
<b>TOTAL DELETIONS</b>	<b>\$135,652.12</b>
<b>TOTAL CHANGE (THIS CHANGE ORDER)</b>	<b>\$3,694.35</b>
	<b>\$131,957.77</b>

ORIGINAL CONTRACT AMOUNT	\$ 1,277,800.80
TOTAL ADDITONS (ALL CHANGE ORDERS)	\$ 135,652.12
TOTAL DELETIONS (ALL CHANGE ORDERS)	\$ 3,694.35
TOTAL CHANGE (ALL CHANGE ORDERS)	\$ 131,957.77
<b>TOTAL CONTRACT VALUE INCLUDING THIS CHANGE ORDER</b>	<b>\$ 1,409,758.57</b>

**THE ABOVE CHANGES ARE APPROVED:**

SRF CONSULTING GROUP, INC.

CITY OF EDEN PRAIRIE

By \_\_\_\_\_  
Project Manager

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

Date \_\_\_\_\_

Date \_\_\_\_\_

**THE ABOVE CHANGES ARE ACCEPTED:**

MEYER CONTRACTING, INC.

CITY OF EDEN PRAIRIE

By \_\_\_\_\_

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

Date \_\_\_\_\_

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION: I.C. 15-5924</b>	<b>ITEM NO.:</b> VIII.H.
Dave Modrow Public Works / Engineering	Approve Professional Services Agreement with Wenck Associates, Inc. for Purgatory Creek Bank Stabilization - 11193 Bluestem Lane	

**Requested Action**

Move to: Approve professional services agreement with Wenck Associates, Inc. for Purgatory Creek bank stabilization near 11193 Bluestem Lane in an amount not to exceed \$50,700.

**Synopsis**

This Professional Services Agreement provides design, bid solicitation, construction observation, and administration for the Purgatory Creek bank stabilization project near 11193 Bluestem Lane.

**Background Information**

The bank of Purgatory Creek is in need of repair to stabilize the embankment along Bluestem Lane. Continuous groundwater seeps, concentrated overland flow from upstream homes, and a sharp change in the direction of the creek have resulted in the weakening and failure of the creek embankment and adjacent nature trail. The exposed lower slope material appears to be an uncohesive soil that is subject to further displacement. The channel flow in the creek is directed into the slope creating an impinging force that likely caused the observed erosion and slope failure. This project has been identified as a high priority to address bank stabilization along the lower reaches of Purgatory Creek.

Design and bidding of the project is proposed to take place in 2016. Construction is to be tentatively scheduled to begin and be substantially completed in 2017.

**Financial Implications**

The Professional Services Agreement with Wenck associates, Inc. has an estimated total cost of \$50,700. The funding source for this project is the storm drainage utility.

**Attachment**

Professional Services Agreement

## Standard Agreement for Professional Services

This Agreement ("Agreement") is made on the \_\_\_\_\_ day of May, 2016 between the City of Eden Prairie, Minnesota (hereinafter "City"), whose business address is 8080 Mitchell Road, Eden Prairie, MN 55344, and Wenck Associates, Inc., a Minnesota company (hereinafter "Consultant") whose business address is 1800 Pioneer Creek Center, P.O. Box 249, Maple Plain, MN, 55359-0249.

### 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 Slope Evaluation, Restoration Design, and Construction Oversight at 11193 Bluestem Lane 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 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 25, 2016 through December 31, 2017 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 \$50,700 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 Jason Warne 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

**FIRM NAME:** \_\_\_\_\_

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

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

## EXHIBIT A



Responsive partner.  
Exceptional outcomes.

April 5, 2016

### **Dave Modrow, P.E.**

Water Resources Engineer  
City of Eden Prairie, Minnesota  
8080 Mitchell Road  
Eden Prairie, MN 55344-4485

RE: Proposal for Slope Evaluation, Restoration Design, and Construction Oversight  
11193 Bluestem Lane, Eden Prairie, MN  
Wenck File #P-0094-0107

### **Dear Dave:**

Wenck Associates, Inc. (Wenck) is pleased to submit this proposal to evaluate and repair the slope failure and gully erosion at 11193 Bluestem Lane in Eden Prairie. The scope of work presented in this proposal reflects previous discussions regarding site conditions and a brief site visit with the City on March 25, 2016.

### **Scope of Services**

---

#### **Task 1 – Site Survey and Soil Characterization**

Wenck will collect limited topographic information through the project area for use in the stability analysis and remedial design. Wenck will probe the slope soils to determine existing soil consistency and collect samples of soil from the slope for laboratory analysis. The analysis results will help to confirm field visual-manual determination of soil types present so that soil strength parameters can be estimated.

Estimated fees for this task: \$4,000

#### **Task 2 – Analysis of Slope Stability and Mitigation Alternatives**

Following the site visit, Wenck will use information gathered at the site to perform a stability analysis of the existing slope and evaluate potential restoration alternatives. Following the analysis, Wenck will prepare a technical memo that discusses the investigative work and results of the analysis. The memo will include a description of the recommended restoration methods, along with estimated construction costs and associated engineering and construction administration costs.

Estimated fees for this task: \$6,000



### **Task 3 - Plans and Specifications**

Upon approval of the recommended design, Wenck will prepare appropriate drawings, details and technical specifications to issue for bids. The bid documents will address specific items including: bidding and contract requirements, site access corridor, potential staging areas, site preparation, erosion control measures, construction material specifications, earthwork and material placement, and restoration activities.

Wenck also recommends the inclusion of an erosion control map and erosion control details that would normally be included in a Stormwater Pollution Prevention Plan (SWPPP). This project does not exceed the disturbance area threshold (1 acre) that would require a Construction Stormwater NPDES permit and accompanying SWPPP. However, Wenck recommends these be included due to the proximity of the project work to Purgatory Creek.

Estimated fees for this task: \$11,000

### **Task 4 - Easement Assistance**

Wenck will assist the City in securing a temporary construction easement to access the property. Wenck GIS staff will work with the City Attorney to prepare the exhibits required to secure the easement. If necessary, Wenck can provide a staff Registered Land Surveyor (RLS) to perform any required field surveys. A change in scope/fees for this task will be negotiated with the City, should that be necessary.

Estimated fees for this task: \$2,500 (RLS not included)

### **Task 5 - Environmental Permitting**

Wenck will work with the appropriate governmental units to secure the necessary permits for the proposed work. We anticipate that the following agencies will require permit submittals for review:

- Minnesota Department of Natural Resources (MnDNR)
- United States Army Corps of Engineers (USACE)
- Riley Purgatory Bluff Creek Watershed District (District).
- Wetland Conservation Act Permitting (WCA)

Wenck will complete a joint application through the MnDNR's MPARS system and submit to each agency for review. Wenck previously completed a wetland delineation at this site which may be included in the permit application documents as needed.

Additional information will be prepared and submitted to the District and WCA as required by site conditions and the permit requirements of each agency. Once each agency has reviewed the permit applications, Wenck will respond to questions and requests for additional information as needed.

Estimated fees for this task: \$6,200

**Dave Modrow, P.E.**  
Water Resources Engineer  
City of Eden Prairie  
April 5, 2016

### **Task 6 - Bid Solicitation**

Wenck will solicit bids from a minimum of three qualified contractors and make a recommendation to the City. As part of this task, Wenck will include any City required insurance and bonding information, as well as a sample contract so the contractors can account for this in their bid preparation. Wenck does not anticipate preparation and distribution of formal bid addenda. However, we will be available to answer questions during the bid solicitation period. Wenck will conduct a pre-bid meeting at the site with contractors so that they can view the site and become familiar with the work required before submitting their bids. Bid submittal will be requested approximately one week following the site visit. Bids will be accepted by Wenck by either fax or e-mail and will be tabulated and included in a formal recommendation to the City.

Estimated fees for this task: \$3,000

### **Task 7 - Construction Field Services/Contractor Management**

Wenck recommends daily construction observation during this stabilization project to ensure that field conditions are consistent with the assumptions in our design, and to monitor the progress of the contractor. Wenck proposes to use a staff engineer familiar with the project constraints and proposed design to be the on-site construction observer. The engineer will work under the direction of Mr. Jason Warne and report to him daily. We anticipate the engineer will be on site for approximately 4 hours/day for 3 weeks during slope stabilization and 1 week during site restoration. We will confirm this schedule once the bids have been received and will advise the City at that point if changes to our anticipated level of effort are necessary.

The on-site engineer will obtain site photographs and prepare a brief written daily report documenting the construction activities that occurred and an estimate of the quantities of the various bid items that were placed that day. At the conclusion of the project, Wenck will perform a field survey to delineate the construction area and confirm quantities as appropriate. Wenck will prepare a record drawing that consists of a map based on this field survey and will include this drawing in a brief letter report that summarizes the construction events. The report will be signed by Mr. Matthiesen and include the following:

- Brief narrative summarizing the construction activities
- Signed certification statement that the project was constructed in general accordance with the approved plans and specifications
- Appendices
  - Photographs
  - Field reports
  - Record Drawing

Wenck will work with the City to complete the traditional Contractor Management/Contract Administration activities such as submittal review, progress meeting facilitation and documentation, pay request review and recommendation, lien waivers, appropriate IC-134 tax forms as required by the Department of Revenue, and any necessary change order negotiation.

Estimated fees for this task: \$18,000

**Dave Modrow, P.E.**  
Water Resources Engineer  
City of Eden Prairie  
April 5, 2016

## **Project Team**

---

Jason Warne, P.E. will manage the project and Ed Matthiesen, P.E. will be the certifying engineer, signing the drawings and technical specifications as a Professional Engineer registered in Minnesota. Dave Parenteau, P.E. will serve as senior advisor for geotechnical aspects of the project and provide senior review.

## **Schedule**

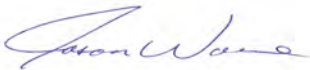
---

We are prepared to begin the work immediately. We anticipate completing the initial analysis and results memo approximately three weeks following the notice to proceed. Draft design documents will be prepared and submitted for the City to review approximately four weeks following design approval. Permit applications will be completed concurrent with the draft design documents to minimize the permit approval timeline.

We anticipate bids will be solicited and received in June. Construction will most likely occur this summer or when water levels in Purgatory Creek allow.

We look forward to working with you and your staff on this project. Should you have any questions on this proposal, please contact us.

**Sincerely,**



Jason Warne, P.E.  
Project Engineer  
(763) 479-4285



Ed Matthiesen, P.E.  
Principal Engineer  
(763) 479-4208



Dave Parenteau, P.E.  
Principal Engineer  
(763) 252-6872

c: Leslie Stovring – City of Eden Prairie

**TABLE 1**

**Cost Estimate for 11193 Bluestem Lane Slope Restoration  
City of Eden Prairie, MN  
Wenck Proposal P-0094-0107**

Task	Project	Project	Senior	Staff Engineer I	Surveyor I <sup>2</sup>	CAD/GIS II	Clerical I	Subtotal		Subtotal	Estimated
	Management II	Engineer II	Engineer IV					Hours	Expenses	Costs	Fee
1. Site Survey and Soil Characterization <sup>1</sup>	1	12	2	0	6	2	1	24	\$800	\$3,929	\$4,000
2. Analysis of Slope Stability and Mitigation Alternatives	2	36	4	0	0	0	0	42	\$0	\$5,990	\$6,000
3. Plans and Specifications	2	40	4	24	0	12	4	86	\$100	\$11,010	\$11,000
4. Construction Easement Assistance	1	8	1	0	0	8	0	10	\$0	\$2,525	\$2,500
5. Environmental Permitting	1	12	2	32	0	4	2	53	\$100	\$6,185	\$6,200
6. Bid Solicitation	1	8	1	12	0	0	2	24	\$200	\$2,993	\$3,000
7. Construction Field Services/Final Report	2	24	8	96	6	10	4	150	\$1,000	\$18,028	\$18,000
	<b>10</b>	<b>140</b>	<b>22</b>	<b>164</b>	<b>12</b>	<b>36</b>	<b>13</b>	<b>389</b>	<b>\$2,200</b>	<b>\$50,660</b>	<b><u>\$50,700</u></b>

<sup>1</sup>Includes Atterberg, Moisture Content, Seive Analysis of two soil samples

<sup>2</sup>Does not include RLS

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Agenda		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b> IC# 15-5922	<b>ITEM NO.:</b> VIII.I.
Leslie Stovring Public Works /Environmental	Approve Agreement for Phase VI Pond Inventory and Inspection Program with Wenck Associates	

**Requested Action**

Move to: Approve the Professional Services Agreement for the Phase VI Pond Inventory and Inspection Program with Wenck Associates in the amount of \$116,260.

**Synopsis**

The proposal from Wenck is to provide an inventory of the stormwater ponding system within the subwatersheds for Riley and Rice Marsh Lakes. The inventory will be used to select projects for completion after 2018. This project is the next step towards completing the city-wide stormwater treatment inventory required by the Minnesota Pollution Control Agency. The cost of pond inventory will be paid out of the stormwater utility.

**Background Information**

The City has been working on inventorying our stormwater system since 2003. The current inspection program includes visual inspection of stormwater treatment areas (including lakes, ponds, wetlands, ditches, raingardens, drainage swales and creek segments) to identify problems that require repair. The scope of work that will be used to complete the inventory was approved by the MPCA on April 18, 2011.

The City has identified approximately 90 water bodies that will require analysis within this study area. Services Wenck will provide includes:

- Survey current pond depth and bathymetric contours for each selected water body.
- Compare existing conditions with as-built information.
- Calculate the removal efficiency (%) for phosphorus and sediment for each pond.
- Determine which ponds need sediment removal.
- Develop models (P8 and BATHTUB) to evaluate the watershed and the stormwater runoff entering the study area.
- Determine whether opportunities exist to upgrade functionality of the ponds in areas where additional treatment may benefit the creek.

The estimated cost is \$116,620 based on analysis of 90 water bodies and the 2 lakes within the study area. Costs will be paid from the storm water utility fund.

**Attachments**

Agreement  
Proposal

## Standard Agreement for Professional Services

This Agreement ("Agreement") is made on the 21<sup>st</sup> day of April, 2016 between the City of Eden Prairie, Minnesota (hereinafter "City"), whose business address is 8080 Mitchell Road, Eden Prairie, MN 55344, and Wenck Associates, Inc., a Minnesota engineering company (hereinafter "Consultant") whose business address is 1800 Pioneer Creek Center, Maple Plain, MN 55359.

### 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 General Engineering Services 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 (Proposal for Phase VI of the Basin Inventory and Maintenance Assessment dated April 21, 2016) 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 April 21, 2016 through December 31, 2018, 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 \$116,260 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 Joe Bischoff 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

**FIRM NAME:** Wenck Associates, Inc.

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

Joe Bischoff

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

Principal



Responsive partner.  
Exceptional outcomes.

April 21, 2016

**Ms. Leslie A. Stovring**  
Environmental Coordinator  
City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN 55344

RE: Proposal for Phase VI of the Basin Inventory and Maintenance Assessment

**Dear Ms. Stovring:**

Thank you for the opportunity to submit this proposal to assist the City of Eden Prairie with the Phase VI Basin Inventory and Maintenance Assessment. Our team is excited about helping the City of Eden Prairie with Phase VI of the Basin Inventory and Maintenance Assessment project. We have assembled a team of engineers and scientists with considerable experience in providing the GIS, inspection, modeling, and reporting services for the City. Our team has considerable experience in providing the GIS, inspection, modeling, and reporting services necessary to build upon the success of the Phase I through Phase V projects for the City. Our team is enthusiastic about continuing to serve the City, and we trust you will find Wenck to be well-qualified and responsive to your needs. Our employee-owners pride themselves on providing unmatched service, sound strategic advice, and technical excellence that fosters good decision-making and helps realize on-the-ground improvements. Thanks for the opportunity to work with you again.

Appendix A includes our proposed scope of services and Appendix B summarizes our proposed schedule and provides a breakdown of estimated costs.

Sincerely,

WENCK ASSOCIATES

Joe Bischoff  
Project Manager/Principal  
(763)-252-6829  
jbischoff@wenck.com

**Leslie A. Stovring**  
Environmental Coordinator  
City of Eden Prairie  
April 21, 2016

## **Project Understanding**

---

Wenck Associates, Inc. is a full-service environmental and civil engineering firm with experience in planning, design, construction, and maintenance of water resource and storm drainage facilities. We have worked with municipal, county, watershed, and private clients to inventory and evaluate their infrastructure and maintenance plans to assist with compliance of federal, state, and local regulations as well as to meet engineering and good housekeeping standards. We understand and are experienced with the Minnesota Pollution Control Agency's NPDES stormwater general permit and industrial stormwater standards.

Wenck has a strong project understanding of the Basin Inventory and Maintenance Assessment project. Wenck has worked with the City of Eden Prairie on five previous phases of the Basin Inventory and Maintenance Assessment. The five phases include Staring Lake (Phase I), Red Rock Lake and Duck Lake (Phase II), Eden Lake and Neill Lake (Phase III), Lower Riley Creek (Phase IV), and Mitchell Lake subwatersheds (Phase V). Wenck has also helped develop the City's Nondegradation Assessment and Local Water Management Planning documents. Wenck brings to the City skills and experience that expand on those previous projects. The proposed sixth phase of the study will apply approaches similar to those applied in the previous Phases. As applicable, Wenck will take the Nondegradation Assessment and Local Water Management planning documents a step further to evaluate whether current conditions satisfy goals outlined in the plans.

It is our understanding that Phase IV will include inspection, assessment and reporting of the contributing watersheds to Rice Marsh Lake in 2016, and will include inspection, assessment and reporting of the contributing watersheds to Lake Riley in 2017. The following proposal and scope of services is based on the two year schedule for completion of the Phase Six Basin Inventory and Maintenance Assessment.



## Scope of Services



*The Scope of Services for the Phase VI Basin Inventory and Maintenance Assessment described below will be completed by the Wenck project team.*

The Wenck team proposes to provide the City of Eden Prairie with the sixth phase of engineering consultant services expanding the previous basin inventory and maintenance assessments. As shown in the attached Figure 1, the Phase VI study will include subwatersheds tributary to Rice Marsh Lake and Lake Riley. Wenck's approach will build upon previous Phases I through V, and continue use of an all-electronic method of evaluating, collecting, and processing the pond inventory and maintenance needs.

## **Task 1 – Stormwater System Analysis**

This task consists of identifying the basins the City is responsible for maintaining, selecting basins for further field evaluation, and delineating the subwatersheds to each basin. (Throughout this proposal, we will refer to constructed stormwater ponds and stormwater wetlands collectively as "basins.") Basin identification will be coordinated with City staff to determine which basins are located on City property, within City right-of-way, or under a drainage and utility easement. We expect to locate basins on City property and within City right-of-way using GIS-based parcel information from the City. We will continue collaborating with City staff in determining which basins may be under drainage and utility easements. The subwatersheds for each basin will be delineated using LiDAR contours and storm sewer information.

### **2016 Rice Marsh Lake Subwatershed - Stormwater System Analysis**

There appear to be 15 basins located in the Rice Marsh Lake subwatershed as shown on Figure 1. The number of basins will be verified during field evaluation and the subwatershed delineation. The basins within the Rice Marsh Lake subwatershed include:

- 14 Basins (constructed ponds, stormwater wetlands, wetlands, and mitigated wetlands)
- 1 Big Basins (Permanent Pool Area greater than 2.5 acres)

#### 2016 Task 1 Deliverable:

- Spreadsheet or database listing the water bodies identified for inclusion in the project for Rice Marsh Lake.

### **2017 Lake Riley Subwatershed - Stormwater System Analysis**

There appear to be 75 basins located in the Lake Riley subwatershed as shown on Figure 1. The number of basins will be verified during field evaluation and the subwatershed delineation. The basins within the Rice Marsh Lake subwatershed include:

- 65 Basins (constructed ponds, stormwater wetlands, wetlands, and mitigated wetlands)
- 6 Creek Segments
- 4 Big Basins (Permanent Pool Area greater than 2.5 acres)

#### 2017 Task 1 Deliverable:

- Spreadsheet or database listing the water bodies identified for inclusion in the project for Lake Riley.

## Task 2 – Sedimentation Survey

For Task 2, Wenck will visually inspect and perform a bathymetric survey for each basin identified in Task 1. The inspection and survey for basins in the Rice Marsh Lake subwatershed will be conducted in 2016. The inspection and survey for basins in the Lake Riley subwatershed will be conducted in 2017. The inspection and survey information will be used to determine if maintenance is required and assess the basin pollutant removal performance (Task 3).

Wenck will review or collect the following for each basin visual inspection:

- Review storm sewer, grading, and utility plans available for each basin prior to field evaluation. If possible, these plans will be taken into the field with the inspector to allow for easy comparison between the proposed and constructed facilities.
- Photograph basin features.
- Identify and report plain-sight maintenance needs (i.e., erosion, accumulation of debris on trash racks, repairs to damaged structures) using the "Stormwater System Follow-Up Checklist".
- Estimate the percentage of the pond's permanent pool surface regularly covered by aquatic vegetation.

Wenck will conduct the sedimentation survey using GPS survey equipment. The elevations for inlets and outlets, water surface elevation, and ground shots above the water surface elevation surrounding the pond will be surveyed using sub-centimeter grade GPS survey equipment. The permanent pool of the basin will be surveyed by measuring the depth of water at each measuring location and then the elevation will be determined by subtracting the depth from the water surface elevation. The sediment accumulation will be measured at each location by advancing a rod into the sediment until the depth of refusal (the original basin bottom). Each location of measurement will be surveyed with sub-meter grade GPS survey equipment.

The survey of the one big basin identified with a permanent pool area greater than 2.5 acres includes a ground shot survey around the basin and a proposed bathymetric survey method over the open water area with sonar technology. The sonar method for measuring depth is most reliable and works best on large basins with depths typically at 3 feet or more. The application of sonar on the big basins will save time on the bathymetric survey of the big basins. The sedimentation survey will still need to be collected utilizing a rod advanced into the basin bottom until refusal at up to 25 locations throughout the basin. The average measured depth of sediment will be multiplied by the permanent pool area to obtain the estimate for sediment accumulation. This method may be applicable to additional basins during the field evaluation. The big basins will also be visually inspected.

### 2016 Task 2 Deliverable:

- Expand the Rice Marsh Lake spreadsheet or database from Task 1 to include the measured parameters from Task 2.

### 2017 Task 2 Deliverable:

- Expand the Lake Riley spreadsheet or database from Task 1 to include the measured parameters from Task 2.

## Task 3 – Basin Analysis

---

Task 3 analyzes the data collected from Task 2 to determine the sedimentation level, pollutant removal effectiveness of the basin, and, ultimately, which basins need sediment removal. The basin analysis for Rice Marsh Lake will be conducted in 2016, and the basin analysis for Lake Riley will be conducted in 2017.

Wenck will use ArcMap software to import the GPS survey data from the field evaluation to determine the degree of sediment deposition in each basin. The ArcMap software will allow Wenck to calculate the volume of the basin below any elevation. Therefore, we can quickly calculate the basin surface area, permanent pool volume, and live storage volume. From this information, we will then estimate the degree of sedimentation by comparing the volume to the design or as-built plans for each basin. Where design or as-built plans are not available, we will determine the degree of sedimentation using the probing rod results.

Using the spreadsheet from Task 2, Wenck will calculate the water quality volume draining to the basin and the permanent pool volume within the basin. Flood elevations will be obtained from design plans, or estimated using the top elevation of the basin.

Wenck will determine the load-based removal efficiency of each basin using a numerical relationship developed from the computer model P8. The P8 model will provide an estimate of the total suspended solids (TSS) and total phosphorus (TP) removal efficiencies for each basin. These removal efficiencies will then be compared to a basin designed to NURP standards.

Wenck will prioritize basin maintenance and expansion projects based on the degree of sedimentation found in each pond, its hydrologic proximity to public waters, and the potential water quality benefits of increasing permanent pool volumes. The plain-sight maintenance needs identified during the field evaluation will be included in a separate prioritization that the City may wish to evaluate on a case-by-case basis and incorporate them into ongoing maintenance programs.

### 2016 Task 3 Deliverable:

- Expand the Rice Marsh Lake spreadsheet or database from Task 2 to include the calculated parameters from Task 3.

### 2017 Task 3 Deliverable:

- Expand the Lake Riley spreadsheet or database from Task 2 to include the calculated parameters from Task 3.

## Task 4 – NURP Criteria Analysis

---

The purpose of Task 4 is to quantify the water quality improvement of dredging or expansion of the priority basins with the goal of satisfying NURP standards. The rankings developed in Task 3 will indicate which basins require dredging or could be expanded. We do not anticipate that all basins included in the field inventory will be selected for analysis in Task 4 because of physical (site restraints) or ownership limitations. The NURP Criteria Analysis for Rice Marsh Lake will be conducted in 2016, and the NURP Criteria Analysis for Lake Riley will be conducted in 2017.

NURP standards require that stormwater ponds have a permanent pool volume that is at least equal to the runoff from a 2.5-inch, 24-hour storm event. For the priority basins, Wenck will estimate the amount of dredging or expansion that is practical and re-evaluate the load-based removal efficiency.

2016 Task 4 Deliverable:

- Expand the Rice Marsh Lake spreadsheet or database from Task 3 to include the revised load-based removal efficiency from Task 4.

2017 Task 4 Deliverable:

- Expand the Lake Riley spreadsheet or database from Task 3 to include the revised load-based removal efficiency from Task 4.

## **Task 5 – Data Analysis, P8 Modeling, and Model Results Evaluation**

The purpose of Task 5 is to provide the City with an expanded assessment of City basin performance in the Rice Marsh Lake and Lake Riley subwatersheds. Wenck proposes the following additional tasks to provide the City with Creating a Phase VI P8 model for Rice Marsh Lake and Lake Riley for the limits within the city. The data analysis, P8 modeling, and model results evaluation for Rice Marsh Lake will be conducted in 2016. The data analysis, P8 modeling, and model results evaluation for Lake Riley will be conducted in 2017.

P8 is an industry-standard model developed to assess pollutant loading in urban watersheds. We will complete the following tasks to accomplish the scope of work:

### **Data Analysis**

This task entails the collection and processing of data through GIS for developing watershed inputs for the P8 Model. Input data includes subwatershed area, the watershed impervious fraction, and the pervious area curve number.

### **P8 Modeling**

Wenck will develop a P8 model for Phase VI that will include the basins identified for field evaluation in the Pond Inventory Project. Watershed information will be determined from the data analysis stormwater system analysis, and basin data will be taken directly from the basin survey. The model will be validated using water quality monitoring data where available.

### **Evaluate P8 Model Results**

P8 will be used to calculate watershed runoff loads for TSS and TP. The basin survey will allow us to estimate the amount of TSS and TP removed by each basin and treatment chain.

### **Draft Technical Memorandum to Summarize Results.**

Wenck will draft a technical memorandum to document the modeling methods, inputs, and assumptions.

## **Task 6 – Report Requirements**

Upon completion of the 2016 analysis of Rice Marsh Lake, Wenck will complete a final report to summarize the methods and results of the Rice Marsh Lake study. Upon completion of the 2017 analysis of Lake Riley, Wenck will complete a final report to summarize the methods and

results of the Lake Riley study. Each report will detail the methods of the field evaluation and analysis from Tasks 2-5, and highlight critical maintenance activities including individual basin sediment volumes. Plain-sight maintenance activities will be summarized using tables and figures rather than a detailed explanation for each individual basin visited during the field evaluation.

The report will present cost considerations for the recommended maintenance activities. Among these, dredging and disposal of sediment is likely the most costly. The cost estimates include construction costs (including mobilization, site preparation, sediment excavation and disposal, minor storm sewer or structural work, and erosion control), Laboratory analysis and results analysis, Level 2 sediment disposal costs according to the MPCA guidance, Engineering costs, and 20% contingency.

Wenck will submit a draft report to City staff for review and approval prior to finalizing the report. We expect one meeting with City staff and one meeting with the Conservation Commission to present the results and recommendations of the study.

#### 2016 Task 6 Deliverables:

- Final Rice Marsh Lake spreadsheet or database including evaluated information for each basin.
- All Rice Marsh Lake GIS files.
- Rice Marsh Lake project report to include all office, field and modeling analyses conducted by the project team.

#### 2017 Task 6 Deliverables:

- Final Lake Riley spreadsheet or database including evaluated information for each basin.
- All Lake Riley GIS files.
- Lake Riley project report to include all office, field and modeling analyses conducted by the project team.

## **Task 7 – Meetings, Project Management & Project Summaries**

Task 7 includes attendance at up to 5 meetings, mileage, and project coordination time. The task also includes drafting of a project summary to be attached to each invoice. The project summary will detail the amount billed to date, tasks which need to be completed, the estimated cost to complete these tasks, and the projected timeline for completion of the project.

#### 2016 Task 7 Deliverables:

- Attendance at up to 5 meetings in regards to the Rice Marsh Lake subwatershed area.
- A project summary report with each monthly invoice in regards to the Rice Marsh Lake subwatershed area.

#### 2017 Task 7 Deliverables:

- Attendance at up to 5 meetings in regards to the Lake Riley subwatershed area.
- A project summary report with each monthly invoice in regards to the Lake Riley subwatershed area.

# Schedule and Cost Estimate

There are six primary tasks to complete for both the Rice Marsh Lake subwatershed area and the Lake Riley subwatershed area of the Phase VI Basin Inventory project. We are ready to begin as soon as the City issues the notice to proceed. Our proposed schedule (Tables 1 and 2) are flexible and can be adjusted to meet the specific needs of the City.

**Table 1. Tasks and Schedule to complete the Rice Marsh Lake Subwatershed Area of Phase VI of Eden Prairie’s Basin Inventory and Maintenance Evaluation, and P8 and BATHTUB models.**

Task	Task Description (Rice Marsh Lake)	Task Completion Timeline
0	Notice to Proceed	May 2016
1	Stormwater System Analysis	June 2016 (1 Month)
2	Sedimentation Survey	November 2016 (6 Months)
3	Basin Analysis	January 2017 (2 Months)
4	NURP Criteria Analysis	January 2017 (1 Month)
5	P8 and Bathtub Analysis	February 2017 (1 Month)
6	Report	April 2017 (2 Months)

**Table 2. Tasks and Schedule to complete the Lake Riley Subwatershed Area of Phase VI of Eden Prairie’s Basin Inventory and Maintenance Evaluation, and P8 and BATHTUB models.**

Task	Task Description (Lake Riley)	Task Completion Timeline
0	Notice to Proceed	January 2017
1	Stormwater System Analysis	April 2017 (1 Month)
2	Sedimentation Survey	November 2017 (6 Months)
3	Basin Analysis	January 2018 (2 Month)
4	NURP Criteria Analysis	January 2018 (1 Month)
5	P8 and Bathtub Analysis	February 2018 (1 Month)
6	Report	April 2018 (2 Month)

The proposed budget has been estimated on a time and materials basis and includes expenses (mileage, printing, etc.). The tasks and cost per task are identified in Tables 3 and 4.

**Table 3. Cost Estimate to complete The Rice Marsh Lake Subwatershed Area of Phase VI of Eden Prairie’s Basin Inventory and Maintenance Evaluation, and P8 and BATHTUB models.**

Task	Task Description (Rice Marsh Lake)	Not-to-Exceed Amount
1	Stormwater System Analysis	\$1,950.00
2	Sedimentation Survey	\$7,160.00
3	Basin Analysis	\$2,250.00
4	NURP Criteria Analysis	\$1,000.00
5	Data Analysis, P8 Modeling, and Model Results Evaluation	\$6,950.00
6	Report Requirements	\$10,760.00
7	Meetings, Project Management & Project Summaries	\$2,890.00
Total		\$32,960.00

**Table 4. Cost Estimate to complete The Lake Riley Subwatershed Area of Phase VI of Eden Prairie’s Basin Inventory and Maintenance Evaluation, and P8 and BATHTUB models.**

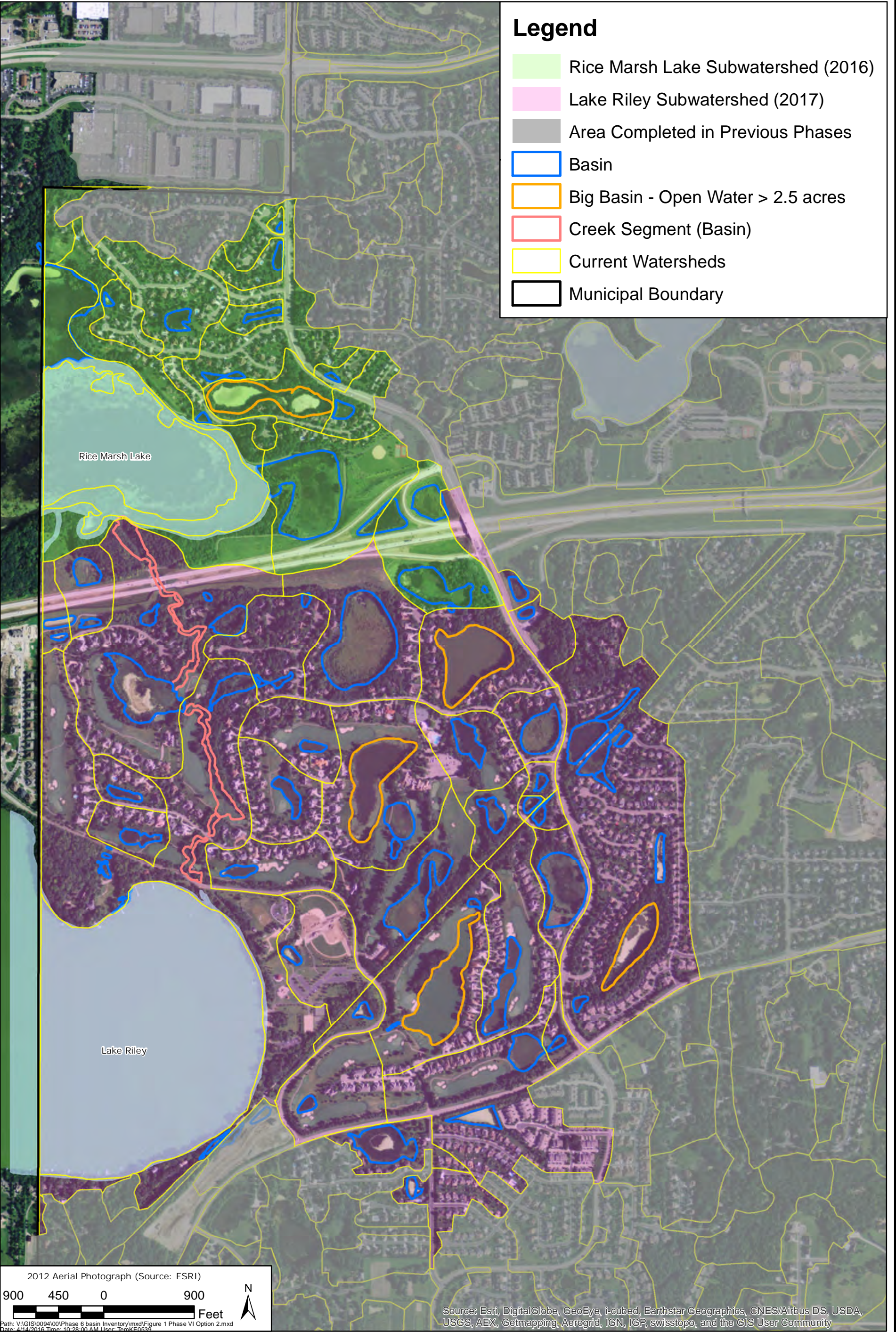
Task	Task Description (Lake Riley)	Not-to-Exceed Amount
1	Stormwater System Analysis	\$5,100.00
2	Sedimentation Survey	\$36,875.00
3	Basin Analysis	\$11,590.00
4	NURP Criteria Analysis	\$5,150.00
5	Data Analysis, P8 Modeling, and Model Results Evaluation	\$10,525.00
6	Report Requirements	\$11,080.00
7	Meetings, Project Management & Project Summaries	\$2,980.00
Total		\$83,300.00

The cost to complete the Rice Marsh Lake subwatershed area in 2016 is presented in Table 3 and the cost to complete the Lake Riley subwatershed area in 2017 is presented in Table 4. In discussion with City staff, the total number of basins to be considered for the inventory during Phase VI is 90 (15 in Rice Marsh Lake subwatershed area, and 75 in the Lake Riley subwatershed area). The cost of the Rice Marsh Lake subwatershed area, assuming 15 basins, is \$32,960. The cost of the Lake Riley subwatershed area, assuming 75 basins, is \$83,300. The total cost of Phase VI Basin Inventory and Maintenance Assessment is \$116,260 (Rice Marsh Lake and Lake Riley).



### Legend

- Rice Marsh Lake Subwatershed (2016)
- Lake Riley Subwatershed (2017)
- Area Completed in Previous Phases
- Basin
- Big Basin - Open Water > 2.5 acres
- Creek Segment (Basin)
- Current Watersheds
- Municipal Boundary



EDEN PRAIRIE

Basin Inventory - Phase VI



Responsive partner. Exceptional outcomes.

APR 2016

Figure 1



<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> VIII.J.
Matt Bourne, Parks and Natural Resources Manager	Community Garden Plot Lease Agreement with Metropolitan Airport Commission	

**Requested Action**

Move to: Approve one-year Community Garden Plots Lease Agreement with the Metropolitan Airport Commission (MAC).

**Synopsis**

This lease agreement is for the use of the 3.17 acre land parcel of MAC Property adjacent to the Super America gas station (on the corner of Pioneer Trail and Old Pioneer Trail) for Community Gardens. These garden plots have been rented annually by residents through the Parks and Recreation Department to grow vegetables and flowers. The previous garden plot lease agreement between the City and MAC expired on December 31, 2015. The MAC has prepared a new one year lease agreement at the rental rate of \$459.36, which allows the City the right to utilize this property again for the 2016 gardening season.

**Background**

The city has leased this parcel of land from the MAC for our Community Garden Program for many years. However, with the recent airport re-zoning this land parcel is now being marketed as a potential commercial development site. The city staff requested that MAC staff consider a new one year lease to permit garden plot usage in 2016. MAC staff indicated that they are still actively marketing the property for development however the City would be able to lease of the property for garden plots for this year with no guarantee for the 2017 season.

**Attachment**

Lease Agreement

## COMMUNITY GARDEN PLOTS LEASE AGREEMENT

THIS COMMUNITY GARDEN PLOTS LEASE AGREEMENT ("Lease") was made effective January 1, 2016 between the Metropolitan Airports Commission ("Commission"), a public corporation of the State of Minnesota, as Lessor, and the City of Eden Prairie ("City"), as Lessee.

### WITNESSETH:

WHEREAS, the Commission has determined that it currently has no specific airport use suitable for the property described in this Lease and is authorized to lease or license the property for compatible uses; and

WHEREAS, the City desires to lease the property to operate community garden plots on the property; and

WHEREAS, the City and Commission entered into a Memorandum or Understanding ("MOU"), dated December 17, 2002, that addresses certain terms regarding the property; and

WHEREAS, the City desires to define certain parcels of the property as described in the Lease below, the MOU, and as shown on attached Exhibit A; and

WHEREAS, the Commission has determined that the authorized uses under this Lease would not interfere with airport operations; and

WHEREAS, Commission is willing to lease the property to the City upon the terms and conditions of this Lease, which has been approved by the Commission on April 18, 2016.

NOW THEREFORE, in consideration of the mutual covenants hereinafter stated, the parties hereto agree as follows:

1. PROPERTY. The Commission grants to City a lease to occupy and use, subject to the terms and conditions stated herein, a portion of the lands constituting Flying Cloud Airport ("Airport") in Hennepin County, Minnesota, totaling 3.17 acres, as shown on attached sketch ("Premises"):

And as designated in red on the plat attached hereto as Exhibit A and made a part hereof. And the legal description of the premises area is attached hereto as Exhibit B and made a part hereof.

2. USE. The Premises may be occupied and used by the City for recreational purposes as follows:

Solely for the operation of community garden plots.

Use of the Premises hereunder and improvements made in furtherance of such use shall at all times comply with clearance requirements under FAA regulations and state zoning requirements.

3. TERM. The term of this Lease shall be one (1) year, commencing January 1, 2016. The Premises are subject to recapture by the Commission upon six (6) months written notice to City, with no monetary compensation to the City. The City may terminate this Lease upon six (6) months written notice to the Commission with no monetary compensation to the Commission. In the event of termination or recapture, the City shall have 90 days within which to remove its property, equipment and fixtures located or placed thereon and to restore the Premises to a condition acceptable to the Commission.

Upon termination of this Lease or any subsequent renewal lease, Commission has no obligation to provide the Premises or any other Commission or Airport property to City.

4. ASSIGNMENT OF LEASE: The City shall not assign or transfer this Lease, nor permit this Lease to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part. The City shall not sublease the whole or any part of the Premises.

5. CONSTRUCTION AND MAINTENANCE.

All plans for the grading and construction of and relating to replacement of or alterations to the Premises, facilities or improvements shall require Commission staff review and approval, and in addition, all expansion, construction, repair, replacement and alteration plans must meet the requirements of the Federal and State regulatory agencies for clearance and protection of approaches in respect to the airport. Final design by City for the Premises shall be subject to review and approval by Commission for conformance with FAA and state rules and regulations and compatibility with airport operational requirements. All work shall be carried on at such time or times and under such control as the Commission's Airport Manager may impose to coordinate the same with the necessary continuous operation of the airport. The City shall fence the Premises,

according to Commission requirements, to prevent unauthorized access to the airport operational areas.

In addition, the City agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

All work shall be completed at City's cost, and City shall notify Commission prior to continuing any work if any foreseen or unforeseen environmental conditions exist or manifest; keep the Premises, this Lease and every improvement on the Premises free and clear from all liens for labor performed and materials furnished; and defend, at City's cost, each and every lien asserted or filed against the land, any part thereof, or against this Lease or any improvement on the Premises and pay each and every judgment resulting from such lien.

In addition to the monetary rent paid to the Commission, the City shall, at all times and at no cost or expense to Commission, maintain the Premises and all improvements thereon in a neat and clean condition and in good repair and shall keep the Premises free from debris, weeds and erosion. The City shall not suffer or permit any waste or nuisance on the Premises and shall permit no illegal acts or conduct thereon or such as will constitute a nuisance.

6. RENT. As rent for the Premises the City shall pay annually an amount of \$459.36 per year. The rental rate must be consistent with any change made in the future to federal revenue diversion policy. Thus, the rental amount may be changed during the term of the Lease in order to maintain compliance with federal revenue diversion policy upon sixty (60) days written notice from the Commission to the City.

City shall pay for all water, sanitary sewer, gas, electricity, telephone, refuse collection, and storm sewer charges, environmental charges and fees, or other similar charges used on or attributable to the Premises, together with any taxes, penalties, interest or surcharges associated with such utilities and charges.

City shall pay all applicable taxes (including, but not limited to, property taxes), assessments, license fees, regulatory fees and other charges, if any, imposed by any other governmental authority during the Term of this Lease upon or related to the Premises, buildings, improvements or other property located thereon, or upon City's use or occupancy, for whatever term deemed applicable to City by that governmental authority. City shall pay these amounts without deduction or set-off against Rent to be paid under this Lease.

7. INSURANCE. The City agrees to indemnify and save harmless the Commission from any and all claims or causes of action arising or claimed to arise by reason of injury or death to person or damage to property and arising out of or incidental to the Commission's grant to the City of this Lease or out of act or omission of person or persons incident to use and occupancy of the premises. The City shall either (i) maintain insurance, a standard term policy or policies of insurance in amounts as hereinafter set out against public liability, blanket contractual liability and property damage including personal and advertising and products liability, or (ii) provide self-insurance of equivalent protection. Such policy or policies shall be in the amount of statutory limits provided by Minn. Stat. 466.04, or as such statute may be amended or modified from time to time, which currently requires one million five hundred thousand dollars (\$1,500,000) per accident or occurrence or five hundred thousand dollars (\$500,000) per person. The general liability insurance shall name the City as insured and shall also name the Commission as additional insured by endorsement to the policy or policies. The City also shall maintain statutory workers' compensation insurance or self-insurance for all employees performing work under this agreement. Nothing in this Lease constitutes a waiver by the City of any statutory or common law, defenses, immunities, or limits on liability. The obligation of the City of Eden Prairie under this section cannot exceed the greater of (i) amount that the City would be obligated to pay under the provisions and limitations of Minn. Stat. Chap 466 or (ii) the amount of insurance carried by City applicable to a claim referred to in the first sentence of this Section 7.
8. HOLD HARMLESS. To the extent permitted by law, the City agrees to hold and save harmless the Commission from any and all claims, liens or liability which may arise from City's construction, maintenance, repair or replacement aforesaid or from claims of labor or materials involved in or rising out of the same.

The City shall indemnify, defend and hold harmless Commission from and against any and all losses, liability, fines, lawsuits, charges, damages, penalties, or claims of liability for loss, damage or injury to persons or property on or about the lands under Lease from whatever cause, and Commission shall not be liable to the City to any extent, nor will the City make any claim against Commission for or on account of damage to the lands under Lease or loss damage to or destruction of improvements, facilities and structures thereon.

Nothing in this Lease Agreement constitutes a waiver by the City of any statutory or common law, defenses, immunities, or limits on liability. The obligation of the City of Eden Prairie under this section cannot exceed the greater of (i) amount that the City would be obligated to pay under the provisions and limitations of

Minn. Stat. Chap. 466 or (ii) the amount of insurance carried by City applicable to a claim referred to in the first sentence of this Section 8.

9. FAA AND MNDOT. Execution and continuation of this Lease is conditioned upon approval and agreement of the FAA and MN/DOT, Division of Aeronautics that the development and use of such lands for recreational purposes would not conflict with aircraft operations to and from the airport and would comply with the clearance and approach requirements presently applicable at said airport.
10. COMPLIANCE WITH LAWS. The City shall comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, or of agencies, departments or divisions of either (including but not limited to the Riley-Purgatory and/or the Lower Minnesota Watershed Districts), or of the Commission relating to the Premises and the use thereof or relating to control of ground and air traffic, aircraft operations and the general use and operation of the airport; and the City shall see to the payment of any all taxes, assessments, license fees or other charges that may be legally levied, assessed or made during the term of this Lease or any extension thereof by reason of the uses hereby permitted of the Premises. City shall provide evidence of compliance with such laws to the Commission upon request of the Commission.
11. HEIGHT. The City expressly agrees for itself, its successors and assigns to restrict the height of structures, objects of natural growth, and other objects on the Premises to a height that will not constitute an obstruction as determined by the standards in Federal Aviation Regulation, Part 77. In the event the aforesaid covenants are breached, the Commission reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the City. Further, the City agrees that no lights will be permitted (including automobile headlights) or installed on the Premises which will have a detrimental effect on control tower operations or otherwise affect night operations.
12. FLIGHT OF AIRCRAFT. The City expressly agrees for itself, its successors and assigns to prevent any use of the Premises which might interfere with the landing and taking off of aircraft from the Airport or to the flight of aircraft over the Premises or otherwise constitute a hazard, or interfere with air navigation and communication facilities presently or in the future serving the Airport. In the event the aforesaid covenant is breached, the Commission reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of the City.
13. WITHOUT PREJUDICE. It is understood that grant of this Lease and use of the Premises is conditioned upon and shall be without prejudice to the rights of the

Commission as owner and operator of the aforesaid public airport of which the subject Premises constitute a part.

14. NONDISCRIMINATION. The City for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the City shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

The City for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or nation origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the City shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

15. COMMISSION RESERVATIONS. Commission reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the City, and without interference or hindrance.

Commission reserves the right, but shall not be obligated to the City, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the City in this regard.

16. COMMISSION RIGHT OF ENTRY. Commission shall at all times and through its agents and employees or contractors have a right of entry upon the Premises, as may be necessary in the development, maintenance and operation of the airport, including for the purpose of wildlife management. Further, the Commission reserves the right to install and maintain on the Premises such utility lines, conduits, pipes and facilities as may be necessary to the development, maintenance and operation of said airport, provided Commission shall at its cost



and expense, repair any damages and restore any portion of the Premises damaged by reason of such installation and maintenance. However, if the City causes the need for such repair, construction, installation, or maintenance, the Commission will not pay to repair or restore any part of the Premises.

17. REQUIRED NOTICE. Incident to use and occupancy of the Premises hereunder, the City will advise those making use of or coming on the Premises and the parents of those children making use of the Premises that Commission has no responsibility in respect to maintenance, care, policing, control and supervision of the premises so long as this Lease is in effect. The City will post signage visible to property users that the Premises are owned by the Metropolitan Airports Commission.

18. ENVIRONMENTAL OPERATING CONDITIONS.

Any materials/waste (hazardous or otherwise) "left over" from City's use and occupancy of the Premises are the property of the City and must be removed by the City. Waste disposal must follow all county, state and federal regulations. MAC is not the owner, generator or the party responsible for removal/disposal of this waste/material.

City shall also notify MAC of any spills or dumping, regardless of the amount, occurring on Airport property to which the City has knowledge. If MAC incurs costs related to a spill or other environmental expense related to City's operations at the Airport, unless due to the negligence of MAC, MAC will bill City for all MAC's costs, plus a fifteen percent (15%) administrative fee. City shall pay MAC within thirty (30) days of invoice.

19. NOTICE

All notices or communications between Commission and City shall be deemed sufficiently given or rendered if in writing and delivered to either party (i) personally, (ii) by registered or certified mail return receipt requested, or (iii) by nationally recognized overnight courier service. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (a) the date of receipt or rejection if given personally, (b) three (3) business days after the date of posting if given by certified or registered mail, or (c) the first (1<sup>st</sup>) business day after the date of posting if delivered by a nationally recognized courier delivery service. Notices hereunder may be given by the respective attorneys for any of the parties. Addresses for all notices are as follows:

Commission: Metropolitan Airports Commission  
Attn: Roy Fuhrmann  
6040 28<sup>th</sup> Avenue South  
Minneapolis, MN 55450

City: City of Eden Prairie  
Attn: Director of Parks and Recreation Services  
8080 Mitchell Road  
Eden Prairie, MN 55344

Either party may change the party's address for notice by providing written notice to the other party.

19. WAIVER

The waiver by Commission or City of any breach of any term of this Lease shall not be deemed a waiver of any prior or subsequent breach of the same term or any other term of this Lease.

22. COMMITMENTS TO FEDERAL AND STATE AGENCIES

Nothing in this Lease shall be construed to prevent Commission from making such commitments as it desires to the Federal Government or the State of Minnesota in order to qualify for the expenditure of Federal or State funds on the Airport.

This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between Commission and the United States, relative to the development, operation, or maintenance of the Airport.

23. RIGHT OF FLIGHT / NOISE

There is hereby reserved to the Commission, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

24. ENTIRE AGREEMENT. This Lease represents the entire agreement between the parties and supersedes any prior agreements regarding the Premises or any part thereof.

IN WITNESS WHEREOF, the parties hereto have signed this Lease Agreement the day and year written below.

**METROPOLITAN AIRPORTS COMMISSION**

By \_\_\_\_\_  
Vice President – Management & Operations

Date \_\_\_\_\_

**CITY OF EDEN PRAIRIE**

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

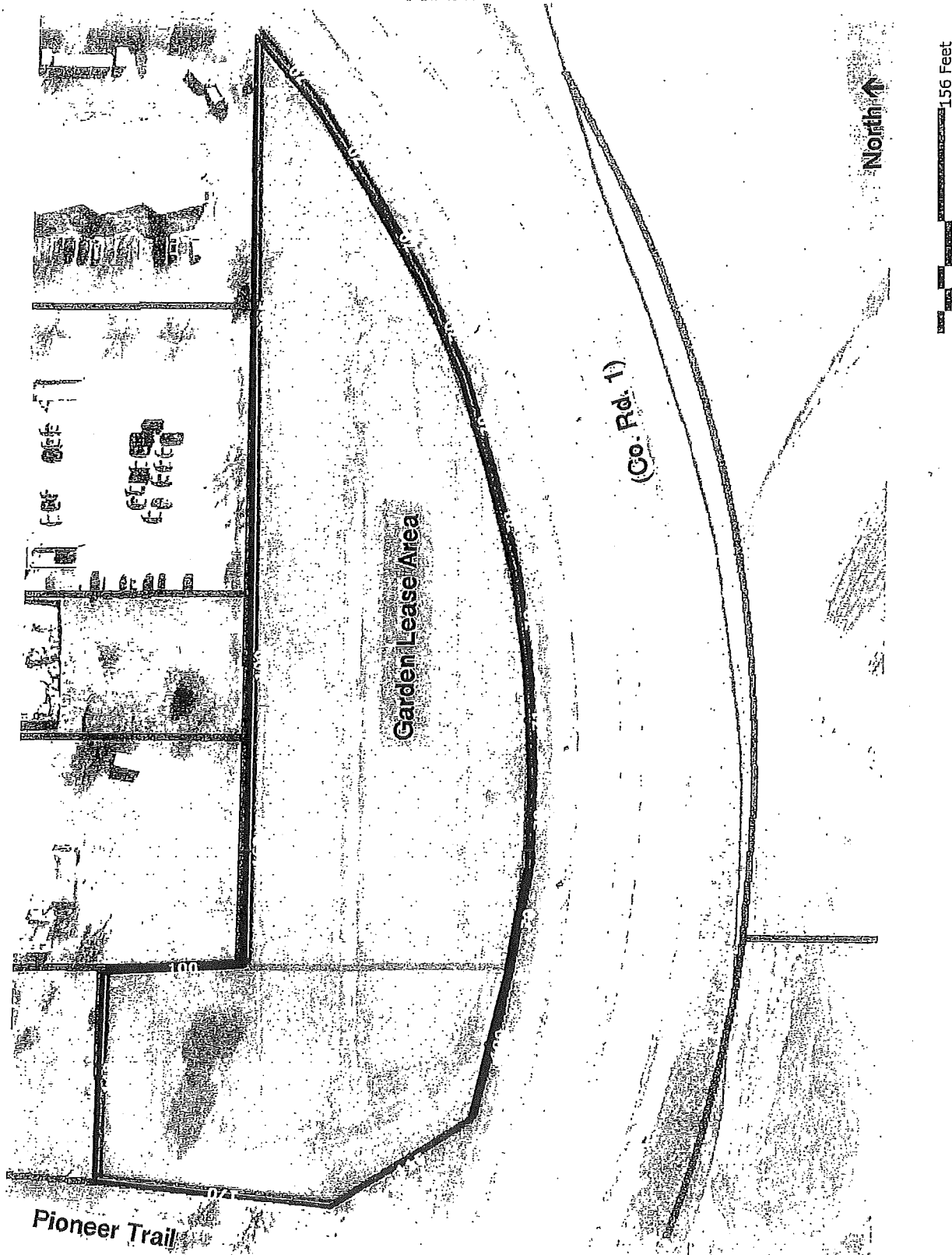
Date \_\_\_\_\_



May 16, 2011

EXHIBIT A

PREMISES



May 16, 2011

**EXHIBIT B**

**COMMUNITY GARDEN PLOTS  
"PREMISES" - LEGAL DESCRIPTION**

Beginning at the southwest corner of the southeast quarter of the northeast quarter of Section 27, Township 116, Range 22 lying in Hennepin County, Minnesota; then northward along the west line of said southeast quarter a distance of 760 feet, then south  $89^{\circ} 36' 24''$  east a distance of approximately 162-feet to a point intersecting the right-of-way of the east side of Pioneer Trail which is the point of beginning for the Premises; then continuing on the same bearing eastward a distance of 147.97 feet, then south  $0^{\circ} 25' 23''$  west a distance of 100 feet, then north  $89^{\circ} 58'$  east a distance of approximately 645 feet to the intersection with of the north right-of-way line of Hennepin County Road #1, then proceeding in a southwestern, westerly, northwesterly and northerly along said road right-of-way line back to the point of beginning.

<b>CITY COUNCIL AGENDA</b> <b>SECTION:</b> Consent Calendar		<b>DATE:</b> May 24, 2016
<b>DEPARTMENT/DIVISION:</b>  Matt Bourne, Parks and Natural Resources Manager, Parks and Recreation	<b>ITEM DESCRIPTION:</b>  Reject Bids for Maintenance Storage Building for Field 8 at Miller Park	<b>ITEM NO.:</b> VIII.K.

**Requested Action**

Move to:        Reject the bids for the Maintenance Storage Building for Field 8 at Miller Park.

**Synopsis**

The City advertised for bids for the construction of a Maintenance Building for Field 8 at Miller Park. Specifications for the work were prepared by our consultant HTPO and bids were opened on April 7, 2016. The project was to be funded through the City’s Park Improvement Fund and a donation/contribution from the Eden Prairie Baseball Association. The EPBA recently communicated they will no longer be able to partner with the City on this project so staff is recommending the bids be rejected.

**Recommendation**

Staff recommends the bids be rejected and the bid surety be returned to the bidders.

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> VIII.L.
Matt Bourne, Parks and Natural Resources Manager, Parks and Recreation	Professional Services Agreement with HTPO for Improvements to Round Lake Park Phase II	

**Motion**

Move to: Approve Professional Services Agreement with HTPO for Construction Phase Services for Improvements to Round Lake Park Phase II at a cost not to exceed \$75,500.

**Synopsis**

Staff recommends entering into a professional services agreement with HTPO for construction administration, observation and staking for the Phase II Improvements to Round Lake Park. The proposed project is scheduled in the Capital Improvement Program for 2016.

**Background**

City staff entered into an agreement with HTPO for the design phase services for this project late last year. Bids were received and the construction contract was awarded to Minnesota Dirt Works at the April 5<sup>th</sup> Council Meeting.

HTPO has performed similar work for the Riley Lake Park Ballfield Expansion and staff feels very comfortable recommending them for this project.

**Recommendation**

The proposal from HTPO is in line with our estimate and staff recommends approval of this contract.

**Attachment**

Standard Agreement for Professional Services



## Standard Agreement for Professional Services

This Agreement ("Agreement") is made on the 24<sup>th</sup> day of May, 2016, 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., a Minnesota Corporation (hereinafter "Contractor") 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 Improvements for Round Lake Park Phase II 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 –Construction Administration, Observation and Staking 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 24, 2016 through the acceptance of bid 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 \$ 75,500.00 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 Laurie Johnson and other Consultant Staff 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, 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 shall apply on a "per project" basis.
- h. All policies shall contain a waiver of subrogation in favor of the City.
- i. All policies 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:



## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. Construction Administration \$10,000.00
  - a. Includes communications with contractor, coordination with geotechnical engineer, conducting preconstruction meeting, shop drawing review, preparation of contractor pay requests, preparation of record drawings, and project closeout.
2. Construction Observation \$46,000.00
  - a. Includes 360 hours of construction observation (half time observation over a four month construction duration).
3. Construction Staking \$18,000.00
  - a. Includes a one-time staking for erosion control, grading, storm sewer, watermain, structures, curb, concrete pads, trail, basketball court and light poles; grade verification of ballfield and drainage basins, and as-built elevation of utility structures.
4. Estimated Reimbursable Expenses \$1,500.00

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> VIII.M.
Matt Bourne, Parks and Natural Resources Manager, Parks and Recreation	Professional Services Agreement with HTPO for Improvements to Field 8 at Miller Park	

**Motion**

Move to: Approve Standard Agreement for Professional Services with HTPO for Construction Phase Services for Improvements to Field 8 at Miller Park at a cost not to exceed \$35,000.

**Synopsis**

Staff recommends entering into a professional services agreement with HTPO for construction administration, observation and staking for the Improvements to Field 8 at Miller Park. The proposed project is scheduled in the Capital Improvement Program for 2016.

**Background**

City staff entered into an agreement with HTPO for the design phase services for this project late last year. Bids were received and the construction contract was awarded to Minnesota Roadways Co. at the May 3, 2016, Council Meeting.

**Recommendation**

The proposal from HTPO is in line with our estimate and staff recommends approval of this contract.

**Attachment**

Professional Services Agreement

## Standard Agreement for Professional Services

This Agreement ("Agreement") is made on the 24<sup>th</sup> day of May, 2016, 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., a Minnesota Corporation (hereinafter "Contractor") 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 Miller Park Field 8 Improvements 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 – Construction Administration, Observation and Staking 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 24, 2016 through the completion of the project 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 \$35,000.00 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 Laurie Johnson and other Consultant Staff 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, 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 shall apply on a "per project" basis.
- h. All policies shall contain a waiver of subrogation in favor of the City.
- i. All policies 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:

## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. Construction Administration \$9,000.00
  - a. Includes communications with contractor, coordination with geotechnical engineer, conducting preconstruction meeting, shop drawing review, preparation of contractor pay requests, preparation of record drawings, and project closeout.
2. Construction Observation \$18,500.00
  - a. Includes 140 hours of construction observation (half time observation over seven weeks of construction).
3. Construction Staking \$6,000.00
  - a. Includes a one-time staking for grading, storm sewer, watermain, curb, concrete pads, plaza; grade verification of drainage basins, and as-built elevation of utility structures.
4. Estimated Reimbursable Expenses \$1,500.00

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> VIII.N.
Matt Bourne, Parks and Natural Resources Manager, Parks and Recreation	Professional Services Agreement with HTPO for Construction Phase Services for Reconstruction of Soccer Field #10	

**Motion**

Move to: Approve Professional Services Agreement with HTPO for Construction Phase Services for Reconstruction of Soccer Field 10 at Miller Park at a cost not to exceed \$27,000.

**Synopsis**

Staff recommends entering into a professional services agreement with HTPO for construction administration, observation and staking for the Reconstruction of Soccer Field 10 at Miller Park. The proposed project is scheduled in the Capital Improvement Program for 2016.

**Background**

City staff entered into an agreement with HTPO for the design phase services for this project late last year. Bids were received and the construction contract was awarded to Duininck, Inc. at the May 3, 2016, Council Meeting.

HTPO has performed similar work for the Soccer Field 9 Reconstruction Project and staff feels very comfortable recommending them for this project.

**Recommendation**

The proposal from HTPO is in line with our estimate and staff recommends approval of this contract.

**Attachment**

Standard Agreement for Professional Services

## Standard Agreement for Professional Services

This Agreement ("Agreement") is made on the 24<sup>th</sup> day of May, 2016, 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., a Minnesota Corporation (hereinafter "Contractor") 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 Reconstruction of Soccer Field 10 at Miller Park 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 – Construction Administration, Observation and Staking 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 24, 2016 through the completion of the project 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 \$27,000.00 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 Laurie Johnson and other Consultant Staff 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, 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 shall apply on a "per project" basis.
- h. All policies shall contain a waiver of subrogation in favor of the City.
- i. All policies 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:

## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. Construction Administration \$6,000.00
  - a. Includes communications with contractor, coordination with geotechnical engineer, conducting preconstruction meetings, shop drawing review, preparation of contractor pay requests, preparation of record drawings, and project closeout.
2. Construction Observation \$17,000.00
  - a. Includes 130 hours of construction observation (half time observation over six weeks of construction).
3. Construction Staking \$2,500.00
  - a. Includes a one-time staking for grading and drain tile, and as-built grade verification of field.
4. Estimated Reimbursable Expenses \$1,500.00

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> VIII.O.
Matt Bourne, Parks and Natural Resources Manager, Parks and Recreation	Award Bid and authorize entering into a contract with Odessa II for Staring Lake Play Area Renovation	

**Requested Action**

Move to: Award contract to Odessa II for Staring Lake Play Area Renovation in the amount of \$1,074,100.

**Synopsis**

The City has been working with our consultant, WSB & Associates, to redesign the play area at Staring Lake Park. This project will update the aged play structure and address multiple safety issues with the existing retaining walls by improving site grading and layout. Specifications for the construction work were prepared and the City received bids from four contractors.

**Background**

A Play Area Assessment of the playground site at Staring Lake Park was completed in 2009 and multiple safety concerns were identified. The renovation will rework the grading and layout of the site to improve accessibility and remove the existing retaining wall which is failing. All play equipment will be replaced with required safety zones and the safety surfacing will be replaced. A number of new gathering areas will also be incorporated into the site to improve user experience.

**Bid Summary and Recommendation**

The summary of the bids submitted is as follows:

<u>Contractor</u>	<u>Base Bid</u>	<u>Bid Alternates</u>	<u>Bid Total</u>
Odesa II	\$1,027,880.00	\$46,220.00	\$1,074,100.00
Blackstone Contractors	\$1,052,876.40	\$68,212.50	\$1,121,088.90
KA Witt Construction	\$1,062,460.00	\$101,495.00	\$1,163,955.00
Ebert Construction	\$1,306,075.70	\$116,387.68	\$1,422,463.38

The Engineers estimate for the project was \$1,063,390.00. Each of the submitters has met the guidelines as detailed in the bid specifications. Staff and consulting engineer recommends the contract be awarded to Odesa II.

Funding for the construction work will come from the Capital Improvement Program. The project is anticipated to begin in June with a final completion spring of 2017.

**Attachments**

Recommendation Letter and Bid Tab  
Contract



May 18, 2016

Matt Bourne, Park and Natural Resource Manager  
City of Eden Prairie  
15150 Technology Drive  
Eden Prairie, MN 55344

Re: Recommendation to Award Construction Contract for Staring Lake Play Area  
WSB Project No. 02127-050

Dear Mr. Bourne,

Congratulations on obtaining very competitive bids for this project. The receipt of 4 quality bids shows great interest in working with the City of Eden Prairie by local contractors.

Bids were received for the above-referenced project on Wednesday, May 18, 2016. There were a total of 4 bids submitted, which were opened and read aloud. The bids were checked for mathematical accuracy and tabulated. The bid tabulation is attached for your reference and includes corrections to any mathematical errors. The low bid was submitted by Odesa II in the amount of \$1,074,100.00 for the base bid improvements and alternates. Their bid is within 1% of the engineer's estimate of \$1,077,190.00 for these total bid improvements.

Odesa II is a local contractor that has successfully constructed other projects for both the City of Eden Prairie as well as WSB & Associates including most recently Round Lake Park Splash Pad. We expect they will perform similarly for this project. WSB & Associates have also contacted Odesa II and confirmed with them that they are confident in their Bid Proposal Submission. They are eager to start the project and look forward to working with the City of Eden Prairie on what should be a great project.

We recommend the City of Eden Prairie award the contract to the low bidder, Odesa II, as indicated below:

Base Bid	\$1,027,880.00
Add Alternate A – Anti-Graffiti Proofing	\$500.00
Add Alternate B – Decorative Concrete	\$33,300.00
Add Alternate C – Graphic Sign Panels	\$8,970.00
Add Alternate D – Concrete Maintenance Strip	\$3,450.00
<b>Recommended Project Award:</b>	<b>\$1,074,100.00</b>

As a reminder, the bid schedule allows construction to proceed on receipt of Notice to Proceed. Work in all areas will be Substantially Completed by October 7, 2016. WSB recommends the City Council approve funding for the above referenced project in the amount of \$1,074,100.00.

Please contact me to discuss any questions you may have. WSB would like to thank you for the opportunity to assist you in the development of plans and documents for improvements to the Staring Lake Play Area.

Sincerely,

*WSB & Associates, Inc.*

A handwritten signature in black ink that reads "Robert A. Slipka III". The signature is written in a cursive style with a horizontal line at the end.

Robert A. Slipka III, RLA  
Senior Landscape Architect

Attachments: Bid Tabulation



## BID TABULATION SUMMARY

**PROJECT:**  
Staring Lake Play Area

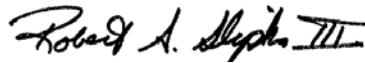
**OWNER:**  
City of Eden Prairie, MN

**WSB PROJECT NO.:**  
2127-05

**Bids Opened:** May 18, 2016 10:00 a.m.

Contractor	Addendum No. 1	Bid Security (5%)	Total Base Bid	Total Alternate Bids
1 Odesa II	X	X	\$1,027,880.00	\$46,220.00
2 Blackstone Contractors	X	X	\$1,052,876.40	\$68,212.50
3 K.A. Witt Construction, Inc.	X	X	\$1,062,460.00	\$101,495.00
4 Ebert Construction	X	X	\$1,306,075.70	\$116,387.68
Opinion of Cost			\$1,029,690.00	\$33,700.00

I hereby certify that this is a true and correct tabulation of the bids as received on May 18, 2018



Robert Slipka, Project Manager

 Denotes corrected figure

## FORM OF CONTRACT

THIS AGREEMENT, made and executed this 24<sup>th</sup> day of May, 2016, by and between the City of Eden Prairie, hereinafter referred to as the “City”, and Odesa II, LLC, hereinafter referred to as the “Contractor”.

WITNESSETH:

CITY AND CONTRACTOR, for the consideration hereinafter stated, agree as follows:

- I. CONTRACTOR hereby covenants and agrees to perform and execute all the provisions of the Plans and Specifications prepared by the City Engineer for the Parks and Recreation Department referred to in Paragraph IV, as provided by the CITY for:

### **Staring Lake Play Area Renovation (with All Add Alternates)**

CONTRACTOR further agrees to do everything required by this Agreement and the Contract Document.

- II. CITY agrees to pay and CONTRACTOR agrees to receive and accept payment in accordance with the prices bid for the unit or lump sum items as set forth in the Proposal Form attached hereto which prices conform to those in the accepted CONTRACTOR'S proposal on file in the office of the City Engineer. The aggregate sum of such prices, based on estimated required quantities is estimated to be \$1,074,100.00.
- III. Payments to CONTRACTOR by CITY shall be made as provided in the Contract Documents.
- IV. The Contract Documents consist of the following component parts:
  - 1) Legal and Procedural Documents
    - a) Advertisement for Bids
    - b) Instruction to Bidders
    - c) Accepted Proposal
    - d) Contract Agreement
    - e) Contractor's Performance Bond
    - f) Contractor's Payment Bond
  - 2) Special Conditions
  - 3) Detail Specifications
  - 4) General Conditions

5) Plans

6) Addenda and Supplemental Agreements

The Contract Documents are hereby incorporated with this Agreement and are as much a part of this Agreement as if fully set forth herein. This Agreement and the Contract Documents are the Contract.

V. CONTRACTOR agrees to fully and satisfactorily complete the work contemplated by this Agreement in accordance with the following schedule:

or in accordance with the Contract Documents.

VI. This Agreement shall be executed in two (2) copies.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals as of the date first above written.

In Presence Of:

CITY OF EDEN PRAIRIE, MN

\_\_\_\_\_

\_\_\_\_\_  
By: Nancy Trya-Lukens Its Mayor

\_\_\_\_\_

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

In Presence Of:

CONTRACTOR

\_\_\_\_\_

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

\_\_\_\_\_

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

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
SECTION: Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>ITEM NO.:</b> VIII.P.
Matt Bourne, Parks and Natural Resources Manager, Parks and Recreation	Approve Maintenance Agreement with the Riley-Purgatory-Bluff Creek Watershed District for the Stormwater Facilities at Round Lake Park	

**Motion**

Move to: Approve Maintenance Agreement with the Riley-Purgatory-Bluff Creek Watershed District for the Stormwater Facilities at Round Lake Park.

**Synopsis**

Due to the need for new stormwater infiltration basins at Round Lake Park, the Riley-Purgatory-Bluff Creek Watershed District is requiring an agreement outlining maintenance and reporting requirements for the new stormwater facilities and management of wetland buffer areas. This agreement must be executed as a condition of the Watershed District permit for the Round Lake Phase II CIP project.

**Background**

The parking areas at Round Lake Park will be reconstructed and expanded as part of the Round Lake Phase II project and are required to be upgraded to include stormwater collection and management.

**Attachment**

Maintenance Agreement  
Exhibit A

**MAINTENANCE AGREEMENT**  
**Between the Riley Purgatory Bluff Creek Watershed District and**  
**The City of Eden Prairie**

This Maintenance Agreement (Agreement) is made by and between the Riley Purgatory Bluff Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (RPBCWD), and the City of Eden Prairie, a statutory city and body corporate and politic of the State of Minnesota (City).

**Recitals and Statement of Purpose**

WHEREAS pursuant to Minnesota Statutes section 103D.345, the RPBCWD has adopted and implements the Wetland and Creek Buffers Rule, the Waterbody Crossings and Structures Rule and the Stormwater Management Rule;

WHEREAS under the Wetland and Creek Buffers Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner's perpetual obligation to protect undisturbed buffer adjacent to a creek or wetland;

WHEREAS under the Stormwater Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner's perpetual obligation to inspect and maintain stormwater-management facilities

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the RPBCWD;

WHEREAS in accordance with the RPBCWD rules and as a condition of permit 2015-039, the City's perpetual obligation to maintain stormwater facilities must be memorialized in a maintenance agreement specifying requirements and restrictions;

WHEREAS City and the RPBCWD execute this Agreement to fulfill the condition of permit no. 2015-039, and concur that it is binding and rests on mutual valuable consideration;

THEREFORE City and RPBCWD agree as follows that City, at its cost, will inspect and maintain the wetland buffer and stormwater facilities as shown in the site plan attached to and incorporated into this Agreement as Exhibit A in perpetuity as follows:

1) BUFFER AREAS

- a) Buffer vegetation must not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities, or other actions to maintain or improve buffer quality and performance, each as approved by the District in advance in writing or when implemented pursuant to a written maintenance plan approved by the District.
- b) Diseased, noxious, invasive or otherwise hazardous trees or vegetation may be selectively removed from buffer areas and trees may be selectively pruned to maintain health.
- c) Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines.
- d) No fill, debris or other material will be placed within a buffer.
- e) No structure or impervious cover (hard surface) may be created within a buffer area beyond that shown in the scaled site plan attached to this declaration as Exhibit A.
- f) Permanent wetland buffer markers will be maintained in the locations shown on the approved site plan attached as Exhibit A. Language shall indicate the purpose of the buffer, restrictions, and the name and website address of the Riley Purgatory Bluff Creek Watershed District.

2) STORMWATER FACILITIES

- a) **Stormwater retention and treatment basin(s).** Stormwater retention and treatment basin(s) must be inspected at least once a year for the first two years after the project is completed and once every five years thereafter to determine if the basin's retention and treatment characteristics are adequate and continue to perform per design. Culverts and outfall structures must be kept clear of any obstructions or sediment accumulation. Sediment accumulation must be

measured by a method accurate to within one vertical foot. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent of its original design volume. Based on this inspection, if the stormwater basin(s) is identified for sediment cleanout, the basin(s) will be programmed into the City's storm water budget plan in order for the pond to be restored to its original design contours.

- b) **Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins will be inspected annually for the first two years after the project is completed and once every five years thereafter to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.
- 3) **Reporting.** City will submit to the RPBCWD annually for the first two years and once every five years after a brief written report that describes stormwater facility maintenance activities performed under this declaration, including dates, locations of inspections and the maintenance activities performed.
- 4) **Property Transfer.** If City conveys into private ownership a fee interest in the property that is the subject of this Agreement, it shall require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the maintenance requirements of this Agreement; and (b) that recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder ensuring that the declaration will run with the land in perpetuity. If City conveys into public ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this Agreement.
- 5) This Agreement may be amended only in a writing signed by the parties.
- 6) **Authority to Contract.** The person executing this Agreement on behalf of City represents that he is duly authorized to execute this Agreement on behalf of City and represents and warrants that this Agreement is a legal, valid and binding obligation enforceable according to its terms.

7) The recitals are incorporated as a part of this Agreement.

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

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT**

By \_\_\_\_\_ Date:  
President, Board of Managers

**City of Eden Prairie**

By: \_\_\_\_\_ Date:  
Its Mayor

By: \_\_\_\_\_ Date:  
Its Administrator

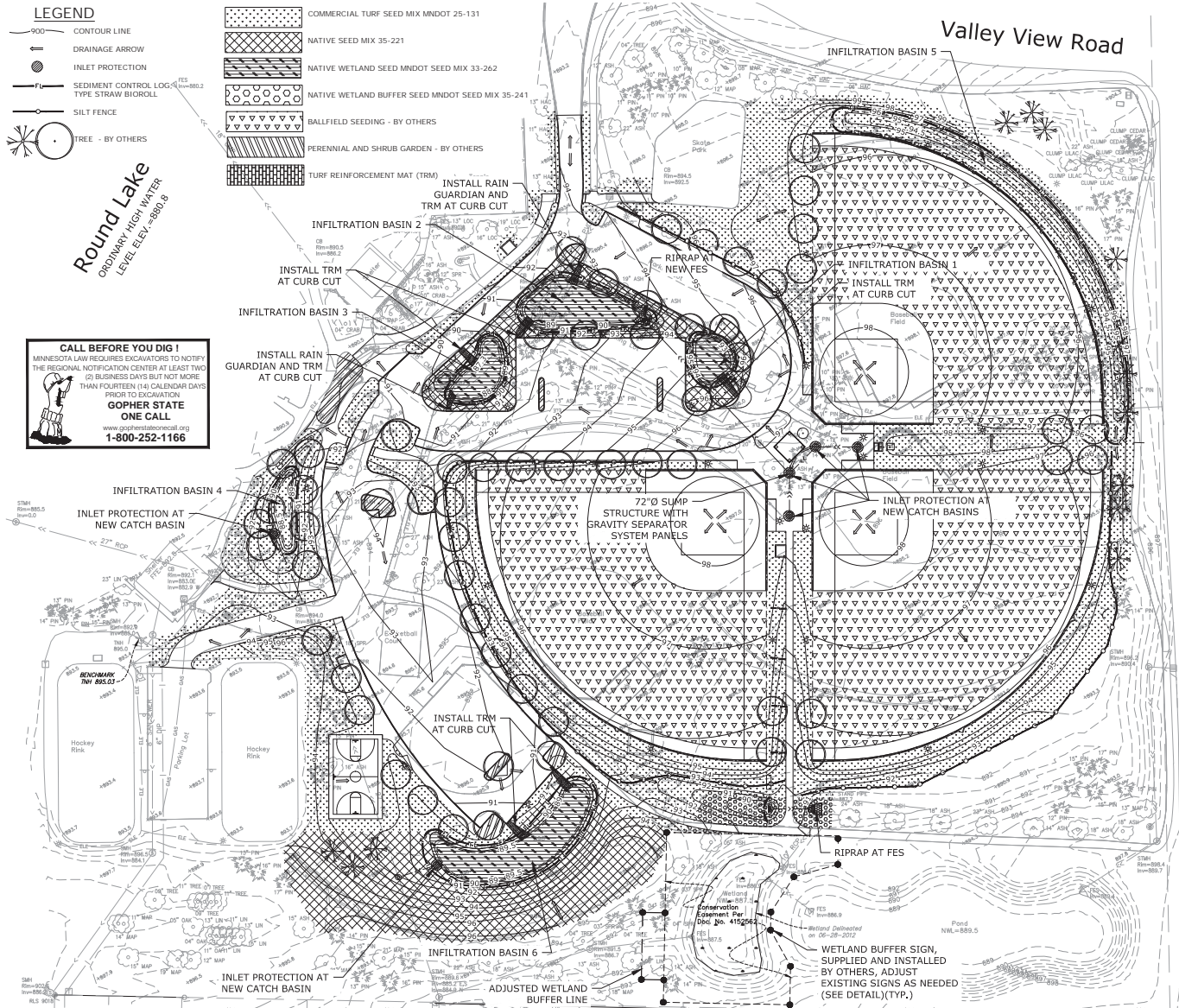


- LEGEND**
- 900 — CONTOUR LINE
  - DRAINAGE ARROW
  - INLET PROTECTION
  - FC — SEDIMENT CONTROL LOGS TYPE STRAW BIORROLL
  - SILT FENCE
  - TREE - BY OTHERS

- COMMERCIAL TURF SEED MIX MNDOT 25-131
- NATIVE SEED MIX 35-221
- NATIVE WETLAND SEED MIX MNDOT SEED MIX 33-262
- NATIVE WETLAND BUFFER SEED MIX MNDOT SEED MIX 35-241
- BALLFIELD SEEDING - BY OTHERS
- PERENNIAL AND SHRUB GARDEN - BY OTHERS
- TURF REINFORCEMENT MAT (TRM)

**Round Lake**  
ORDINARY HIGH WATER  
LEVEL: ELEV. = 890.9

**CALL BEFORE YOU DIG!**  
MINNESOTA LAW REQUIRES EXCAVATORS TO NOTIFY THE REGIONAL NOTIFICATION CENTER AT LEAST TWO (2) BUSINESS DAYS BUT NOT MORE THAN FOURTEEN (14) CALENDAR DAYS PRIOR TO EXCAVATION.  
**Gopher State ONE CALL**  
www.gopherstateonecall.org  
1-800-252-1166



**NOTES**

1. CONTRACTOR SHALL TAKE SPECIAL CARE TO MINIMIZE COMPACTION IN GREENSPACE AREAS, INCLUDING AREAS FOR INFILTRATION BASINS.
2. INSTALL ADDITIONAL ESC MEASURES FOLLOWING MASS GRADING AS SHOWN OR AS DIRECTED BY ENGINEER.
3. INSTALL INLET PROTECTION IMMEDIATELY FOLLOWING INSTALLATION OF NEW CATCH BASINS.
4. INSTALL SEDIMENT CONTROL LOGS AROUND INFILTRATION BASINS IMMEDIATELY FOLLOWING EXCAVATION OF BASINS. SCARIIFY TOP 12" OF SUBGRADE PRIOR TO PLACEMENT OF TOPSOIL AND ROOT ZONE MIX.
5. PLACE MIN. 6" TOPSOIL ON ALL DISTURBED AND NEW GREENSPACE AREAS EXPECT FOR INFILTRATION BASINS.
6. TURF ESTABLISHMENT FOR ALL DISTURBED AND NEW GREENSPACE AREAS SHALL CONFORM TO MNDOT 2574 AND 2575. ALL DISTURBED AREAS SHALL BE STABILIZED WITHIN 7 CALENDAR DAYS AFTER LAND-DISTURBING WORK HAS TEMPORARILY OR PERMANENTLY CEASED.
7. CONTRACTOR SHALL BE RESPONSIBLE FOR HYDRO-SEEDING ALL DISTURBED GREENSPACE AREAS WITH SEED, FERTILIZER (WHERE REQUIRED), AND HYDRAULIC SOIL STABILIZER UNLESS NOTED OTHERWISE ON THE PLANS OR AS DIRECTED BY THE ENGINEER.
  - COMMERCIAL TURF SEED MIX SHALL BE MNDOT MIXTURE 25-131 APPLIED AT A RATE OF 220 LBS/AC (MNDOT 3876). FERTILIZER SHALL BE TYPE 1 COMMERCIAL GRADE, NPK 0-10-20 (MNDOT 3881) AND APPLIED AT A RATE OF 60 LBS/AC.
  - NATIVE SEED MIX SHALL BE MNDOT MIXTURE 35-221 APPLIED AT A RATE OF 36.5 LBS/AC (MNDOT 3876). FERTILIZER SHALL BE TYPE 3 SLOW-RELEASE, NPK 0-10-20 (MNDOT 3881) AND APPLIED AT A RATE OF 60 LBS/AC.
  - NATIVE WETLAND SEED MIX SHALL BE MNDOT MIXTURE 33-262 APPLIED AT A RATE OF 44 LBS/AC (MNDOT 3876) IN THE INFILTRATION BASIN AREAS. FERTILIZER SHALL BE TYPE 3 SLOW-RELEASE, NPK 0-10-20 (MNDOT 3881) AND APPLIED AT A RATE OF 60 LBS/AC.
  - NATIVE WETLAND BUFFER SEED MIX SHALL BE MNDOT MIXTURE 35-241 APPLIED AT A RATE OF 36.5 LBS/AC (MNDOT 3876). NO FERTILIZER SHALL BE USED IN THIS AREA.
  - HYDRAULIC SOIL STABILIZER SHALL BE TYPE HYDRAULIC MULCH (MNDOT 3884.2 B.2) APPLIED AT A RATE OF 2100 LBS/AC.
8. THE BALLFIELDS WILL BE SEED BY OTHERS.
9. IF WEATHER CONDITIONS DO NOT ALLOW FOR THE PLACEMENT OF THE SEED AS DETERMINED BY THE ENGINEER, THE CONTRACTOR SHALL APPLY TYPE B.2 HYDRAULIC MULCH (MNDOT 3884) TO ALL DISTURBED AREAS APPLIED AT A RATE OF 2100 LBS/AC. AFTER APRIL 15 OR AFTER THE SPRING SNOWMELT, WHICHEVER IS LATER, THE CONTRACTOR SHALL THEN PLACE THE SEED AND FERTILIZERS AS SHOWN.
10. INSTALL TURF REINFORCEMENT MAT (TRM), CATEGORY 3 (MNDOT 3885.2 B.5) AT ALL CURB CUTS AND EXTEND TRM TO BOTTOM OF BASINS AS SHOWN.

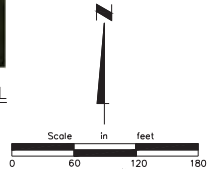
**BENCHMARK**

TOP NUT OF HYDRANT (TNN). ELEVATION = 895.03 (NAVD88), LOCATION SHOWN ON PLAN

Eden Prairie Road (Co. Rd. No. 4)



WETLAND BUFFER SIGN DETAIL



FILE: C:\PROJECTS\2016\04\01\20160401\20160401.dwg PLOT: 20160401.dwg LAYOUT: 7 SCALE: 3/8" = 1'-0" DATE/TIME: MAY 12, 2016, 10:46AM USER: JHARRIS... (text partially obscured)

**HIT PO** Engineering • Surveying  
Landscape Architecture  
**HANSEN THORP PELLINEN OLSON, Inc.**  
7510 Market Plaza Drive • Eden Prairie, MN 55344  
952-829-0700 • 952-829-7808 fax

Project No. 15-093	Date	Revisions
Drawn by HIPO	02-22-16	OUT TO BID
Design by AMP	05-12-16	REVISED PER WATERSHED PERMIT REQUIREMENTS
Checked by C.H		

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 Minnesota.  
Adam Pawek  
Lic. No. 49990 Date: \_\_\_\_\_

STATE AID PROJECT NO.	
STATE PROJECT NO.	
COUNTY PROJECT NO.	
CITY PROJECT NO. 15102	
CLIENT PROJECT NO.	

PHASE II EROSION AND SEDIMENT CONTROL PLAN  
ROUND LAKE PARK IMPROVEMENTS  
EDEN PRAIRIE, MN

SHEET 7  
of  
16 SHEETS

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Consent Calendar		May 24, 2016
<b>DEPARTMENT/DIVISION:</b> Mary Krause Public Works / Engineering	<b>ITEM DESCRIPTION: I.C. 14-5867</b> Award Contract for the Waterford Rd. Area and Larkspur Ln. Area Sump Pump Collection System Project to Valley Rich Company, Inc.	<b>ITEM NO.:</b> VIII.Q.

### **Requested Action**

Move to: Award the Contract for the Waterford Road Area and Larkspur Lane Area Sump Pump Collection System Project to Valley Rich Company, Inc. in the amount of \$555,989.

### **Synopsis**

Bids were received on Thursday, May 12, 2016, for the Waterford Road Area and Larkspur Lane Area Sump Pump Collection System project. Five contractors received plans. One bid was received by Valley Rich Company, Inc. in the amount of \$555,989.

Bids were solicited in the fall of 2015 for the Waterford Road Area portion of the project and came in above the Engineers Estimate for the project, resulting in the rejection of all bids. The project scope was expanded to include the Larkspur Lane and a portion of Preserve Boulevard in addition to the Waterford Road area, with the goal of having increased quantities resulting in a project more attractive to contractors. The lone bid received bid for the project is approximately 35% above the estimated cost of the project. Contractor input regarding the lack of bids submitted and high prices indicates that due to increased work backlogs and the labor intensive components to the project, rebidding the project again would not result in lower prices and may actually increase again due to the large demand of concrete subcontractors (for the placement of the curb and gutter and sidewalk). Because the project areas have been designated as priority areas with a history that includes resident falls and injury, staff is recommending approval of the contract.

### **Background Information**

This project consists of the installation of a sump pump collection system within the existing street. This project is a result of the I & I (Inflow & Infiltration) project as well as ongoing drainage issues in the neighborhood. These neighborhoods have been determined to be a priority in regards to sump pump discharge issues. Similar projects in the Debbie Lane and Joseph Curve neighborhoods been successful thus far in resolving I & I issues. In addition to the sump pump collection system, existing curb and gutter will be removed and replaced in areas evaluated to be cracked, sunken or in disrepair in preparation for an upcoming mill and overlay.

Upon completion of this project, a mill and overlay project on the streets within the project area will be scheduled for 2017.

### **Financial Implications**

Funding for this project will be through a combination of the Utility Wastewater Fund, Storm Water Management Fund and Pavement Management Fund.

### **Attachments**

Bid Tab

Contract

**Bid Tab Larkspur Lane / Preserve Blvd Area Sump Pump Collection System**

<b>Sump Pump Collection System</b>					
<b>City of Eden Prairie Project I.C. #14-5867</b>					
<b>Schedule #1</b>				<b>Valley Rich</b>	
<b>NO</b>	<b>DESCRIPTION</b>	<b>EST. QTY.</b>	<b>UNIT</b>	<b>UNIT PRICE</b>	<b>TOTAL</b>
1	Mobilization	1	L. S.	6000.00	\$6,000.00
2	Traffic Control	1	L. S.	3,500.000	\$3,500.00
3	6" Drainpipe - SDR 35 PVC SWR Perforated Pipe	1,354	L. F.	25.000	\$33,850.00
4	4" Draintile (Nonperforated) SDR 26 PVC	200	L. F.	16.500	\$3,300.00
5	NDS 12" x 12" Drainbox 1200 with Grate	11	Each	1,200.000	\$13,200.00
6	Filter Aggregate - MNDOT 3149.2H	150	Ton	40.000	\$6,000.00
7	6" Clean-out	6	Each	250.000	\$1,500.00
8	Connect to Existing Catch Basin	5	Each	750.000	\$3,750.00
9	Remove Bituminous Pavement	552	Sq. Yd.	22.000	\$12,144.00
10	Remove Concrete Curb & Gutter	2,484	L. F.	8.000	\$19,872.00
11	Bituminous Pavement - MNDOT SPNWB240B	552	Sq. Yd.	41.500	\$22,908.00
12	Bituminous Driveways - MNDOT SPWEA230B	200	Sq. Yd.	41.500	\$8,300.00
13	Mountable Concrete Curb & Gutter	2,484	L. F.	38.500	\$95,634.00
14	Concrete Valley Gutter	162	L. F.	38.500	\$6,237.00
15	Aggregate Base CL. 5 (100% crushed quarry rock)	150	Ton	42.000	\$6,300.00
16	Irrigation System Repair	5	Each	500.000	\$2,500.00
17	Premium Topsoil Borrow (LV)	100	Cu. Yd.	55.000	\$5,500.00
18	Hydroseed - MNDOT Seed Mix 25-151	596	Sq. Yd.	3.250	\$1,937.00
19	Street Sweeping	10	Hour	150.000	\$1,500.00
20	Curb Inlet Protection	5	Each	250.000	\$1,250.00
21	Biorolls	100	L. F.	5.000	\$500.00
<b>SCHEDULE #1 TOTAL BASE BID</b>					<b>\$255,682.00</b>

## Bid Tab Larkspur Lane / Preserve Blvd Area Sump Pump Collection System

Sump Pump Collection System					
City of Eden Prairie Project I.C. #14-5867					
Schedule #2				Valley Rich	
NO	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL
1	Mobilization	1	L. S.	6500.00	\$6,500.00
2	Traffic Control	1	L. S.	3,500.000	\$3,500.00
3	6" Drainpipe - SDR 35 PVC SWR Perforated Pipe	2,190	L. F.	25.000	\$54,750.00
4	4" Drintile (Nonperforated) SDR 26 PVC	240	L. F.	16.500	\$3,960.00
5	NDS 12" x 12" Drainbox 1200 with Grate	12	Each	1,200.000	\$14,400.00
6	Filter Aggregate - MNDOT 3149.2H	243	Ton	40.000	\$9,720.00
7	6" Clean-out	8	Each	250.000	\$2,000.00
8	Connect to Existing Catch Basin	6	Each	750.000	\$4,500.00
9	Remove Bituminous Pavement	805	Sq. Yd.	22.000	\$17,710.00
10	Remove Concrete Curb & Gutter	1,880	L. F.	8.000	\$15,040.00
11	Bituminous Pavement - MNDOT SPNWB240B	805	Sq. Yd.	41.500	\$33,407.50
12	Bituminous Driveways - MNDOT SPWEA230B	100	Sq. Yd.	41.500	\$4,150.00
13	Mountable Concrete Curb & Gutter	1,880	L. F.	38.500	\$72,380.00
14	Concrete Valley Gutter	0	L. F.	38.500	\$0.00
15	Aggregate Base CL. 5 (100% crushed quarry rock)	210	Ton	42.000	\$8,820.00
16	Irrigation System Repair	5	Each	500.000	\$2,500.00
17	Premium Topsoil Borrow (LV)	71	Cu. Yd.	55.000	\$3,905.00
18	Hydroseed - MNDOT Seed Mix 25-151	470	Sq. Yd.	3.250	\$1,527.50
19	Street Sweeping	10	Hour	150.000	\$1,500.00
20	Curb Inlet Protection	6	Each	250.000	\$1,500.00
21	Biorolls	100	L. F.	5.000	\$500.00
22	Remove 5' Concrete Walk	409	Sq. Yd.	27.000	\$11,043.00
23	5' Concrete Walk 5"	409	Sq. Yd.	66.000	\$26,994.00
<b>SCHEDULE #2 TOTAL BASE BID</b>					<b>\$300,307.00</b>
<b>SCHEDULE #1 AND SCHEDULE #2 BID</b>					<b>\$555,989.00</b>

FORM OF CONTRACT

THIS AGREEMENT, made and executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_ and between City of Eden Prairie hereinafter referred to as the "CITY", and Valley Rich Company, Inc.

WITNESSETH:

CITY AND CONTRACTOR, for the consideration hereinafter stated, agree as follows:

- I. CONTRACTOR hereby covenants and agrees to perform and execute all the provisions of the Plans and Specifications prepared by the Public Works Department referred to in Paragraph IV, as provided by the CITY for:

I.C. 14-5867, Waterford Road Area and Larkspur Lane Area Sump Pump Collection System Improvements

CONTRACTOR further agrees to do everything required by this Agreement and the Contract Document.

- II. CITY agrees to pay and CONTRACTOR agrees to receive and accept payment in accordance with the prices bid for the unit or lump sum items as set forth in the Proposal Form attached hereto which prices conform to those in the accepted CONTRACTOR'S proposal on file in the office of the City Engineer. The aggregate sum of such prices, based on estimated required quantities is estimated to be \$555,989.00.

- III. Payments to CONTRACTOR by City shall be made as provided in the Contract Documents.

- IV. The Contract Documents consist of the following component parts:

(1) Legal and Procedural Documents

- a. Advertisement for Bids
- b. Instruction to Bidders
- c. Accepted Proposal
- d. Contract Agreement
- e. Contractor's Performance Bond
- f. Contractor's Payment Bond

(2) Special Conditions

(3) Detail Specifications

(4) General Conditions

(5) Plans

(6) Addenda and Supplemental Agreements

The Contract Documents are hereby incorporated with this Agreement and are as much a part of this Agreement as if fully set forth herein. This Agreement and the Contract Documents are the Contract.

V. CONTRACTOR agrees to fully and satisfactorily complete the work contemplated by this Agreement in accordance with the following schedule:

or in accordance with the Contract Documents.

VI. This Agreement shall be executed in two (2) copies.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals as of the date first above written.

In Presence Of:

CITY OF EDEN PRAIRIE, MN.

\_\_\_\_\_

By \_\_\_\_\_  
Its City Mayor

\_\_\_\_\_

And \_\_\_\_\_  
Its City Manager

CONTRACTOR

In Presence Of:

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_  
Title

\_\_\_\_\_

And \_\_\_\_\_  
Title

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Public Hearing		May 24, 2016
<b>DEPARTMENT/DIVISION:</b> Denise Christensen Public Works / Engineering	<b>ITEM DESCRIPTION:</b> Vacation 16-02 Vacation of public Drainage & Utility Esmts over Lot 1, Block 1, Shady Oak Crosstown Addition	<b>ITEM NO.:</b> IX.A.

### **Requested Action**

Move to:

- Close the public hearing; and
- Adopt the resolution vacating the public Drainage and Utility Easements lying over, under and across Lot 1, Block 1, Shady Oak Crosstown Addition, Hennepin County, Minnesota.

### **Synopsis**

The Property Owners have requested the vacation of the drainage and utility easements to facilitate the plat of Shady Oak Crosstown 2nd Addition for building construction.

### **Background Information**

The drainage and utility easements to be vacated were originally dedicated with the plat of Shady Oak Crosstown Addition. In order to accommodate a building addition on the lot, the property owners would like these underlying easements vacated and will dedicate all new drainage and utility easements with the plat of Shady Oak Crosstown 2nd Addition.

The release of the resolution vacating the drainage and utility easements shall be conditioned on the recording new dedicated drainage and utility easements on the plat of Shady Oak Crosstown 2nd Addition.

### **Attachments**

- Resolution
- Location Map
- Site Plan
- Published Notice
- Notification List



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

**RESOLUTION NO. 2016-**

**VACATION OF PUBLIC DRAINAGE AND UTILITY EASEMENTS LYING OVER,  
UNDER AND ACROSS LOT 1, BLOCK 1, SHADY OAK CROSSTOWN ADDITION,  
HENNEPIN COUNTY, MINNESOTA  
VACATION 16-02**

**WHEREAS**, the City of Eden Prairie has certain Drainage and Utility Easements described as follows:

The public Drainage and Utility Easements lying over, under and across Lot 1, Block 1, SHADY OAK CROSSTOWN ADDITION, Hennepin County, Minnesota.

**WHEREAS**, a Public Hearing was held on May 24, 2016, after due notice was given to affected property owners and published in accordance with M.S.A. 412.851; and

**WHEREAS**, the Council has been advised by City Staff that the proposed vacation of the above described Drainage and Utility Easements has no relationship to the comprehensive municipal plan; and

**WHEREAS**, it has been determined that the said Drainage and Utility Easements are not necessary and have no interest to the public, therefore, should be vacated.

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

1. Said Drainage and Utility Easements described above are hereby vacated.
2. The City Clerk shall prepare a Notice of Completion of Proceedings in accordance with M.S.A. 412.851.
3. This Resolution is contingent upon and shall not be effective until the subdivision Shady Oak Crosstown 2nd Addition has been recorded with the County Recorder/Registrar of Titles as applicable. The City Clerk shall not present the Notice of Completion of Proceedings to the County Auditor or file it with the County Recorder/Registrar of Titles until the subdivision Shady Oak Crosstown 2nd Addition is recorded.

**ADOPTED** by the Eden Prairie City Council on May 24, 2016.

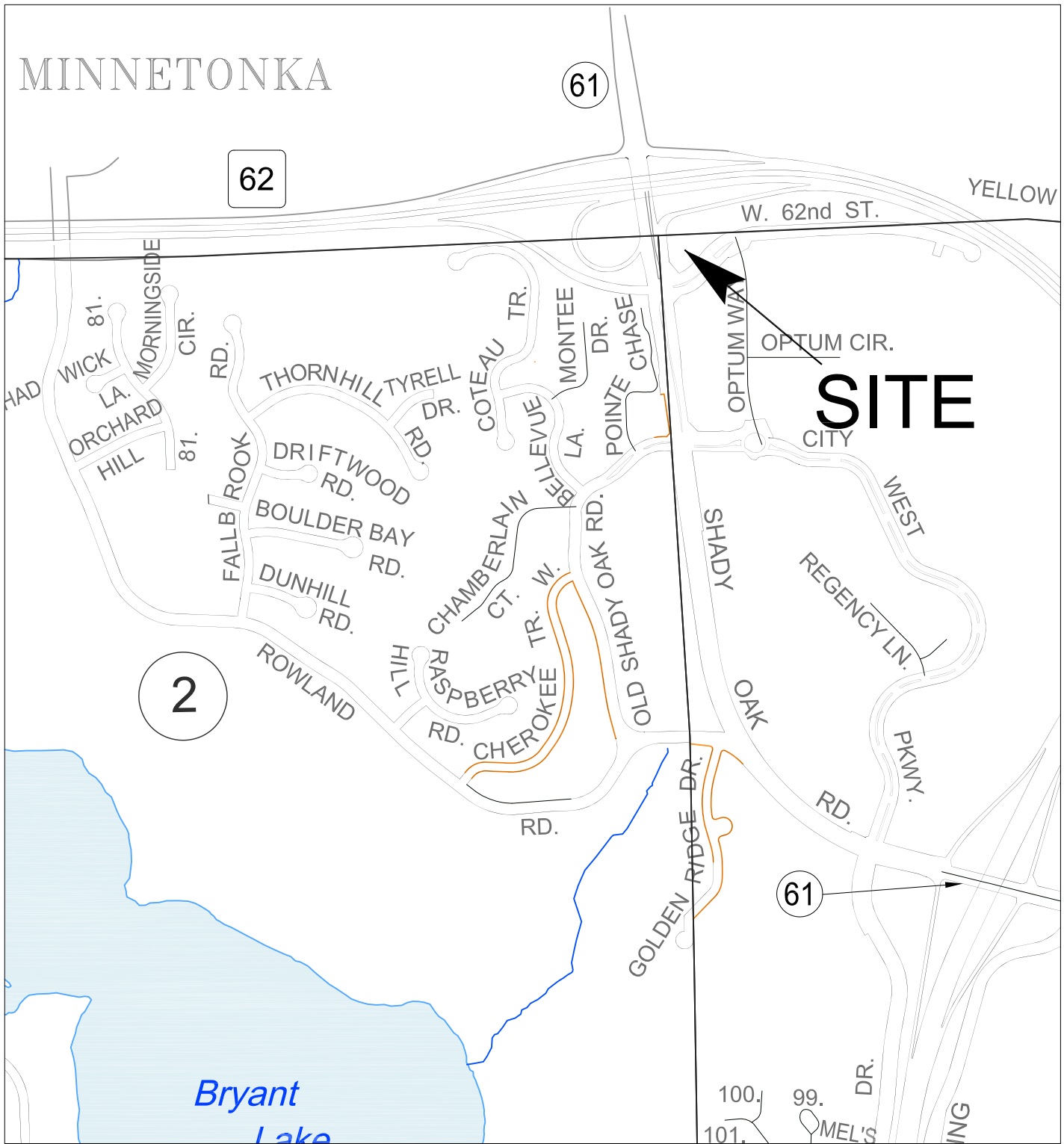
---

Nancy Tyra-Lukens, Mayor

**ATTEST:**

---

Kathleen Porta, City Clerk



VAC 16-02

# LOCATION MAP

FILE NO. 9213

OFFICIAL PLAT

03769

8 Feb 17 1981 CS375990 Doc #30.00

# SHADY OAK CROSTOWN ADDITION

BEARINGS SHOWN ARE ASSUMED  
O DENOTES IRON MONUMENT

EGAN, FIELD & NOWAK, INC.  
SURVEYORS

R.T. DOC. NO. 1906829  
C.R. DOC. NO. 5375990



Highlighted area denotes area of proposed easement vacation.

KNOWN ALL MEN BY THESE PRESENTS: That Anoco Oil Company, a Maryland corporation, owner and proprietor of the following described property situated in the State of Minnesota and County of Hennepin, to wit:

That part of the Northwest Quarter of the Northwest Quarter of Section 1, Township 116, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 1; thence on an assumed bearing of North 87 degrees 01 minute 59 seconds East along the north line of said Northwest Quarter, a distance of 47.37 feet to the point of beginning of the tract of land to be described; thence continuing North 87 degrees 01 minute 59 seconds East along said north line, a distance of 344.79 feet; thence Southwesterly, a distance of 185.01 feet along a non-tangential curve, concave to the southeast, having a radius of 444.26 feet; a chord distance of 183.71 feet and a chord bearing of South 50 degrees 29 minutes 28 seconds West; thence South 39 degrees 04 minutes 36 seconds West, tangent to last described curve, a distance of 63.05 feet; thence Southwesterly, a distance of 113.48 feet along a tangential curve, concave to the northwest, having a radius of 246.48 feet; thence North 40 degrees 36 minutes 33 seconds West, a distance of 66.27 feet; thence North 6 degrees 16 minutes 29 seconds West, a distance of 151.60 feet to the point of beginning.

The Registered portion of which is embraced within:

All that part of the following described tract:  
Tract 1: That part of the Northwest Quarter of the Northwest Quarter, Section 1, Township 116, Range 22 lying West of a line drawn from a point on the North line of said Northwest Quarter of the Northwest Quarter distant 282.5 feet East from the Northwest corner of said Northwest Quarter of the Northwest Quarter to a point on the South line of said Northwest Quarter of the Northwest Quarter distant 282.5 feet East from the Southwest corner of said Northwest Quarter of the Northwest Quarter.

Which lies Northerly of a line drawn parallel with and distant 40 feet Southerly of the following described line, hereinafter referred to as Line D:

Beginning at a point on the North line of Section 1, Township 116, Range 22 distant 577.37 feet Easterly of the Northwest corner of said Section 1; thence run Southwesterly along a curve tangent to said North line having a radius of 408.26 feet (delta angle 49° 57' 23") for a distance of 242.55 feet; thence tangent to said curve for a distance of 63.05 feet; thence deflect to the right along a tangential curve having a radius of 286.48 feet (delta angle 42° 15' 00") for a distance of 211.25 feet; thence tangent to said curve for a distance of 108.11 feet and there terminating.

According to the Government Survey thereof.  
Line caused the same to be surveyed and platted as SHADY OAK CROSTOWN ADDITION and does hereby denote and delineate in the public for public use forever the easement for drainage and utility purposes as shown on this plat.  
In witness whereof said Anoco Oil Company, a Maryland corporation, has caused these presents to be signed by its proper officer this 6 day of October, 1981.

ANOCO OIL COMPANY  
by *C. L. Smith* its Business Development Representative

STATE OF Miss The foregoing instrument was acknowledged before me this 6 day of October, 1981, by C. L. Smith Bus. Dev. Rep. of Anoco Oil Company, a Maryland corporation, on behalf of the corporation.



*Bruce W. Griva*  
Notary Public, Hennepin County, Minnesota  
My commission expires April 22, 1982

I hereby certify that I have surveyed and platted the property described on this plat as SHADY OAK CROSTOWN ADDITION; that this plat is a correct representation of said survey; that all distances are correctly shown on the plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown; that the outside boundary lines are correctly designated on the plat; and that there are no wet lands or public highways to be designated on said plat.

*Bruce W. Griva*  
Bruce W. Griva, Land Surveyor  
Minnesota License No. 17265

STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
The foregoing Surveyor's Certificate was acknowledged before me this 6th day of October, 1981, by Bruce W. Griva, Land Surveyor.



*Bruce W. Griva*  
Notary Public, Hennepin County, Minnesota  
My commission expires April 22, 1982

EDEN PRAIRIE, MINNESOTA  
This plat of SHADY OAK CROSTOWN ADDITION was approved and accepted by the City Council of Eden Prairie, Minnesota, at a regular meeting thereof held this 20th day of October, 1981. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 507.01, Subdivision 2.

*Raymond J. ...* Mayor  
*Carl ...* Manager

PROPERTY TAX AND PUBLIC RECORDS DEPARTMENT, Hennepin County, Minnesota.  
I hereby certify that taxes payable in 1981 and prior years have been paid for land described on this plat.  
Dated this 20th day of February, 1982.

Dale C. Felstad, Hennepin County Auditor  
by *Charles Anderson* deputy

SURVEY DIVISION, Hennepin County, Minnesota  
Pursuant to Chapter 810, Minnesota Laws of 1968, this plat has been approved this 4TH day of February, 1982.  
by *Michael H. Reiter Jr.*

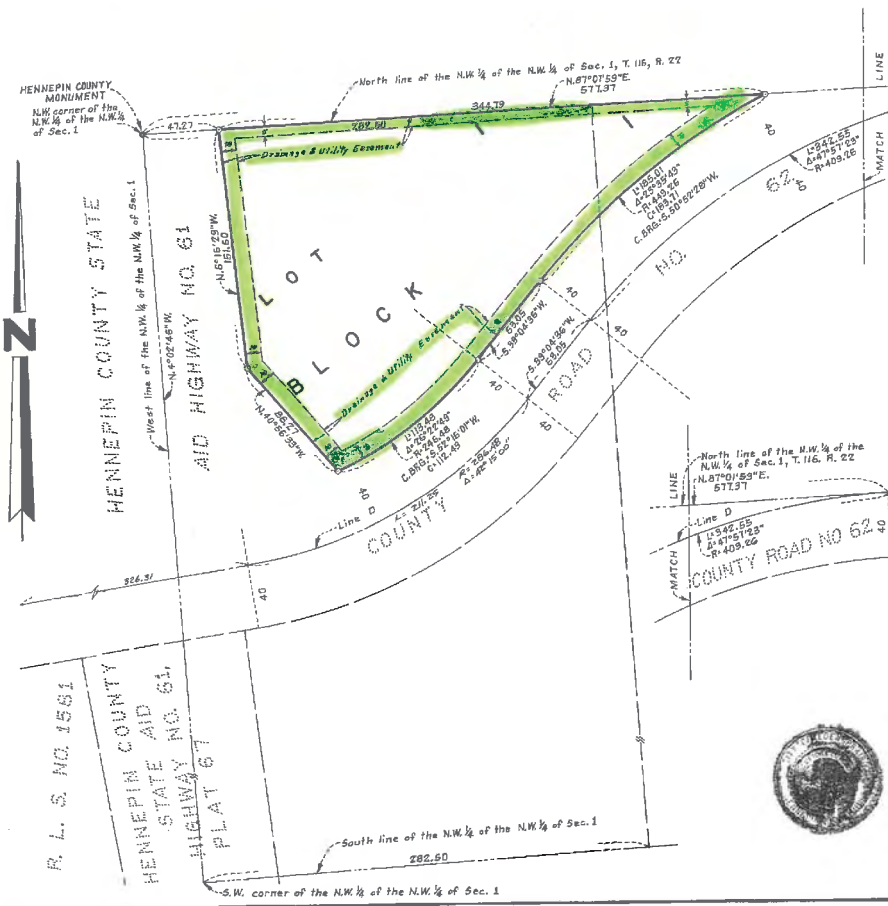
Bernard H. Larson, Hennepin County Surveyor

REGISTRAR OF TITLES, Hennepin County, Minnesota  
I hereby certify that the within plat of SHADY OAK CROSTOWN ADDITION was filed for record in this office this 4TH day of February, 1982, at 10:00 o'clock A. M.  
by *...* deputy

R. Dan Carlson, Registrar of Titles

COUNTY RECORDER, Hennepin County, Minnesota  
I hereby certify that the within plat of SHADY OAK CROSTOWN ADDITION was filed for record in this office this 8th day of February, 1982, at 11:22 o'clock P. M.  
by *M. R. Knause* deputy

R. Dan Carlson, County Recorder



FILE NO. 9213  
456-6837



VACATION 16-02  
NOTICE OF VACATION OF PUBLIC DRAINAGE AND UTILITY EASEMENTS LYING  
OVER, UNDER AND ACROSS LOT 1, BLOCK 1, SHADY OAK CROSSTOWN ADDITION,  
HENNEPIN COUNTY, MINNESOTA

Notice is hereby given that a public hearing will be held before the Eden Prairie City Council at the Eden Prairie City Hall, 8080 Mitchell Road, Eden Prairie, Minnesota, on May 24, 2016 at 7:00 p.m. to hear all persons present upon the proposed vacation of public drainage and utility easements described as follows:

All the public Drainage and Utility Easements lying over, under and across Lot 1, Block 1, SHADY OAK CROSSTOWN ADDITION, Hennepin County, Minnesota.

By Order of the City Council

Published in the Eden Prairie News on May 5, 2016

# NOTIFICATION LIST

## VACATION REQUEST 16-02

A copy of the Public Hearing Notice has been sent to owner of the following parcels:

01-116-22-22-0012

01-116-22-21-0005

A copy of the Public Hearing Notice has been sent to the following Utilities:

CenterPoint Energy

Century Link Communications

Comcast Cable

Xcel Energy

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b> May 24, 2016
<b>SECTION:</b> Public Hearings		
<b>DEPARTMENT/DIVISION:</b> Community Development/Planning Janet Jeremiah/Steve Durham	<b>ITEM DESCRIPTION:</b> Climatech Renovation	<b>ITEM NO.:</b> IX.B.

**Requested Action**

Move to:

- Close the Public Hearing; **and**
- Adopt the Resolution for Site Plan Review on 6.98 acres.

**Synopsis**

The proposed plan includes an exterior improvements; new office and visitor parking entrance; and parking lot re-configuration inclusive of a storm-water infiltration pond. This update will include:

- Updated exterior color and updated architectural elements.
- On the north elevation a thirty-five foot (35') tall raw material silo will be added, a required structure for the Climatech manufacturing process. The silo will be screened with a screening wall which includes metal decorative façade.
- Updated landscape plan that meets code requirements and will include a variety of new ground cover plant material providing color and interest to the site.
- Inclusion of a bicycle rack.
- Due to winter conditions during the review process a Wetland Determination Report along with approval of the field review must be completed.

**Background**

A one-story office/warehouse building of approximately 90,000 square feet was constructed on site in 1974. The current structure meets the current required exterior building materials and structure setback requirements for the I-5 Zoning District. The site has been vacant for several years. Climatech will be completing improvements to the site which will update the building's exterior and parking lot. The improvements will meet or exceed code requirements.

**Planning Commission Recommendation**

The Planning Commission voted 6-0 to recommend approval of the project at the April 25, 2016 meeting.

**Attachments**

1. Resolution Site Plan Review
2. Staff Report dated 04-20-2016
3. Location Map
4. Guide Plan Map
5. Zoning Map
6. Aerial Map
7. Project Narrative 04-13-16
8. Unapproved Planning Commission Minutes dated 04-25-2016

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

**RESOLUTION NO. 2016-\_\_\_**

**A RESOLUTION APPROVING THE SITE PLAN REVIEW OF CLIMATECH RENOVATION**

**WHEREAS**, Climatech, has applied for a Site Plan approval to modify the exterior of the a building with site plan alterations including revision of parking lot and landscape plan for the propeerty at 6950 Washington Avenue South, Eden Prairie, Minnesota; and

**WHEREAS**, the City of Eden Prairie has by virtue of City Code provided for the Site Plan Review of certain areas located within the City; and

**WHEREAS**, the Planning Commission did conduct a public hearing on April 25, 2016 for Climatech, for the site located at 6950 Washington Avenue South, and considered their request for approval of the Site Plan Review and recommended approval of the request to the City Council; and

**WHEREAS**, the City Council did consider the request on May 24, 2016.

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

1. Climatech Renovation, being in Hennepin County, Minnesota, legally described as outlined in Exhibit A, is attached hereto and made a part hereof.
2. That the City Council does grant Site Plan Review approval as outlined in the Staff Report dated April 20, 2016 and based on plans stamp dated April 19, 2016.
3. Prior implementation of the Site Plan a Wetland Determination Report along with approval of the field review, to determine the potential presence of wetland on site, must be completed.

**ADOPTED** by the City Council of the City of Eden Prairie this 24th day of May, 2016.

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

**ATTEST:**

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

# EXHIBIT A

## Legal Description:

That part of the South Half of the Southeast Quarter of the Southeast Quarter of Section 1, Township 116, North, Range 22 West of the 5th Principal Meridian, lying South of the North 70 feet thereof, and lying East of the West 612.85 feet thereof, and lying Southwesterly of the center line of Old Hennepin County Road No. 18 (also known as Washington Avenue), according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.

## Abstract Property



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

**RESOLUTION NO. 2016-**

**A RESOLUTION APPROVING THE SITE PLAN REVIEW  
OF CLIMATECH RENOVATION**

**WHEREAS**, Climatech, has applied for a Site Plan approval to modify the exterior of the a building with site plan alterations including revision of parking lot and landscape plan for the propeerty at 6950 Washington Avenue South, Eden Prairie, Minnesota; and

**WHEREAS**, the City of Eden Prairie has by virtue of City Code provided for the Site Plan Review of certain areas located within the City; and

**WHEREAS**, the Planning Commission did conduct a public hearing on April 25, 2016 for Climatech, for the site located at 6950 Washington Avenue South, and considered their request for approval of the Site Plan Review and recommended approval of the request to the City Council; and

**WHEREAS**, the City Council did consider the request on May 24, 2016.

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

1. Climatech Renovation, being in Hennepin County, Minnesota, legally described as outlined in Exhibit A, is attached hereto and made a part hereof.
2. That the City Council does grant Site Plan Review approval as outlined in the Staff Report dated April 20, 2016 and based on plans stamp dated April 19, 2016.
3. Prior implementation of the Site Plan a Wetland Determination Report along with approval of the field review, to determine the potential presence of wetland on site, must be completed.

**ADOPTED** by the City Council of the City of Eden Prairie this 24th day of May, 2016.

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

**ATTEST:**

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

# EXHIBIT A

## Legal Description:

That part of the South Half of the Southeast Quarter of the Southeast Quarter of Section 1, Township 116, North, Range 22 West of the 5th Principal Meridian, lying South of the North 70 feet thereof, and lying East of the West 612.85 feet thereof, and lying Southwesterly of the center line of Old Hennepin County Road No. 18 (also known as Washington Avenue), according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.

## Abstract Property

## **STAFF REPORT**

**TO:** Planning Commission

**FROM:** Steve Durham, Planner II

**DATE:** April 20, 2016

**SUBJECT:** Climatech

**LOCATION:** 6950 Washington Avenue South, Eden Prairie, Minnesota

**REQUEST:**

- Site Plan Review on 6.98 acres

### **BACKGROUND**

The property is 6.98 acres, currently zoned Industrial (I-5,) and guided for Industrial Development. The surrounding properties to the north, south, east and west are guided industrial. The surrounding properties are zoned either I-2 or I-5.

A one-story office/warehouse building of approximately 90,000 square feet was constructed on site in 1974. The structure meets the required exterior building material and structure setback requirements for the I-5 Zoning District. The site has been vacant for several years. Climatech, currently located in Hopkins, MN, plans to relocate its business operation to this site.

### **SITE PLAN**

The proposed plan includes exterior improvements; new office and visitor parking entrance in the southeast portion of the site; and parking lot re-configuration inclusive of a storm-water infiltration basin.

On the north elevation a thirty-five foot (35') tall raw material silo will be added, a required structure for the Climatech manufacturing process. The silo will be screened with a screening wall which includes metal decorative façade. Other improvements include a new loading dock area, new employee entrances, and a new main entry feature. The renovation also includes new windows and doors as well as updated paint colors. The proposed exterior elevations meet and exceed current code requirements of 75% specially designed precast concrete with decorative design and not more than 25% metal, vinyl, stucco, plastic or a combination of these materials.

The original parking lot configuration provides 213 stalls. The parking lot will be re-configured to accommodate new loading dock doors located on the north elevation. Climatech parking needs include 189 parking stalls. The site plan includes 203 parking stalls of which 17 will be in proof of parking.

### **TREE LOSS, LANDSCAPING AND SCREENING**

The landscaping and tree replacement plan provided for the project meets the City Code requirement. The proposed landscaping calls for improving the landscape material by adding perennials and ornamental grasses to add interest and color to the site. Tree replacement required is 22 caliper inches. The landscape requirement for the site is 168 caliper inches. Total required landscape is 190

**April 20, 2016**

caliper inches.

**SITE LIGHTING**

The existing site lighting on the north will remain. Compliance with lighting standards will be verified at the time of building permit issuance.

**STAFF RECOMMENDATION**

Recommend approval of the following request:

- Site Plan Review on 6.98 acres

The Recommendation is based on plans stamp dated April 13, 2016, the Staff Report dated April 20, 2016 and the following conditions:

Prior to land alteration permit issuance for the property, the proponent shall:

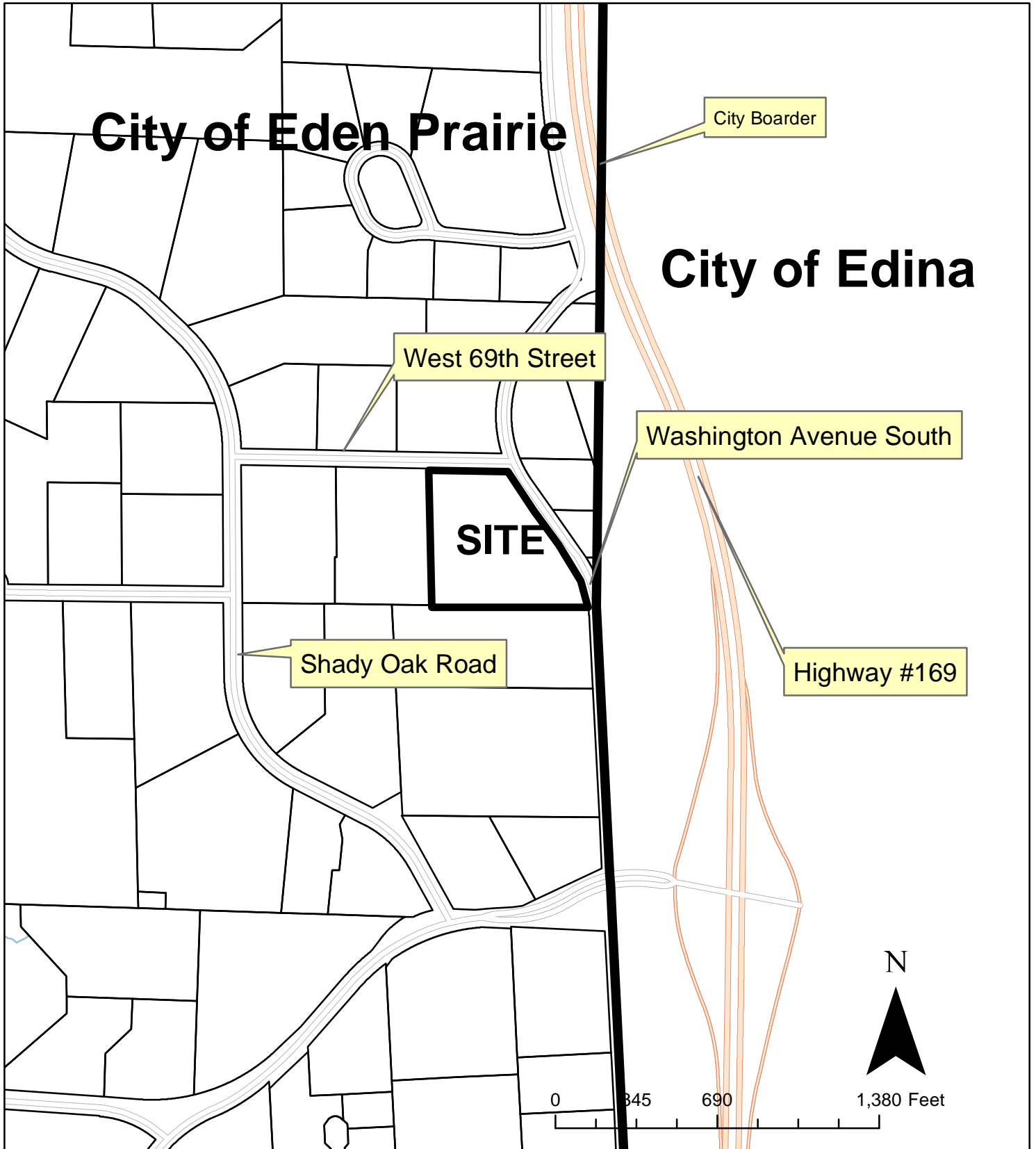
1. Provide a tree replacement/landscaping surety equivalent to 150% of the cost of the landscaping plan for review and approval.
2. The wetland Determination and/or Delineation must be reviewed and approved by the City and Nine Mile Creek Watershed District prior to a Land Alteration Permit.
3. Submit detailed storm water runoff, utility and erosion control plans for review by the City Engineer and Watershed District.
4. Obtain approval of plans from the Watershed District.
5. Install erosion control and tree protection fencing at the grading limits of the property for review and approval by the City Engineer and City Forester.

Prior to building permit issuance for the property, the applicant shall

1. Provide a photometric plan consistent with 0.5 foot candles at the property line, light poles not greater than 25' with downcast cut-off fixtures.

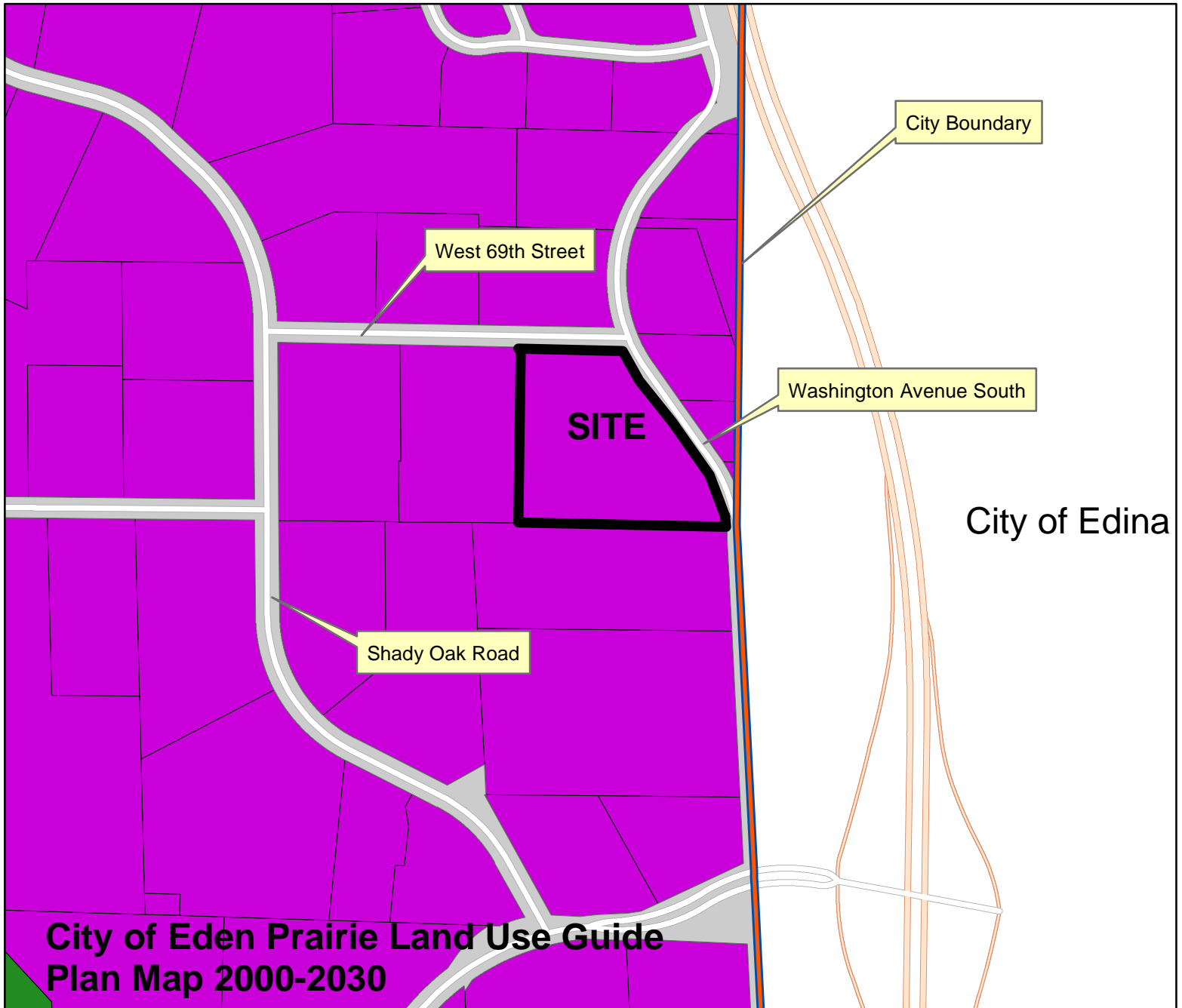
# Area Location Map - Climatech

Site Address: 6950 Washington Avenue, Eden Prairie, MN



# Guide Plan Map - Climatech

6950 Washington Avenue South, Eden Prairie, MN 55344

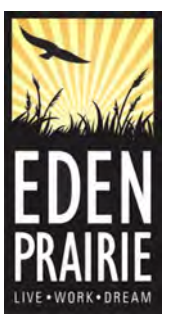


- |  |                         |
|--|-------------------------|
| Rural Residential 0.10 Units/Acre            | Neighborhood Commercial |
| Low Density Residential 0-2.5 Units/Acre     | Community Commercial    |
| Low Density/Public/Open Space                | Regional Commercial     |
| Medium Density residential 2.5-10 Units/Acre | Town Center             |
| Medium Density Residential/Office            | Park/Open Space         |
| High Density Residential 10-40 Units/Acre    | Public/Quasi-Public     |
| Airport                                      | Golf Course             |
| Office                                       | Church/ Cemetary        |
| Office/Industrial                            | Open Water              |
| Office/Public/Open Space                     | Right-Of-Way            |
| Industrial                                   | CityLimits              |

- Streams
- Principal Arterial
- A Minor Arterial
- B Minor Arterial
- Major Collector
- Minor Collector

DATE Approved 03-19-03    DATE Revised 12-06-06  
 DATE Revised 01-07-05    DATE Revised 03-01-07  
 DATE Revised 11-07-05    DATE Revised 06-01-07  
 DATE Revised 02-23-06    DATE Revised 10-01-07  
 DATE Revised 03-23-06    DATE Revised 03-01-08  
 DATE Revised 06-23-06    DATE Revised 03-01-09

DECLARATION: The City of Eden Prairie does not warrant the accuracy or the completeness of the information contained in this map. It is your responsibility to verify the accuracy of the information on this map with the City of Eden Prairie. The City of Eden Prairie does not warrant the accuracy of the information on this map for any purpose other than the intended use of the information. The City of Eden Prairie does not warrant the accuracy of the information on this map for any purpose other than the intended use of the information. The City of Eden Prairie does not warrant the accuracy of the information on this map for any purpose other than the intended use of the information.







**Aerial Map: Climatech**  
**Address: 6950 Washington Avenue South**  
**Eden Prairie, Minnesota 55344**





# MEMORANDUM

1000 Twelve Oaks Center Drive      Tel 952.426.7400  
Suite 200                                      Fax 952.426.7440  
Wayzata, MN 55391                        www.mohagenhansen.com

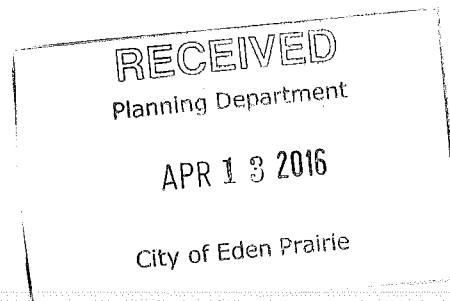


**Date:** April 13, 2016

**Memo To:** Julia Klima, AICP  
City Planner  
City of Eden Prairie

**From:** Stephen M. Oliver  
Project Architect

**Project:** Climatech Renovation  
6950 Washington Avenue South  
MH Project No. 15413.0ROC



## General Description:

The project involves the purchase and renovation of an existing building and property located at 6950 Washington Ave. South, Eden Prairie, MN 55344. The building includes 93,880 square feet and will house Climatech's corporate offices as well as manufacturing and warehouse space. Climatech is an Employee-owned company and has been in the market to establish a home that will not only provide a branding statement for employees and customers, but also provide much-needed efficiency improvements in manufacturing flow and energy usage. Climatech's emphasis on lean manufacturing has been hampered by its own organic growth in an existing leased space of 85,000 square feet.

The project includes both interior and exterior renovation to provide the client with new office and production space that will meet the demands for workflow and efficiency and to provide a facelift for the 1970's vintage building. The exterior improvements will include new entry features for the east, main entry as well as for three employee entry points on the north. New windows will be installed in unused overhead door locations and a new set of loading dock doors will be developed centrally on the north side to serve the two major production departments – fabrication and extrusion. On the south side of the building, new windows and façade treatments will be developed as a part of the employee break area. The west façade will not undergo any demolition or gain any new features, but will be painted to match the adjacent north and south facades.

Site improvements include a new visitor parking area on the east, upgrades to lot striping generally, rain gardens and landscape enhancements to bring the site into compliance with current site standards. As a critical component of Climatech's operations, a 35' tall raw material silo will be installed on the north side of the building and will be fully screened with decorative cladding that will match the cladding details used at the new entry points around the building.

In this redevelopment effort, the team wishes to develop a new look and image for the property and for Climatech so as to promote and celebrate the brand as well as to promote and celebrate the resurrection of a rundown and underutilized commercial property.

To that end, the design team believes heavy screening in the front of the building runs contrary to the ideas of renovating, reusing, and repurposing existing sites, as well as showing the community and clients a strong message of promoting businesses within the City. Allowing a company to show off its new look and provide an enjoyable entry experience for its customers and clients is very important.

The approach taken and documented in the submittal drawings offers the following for the east or front façade on Washington Ave. S.:

- Allow open views from the road to the front door to promote easy wayfinding and direction for visitors, as well as present a new, modern public image. Safety and security is also enhanced with better visibility.

**Memorandum**

Climatech Renovation

April 13, 2016

Page 2 of 4

- Use year-round shrubs (boxwood hedge) directly in front of the limited visitor parking, to a height of approx. 4', to allow a generally unobstructed view to the new door/entrance/canopy, yet screening the car parking. This accomplishes the city's main concern, which is to screen cars from the public street whenever possible.
- Use larger evergreens at the building corners to better frame this side of the building, as well as partially screen the adjacent building and larger employee parking areas behind.
- Use colorful ornamental trees at the building corner closest to the entrance drive to better attract the visitors eye toward the front of the building rather than down the side (employee section).
- Use a large rain garden along the front of the property for storm water control (infiltration), as well as provide a native foreground planting display for the building main entrance.
- Augment the new entrance and loop island with additional native perennial material, as well as hardy shrub roses, to relate to the rain garden, but planted in a more formal style to relate to the modern forms of the new entrance/canopy.

Our team believes this approach accomplishes the intent of the city ordinance while also promoting building renovation and revitalization while achieving the goals the owner has for visibility and operations alike.

**Property Data:**

City Guide Plan Framework: Guided as Industrial use and will remain as such.

Zoning: I-5.

Variances Requested: None.

Existing Land Use: Industrial.

**Phasing and Construction Schedule:**

It is the intent of the contractor to start renovation activities in the spring of 2016 with occupancy of the building being expected in September of 2016. Climatech will take 4 months to move and set up in the new building, with plans to be fully operational at the end of 2016.

**Development Method:**

Climatech will be the building owner and will contract directly with Rochon Corporation for all construction work.

**Legal Instruments, association documents, easements, covenants, and restrictions:**

There are no specific legal instruments in play for this project, although consideration for expanding a utility easement at the city's request is pending.

**Building Use Profile:** refer to drawings

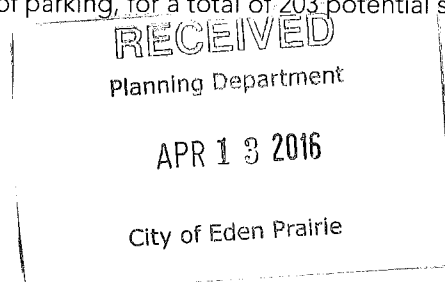
Building Area: 93,880 GSF – includes office, warehouse and manufacturing spaces.

Site Area: 304,886 SF

Floor Area Ratio: .29

Base Area Ratio: .29

Parking: 189 parking stalls required. 186 provided, with 17 stalls as proof of parking, for a total of 203 potential stalls.



**Memorandum**

Climatech Renovation  
April 13, 2016  
Page 3 of 4

**Signage:**

The existing monument sign will be remodeled with new graphics and materials to match the building features. The signs at the east entry and northeast employee entry will be channel frame type letters, internally lit. Refer to the 3D renderings for the locations of wall mounted signs.

**Lighting:**

The existing site lighting on the north will remain and will be reused in place as the parking configuration is essentially the same. Site lighting for the east parking lot will likely be developed from building mounted fixtures at existing locations or from a single pole mounted fixture, depending on how the existing fixtures perform.

**Transportation:**

Refer to separate TDM and Traffic Plan Summary documentation.

**Environmental Assessment:**

The Owner has submitted the Phase 1 Environmental Survey to the city directly, as of 3/11/16. The report indicates there to be approximately 48 square feet of asbestos containing gray 12"x12" floor tile and mastic in the building. No other hazardous materials or other environmental hazards were found on the site.

**Shoreland Ordinance/Floodplain Restrictions:**

Not applicable.

**Airport Zones:**

Not applicable.

**Disposition of Excess Land:**

Not applicable.

**Limits of Disturbance:**

Refer to civil drawings.

**Transportation:**

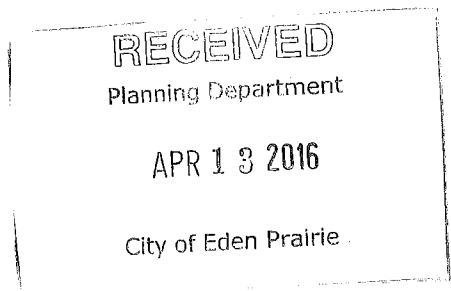
Refer to separate TDM and Traffic Plan Summary documentation.

**Stormwater Management:**

The Climatech site improvements will include upgraded stormwater infrastructure to meet stormwater requirements for water quality, volume and rate control standards set by the Nine Mile Creek Watershed District and City of Eden Prairie. This is mainly achieved through the construction of an infiltration basin on the south east side of the site. Please see the Stormwater report prepared for this project for more detailed design information.

**Water and Wetlands:**

Refer to separate wetland report for in depth information.



The desktop review of the Assessment Area identified one potential wetland along the west boundary of the Assessment Area. The potential wetland area is shown on the NWI map (Figure 4), with the boundaries of the wetland extending across the west boundary of the Assessment Area. This potential wetland is also shown on the City of Eden Prairie Water Body Location Diagram and identified as Basin ID 01-44-A (Figure 6). The boundaries of the potential

**Memorandum**

Climatech Renovation

April 13, 2016

Page 4 of 4

wetland area on the City Water Body Location Diagram do not extend into the Assessment Area. The desktop review did not identify any other potential wetlands on the Assessment Area.

The field survey identified one potential wetland along the west boundary, which corresponds to the NWI mapped wetland and City Wetland ID 01-44-A. The east boundary of this potential wetland generally follows the toe of the fill slope along the lot line and is located at an elevation of approximately 867 ft. msl (Figure 5). The estimated boundary of this potential wetland is located 40 to 50 feet west of the west of the Assessment Area property.

**Wildlife:**

This industrial/office site has been developed since the 1970's. There is no specific wildlife present or impacted by the scope of this project.

**Soils:**

Refer to soil boring report.

**Existing Structures:**

The existing building, built in the 1970's, will remain on the site and will be modified as needed to accommodate the needs of the new owner and their specific operations. There are no abandoned or historic structures on the site.

**Steep Slopes and Bluffs:**

Not applicable.

**Owner:**

Climatech is purchasing the building from the seller for their own use.

**Developer:**

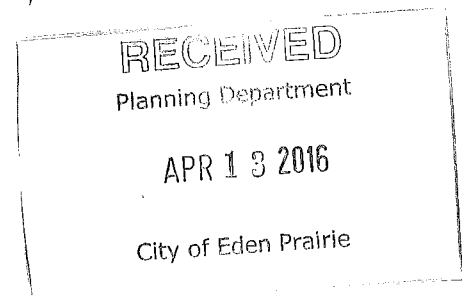
Rochon Corporation is serving as the General Contractor for the project, but there is no "developer" involved in the project, which is a build-to-suit project.

**Financing:**

Climatech is pursuing private financing for site and building improvements. The financing package is not finalized.

**Land and Building Use Profile**

As an owner-occupied building, the building will be 100% used by Climatech, solely for their business operations.



**UNAPPROVED MINUTES**

**EDEN PRAIRIE PLANNING COMMISSION**

**MONDAY, APRIL 25, 2016**

**7:00 P.M., CITY CENTER  
Council Chambers  
8080 Mitchell Road**

**COMMISSION MEMBERS:**

Jon Stoltz, John Kirk, Travis Wuttke, Ann Higgins,  
Charles Weber, Andrew Pieper, Ed Farr, Mark  
Freiberg, Tom Poul

**CITY STAFF:**

Julie Klima, City Planner  
Rod Rue, City Engineer  
Matt Bourne, Manager of Parks and Natural Resources  
Julie Krull, Recording Secretary

**I. CALL THE MEETING TO ORDER**

**II. PLEDGE OF ALLEGIANCE – ROLL CALL**

Vice Chair Pieper called the meeting to order at 7:00 p.m. Poul and Stoltz were absent.

**III. APPROVAL OF AGENDA**

**MOTION:** Wuttke moved, seconded by Higgins, to approve the agenda. **Motion carried 7-0.**

**IV. MINUTES**

**A. PLANNING COMMISSION MEETING HELD ON APRIL 11, 2016**

**MOTION:** Kirk moved, seconded by Farr, to approve the Planning Commission Minutes. **Motion carried 7-0.**

**V. INFORMATIONAL MEETINGS**

**VI. PUBLIC MEETINGS**

**VII. PUBLIC HEARINGS**

**A. CLIMATECH RENOVATION**

Location: 6950 Washington Ave S  
Request for:

## PLANNING COMMISSION MINUTES

April 25, 2016

Page 2

- Site Plan Review on 6.98 acres

Beverly Lexvold, Director of Operations with Climatech Renovation introduced herself.

Peter Coil, attorney representing Climatech Renovation, presented the proposal. He stated their plan would be to recast the existing building. Their business is currently located in Hopkins and they would like to relocate to Eden Prairie in the location of the proposal. He utilized the overhead projector to show what the existing building would look like. They would like to update the building both in the interior and exterior. For the exterior portion, it would be re-skinned to give it a contemporary look. The original parking lot would be re-configured to accommodate the new loading dock doors. Climatech would need 189 parking stalls and the new plan includes 203 parking stalls, of which 17 would be in the proof of parking. There would be a new office and visitor parking entrance in the southeast portion of this site. There will also be a rain garden structure added for storm water and they will upgrade the landscaping. There will also be a silo structure added to this site, but will have a screening wall around it.

Vice Chair Pieper asked Klima to review the staff report. Klima said this is for a site plan approval with dock doors, landscaping, proof of parking and an exterior silo, which will be screened. The project proponent did an excellent job on this and staff recommendation is for approval based on the staff report.

Higgins asked in regards to the windows what the metal extension was. Mr. Coil was unable to answer that question. Farr said it was most likely used for sun screening.

Vice Chair Pieper opened the meeting up for public input. There was no input.

Farr asked if there was going to be a re-plat. Klima said there was not going to be a re-plat.

Farr commented he thought this was an excellent example of upgrading a building in the Golden Triangle Area.

**MOTION:** Kirk moved, seconded by Higgins, to close the public hearing. **Motion carried 7-0.**

**MOTION:** Kirk moved, seconded by Higgins, to recommend approval of the Site Plan Review on 6.98 acres based on plans stamp dated April 13, 2016 and the information included in the staff report dated April 19, 2016. **Motion carried 6-0, Wuttke abstained.**

**PLANNING COMMISSION MINUTES**

April 25, 2016

Page 3

**VIII. PLANNERS' REPORT**

**IX. MEMBERS' REPORT**

**X. CONTINUING BUSINESS**

**XI. NEW BUSINESS**

**XII. ADJOURNMENT**

**MOTION:** Weber moved, seconded by Wuttke, to adjourn the Planning Commission meeting. **Motion carried 7-0.**

Chair Stoltz adjourned the meeting at 7:15 p.m.

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b> May 24, 2016
<b>SECTION:</b> Payment of Claims		
<b>DEPARTMENT/DIVISION:</b> Sue Kotchevar, Office of the City Manager/Finance	<b>ITEM DESCRIPTION:</b> Payment of Claims	<b>ITEM NO.:</b> X.

**Requested Action**

Move to: Approve the Payment of Claims as submitted (roll call vote)

**Synopsis**

Checks	246223 - 246574
Wire Transfers	1013877 - 1014049
Wire Transfers	5754 - 5774



City of Eden Prairie  
Council Check Summary  
5/24/2016

Division	Amount	Division	Amount
	193,421	304 Senior Board	195
100 City Manager	878	308 E-911	436
101 Legislative	1,740	309 DWI Forfeiture	18,441
102 Legal Counsel	48,138	315 Economic Development	27,761
110 City Clerk	1,660	445 Cable PEG	6,164
111 Customer Service	7,773	502 Park Development	3,979
112 Human Resources	998	509 CIP Fund	3,507
113 Communications	15,557	522 Improvement Projects 2006	3,965
114 Benefits & Training	19,214	528 Shady Oak Rd-CR 61 North	374
130 Assessing	1,027	529 Shady Oak Rd-CR 61 South	1,593
131 Finance	150	530 Pool Upgrade/Expansion	
132 Housing and Community Services	16,909	531 Eden Prairie Road	1,793
133 Planning	1,019	534 WEST 70TH ST. EXTENSION	798
136 Public Safety Communications	2,324	535 TC Station / NS Road	2,866
137 Economic Development	309	536 General LRT	72,513
138 Community Development Admin.	169	804 100 Year History	403
151 Park Maintenance	70,890	<b>Total Capital Projects</b>	<b><u>144,788</u></b>
153 Organized Athletics	15,819		
154 Community Center	38,395	601 Prairie Village Liquor	180,311
156 Youth Programs	3,645	602 Den Road Liquor	258,356
157 Special Events	400	603 Prairie View Liquor	199,879
158 Senior Center	2,903	605 Den Road Building	1,738
159 Recreation Administration	1,000	701 Water Fund	195,510
160 Therapeutic Recreation	680	702 Sewer Fund	23,204
162 Arts	192	703 Storm Drainage Fund	25,498
163 Outdoor Center	3,779	<b>Total Enterprise Fund</b>	<b><u>884,495</u></b>
164 Park Rental Facilities	452		
168 Arts Center	350	316 WAFTA	50
180 Police	37,000	803 Escrow Fund	1,814
184 Fire	15,873	806 SAC Agency Fund	9,940
186 Inspections	2,485	807 Benefits Fund	771,543
200 Engineering	10,802	809 Investment Fund	9,081
201 Street Maintenance	15,938	812 Fleet Internal Service	157,608
202 Street Lighting	72,341	813 IT Internal Service	87,827
<b>Total General Fund</b>	<b><u>604,229</u></b>	814 Facilities Capital ISF	207,977
		815 Facilities Operating ISF	53,869
301 CDBG	7,256	816 Facilities City Center ISF	164,111
303 Cemetary Operation	20	817 Facilities Comm. Center ISF	96,713
312 Recycle Rebate	295	<b>Total Internal Svc/Agency Funds</b>	<b><u>1,560,534</u></b>
<b>Total Special Revenue Fund</b>	<b><u>7,571</u></b>		
		<b>Report Total</b>	<b><u>3,202,667</u></b>
438 G.O. Bonds (SCBA) 2011B	525		
441 2012A G.O. Refunding Bonds	525		
<b>Total Debt Service Fund</b>	<b><u>1,050</u></b>		

City of Eden Prairie  
Council Check Register by GL  
5/24/2016

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
246270	254,918	HEALTHPARTNERS	Accounts Receivable	Health and Benefits	Premiums May 2016
5763	252,864	ULTIMATE SOFTWARE GROUP, THE	Federal Taxes Withheld	Health and Benefits	Payroll Taxes
246471	189,976	CENTRAL ROOFING COMPANY	Other Contracted Services	Facilities Capital	Den Road Bldg Roof
5761	155,102	PUBLIC EMPLOYEES RETIREMENT ASSOCIATION	PERA	Health and Benefits	PERA
1014049	144,393	XCEL ENERGY	Electric	Public Safety Communications	Electric bills for multi locations
5774	111,480	MINNESOTA DEPT OF REVENUE	Sales Tax Payable	Historical Culture	MN Dept of Rev-Sales tax
1014042	111,320	TOWMASTER INC	Equipment Parts	Capital Impr/Maint Fixed	New #168 Plow equipment
5766	102,737	MINNESOTA DEPT OF REVENUE	Sales Tax Payable	General Fund	MN Dept of Rev-Sales tax
246276	94,327	HENNEPIN COUNTY TREASURER	Licenses & Taxes	City Hall - Direct Costs	
246514	68,761	METRO TRANSIT	Design & Engineering	TC Station / NS Road	
5757	58,764	US BANK	Building Repair & Maint.	Sewer System Maintenance	
246407	53,398	NELSON AUTO CENTER, INC	Autos	Utility Operations - General	
1013939	52,381	MIDWAY FORD	Autos	Police	
1013907	50,495	GREGERSON ROSOW JOHNSON & NILAN LTD	Legal	Rehab	
246391	43,940	JOHNSON BROTHERS LIQUOR CO	Liquor Product Received	Prairie Village Liquor Store	
5764	34,146	ICMA RETIREMENT TRUST-457	Deferred Compensation	Health and Benefits	
5765	31,078	EMPOWER	Deferred Compensation	Health and Benefits	
1013904	30,393	CENTERPOINT ENERGY SERVICES INC	Gas	Water Treatment Plant	
1013903	27,147	CDW GOVERNMENT INC.	Hardware - Rpr & Mtc	IT Operating	
1014020	26,939	DIVERSE BUILDING MAINTENANCE	Tenant 1 - Janitor Service	Prairie Village Liquor Store	
246552	26,015	SOUTHERN WINE & SPIRITS OF MN	Liquor Product Received	Prairie Village Liquor Store	
246537	25,242	RANGER	Autos	Police	
246279	24,375	HOME TITLE	Other Contracted Services	TIF-EDEN SHORES SENIOR HOUSING	
1013977	23,775	SHI CORP	Software	IT Operating	
246426	23,737	SOUTHERN WINE & SPIRITS OF MN	Liquor Product Received	Prairie Village Liquor Store	
246510	23,265	JOHNSON BROTHERS LIQUOR CO	Liquor Product Received	Prairie Village Liquor Store	
246286	22,271	JOHNSON BROTHERS LIQUOR CO	Liquor Product Received	Den Road Liquor Store	
246348	22,232	ABM ONSITE SERVICES-MIDWEST	Janitor Service	City Hall - CAM	
1013961	21,191	FRONTIER PRECISION INC	Capital Under \$25,000	Utility Operations - General	
1014015	20,969	WSB & ASSOCIATES INC	Other Contracted Services	Capital Impr/Maint Fixed	
246285	20,145	JJ TAYLOR DISTRIBUTING MINNESOTA	Liquor Product Received	Prairie Village Liquor Store	
246379	19,850	GREEN ACRES SPRINKLER COMPANY	Improvements to Land	Capital Outlay Parks	
246373	19,805	FLEET MAINTENANCE INC	Equipment Repair & Maint	Fleet Operating	
246323	19,370	SOUTH METRO PUBLIC SAFETY TRAINING FACIL	Other Contracted Services	Public Safety Training Facilit	
246390	18,181	JJ TAYLOR DISTRIBUTING MINNESOTA	Liquor Product Received	Prairie Village Liquor Store	
246316	18,072	PRAIRIE PARTNERS SIX LLP	Waste Disposal	Prairie Village Liquor Store	
246288	17,960	JP MORGAN CHASE BANK N A	Miscellaneous	DWI Forfeiture	
1014034	17,535	PEARSON BROTHERS INC	Sweeping	Storm Drainage	
246325	16,941	SOUTHERN WINE & SPIRITS OF MN	Liquor Product Received	Prairie Village Liquor Store	
246262	16,902	GENERAL OFFICE PRODUCTS COMPANY	Office Supplies	Pool Maintenance	
1014036	16,342	REINDERS INC	Chemicals	Park Maintenance	
246509	15,941	JJ TAYLOR DISTRIBUTING MINNESOTA	Liquor Product Received	Prairie Village Liquor Store	
1014041	15,559	THORPE DISTRIBUTING	Liquor Product Received	Den Road Liquor Store	
246465	15,409	BREAKTHRU BEVERAGE MINNESOTA BEER LLC	Liquor Product Received	Prairie Village Liquor Store	
5772	14,788	LIFE INSURANCE COMPANY OF NORTH AMERICA	Life Insurance EE/ER	Health and Benefits	
246298	14,708	MANSFIELD OIL COMPANY	Motor Fuels	Fleet Operating	
1014046	14,515	WALL TRENDS INC	Supplies - General Bldg	Ice Arena Maintenance	
246436	14,321	UNIVERSAL ATHLETIC SERVICES INC	Operating Supplies	Park Maintenance	
246317	14,030	PRAIRIEVIEW RETAIL LLC	Building Rental	Prairie View Liquor Store	
246283	13,932	INTEGRITY REMODELING & DESIGN GROUP LLC	Capital Under \$25,000	Police	
246234	13,868	BREAKTHRU BEVERAGE MINNESOTA BEER LLC	Liquor Product Received	Prairie Village Liquor Store	
5769	12,970	RADIANT SYSTEMS	Bank and Service Charges	Prairie View Liquor Store	
246409	12,874	NORTH STAR PUMP SERVICE	Equipment Repair & Maint	Sewer Liftstation	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
246495	12,509	GRAYMONT	Treatment Chemicals	Water Treatment Plant	
1013923	11,962	THORPE DISTRIBUTING	Liquor Product Received	Prairie View Liquor Store	
246466	11,389	BREAKTHRU BEVERAGE MINNESOTA WINE & SPIR	Liquor Product Received	Prairie Village Liquor Store	
246460	11,013	BERGERSON-CASWELL INC	Equipment Repair & Maint	Water Wells	
1013890	10,086	INTEREUM INC	Building	CmtyCtr Pool Upgrade/Expansion	
246374	10,000	GENERAL CORROSION CORPORAITON	Design & Engineering	Engineering	
246515	9,841	METROPOLITAN COUNCIL	Other Revenue	SAC Agency Fund	
5768	9,728	SELECT ACCOUNT	HSA - Employer	Health and Benefits	
246355	9,708	BREAKTHRU BEVERAGE MINNESOTA WINE & SPIR	Liquor Product Received	Den Road Liquor Store	
1013933	9,600	BRAUN INTERTEC CORPORATION	Testing - Soil Boring	Capital Impr/Maint Fixed	
246532	9,574	PHILLIPS WINE AND SPIRITS INC	Liquor Product Received	Prairie Village Liquor Store	
1013966	9,491	HEWLETT-PACKARD COMPANY	Computers	IT Operating	
246235	9,225	BREAKTHRU BEVERAGE MINNESOTA WINE & SPIR	Liquor Product Received	Prairie Village Liquor Store	
246227	9,081	ADVANTUS CAPITAL MANAGEMENT INC	Interest	Investment Fund	
5770	8,707	US BANK - CREDIT CARD MERCHANT ONLY	Bank and Service Charges	Finance	
246525	8,360	NORTHLAND RECREATION LLC	Landscape Materials/Supp	Park Maintenance	
1013964	8,334	HANSEN THORP PELLINEN OLSON	Other Contracted Services	Capital Maint. & Reinvestment	
246354	7,923	BREAKTHRU BEVERAGE MINNESOTA BEER LLC	Liquor Product Received	Prairie Village Liquor Store	
246569	7,903	WELSH COMPANIES	Other Contracted Services	Facilities Capital	
1013976	7,875	SENIOR COMMUNITY SERVICES	Other Contracted Services	Housing and Community Service	
246399	7,716	MINNESOTA DEPARTMENT OF EMPLOYMENT	Unemployment Compensation	Organizational Services	
1014038	7,632	SHI CORP	Software Maintenance	IT Operating	
246524	7,481	NAC	Other Contracted Services	Facilities Capital	
246438	7,442	VISION TECHNOLOGY SOLUTIONS, LLC	Other Contracted Services	Communications	
246414	7,108	PHILLIPS WINE AND SPIRITS INC	Liquor Product Received	Prairie View Liquor Store	
1013971	6,818	METRO SALES INCORPORATED*	Other Rentals	IT Operating	
246223	6,742	3D SPECIALTIES	Asphalt Overlay	Street Maintenance	
1013916	6,640	PRAIRIE ELECTRIC COMPANY	Contract Svcs - Fire/Life/Sfty	City Hall - CAM	
246396	6,618	METRO TRANSIT	Design & Engineering	TC Station / NS Road	
1013981	6,481	THORPE DISTRIBUTING	Liquor Product Received	Prairie Village Liquor Store	
246477	6,407	CRETEX SPECIALTY PRODUCTS	Repair & Maint. Supplies	Sewer System Maintenance	
1013911	6,307	MITY-LITE INC	Capital Under \$25,000	Fitness/Conference - Cmty Ctr	
246403	6,300	MN MECHANICAL SOLUTIONS INC	Equipment Repair & Maint	Water Treatment Plant	
246541	6,250	RIGHTLINE DESIGN LLC	Other Contracted Services	Communications	
246340	5,873	VALLEY RICH CO INC	Equipment Repair & Maint	Water System Maintenance	
246295	5,703	LEAGUE MN CITIES INS TRUST	Insurance Claims	Utility Operations - General	
5759	5,685	SELECT ACCOUNT	HRA	Health and Benefits	
1013900	5,551	A-SCAPE INC	Contract Svcs - Snow Removal	Fire Station #5	
246324	5,500	SOUTHDALE YMCA	Refunds	CDBG - Public Service	
246422	5,403	SHORT ELLIOTT HENDRICKSON INC	Design & Engineering	Improvement Projects 2006	
246357	5,403	CARVER COUNTY LICENSE CENTER	Autos	Park and Recreation	
246236	5,260	BWS HEATING & AIR CONDITIONING	Contract Svcs - HVAC	Park Shelters	
1013974	5,231	PIONEER MANUFACTURING COMPANY	Operating Supplies	Park Maintenance	
1013951	5,153	ADVANCED ENGINEERING & ENVIRONMENTAL SE	Design & Engineering	Sewer Liftstation	
1013929	5,100	XCEL ENERGY	Electric	Prairie Village Liquor Store	
5756	5,062	GENESIS EMPLOYEE BENEFITS, INC	Other Contracted Services	Health and Benefits	
246551	5,000	SOUTHDALE YMCA YOUTH DEVELOPMENT PROGRAM	Other Contracted Services	Housing and Community Service	
246311	4,823	PHILLIPS WINE AND SPIRITS INC	Liquor Product Received	Den Road Liquor Store	
246455	4,686	ARTISAN BEER COMPANY	Liquor Product Received	Prairie Village Liquor Store	
1014013	4,620	VAN PAPER COMPANY	Tenant 1 - Cleaning Suppli	City Center Operations	
1013963	4,500	GRANICUS INC	Other Hardware	Cable PEG	
246484	4,192	EDUCATION AND TRAINING SERVICES	Instructor Service	Utility Operations - General	
1013888	4,158	GUNNAR ELECTRIC CO INC	Other Contracted Services	Street Lighting	
246378	4,135	GRAYMONT	Treatment Chemicals	Water Treatment Plant	
246264	4,108	GRAYMONT	Treatment Chemicals	Water Treatment Plant	
246483	3,875	EDEN PRAIRIE EARLY CHILDHOOD	Other Contracted Services	Housing and Community Service	
246503	3,844	HOHENSTEINS INC	Liquor Product Received	Prairie Village Liquor Store	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
1013899	3,827	WENCK ASSOCIATES INC	Design & Engineering	Storm Drainage	
246472	3,771	CENTURYLINK	Computers	Cummins Grill	
246392	3,770	JOHNSON CONTROLS	Other Contracted Services	Pool Maintenance	
246562	3,735	VALLEY RICH CO INC	Equipment Repair & Maint	Water System Maintenance	
246384	3,707	HOHENSTEINS INC	Liquor Product Received	Prairie View Liquor Store	
246432	3,693	TKO WINES, INC	Liquor Product Received	Den Road Liquor Store	
246310	3,629	PAUSTIS & SONS COMPANY	Liquor Product Received	Prairie Village Liquor Store	
1013877	3,625	ADAMS PEST CONTROL INC	Contract Svcs - Pest Control	Fitness/Conference - Cmty Ctr	
246278	3,618	HOHENSTEINS INC	Liquor Product Received	Prairie Village Liquor Store	
246413	3,491	PAUSTIS & SONS COMPANY	Liquor Product Received	Prairie Village Liquor Store	
246352	3,434	BERNICK'S WINE	Liquor Product Received	Prairie Village Liquor Store	
246252	3,386	EHLERS & ASSOCIATES INC	Other Contracted Services	TIF-COLUMBINE ROAD HOUSING	
5771	3,367	AMERICAN EXPRESS	Bank and Service Charges	Finance	
246508	3,240	INTERTECH INC	Contract Development	IT Operating	
1013969	3,214	JEFFERSON FIRE & SAFETY INC	Protective Clothing	Fire	
246530	3,214	PAUSTIS & SONS COMPANY	Liquor Product Received	Prairie Village Liquor Store	
1013937	3,120	GREENSIDE INC	Contract Svcs - Snow Removal	Fire Station #1	
246229	3,108	ARTISAN BEER COMPANY	Liquor Product Received	Prairie Village Liquor Store	
246249	3,095	DPC INDUSTRIES INC	Treatment Chemicals	Water Treatment Plant	
1014032	3,070	ON CALL SERVICES	Operating Supplies	Day Care	
246570	3,029	WINE MERCHANTS INC	Liquor Product Received	Prairie Village Liquor Store	
246313	3,000	POSTAGE BY PHONE RESERVE ACCOUNT	Postage	Customer Service	
1013921	3,000	ST CROIX ENVIRONMENTAL INC	OCS-Well Field Mgmt	Water Wells	
1013901	2,922	ASPEN WASTE SYSTEMS INC.	Waste Disposal	Fire Station #3	
1013881	2,896	CHEMSEARCH	Supplies - Plumbing	City Hall - CAM	
1013954	2,865	BARR ENGINEERING COMPANY	Other Contracted Services	Storm Drainage	
1013897	2,824	VAN PAPER COMPANY	Cleaning Supplies	Park Shelters	
246526	2,618	NVR SURFACES LLC	Other Contracted Services	Facilities Capital	
246351	2,590	ARTISAN BEER COMPANY	Liquor Product Received	Prairie Village Liquor Store	
246415	2,587	PRAIRIE EQUIPMENT COMPANY	Repair & Maint. Supplies	Water System Maintenance	
1013948	2,525	VINOCOPIA	Liquor Product Received	Prairie Village Liquor Store	
246557	2,462	TKO WINES, INC	Liquor Product Received	Prairie Village Liquor Store	
246451	2,402	ACCELERATED TECHNOLOGIES LLC	Capital Under \$25,000	Ice Operations	
246343	2,382	WINE MERCHANTS INC	Liquor Product Received	Prairie Village Liquor Store	
1013909	2,375	MENARDS	Small Tools	Water System Maintenance	
246481	2,337	E A SWEEN COMPANY	Merchandise for Resale	Concessions	
1013999	2,297	MCGINTY-VANSICKLE, PATTI	Tuition Reimbursement/School	Organizational Services	
1014047	2,266	WINE COMPANY, THE	Liquor Product Received	Prairie Village Liquor Store	
1013984	2,187	WINE COMPANY, THE	Liquor Product Received	Prairie Village Liquor Store	
246505	2,115	HRD CONSULTING	Conference/Training	Fire	
246533	2,113	PINE PRODUCTS INC	Landscape Materials/Supp	Park Maintenance	
1013956	2,100	CLAUDE'S CERAMIC TILE INC	Contract Svcs - General Bldg	Dunn Brothers	
1014023	2,089	GRAINGER	Repair & Maint. Supplies	Fitness/Conference - Cmty Ctr	
1013998	2,055	JOHNSON, TROY	Tuition Reimbursement/School	Organizational Services	
246385	2,027	HOME DEPOT CREDIT SERVICES	Supplies - Plumbing	Dunn Brothers	
246224	2,000	A.M. PHOTOGRAPHY	Other Contracted Services	Communications	
246306	2,000	NORATEK SOLUTIONS INC	Software Maintenance	IT Operating	
246441	1,948	WINE MERCHANTS INC	Liquor Product Received	Prairie Village Liquor Store	
246389	1,924	INTERNATIONAL UNION OF OPERATING	Union Dues Withheld	Health and Benefits	
246440	1,923	WELSH COMPANIES	Other Contracted Services	Public Works/Parks	
246516	1,863	MIDWEST COCA COLA BOTTLING COMPANY	Liquor Product Received	Concessions	
246488	1,838	FIRE SAFETY USA INC	Equipment Repair & Maint	Fire	
246519	1,800	MINNESOTA POST BOARD	Licenses & Taxes	Police	
246542	1,800	SCOTT NELSON COACHING INC	Training Supply-Weekly	Fire	
5755	1,781	GENESIS EMPLOYEE BENEFITS, INC	Other Contracted Services	Health and Benefits	
5754	1,766	GENESIS EMPLOYEE BENEFITS, INC	Other Contracted Services	Health and Benefits	
246301	1,699	MIDWEST COCA COLA BOTTLING COMPANY	Merchandise for Resale	Concessions	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
246328	1,675	STATE OF MINNESOTA	Autos	Police	
1013928	1,653	WINE COMPANY, THE	Liquor Product Received	Prairie Village Liquor Store	
246333	1,617	TACTICAL SOLUTIONS INC	Equipment Repair & Maint	Police	
1014019	1,613	CENTERPOINT ENERGY	Gas	Sewer Liftstation	
246342	1,575	WELLS FARGO BANK MINNESOTA NA	Paying Agent	2012A GO Refunding Bonds	
1014028	1,567	LANDS END CORPORATE SALES	Clothing & Uniforms	Police	
1014037	1,545	SENIOR COMMUNITY SERVICES	Refunds	CDBG - Public Service	
1014014	1,523	VINOCOPIA	Liquor Product Received	Prairie Village Liquor Store	
246383	1,519	HIGHWAY 5 BP	Operating Supplies	Police	
1014025	1,511	HANSEN THORP PELLINEN OLSON	Other Contracted Services	Sewer Capital	
246363	1,500	DAKOTA COUNTY TECHNICAL COLLEGE	Tuition Reimb-College Core	Fire	
246480	1,462	DOMACE VINO	Liquor Product Received	Prairie Village Liquor Store	
246326	1,449	SPARTAN STAFFING LLC	Other Contracted Services	Park Maintenance	
246427	1,449	SPARTAN STAFFING LLC	Other Contracted Services	Park Maintenance	
246553	1,449	SPARTAN STAFFING LLC	Other Contracted Services	Park Maintenance	
1014021	1,430	DREW'S CONCESSIONS LLC	Capital Under \$25,000	Concessions	
246520	1,405	MINNESOTA SAFETY SERVICES LLC	Other Contracted Services	Pool Operations	
246457	1,404	BAUER BUILT TIRE AND BATTERY	Tires	Fleet Operating	
246428	1,397	STAPLES ADVANTAGE	Office Supplies	Customer Service	
1013952	1,396	ANCHOR PAPER COMPANY	Office Supplies	Police	
1013892	1,334	LYNDALE PLANT SERVICES	Contract Svcs - Int. Landscape	City Hall - CAM	
246468	1,311	CALIFORNIA CONTRACTORS SUPPLIES INC	Repair & Maint. Supplies	Utility Operations - General	
1013962	1,262	GRAINGER	Repair & Maint. Supplies	Water Metering	
246489	1,250	FLEET MAINTENANCE INC	Equipment Repair & Maint	Fleet Operating	
246424	1,241	SITEONE LANDSCAPE SUPPLY, LLC	Landscape Materials/Supp	Miller Park	
1014000	1,202	METROPOLITAN FORD	Equipment Parts	Fleet Operating	
246461	1,200	BERNICK'S WINE	Liquor Product Received	Prairie View Liquor Store	
246329	1,185	STOP STICK LTD.	Capital Under \$25,000	Police	
246494	1,178	GRAPE BEGINNINGS	Liquor Product Received	Prairie Village Liquor Store	
1013898	1,167	VINOCOPIA	Liquor Product Received	Prairie Village Liquor Store	
246273	1,154	HENNEPIN COUNTY I/T DEPT	Software Maintenance	Public Safety Communications	
246473	1,145	CENTURYLINK	Telephone	IT Operating	
246296	1,124	MACQUEEN EQUIPMENT INC	Equipment Parts	Fleet Operating	
1014016	1,099	BELLBOY CORPORATION	Liquor Product Received	Prairie Village Liquor Store	
246547	1,074	SITEONE LANDSCAPE SUPPLY, LLC	Landscape Materials/Supp	Park Maintenance	
1014024	1,072	GRANICUS INC	Equipment Repair & Maint	Cable PEG	
246375	1,067	GENERAL OFFICE PRODUCTS COMPANY	Office Supplies	Utility Operations - General	
1013957	1,060	DAKOTA SUPPLY GROUP INC	Merchandise for Resale	Water Metering	
1013902	1,018	BELLBOY CORPORATION	Liquor Product Received	Prairie Village Liquor Store	
1013914	1,007	NUCO2 INC	Supplies - Pool	Pool Maintenance	
246456	1,000	ARVIG	Fiber Lease Payments	IT Operating	
246397	995	MIDWEST COCA COLA BOTTLING COMPANY	Liquor Product Received	Concessions	
1013924	992	US HEALTH WORKS MEDICAL GRP MN, PC	Employment Support Test	Organizational Services	
1013985	982	XCEL ENERGY	Contract Svcs - Electrical	Miller Park	
246564	967	VINE LINE DISTRIBUTION LLC	Liquor Product Received	Prairie View Liquor Store	
246555	963	SPOK, INC.	Pager & Cell Phone	IT Operating	
246518	939	MINNESOTA PIPE AND EQUIPMENT*	Equipment Parts	Water System Maintenance	
246536	902	RANDY'S ENVIRONMENTAL SERVICES	Waste Disposal	City Hall - CAM	
246548	881	SMALL LOT MN	Liquor Product Received	Prairie Village Liquor Store	
1014048	870	WM MUELLER AND SONS INC	Landscape Materials/Supp	Street Maintenance	
246410	867	NORTHERN LIGHTS DISPLAY	Operating Supplies	Wine Club/Events	
1013972	864	NUCO2 INC	Supplies - Pool	Pool Maintenance	
246320	854	SCHONSTEDT INSTRUMENT COMPANY	Equipment Repair & Maint	Water System Maintenance	
246408	851	NORTH CENTRAL INTERNATIONAL	Equipment Repair & Maint	Fleet Operating	
246377	844	GRAPE BEGINNINGS	Liquor Product Received	Prairie Village Liquor Store	
246419	830	RETROFIT COMPANIES, INC, THE	Supplies - Electrical	Prairie Village Liquor Store	
1014027	813	KIDS TEAM TENNIS LLC	Instructor Service	Tennis	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
1013992		798 BRAUN INTERTEC CORPORATION	Testing - Soil Boring	WEST 70TH ST. EXTENSION	
1013926		797 WALL TRENDS INC	Contract Svcs - Gen. Bldg	City Center Operations	
246338		777 US BANK	Other Contracted Services	Health and Benefits	
246253		760 EMERGENCY AUTOMOTIVE TECHNOLOGY INC	Equipment Parts	Fleet Operating	
1014026		758 HORIZON COMMERCIAL POOL SUPPLY	Supplies - Pool	Pool Maintenance	
1013891		757 JOHN HENRY FOSTER MINNESOTA INC	Maintenance Contracts	Water Treatment Plant	
246528		736 ONCE UPON A STAR	Instructor Service	Preschool Events	
246331		733 SYMBOLARTS	Operating Supplies	Safety Camp	
1013983		698 US HEALTH WORKS MEDICAL GRP MN, PC	Employment Support Test	Organizational Services	
246308		697 OLYMPIC HILLS GOLF CLUB	Miscellaneous	Internal Events	
246467		697 BUCHIREDDYGARI PRATHIMA	Deposits-P&R Refunds	Community Center Admin	
246255		689 EXECUTIVE OCEAN	Awards	City Council	
1013882		689 CLAREY'S SAFETY EQUIPMENT	Equipment Repair & Maint	Emergency Preparedness	
246334		674 TASER INTERNATIONAL	Clothing & Uniforms	Police	
1013906		673 GRAINGER	Repair & Maint. Supplies	Housing and Human Svcs	
246346		667 PETTY CASH	Mileage & Parking	Police	
1014018		665 CDW GOVERNMENT INC.	Hardware - Other	IT Operating	
246506		663 INDEED BREWING COMPANY LLC	Liquor Product Received	Prairie View Liquor Store	
246507		660 INDOFF INCORPORATED	Office Supplies	Customer Service	
246259		658 FREEVEND TECHNICAL SERVICES	Equipment Repair & Maint	Concessions	
246321		654 SEASONAL SERVICES ON LAKE MINNETONKA	Other Contracted Services	Smetana Park	
246458		652 BAUHAUS BREW LABS, LLC	Liquor Product Received	Prairie Village Liquor Store	
246402		625 MN CIT OFFICERS ASSOCIATION	Tuition Reimbursement/School	Police	
5773		613 MINNESOTA DEPT OF REVENUE	Motor Fuels	Fleet Operating	
1014033		606 PARLEY LAKE WINERY	Liquor Product Received	Prairie Village Liquor Store	
1014010		595 STONEBROOKE	Autos	Fleet Operating	
246369		593 EDINA, CITY OF	Other Contracted Services	Cable PEG	
1013970		591 MENARDS	Operating Supplies	Fleet Operating	
246540		591 RIFFLAND SOLUTIONS	Other Contracted Services	Storm Drainage	
246232		589 BERNICK'S WINE	Liquor Product Received	Prairie View Liquor Store	
1013905		583 DMX MUSIC	Other Contracted Services	Den Road Liquor Store	
246498		576 HD SUPPLY WATERWORKS LTD	Equipment Parts	Water System Maintenance	
246322		576 SNAP-ON TOOLS	Small Tools	Fleet Operating	
246251		570 EDINA, CITY OF	Other Contracted Services	Communications	
246499		559 HENNEPIN COUNTY ACCOUNTS RECEIVABLE	Board of Prisoner	Police	
246386		558 HOPKINS SCHOOL DISTRICT ISD270	Fiber Lease Payments	IT Operating	
1014011		543 THE OASIS GROUP	Employee Assistance	Organizational Services	
1013994		539 CARLSTON, BRANDON	Clothing & Uniforms	Police	
1013973		539 OENO'S DISTRIBUTION	Liquor Product Received	Prairie Village Liquor Store	
246360		539 CINTAS CORPORATION #470	Cleaning Supplies	Utility Operations - General	
246353		537 BOURGET IMPORTS	Liquor Product Received	Prairie Village Liquor Store	
246292		525 LACKEY, SHARI	Refunds	Environmental Education	
1013938		521 METROPOLITAN FORD	Equipment Repair & Maint	Fleet Operating	
1013912		515 MTI DISTRIBUTING INC	Equipment Repair & Maint	Park Maintenance	
246332		505 SYSCO WESTERN MINNESOTA	Merchandise for Resale	Concessions	
246418		500 REMARKABLE REPTILES, THE	Other Contracted Services	Outdoor Center	
246485		498 ENKI BREWING COMPANY INC	Liquor Product Received	Prairie Village Liquor Store	
246567		496 WALSER CHRYSLER JEEP DODGE	Autos	Fleet Operating	
246280		494 IDEA CREEK LLC,THE	Operating Supplies	Fire	
246260		492 GARELICK STEEL CO INC	Equipment Parts	Fleet Operating	
1013910		491 METRO SALES INCORPORATED*	Equipment Rentals	IT Operating	
1013989		483 BERRY COFFEE COMPANY	Merchandise for Resale	Concessions	
246431		480 SYSCO WESTERN MINNESOTA	Merchandise for Resale	Concessions	
1014017		475 BOYER TRUCKS	Equipment Parts	Fleet Operating	
246267		469 HALDEMANN HOMME INC	Repair & Maint. Supplies	Fitness/Conference - Cmty Ctr	
1013927		463 WATSON CO INC, THE	Merchandise for Resale	Concessions	
246381		460 HENNEPIN COUNTY ATTORNEY'S OFFICE	Miscellaneous	DWI Forfeiture	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
246404		450 MN STATE BOARD OF ASSESSORS	Dues & Subscriptions	Assessing	
1013886		441 FASTENAL COMPANY	Small Tools	Fleet Operating	
246345		440 SCOTT COUNTY SHERIFF'S OFFICE	Deposits	Escrow	
246464		429 BOURGET IMPORTS	Liquor Product Received	Prairie Village Liquor Store	
246265		428 GS DIRECT	Operating Supplies	Engineering	
1013946		427 VAN PAPER COMPANY	Cleaning Supplies	Senior Center	
1013955		425 BELLBOY CORPORATION	Liquor Product Received	Prairie Village Liquor Store	
246443		423 DAVIS JOHN	AR Utility	Water Enterprise Fund	
246300		416 MEDICINE LAKE TOURS	Special Event Fees	Trips	
1013997		414 FASTENAL COMPANY	Repair & Maint. Supplies	Fleet Operating	
1014031		410 MTI DISTRIBUTING INC	Equipment Parts	Fleet Operating	
246263		407 GRAPE BEGINNINGS	Liquor Product Received	Prairie View Liquor Store	
246474		407 CHLORINATED WATER SUPPLY	Outside Water Sales	Escrow	
246339		407 VAISALA	Other Contracted Services	Snow & Ice Control	
246544		403 SIGNSOURCE	Signs	Prairie View Liquor Store	
246387		400 IN THE HEART OF THE BEAST	Other Contracted Services	Special Initiatives	
1013965		396 HD SUPPLY FACILITIES MAINTENANCE	Supplies - General Bldg	City Center Operations	
246416		393 PRICKETT, WILLIAM	Clothing & Uniforms	Inspections-Administration	
246238		389 CAPREF EDEN PRAIRIE LLC	Refunds	Housing and Community Service	
1013880		386 BOUNDLESS NETWORK	Operating Supplies	Community Center Admin	
1013967		385 IDEAL SERVICE INC	Repair & Maint. Supplies	Water Treatment Plant	
1013922		385 STREICHERS	Clothing & Uniforms	Police	
1014022		382 GRAFIX SHOPPE	Autos	Police	
246237		377 CALIFORNIA CONTRACTORS SUPPLIES INC	Operating Supplies	Utility Operations - General	
246550		375 SOUNDS GREAT & SPECIAL SOUNDS INC	Other Contracted Services	Special Events & Trips	
246359		372 CENTURYLINK	Telephone	IT Telephone	
1013986		368 ADAMS PEST CONTROL INC	Contract Svcs - Pest Control	Historical Buildings	
246245		360 DALE GREEN COMPANY, THE	Landscape Materials/Supp	Capital Maint. & Reinvestment	
246490		358 FRED PRYOR SEMINARS	Conference/Training	Street Maintenance	
246470		355 CBIZ FINANCIAL SOLUTIONS INC	Other Contracted Services	Health and Benefits	
1013908		348 HD SUPPLY FACILITIES MAINTENANCE	Supplies - Security	Dunn Brothers	
246366		347 EDEN PRAIRIE COMMUNITY EDUCATION	Instructor Service	Senior Center Programs	
1014029		347 LOCATORS & SUPPLIES INC	Patching Asphalt	Street Maintenance	
246228		332 AMERIPRIDE LINEN & APPAREL SERVICES	Janitor Service	Prairie Village Liquor Store	
246370		332 ENKI BREWING COMPANY INC	Liquor Product Received	Prairie View Liquor Store	
1013960		331 FERRELLGAS	Gas	Dorenkemper House	
246240		326 CLEAR RIVER BEVERAGE CO	Liquor Product Received	Prairie View Liquor Store	
246258		325 FLEET MAINTENANCE INC	Equipment Repair & Maint	Fleet Operating	
1014003		321 NORTHERN SAFETY TECHNOLOGY INC	Equipment Parts	Fleet Operating	
1013995		319 CHEMSEARCH	Contract Svcs - Ice Rink	Ice Arena Maintenance	
1014006		317 PORTA, KITTY	Mileage & Parking	City Clerk	
246447		315 M-R SIGN CO INC	Signs	Park Maintenance	
1013953		314 BANK BEER CO	Liquor Product Received	Prairie Village Liquor Store	
246275		306 HENNEPIN COUNTY TREASURER	Licenses & Taxes	Park Maintenance	
1013936		305 FASTENAL COMPANY	Small Tools	Fleet Operating	
1013942		305 SCHLUETER, PAUL	Conference/Training	Fleet Operating	
246546		303 SIGNSOURCE	Contract Svcs - Gen. Bldg	City Center Operations	
246442		300 WOODBURY PUBLIC SAFETY	Other Contracted Services	Organizational Services	
246448		300 3RD LAIR	Instructor Service	Camps	
246504		300 HOIGAARD'S CUSTOM CANVAS	Repair & Maint. Supplies	Water Treatment Plant	
246479		300 DEALER AUTOMOTIVE SERVICES INC	Autos	Police	
5760		296 SELECT ACCOUNT	Other Deductions	Health and Benefits	
1013959		292 EDEN PRAIRIE FIREFIGHTER'S RELIEF ASSOC	Union Dues Withheld	Health and Benefits	
246572		289 WORKS COMPUTING INC	Hardware - Rpr & Mtc	IT Operating	
246371		289 ENVIRONMENTAL RESOURCE ASSOCIATES	Laboratory Chemicals	Water Treatment Plant	
1013879		285 BERRY COFFEE COMPANY	Merchandise for Resale	Concessions	
1013996		285 CLAREY'S SAFETY EQUIPMENT	Safety Supplies	Customer Service	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
1014001		284 MINNESOTA CLAY CO. USA	Operating Supplies	Arts Center	
5762		283 ULTIMATE SOFTWARE GROUP, THE	Garnishment Withheld	Health and Benefits	
246433		280 TRI STATE BOBCAT INC.	Landscape Materials/Supp	Street Maintenance	
246318		279 PRINT SOURCE MINNESOTA	Operating Supplies	City Council	
246257		278 FLAGSHIP RECREATION	Equipment Repair & Maint	Park Maintenance	
246256		275 FIRE SAFETY USA INC	Operating Supplies	Street Maintenance	
246573		272 Z WINES USA LLC	Liquor Product Received	Prairie Village Liquor Store	
246417		271 PROP - DO NOT USE	United Way Withheld	Health and Benefits	
246299		270 MARCO INC	Equipment Repair & Maint	IT Telephone	
246486		267 EPIC EVENT RENTAL	Operating Supplies	Wine Club/Events	
246521		263 MINNESOTA VALLEY ELECTRIC COOPERATIVE	Electric	Traffic Signals	
246364		257 E A SWEEN COMPANY	Merchandise for Resale	Concessions	
246446		249 FINANCE & COMMERCE	Dues & Subscriptions	Economic Development	
1013896		249 TOLL GAS AND WELDING SUPPLY	Equipment Parts	Fleet Operating	
246225		240 AARP DRIVERS SAFETY	Other Contracted Services	Senior Center Programs	
246362		240 COMMUNITY HEALTH CHARITIES OF MINNESOTA	United Way Withheld	Health and Benefits	
246350		237 AMERIPRIDE LINEN & APPAREL SERVICES	Janitor Service	Prairie Village Liquor Store	
246266		236 GYM WORKS	Equipment Repair & Maint	Fitness Center	
246401		234 MINNETONKA POLICE DEPARTMENT	Clothing & Uniforms	Police	
246356		228 BROTHERS FIRE PROTECTION	Contract Svcs - Fire/Life/Sfty	City Hall - CAM	
1013975		227 PRAIRIE ELECTRIC COMPANY	Equipment Repair & Maint	Water Wells	
1013889		226 HENKE, RONNIE	Tuition Reimbursement/School	Police	
246420		225 RIGHTWAY GLASS INC	Equipment Repair & Maint	Fleet Operating	
246398		222 MIDWEST PLAYSCAPES	Equipment Repair & Maint	Park Maintenance	
1014040		219 STREICHERS	Clothing & Uniforms	Fire	
246421		215 SCOTT COUNTY SHERIFFS OFFICE	Deposits	Escrow	
246500		213 HENNEPIN COUNTY TREASURER	Operating Supplies-Escrow	Planning	
246376		212 GERTENS	Landscape Materials/Supp	Street Maintenance	
246412		212 PARK JEEP INC	Autos	Police	
1013990		210 BERTELSON TOTAL OFFICE SOLUTIONS	Office Supplies	Utility Operations - General	
246226		210 AARP DRIVERS SAFETY	Other Contracted Services	Senior Center Programs	
1013943		205 SHAMROCK GROUP, INC - ACE ICE	Liquor Product Received	Prairie Village Liquor Store	
246344		200 GANDRUD, DAVID	Deposits	Escrow	
246558		200 T-MOBILE USA	Other Contracted Services	Police	
246425		200 SNAP-ON TOOLS	Small Tools	Fleet Operating	
246560		194 UNITED STATES POSTAL SERVICE	Postage	Senior Center Admin	
1013931		191 BERTELSON TOTAL OFFICE SOLUTIONS	Office Supplies	Utility Operations - General	
246293		190 LAKE COUNTRY DOOR LLC	Contract Svcs - General Bldg	Public Works/Parks	
1013988		189 BERKBIGLER, RIK	Travel Expense	Fire	
246394		185 KENDELL DOORS & HARDWARE INC	Tenant 1 - - Supplies	City Hall - Direct Costs	
246512		183 KEEPRS INC.	Clothing & Uniforms	Reserves	
246482		181 EARL F ANDERSEN INC	Signs	Recycle Rebate	
246303		180 MINNESOTA POST BOARD	Licenses & Taxes	Police	
1013894		180 PROSOURCE SUPPLY	Cleaning Supplies	Pool Maintenance	
246233		179 BOURGET IMPORTS	Liquor Product Received	Prairie Village Liquor Store	
246307		178 OFFICE OF MN IT SERVICES	Other Contracted Services	Police	
246254		178 EPIC EVENT RENTAL	Operating Supplies	Wine Club/Events	
246291		175 KEEPRS INC.	Clothing & Uniforms	Fire	
246411		171 OLSEN'S EMBROIDERY/COMPANY	Clothing & Uniforms	Utility Operations - General	
1014030		171 MENARDS	Operating Supplies	Community Center	
1013945		166 STONEBROOKE	Autos	Police	
246319		160 SCHAFFER, PHIL	Instructor Service	Senior Center Admin	
246549		160 SONETICS CORPORATION	Equipment Repair & Maint	Public Safety Communications	
246502		159 HI-LINE INC	Equipment Parts	Fleet Operating	
1013980		157 TEE JAY NORTH INC	Contract Svcs - General Bldg	Ice Arena Maintenance	
246372		155 FIRE SAFETY USA INC	Protective Clothing-Misc.	Fire	
246453		155 AMERIPRIDE LINEN & APPAREL SERVICES	Janitor Service	Prairie Village Liquor Store	



Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
1014004		154 PARK SUPPLY OF AMERICA INC	Supplies - Plumbing	City Center Operations	
246239		150 CENTER FOR SOMALIA HISTORY STUDIES	Tuition Reimbursement/School	Police	
246314		150 PRAHA DISTRIBUTING	Liquor Product Received	Prairie Village Liquor Store	
1013925		150 USA SECURITY	Maintenance Contracts	Water Treatment Plant	
1013920		147 SPS COMPANIES	Supplies - Plumbing	Fire Station #3	
1014008		146 QUALITY PROPANE	Motor Fuels	Ice Arena Maintenance	
1013919		146 SIRCHIE FINGER PRINT LABORATORIES	Operating Supplies	Police	
246241		146 COMCAST	Equipment Repair & Maint	E-911 Program	
1013915		145 OSI BATTERIES INC	Operating Supplies	Traffic Signs	
246244		145 CONTINENTAL SAFETY EQUIPMENT	Repair & Maint - Ice Rink	Ice Arena Maintenance	
246282		141 INDEED BREWING COMPANY LLC	Liquor Product Received	Prairie View Liquor Store	
246274		137 HENNEPIN COUNTY RESIDENT & REAL ESTATE	Other Contracted Services	Engineering	
246493		136 GALCO	Repair & Maint. Supplies	Water Treatment Plant	
246476		135 COMMERCIAL ASPHALT CO	Patching Asphalt	Street Maintenance	
246382		133 HENNEPIN COUNTY TREASURER	Operating Supplies-Escrow	Planning	
1014002		132 MPX GROUP, THE	Printing	Police	
5758		132 VANCO SERVICES	Miscellaneous	Community Center Admin	
1013941		129 QUALITY PROPANE	Motor Fuels	Ice Arena Maintenance	
246269		129 HD SUPPLY WATERWORKS LTD	Operating Supplies	Water System Maintenance	
246368		129 EDEN PRAIRIE WINLECTRIC	Repair & Maint. Supplies	Flying Cloud Fields	
246261		125 GENERAL MACHINING INC.	Equipment Parts	Fleet Operating	
1013930		125 ADAMS PEST CONTROL INC	Contract Svcs - Pest Control	Fitness/Conference - Cmty Ctr	
246574		125 ZHOU LIANG	Refunds	Environmental Education	
246571		123 WOODLAND LANE	Refunds	Environmental Education	
1013993		121 CARLON, JOHN	Mileage & Parking	Utility Operations - General	
246341		121 WALSER CHRYSLER JEEP DODGE	Equipment Parts	Fleet Operating	
246449		120 AARP DRIVERS SAFETY	Other Contracted Services	Senior Center Programs	
246523		120 MUEHLBAUER, THOMAS G	Other Contracted Services	Community Band	
246543		119 SHRED RIGHT	Waste Disposal	City Center Operations	
1013979		118 SPS COMPANIES	Supplies - Plumbing	City Hall - CAM	
1014007		117 PROSOURCE SUPPLY	Cleaning Supplies	Fitness/Conference - Cmty Ctr	
246478		116 CUSHMAN MOTOR COMPANY INC.	Equipment Parts	Fleet Operating	
1013913		114 NEW FRANCE WINE COMPANY	Liquor Product Received	Prairie Village Liquor Store	
246459		112 BECKER ARENA PRODUCTS INC	Repair & Maint - Ice Rink	Ice Arena Maintenance	
1013949		112 WSB & ASSOCIATES INC	Design & Engineering	Water Capital	
246335		111 TRANSUNION RISK & ALTERNATIVE DATA	Other Contracted Services	Police	
1013987		111 BATTERIES PLUS	Operating Supplies	Prairie Village Liquor Store	
1014045		110 US HEALTH WORKS MEDICAL GRP MN, PC	Employment Support Test	Organizational Services	
1013978		110 SPRINT	Computers	IT Operating	
246452		108 AIM ELECTRONICS	Other Contracted Services	Miller Park	
246450		105 AARP DRIVERS SAFETY	Other Contracted Services	Senior Center Programs	
1013947		105 VANDENBERGHE, MARK	Travel Expense	Fire	
246487		104 EXECUTIVE OCEAN	Operating Supplies	Heritage Preservation	
246430		100 SUSA	Conference/Training	Utility Operations - General	
246496		100 HAMBERG JULIA	Refunds	Environmental Education	
246497		100 HARRIS NATANYA	Refunds	Environmental Education	
246522		100 MOQUIST, LYNDON	Other Contracted Services	Assessing	
246527		100 O'CONNOR, ANNETTE	Other Contracted Services	Assessing	
246539		100 RIAL KRISTIN	Other Contracted Services	Assessing	
246556		100 THOMPSON, NATE	Other Contracted Services	Assessing	
246565		100 Vlasaty Jennifer	Deposits	Community Center Admin	
246566		100 WALKER, TODD	Other Contracted Services	Assessing	
246445		99 STATE OF MINNESOTA	Licenses & Taxes	Fleet Operating	
246315		94 PRAIRIE LAWN AND GARDEN	Equipment Repair & Maint	Park Maintenance	
246437		92 VERIZON WIRELESS	Telephone	E-911 Program	
1014043		90 TWIN CITY FILTER SERVICE INC	Building Repair & Maint.	Water Treatment Plant	
246358		89 CEMSTONE CONTRACTOR SUPPLY	Small Tools	Street Maintenance	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
1014009		89 SACKETT, MATTHEW	Tuition Reimbursement/School	Police	
1013950		87 A TO Z RENTAL CENTER	Building Materials	Community Center	
246545		86 SIGNSOURCE	Office Supplies	Administration	
1014005		83 PARKER, WARD	Operating Supplies	Police	
246336		82 UNIFORMS UNLIMITED	Clothing & Uniforms	Police	
246289		80 KAISER, DAVID S	Supplies - Pool	Pool Maintenance	
246444		80 DIERS BILL	Equipment Repair & Maint	Utility Operations - General	
246534		80 PLEAA	Training Supplies	Police	
246435		78 UNITED WAY	United Way Withheld	Health and Benefits	
246231		77 AVIAN ACRES	Operating Supplies	Outdoor Center	
1014012		77 THOMPSON JONATHAN	Travel Expense	Assessing	
246423		75 SIGNSOURCE	Signs	Prairie Village Liquor Store	
1013940		74 MILLENDER LARRY	Mileage & Parking	Aquatics Admin.	
246439		73 WELLS FARGO BANK, N A	Other Contracted Services	Police	
246462		72 BHANTE SATHI	AR Utility	Water Enterprise Fund	
1013934		71 CARLSTON, BRANDON	Clothing & Uniforms	Police	
246400		69 MINNESOTA DEPT OF HEALTH	Licenses & Taxes	Water System Maintenance	
246388		67 INDELCO PLASTICS CORP	Repair & Maint. Supplies	Water Treatment Plant	
246365		67 EARL F ANDERSEN INC	Signs	Traffic Signs	
246347		64 440400 - NCPERS MINNESOTA	PERA	Health and Benefits	
246297		63 MAMAC SYSTEMS INC	Supplies - HVAC	Fitness/Conference - Cmty Ctr	
1013944		61 SHINGLES, KORI	Mileage & Parking	Athletic Programs Admin	
246469		60 CARVER COUNTY LICENSE CENTER	Licenses & Taxes	Fleet Operating	
246529		60 PARRISH JAMES	Deposits	Community Center Admin	
246563		60 Veldkamp Dean E	Deposits	Community Center Admin	
246434		59 UNIFORMS UNLIMITED	Clothing & Uniforms	Police	
1013895		58 QUALITY PROPANE	Motor Fuels	Ice Arena Maintenance	
1013991		58 BEUTZ, KARI	Tuition Reimbursement/School	Fitness Classes	
246327		57 STAPLES ADVANTAGE	Office Supplies	Customer Service	
1013958		55 DMX MUSIC	Other Contracted Services	Prairie Village Liquor Store	
246247		53 DIRECTV	Other Contracted Services	Police	
246242		53 COMCAST	Other Broadband Internet	IT Operating	
246337		51 UNIVERSAL ATHLETIC SERVICES INC	Equipment Repair & Maint	Basketball	
246302		50 MINNESOTA DEPARTMENT OF HEALTH	Licenses & Taxes	WAFTA	
246406		50 MPPOA	Printing	Police	
246405		45 MPCA	Licenses & Taxes	Sewer Utility - General	
246367		44 EDEN PRAIRIE FOUNDATION	United Way Withheld	Health and Benefits	
246290		42 KAKOOKIES	Merchandise for Resale	Concessions	
1013917		40 PRIORITY COURIER EXPERTS	Design & Engineering	Capital Impr/Maint Fixed	
246294		40 LAMBERTY, DAVID	Deposits-P&R Refunds	Community Center Admin	
246312		40 PLEAA	Tuition Reimbursement/School	Police	
246513		40 KOSTELIZ, ANGELA	Deposits	Community Center Admin	
246531		40 PEDERSON JANE	Deposits	Community Center Admin	
246538		40 Reinhardt-Sondrall Linda	Deposits	Community Center Admin	
246554		40 Speck Christy A	Deposits	Community Center Admin	
246561		40 Urbanski John A	Deposits	Community Center Admin	
1013932		40 BOHNSACK, SUE	Mileage & Parking	Senior Center Admin	
1013918		39 QUICKSILVER EXPRESS COURIER	Other Contracted Services	Shady Oak Rd-CR 61 South	
246281		35 IEDITWEB INC	Contract Svcs - Garden Romm	Garden Room Repairs	
246380		33 HD SUPPLY WATERWORKS LTD	Repair & Maint. Supplies	Crestwood Park	
1013893		32 MINNESOTA CLAY CO. USA	Operating Supplies	Arts Center	
5767		32 SAGE PAYMENT SOLUTIONS	Bank and Service Charges	Finance	
1014039		32 SPS COMPANIES	Supplies - Lawn Maintenance	City Hall - CAM	
246268		30 HART, EDMUND	Conference/Training	Softball	
246271		30 HEALY, STEPHEN	Conference/Training	Softball	
246284		30 JENKINS, JOEL S	Conference/Training	Softball	
246535		30 PRAHA DISTRIBUTING	Liquor Product Received	Prairie Village Liquor Store	

Check #	Amount	Supplier / Explanation	Account Description	Business Unit	Comments
1013883		30 DESAULNIERS, DAN	Conference/Training	Softball	
1013884		30 ELIASON, STEVE J	Conference/Training	Softball	
1013885		30 FALCK, TIMOTHY R	Conference/Training	Softball	
246277		29 HENNEPIN COUNTY TREASURER	Operating Supplies-Escrow	Planning	
246361		27 COMCAST	Other Contracted Services	Police	
246305		25 MINT CONDITION DETAILING INC	Equipment Repair & Maint	Fleet Operating	
246511		25 JOHNSON CLAIRE	Deposits	Community Center Admin	
246517		23 MINNESOTA DEPT OF HEALTH	Licenses & Taxes	Water Treatment Plant	
1014035		22 QUICKSILVER EXPRESS COURIER	Postage	Planning	
246230		22 AT&T MOBILITY	Pager & Cell Phone	Park Maintenance	
246559		21 UNIFORMS UNLIMITED	Clothing & Uniforms	Police	
246429		21 STATE OF MINNESOTA	Miscellaneous	DWI Forfeiture	
1013878		20 AMERICAN SOLUTIONS FOR BUSINESS	Clothing & Uniforms	Community Center Admin	
246246		20 DAWSON SAM T	Deposits-P&R Refunds	Community Center Admin	
246248		20 DODDS DUANE	Deposits-P&R Refunds	Community Center Admin	
246250		20 DUKART, CARLETTA	Deposits-P&R Refunds	Community Center Admin	
246272		20 HELGESON RANDI	Deposits-P&R Refunds	Community Center Admin	
246287		20 JOHNSON MICHAEL	Deposits-P&R Refunds	Community Center Admin	
246454		20 ANDERSON PAUL	Deposits	Community Center Admin	
246491		20 FREIER KATE	Deposits	Community Center Admin	
246492		20 FRIE MICHAELA	Deposits	Community Center Admin	
246568		20 WEIMAN, MAGNUS	Deposits	Community Center Admin	
246393		20 KEEPRS INC.	Clothing & Uniforms	Fire	
246330		18 SUTPHEN CHRISTINE	Deposits-P&R Refunds	Community Center Admin	
246309		18 OPHOVEN SAW SERVICE	Equipment Repair & Maint	Senior Center Programs	
1014044		17 UPS	Operating Supplies	Fleet Operating	
246349		15 ACTIVAR PLASTIC PRODUCTS GROUP INC	Repair & Maint. Supplies	Water Treatment Plant	
1013935		14 CUSTOM HOSE TECH	Equipment Parts	Fleet Operating	
1013968		13 JANEX INC	Janitor Service	Den Road Liquor Store	
246243		13 COMCAST	Cable TV	Fire	
246501		12 HERMAN'S LANDSCAPE	Operating Supplies	Street Maintenance	
1013982		12 UPS	Equipment Repair & Maint	Public Safety Communications	
246304		10 MINNESOTA VALLEY ELECTRIC COOPERATIVE	Electric	Riley Creek Woods	
246475		3 COMCAST	Cable TV	Fire	
246463		1 BLUE TARP FINANCIAL INC	Capital Under \$25,000	Fleet Operating	
	<b>3,202,667</b>	<b>Grand Total</b>			

<b>CITY COUNCIL AGENDA</b>		<b>DATE:</b>
<b>SECTION:</b> Ordinances & Resolutions		May 24, 2016
<b>DEPARTMENT/DIVISION:</b>	<b>ITEM DESCRIPTION:</b>	<b>IEM NO.:</b> XI.A.
Robert Ellis Public Works/Engineering	First Reading of an Ordinance Amending City Code Section 6.01 through 6.03 and 6.05 through 6.07, Relating to the Right-of-Way	

**Requested Action**

Move to: Approve First Reading of an Ordinance Amending City Code Sections 6.01 through 6.03 and 6.05 through 6.07, relating to the right-of-way.

**Synopsis**

City Code Sections 6.01 through 6.03 and 6.05 through 6.07 are being amended to provide better controls over work performed within the right-of-way (ROW). The amended code will provide standards for private utility installation above ground and below ground. It also sets standards for site restoration, public notification and traffic control. As rights-of-way become more crowded with above and below ground infrastructure, there is an added need to improve how this space in managed. This ordinance amendment establishes expectations for how work is accomplished, where facilities can be located, and how sites must be restored upon completion.

**Background Information**

The origins of much of Chapter Six of the Eden Prairie City Code can be traced back to 1982 with substantial additions and revisions made in 2006. Recent concerns about the number of public and private utilities vying for space in the ROW and the manner in which project areas are being restored has lead to the need to amend the code to set more specific and stringent standards. In addition to a number of editorial changes, the following specific changes were made:

- Permit application information requirements
- Standards for underground utility installation
- Standards for above ground system installations
- Standards for notification of affected property owners prior to work starting
- Standards for site restoration
- Addressing failure to perform work in a safe and expeditious manner

**Attachment**

Ordinance

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

**ORDINANCE NO. \_\_-2016**

**AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, AMENDING CITY CODE CHAPTER 6 RELATING TO RIGHT-OF-WAY PERMITS; AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 6.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.**

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

**Section 1.** City Code Chapter 6, Sections 6.01, 6.02, and 6.03 are hereby amended by deleting Sections 6.01, 6.02, and 6.03 in their entirety and replacing them with the following:

**SECTION 6.01. DEFINITIONS.**

Except as otherwise defined in the City Code or where the context clearly indicates a contrary intent, the words and terms defined in Minnesota Statutes Chapter 169, Minnesota Statutes Chapter 237, and Minnesota Administrative Rules Chapter 7819, all as amended from time to time, shall be applicable to City Code Chapters 5, 6, 7 and 8. Wherever reference is made to an individual or position in this Chapter, it shall mean the individual or person or his/her designee. The following words, terms and phrases, as used herein, have the following meanings unless the context clearly indicates otherwise:

**Subd. 1. “Abandoned Facility”** - a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service; or a facility that is declared abandoned by the right-of-way user.

**Subd. 2. “Applicant”** - any person requesting permission from the City to excavate or obstruct a right-of-way.

**Subd. 3. “Commercial Wireless Telecommunication Facility”** - a tangible asset used to provide commercial wireless telecommunication services as defined in City Code Section 11.02, including all antennas, support devices, and telecommunications mechanical equipment including ground-mounted equipment, associated cables, and attachments.

**Subd. 4. “Delay Penalty”** - the monetary penalty imposed by the City as a result of unreasonable delays in permitted work within the right-of-way, including but not limited to construction, excavation, obstruction, patching, or restoration.

**Subd. 5. “Director”** - the City’s Director of Public Works or his or her designee.

**Subd. 6. “Emergency”** - a condition that poses a clear and immediate danger to life or health; may result in a significant loss of property; or requires immediate repair or replacement in order to restore service to a customer.

**Subd. 7. “Equipment”** - any tangible asset located within the right-of-way that

is used in the process of construction, installation, repair, or maintenance.

**Subd. 8. “Excavate”** - to dig into or in any way remove, physically disturb, or penetrate any part of a public right-of-way.

**Subd. 9. “Facility” or “Facilities”** - any tangible asset(s) in the right-of-way required to provide utility service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by Minnesota Statutes Section 161.45 governing utility facility placement in state trunk highways.

**Subd. 10. “Ground-Mounted Equipment”** – equipment used in the operation of commercial wireless telecommunication facilities that is located on the ground and protrudes above the surface elevation of the ground.

**Subd. 11. “High Density Corridor”** - a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

**Subd. 12. “Local Guide Specifications and Standard Details”** - the following rules and regulations of the City: General Conditions to the Standard Specifications for Construction; Standard Detail Specifications for Sanitary and Storm Sewer Systems; Standard Detail Specifications for Watermain Systems; Standard Detail Specifications for Sanitary and Storm Sewer and Watermain Systems Excavation, Installation and Non-Pavement Restoration Procedures; and Standard Detail Specifications for Street Construction, Walkways, and Pavement Restoration.

**Subd. 13. “Obstruct”** - to place any tangible object upon a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

**Subd. 14. “Patch or Patching”** - a method of pavement replacement that is temporary in nature. A patch consists of: (1) the compaction of the subbase and aggregate base, and (2) the replacement, with the same grade of material, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

**Subd. 15. “Pavement”** - any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with paver blocks, bituminous, concrete, aggregate, or gravel.

**Subd. 16. “Permit Holder”** - any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City.

**Subd. 17. “Person”** - all firms, partnerships, associations, limited liability companies, corporations, and natural persons.

**Subd. 18. “Potholing”** - excavating the area above an underground facility to determine the precise location of the underground facility without damage to it,

before excavating within two feet of the marked location of the underground facility.

**Subd. 19. “Public Right-of-Way”** - the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, trail, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City.

**Subd. 20. “Public Utility Structure”** – a structure or pole supporting wires for communication or transmission of data, electricity, roadway lighting, or commercial wireless telecommunication facilities.

**Subd. 21. “Restore” or “Restoration”** - the process by which the right-of-way and surrounding area, including pavement, foundation, surfacing, and ground vegetation are returned to the same condition and life expectancy that existed before excavation.

**Subd. 22. “Right-of-Way Permit”** – a permit to perform work in a public right-of-way, whether to excavate or obstruct the right-of-way.

**Subd. 23. “Right-of-Way User”** – (1) a telecommunications right-of-way user; or (2) a person owning or controlling a facility in the public right-of-way that is used or is intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

**Subd. 24. “Service” or “Utility Service”** - includes (1) services provided by a public utility as defined in Minnesota Statutes section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including the transporting of voice or data information; (3) services provided by a cable communications system as defined in Minnesota Statutes, Chapter 238; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; (6) water, sewer, steam, cooling, or heating services; (7) pipeline, community antenna television, fire and alarm communications, electricity, light, energy, or power services; (8) the services provided by a public service corporation organized pursuant to Minnesota Statutes, Chapter 301B; and (9) the services provided by a district heating or cooling system.

**Subd. 25. “Service Lateral”** - an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.

**Subd. 26. “Telecommunications Right-of-Way User”** – a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or intended to be used for transporting telecommunications or other voice or data information.

**Subd. 27. “Trench”** - an excavation in the right-of-way having a length equal to

or greater than the width of the right-of-way for the sections of roadway where the work is occurring, including a directional bore.

### **SECTION 6.02. APPLICATION AND SCOPE.**

Except as otherwise stated therein, the provisions of Chapters 5, 6, 7, and 8 are applicable to all users of the streets, public ways, rights-of-way and roadways within the City, including but not limited to those owned or operated by the United States, the State of Minnesota, or any county, town, city, district, or other political subdivision located wholly or partially within the corporate limits of the City.

### **SECTION 6.03. RIGHT-OF-WAY PERMITS.**

**Subd. 1. Permit Required.** Except as otherwise provided in the City Code, no person may temporarily or permanently obstruct or excavate any public right-of-way without first having obtained a right-of-way permit from the City.

#### **Subd. 2. Permit Applications.**

- A. A written application for a right-of-way permit shall be submitted to the Public Works Department at least two weeks prior to the anticipated project start date. The application shall be made on a form provided by the City and shall include all required attachments, a scaled drawing showing the location and area of the proposed project and the location of all proposed facilities, a traffic control plan, a restoration plan, a timeline for the proposed project, and, if requested by the Director, a scaled drawing showing the location of all known existing facilities and a public notification plan. All such applications shall be consistent with the provisions of this Chapter and good engineering, safety, and maintenance practices shall be followed for the work or activity conducted under the right-of-way permit.
- B. The application shall require the applicant to defend, indemnify and hold the City harmless from all liability or claims of liability for bodily injury or death to persons, or for property damage, for those claims specified in Minnesota Rule 7819.1250, subpart 2.
- C. If the City has suffered any undisputed loss, damage, or expense because of the applicant's prior excavations or obstructions of the public right-of-way or any emergency actions relating thereto, the Director may require the applicant to reimburse the City for such expense before considering a new permit application for approval.
- D. Before granting any permit under any of the provisions of this Chapter, the Director may impose such insurance, bonding, letter of credit, cash deposit, or other financial security requirements thereon as deemed necessary to properly safeguard persons or property exposed to the work or activity. Such insurance shall also protect the City and its employees from any suit, action or cause of action arising by reason of such work or activity.



E. If requested by the Director, an applicant for a right-of-way permit shall provide mapping information in accordance with Minnesota Rules 7819.4000 and 7819.4100.

**Subd. 3. Issuance of Permit and Conditions.** Upon the Director's determination that the applicant has satisfied the requirements of this Section, the Director shall issue the right-of-way permit subject to the terms and conditions of this Chapter. The Director may impose reasonable conditions upon the issuance of the right-of-way permit and the performance of the permit holder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permit holder shall comply with all requirements of local guide specifications and standard details as well as all local, state and federal laws, including but not limited to Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560 (Gopher One Call Excavation Notice System).

**Subd. 4. Permit Fees.** The City shall establish a right-of-way permit fee in an amount sufficient to recover City costs. The City shall impose the permit fee at the time it issues a right-of-way permit. The City, in its sole discretion, may require payment of the permit fee: (1) at the time of permit issuance; (2) within thirty (30) days of billing; or (3) through an annual billing. Failure to pay permit fees when due may result in suspension or revocation of a right-of-way permit. Permit fees paid for a permit that has been revoked by the Director are not refundable. Unless otherwise agreed to in a franchise agreement, permit fees may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise agreement.

**Subd. 5. Permit Display.** Right-of-way permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director.

**Subd. 6. Permit Extensions.** A right-of-way permit is valid only for the area of the public right-of-way specified in the permit and for the dates specified in the permit. No permit holder may do any work outside of the area specified in the permit or begin its work before the permit start date or continue working after the permit end date. Any permit holder desiring to obstruct or excavate an area greater than that specified in the permit or desiring to perform work on dates not specified in the permit shall apply for a new or extended right-of-way permit and pay any additional fees required by the City. The permit holder shall obtain the new or extended permit before performing any work not allowed by the original permit.

**Subd. 7. Denial of Permit.** The City may deny a right-of-way permit for failure to meet the requirements and conditions of this Section or if the City determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use.

**Subd. 8. Standards for Construction or Installation.**

A. **General Standards.** Excavation, backfilling, patching, restoration, and all other work performed in the right-of-way must be done in conformance with all applicable Minnesota Statutes and Administrative Rules, including without limitation Rules 7819.5000 and 7819.5100, all requirements of the City Code, and local guide specifications and standard details that are consistent with Minnesota Statutes Sections 237.162 and 237.163. Installation of service laterals must be performed in accordance with Minnesota Rules Chapter 7560 and the City Code. The permit holder shall comply with the following additional standards when performing the work authorized under the right-of-way permit:

1. Take such precautions as are necessary to avoid creating unsanitary conditions.
2. Conduct the operations and perform the work in a manner that insures the least obstruction to and interference with traffic.
3. Take adequate precautions to insure the safety of the general public and those who require access to abutting property.
4. Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties.
5. Comply with the Minnesota Manual of Uniform Traffic Control Devices at all times during construction or installation.
6. Exercise caution at all times for the protection of persons, including employees, and property.
7. Protect and identify excavations and work operations with barricade flags and, if required, by a flag person in the daytime and by warning lights at night.
8. Provide proper trench protection as required by the Occupational Safety and Health Administration in order to prevent cave-ins endangering life.
9. Protect the root growth of trees and shrubbery.
10. If possible, provide for space in the installation area for other right-of-way users.
11. Maintain access to all properties and cross streets as possible during construction and installation and maintain emergency vehicle access at all times.
12. Maintain alignment and grade unless otherwise authorized by the City. Changes not approved by the City will require removal and reconstruction.
13. During plowing or trenching of facilities, a warning tape must be placed at a depth of twelve (12) inches above copper cables with over two hundred (200) pairs and above fiber facilities.

14. Below concrete or bituminous paved road surfaces, directional bore facilities must be installed in conduit of a type determined by the permit holder.
15. The placing of all facilities must comply with the National Electric Safety Code, as incorporated by reference in Minnesota Statutes section 326B.35.
16. At the direction of the Director, facilities being installed or relocated within a high density corridor shall be placed in a common conduit system or share other common structures.
17. A Minnesota licensed surveyor shall be used to locate property lines, install property pins, and replace any destroyed property pins at corners.
18. Excavations, trenches, and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the City.
19. Excavations, trenches, and jacking pits shall be protected when unattended to prevent entrance of surface drainage.
20. All backfilling must be placed in six inch (6") layers at optimum moisture and compacted with the objective of attaining ninety-five percent (95%) of Standard Proctor. Compaction shall be accomplished with hand, pneumatic, or vibrating compactors as appropriate.
21. Backfill material shall be subject to the approval of the Director. The Director may permit backfilling with the material from the excavation provided such material is acceptable to the Director.
22. Compacted backfill shall be brought to bottom of the aggregate base of the approved street section.
23. All work performed in the right-of-way shall be done in conformance with local guide specifications and standard details, unless a less stringent standard is approved by the Director.
24. Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.
25. No lugs damaging to roadway surfaces may be used.
26. Dirt or debris must be periodically removed during construction, which may require the use of a mechanical sweeper.
27. Above-ground utility markers may not be installed except as authorized by the Director.
28. Other reasonable standards and requirements of the Director.

B. **Standards for Installation of Underground Utilities.** The permit holder shall comply with the following standards when installing facilities underground:

1. Buried fiber facilities shall be at a minimum depth of three (3) feet and a maximum depth of four (4) feet unless an alternate location is approved in advance by the Director. Buried copper facilities below concrete or bituminous paved road surfaces must be placed at a minimum depth of three (3) feet and a maximum depth of four (4) feet. Other buried copper facilities must be placed at a minimum depth of thirty (30) inches and a maximum depth of four (4) feet.
2. Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved by the Director.
3. If construction is open cut, the permit holder must install the visual tracers within twelve (12) inches and over buried facilities. If other construction methods are used, substitute location methods will be considered.
4. The permit holder shall register with Gopher State One Call and comply with the requirements of that system.
5. Compaction in a trench shall be ninety-five percent (95%) of Standard Proctor and copies of test results must be submitted to the Director. Tests will be required at the discretion of the Director. Tests must be conducted by an independent testing firm at locations approved by the Director. The Director may require recompaction and new tests if densities are not met.
6. The facilities shall be located so as to avoid traffic signals and signs, which are generally placed a minimum of three (3) feet behind the curb.
7. When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and when directed by the City, the permit holder shall excavate an observation hole over the utility to ensure that the City utility is not damaged.
8. All junction boxes or access points shall be located no closer than ten (10) feet from City hydrants, valves, manholes, lift stations, or catch basins unless an alternate location is approved by the City.
9. Underground facilities shall not be installed between a hydrant and an auxiliary valve.
10. Buried telecommunications facilities must have a locating wire or conductive shield, except for di-electric cables.
11. Buried fiber facilities must be placed in a conduit of a type determined by the right-of-way user unless the permit holder obtains a waiver from the City.

**C. Standards for Installation of Overhead Facilities.** The permit holder shall comply with the following standards when installing facilities overhead:

1. All wires shall be a minimum of eighteen (18) feet above paved surfaces and at a location that does not interfere with traffic signals, overhead

signs, or street lights.

2. Facilities shall be co-located on poles where possible.
3. Placing overhead facilities on both sides of the right-of-way is prohibited unless specifically approved by the Director.

D. **Trenchless Excavation.** A permit holder employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560, and shall employ potholing or open cutting over existing underground utilities before excavating as determined by the City.

E. **Location of Facilities.**

1. **Location.** Placement, location, and relocation of facilities must comply with local guide specifications and standard details and other applicable laws, and with Minnesota Rules 7819.3100, 7819.5000, and 7819.5100.
2. **Corridors.** The City may assign specific corridors within the right-of-way, or any particular segment thereof, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All right-of-way permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Facilities being installed or relocated within a high density corridor shall be placed in a common conduit system or share other common structures.
3. **Limitation of Space.** To protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. The Director shall strive to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects.

F. **Standards for Commercial Wireless Telecommunication Facilities.**

1. **Purpose and Findings.** The City desires high quality commercial wireless telecommunication services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that commercial wireless telecommunication facilities can have on aesthetics and public safety. Due to the many services that must be delivered within its limited area, the City also strives to avoid unnecessary encumbrances within the public right-of-way. The

City allows and regulates commercial wireless telecommunication facilities through performance standards and height limits as prescribed in Chapter 11, Section 11.06. The purpose of this section is to regulate the installation of commercial wireless telecommunication facilities within the public right-of-way in a manner that balances desire for service with aesthetic, public safety, and right-of-way flexibility concerns.

Public rights-of-way are appropriate locations for commercial wireless telecommunication facilities that present minimal impacts (i.e. small tower attachments that do not require new poles, do not require pole extensions, and do not have associated ground-mounted equipment). Commercial wireless telecommunication facilities that require greater heights than can be afforded by existing poles in the public right-of-way and those that require ground-mounted equipment are more appropriately sited outside of the public right-of-way in accordance with the performance standards contained in Chapter 11. The City recognizes that, as wireless technology advances, some residential areas of the City may be hard to serve with wireless technology due to the lack of siting alternatives in the immediate vicinity. In such areas, where no alternative non-right-of-way locations are available, commercial wireless telecommunication facilities that require pole extensions and ground-mounted equipment will be allowed in the public right-of-way subject to the requirements of this Section, which are meant to protect the public health, safety, and welfare.

2. **Commercial Wireless Telecommunication Facilities as Attachments to Existing Public Utility Structures.** Commercial wireless telecommunication facilities that comply with the following requirements may be attached to existing public utility structures within the right-of-way after issuance of a right-of-way permit:
  - (a) The commercial wireless telecommunication facility shall not extend above the top of the existing public utility structure and the height of the existing public utility structure shall not be increased to accommodate the commercial wireless telecommunication facility.
  - (b) If the public utility structure must be replaced to structurally accommodate the commercial wireless telecommunication facility, the height of the replacement public utility structure shall not exceed the height of the existing public utility structure and the diameter of the replacement public utility structures shall not exceed the diameter of the existing public utility structure by more than 50 percent. Once the diameter of a replacement public utility structure has been increased under the provisions of this paragraph, the diameter shall not be further increased.
  - (c) Excluding electrical meter and mounting hardware, the commercial wireless telecommunication facility shall not have an aggregate

volume greater than seven (7) cubic feet and no one device shall have a volume greater than three (3) cubic feet.

- (d) The commercial wireless telecommunication facility shall not have any individual surface area face greater than three (3) square feet except that an individual face of a cylindrical device shall not exceed ten (10) square feet.
- (e) The commercial wireless telecommunication facility shall not extend outward from the existing public utility structure or arm thereof by more than eighteen (18) inches, except that an antenna one-half (1/2) inch or less in diameter may extend an additional six (6) inches.
- (f) The commercial wireless telecommunication facility shall include no ground-mounted equipment within the right-of-way.
- (g) The commercial wireless telecommunication facility shall have limited exposed cabling and mounting hardware. It shall also match the public utility structure it is attached to in color and, as close as practicable, in material and design.
- (h) The City may refuse to allow commercial wireless telecommunication facilities to be attached to decorative public utility facilities.
- (i) The commercial wireless telecommunication facility shall not interfere with public safety wireless telecommunications.
- (j) Commercial wireless telecommunication facilities in the right-of-way shall be removed and relocated at the City's request and at no cost to the City when the Director determines that removal and relocation is necessary to prevent interference with: (1) present or future City use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.
- (k) A commercial wireless telecommunication facility attached to an existing public utility structure shall not block light emanating from the public utility structure and shall not otherwise interfere with the original use of the public utility structure.
- (l) A telecommunications right-of-way user who desires to place commercial wireless telecommunication facilities on City-owned public utility structures shall enter into a license agreement with the City, upon terms and conditions required by the City, for use of space.

**3. Commercial Wireless Telecommunication Facilities as Extensions to Existing Public Utility Structures or with Ground-Mounted**

**Equipment.** Commercial wireless telecommunication facilities that require increased public utility structure height or that have ground-mounted equipment may be erected in the public right-of-way only when in compliance with the following provisions and after issuance of a right-of-way permit:

- (a) The applicant shall demonstrate to the satisfaction of the Director that the commercial wireless telecommunication facility cannot be placed in a location outside of the right-of-way within one quarter (1/4) mile of the proposed location.
- (b) The extension to the existing public utility structure, including lightning rods and all other attachments, shall not exceed the height of the existing public utility structure by more than fifteen (15) feet. Once the height of a public utility structure has been increased under the provisions of this paragraph, the height shall not be further increased.
- (c) The extension to the existing public utility structure shall not increase the diameter of the public utility structure by more than fifty (50) percent. Once the diameter of a public utility structure has been increased under the provisions of this paragraph, the diameter shall not be further increased.
- (d) Excluding electrical meter and mounting hardware, the commercial wireless telecommunication facility shall not have an aggregate volume greater than seven (7) cubic feet and no one device shall have a volume greater than three (3) cubic feet.
- (e) The commercial wireless telecommunication facility shall not have any individual surface area face greater than three (3) square feet except that an individual face of a cylindrical device shall not exceed ten (10) square feet.
- (f) The commercial wireless telecommunication facility shall not extend horizontally from the existing public utility structure or arm thereof by more than eighteen (18) inches, except that an antenna one-half (1/2) inch or less in diameter may extend an additional six (6) inches, and shall not extend vertically from the top of the public utility structure by more than thirty-six (36) inches.
- (g) The extension to the existing public utility structure shall match the original and surrounding public utility structures in materials and color, as determined by the Director.
- (h) The commercial wireless telecommunication facility shall not interfere with public safety wireless telecommunications.
- (i) The commercial wireless telecommunication facility should have limited exposed cabling and mounting hardware. It shall also



match the public utility structure it is attached to in color and, as close as practicable, in material and design.

- (j) The City may refuse to allow commercial wireless telecommunication facilities to be attached to decorative public utility structures.
- (k) A right-of-way permit for a commercial wireless telecommunication facility that has ground-mounted equipment will be issued only if the City finds the following:
  - (i) the ground-mounted equipment will not disrupt traffic or pedestrian circulation;
  - (ii) the ground-mounted equipment will not interfere with vehicle and pedestrian intersection sight lines;
  - (iii) the ground-mounted equipment will not create a safety hazard;
  - (iv) the location of the ground-mounted equipment minimizes impacts on adjacent property; and
  - (v) the ground-mounted equipment will not adversely impact the health, safety, or welfare of the community.
- (l) Ground-mounted equipment associated with the commercial wireless telecommunication facility shall comply with the provisions of Code Section 11.06, subdivision 9, and shall also meet the following performance standards:
  - (i) be separated from the nearest ground-mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless the equipment is placed underground, or unless waived by the Director;
  - (ii) if located adjacent to residential uses, ground-mounted equipment shall be limited to three (3) feet in height above grade and twenty-seven (27) cubic feet in cumulative size; and
  - (iii) if located adjacent to non-residential uses, ground-mounted equipment shall be limited to five (5) feet in height above grade and eighty-one (81) cubic feet in cumulative size.
- (m) Commercial wireless telecommunication facilities in the right-of-way shall be removed and relocated at the City's request and at no cost to the City when the Director determines that removal and relocation is necessary to prevent interference with: (1) present or future City use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel

over the right-of-way.

(n) A telecommunications right-of-way user who desires to place commercial wireless telecommunication facilities on City-owned public utility structures shall enter into a license agreement with the City, upon terms and conditions required by the City, for use of space.

4. **New Structures.** The erection in the public right-of-way of a new public utility structure to support commercial wireless telecommunication facilities is prohibited, except where the Director determines there is a need for additional roadway lighting, emergency warning siren, or other public infrastructure that must be supported by a public utility structure. Any new public utility structure erected to support commercial wireless telecommunication facilities allowed by the City under this paragraph and any associated or attached equipment must comply with the requirements of this Section.
5. **Charges.** In addition to the permit fees outlined in this Chapter, the City reserves the right to charge telecommunications right-of-way users to the extent that such charges are allowed under state law. Telecommunications right-of-way users shall be responsible for payment of real or property taxes attributable to their equipment in the public right-of-way.

**Subd. 9. Compliance with Chapter 11.** In addition to the requirements of this Section, persons placing facilities in the public right-of-way shall comply with all applicable permitting and other requirements imposed under Chapter 11 of this Code. Where the provisions of this Section are more restrictive than the provisions of Chapter 11, the provisions of this Section shall apply.

**Subd. 10. Restoration of Right-of-Way.** The permit holder shall patch and restore the right-of-way to the satisfaction of the Director.

- A. **Timing.** All work to be done under the right-of-way permit and all required patching and restoration of the right-of-way must be completed within the dates specified in the right-of-way permit.
- B. **Duty to correct defects.** The permit holder shall correct any defects in patching or restoration performed by the permit holder or its agents. Upon notification from the Director, the permit holder shall correct all such defects as required by the Director. Correction work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure.
- C. **Failure to restore.** If the permit holder fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the City may complete the restoration. The permit holder shall reimburse the City for its reasonable costs

incurred in completing the restoration and shall pay any delay penalty and/or degradation fee imposed by the City within thirty (30) days of invoice from the City. If a permit holder fails to pay as required, the City may deny future right-of-way permit applications.

**Subd. 11. Delay Fee.** The City may establish and impose a delay fee for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration, or for work not completed prior to right-of-way permit expiration. The delay fee and associated fees shall be established from time to time by City Council resolution. No delay fee shall be imposed if the delay is due to circumstances beyond the control of the permit holder, including without limitation inclement weather, acts of God, or civil strife.

**Subd. 12. Inspection.**

- A. **Notice of Completion.** When the work under any right-of-way permit is completed, the permit holder shall furnish a completion certificate and as-built drawings in accordance with Minnesota Rule 7819.1300 if requested by the Director.
- B. **Site Inspection.** The permit holder shall make the work site available for inspection by the Director or other City personnel and to all others authorized by law at all times during the execution of and upon completion of the work.
- C. **Authority of Director.**
  - 1. The Director may order the immediate cessation of any work which the Director determines, in the Director's sole discretion, poses a serious threat to the life, health, safety, or well-being of the public.
  - 2. The Director may issue an order to the permit holder requiring the correction of any work that does not conform to the terms of the right-of-way permit or other applicable laws, standards, conditions, or codes. The order shall inform the permit holder that failure to correct the violation may result in revocation of the right-of-way permit. If the permit holder does not correct the violation to the satisfaction of the Director within ten (10) days after issuance of the order, the Director may revoke the right-of-way permit.

**Subd. 13. Work Done Without a Permit.** Except as provided in this subdivision 13, any person who obstructs or excavates the public right-of-way without a right-of-way permit issued by the City shall be guilty of a misdemeanor as provided in Chapter 1 and in Section 6.99 of this Chapter.

- A. **Emergency Situations.** A right-of-way user shall immediately notify the City of any event concerning its facilities that it considers to be an emergency and may take any actions reasonable and necessary to respond to the emergency. Within

two (2) business days after the occurrence of the emergency, the right-of-way user shall apply to the City for the necessary right-of-way permit(s), pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency.

If the City becomes aware of an emergency concerning facilities in the right-of-way, the City will make reasonable attempts to contact the owner of each facility affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency. If the emergency was caused by a facility or facilities, the owner thereof shall reimburse the City for its costs in responding to the emergency.

- B. **Non-Emergency Situations.** Except in an emergency, any person who obstructs or excavates a public right-of-way without first having obtained a right-of-way permit must subsequently obtain a right-of-way permit. The fee for a subsequently issued right-of-way permit shall be established from time to time by City Council resolution. The permit holder shall also pay all the other fees required by the City Code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all other requirements of this Chapter.

#### **Subd. 14. Damage to Other Facilities.**

- A. When the City performs work in the right-of-way that requires the alteration or relocation of an existing facility, the Director shall notify the facility owner as soon as is reasonably possible. The facility owner shall reimburse the City for its costs associated with such alteration or relocation within thirty (30) days from the date of billing.
- B. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency caused by that owner's facilities.

#### **Subd. 15. Revocation of Permits.**

- A. **Substantial Breach.** The City may revoke any right-of-way permit if the permit holder substantially breaches any of the terms and conditions of any applicable statute, ordinance, rule or regulation, or any condition of the right-of-way permit. A substantial breach includes, but is not limited to, the following:
  - 1. The violation of any material provision of the right-of-way permit;

2. The attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
3. Any material misrepresentation of fact in the permit application;
4. The failure to complete the work in a timely manner unless a permit extension has been obtained or unless the failure to complete work is due to reasons beyond the permit holder's control; or
5. The failure to timely correct work that is the subject of an order issued by the Director under subdivision 12.C of this section.

**B. Written Notice of Breach.** If the Director determines that the permit holder has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the right-of-way permit, the Director may notify the permit holder of the breach in writing and demand that the permit holder remedy the violation. The notice and demand shall inform the permit holder that continued violations may result in revocation of the right-of-way permit. In the notice and demand, the Director may also impose additional or revised conditions on the right-of-way permit to mitigate and remedy the breach.

**C. Response to Notice of Breach.** Within two (2) business days of receiving the written notice and demand, the permit holder shall provide the City with its plan to cure the breach. Any failure to respond to the notice, to submit an acceptable plan, or to implement the approved plan shall be grounds for immediate revocation of the right-of-way permit.

**D. Reimbursement of City Costs.** Upon revocation of a right-of-way permit, the permit holder shall reimburse the City for its reasonable costs incurred because of the revocation, including but not limited to restoration costs, collection costs, and attorney fees.

**Subd. 16. Exemptions.** The following persons are exempt from the requirements of this Section:

- A. City employees acting within the course and scope of their employment and contractors acting within the course and scope of a contract with the City;
- B. Persons who install mailboxes in the public right-of-way in accordance with requirements of the U.S. Postal Service;
- C. Persons who temporarily place residential household refuse containers in the public right-of-way for the collection of solid waste or recyclables in accordance with the provisions of Sections 5.36 and 9.01 of the City Code.

**Subd. 17. Right-of-Way Vacation.** If the City vacates a public right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200.

**Subd. 18. Abandoned Facilities.** A right-of-way user shall notify the City when facilities are to be abandoned. A right-of-way user who has abandoned facilities in a public right-of-way shall remove them from the right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the Director waives this requirement.

**Subd. 19. Non-Completion or Abandonment of Work.** Work shall progress expeditiously to completion in accordance with any time limitation specified in the right-of-way permit so as to avoid unnecessary inconvenience to the public. In the event that the permit holder fails to timely complete the work in accordance with the terms of the right-of-way permit or ceases or abandons the work without due cause, the City may, after six (6) hours' notice in writing to the permit holder of its intention to do so, correct the work, fill the excavation and repair the public right-of-way in a manner that it deems necessary to protect the safety and welfare of the public. The City shall make or contract for all temporary and permanent repairs, including but not limited to backfilling, compacting, and resurfacing, and the permit holder shall reimburse the City for all costs incurred for such work. If the permit holder fails to reimburse the City within thirty (30) days of billing, the City may do any or all of the following: (1) reimburse itself from the proceeds from any cash deposit, letter of credit, bond, or other security given by the permit holder; (2) deny the permit holder any future right-of-way permits; and (3) impose a delay penalty.

**Subd. 20. Right-of-Way Prohibitions.** The following actions are prohibited in the public right-of-way:

- A. **Dumping in Streets.** It is a misdemeanor for any person to throw or deposit in any public right-of-way any solid, recyclable, or yard waste, including but not limited to nails, dirt, glass, cans, discarded cloth or clothing, construction debris, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease, petroleum products or other automotive fluids or to empty any water containing salt or other injurious chemical thereon. It is a violation of this Section to haul any such material inadequately enclosed or covered thereby permitting the same to fall upon the street.
- B. **Fires.** It is a misdemeanor for any person to build or maintain a fire upon a public right-of-way.
- C. **Signs.** It is a misdemeanor for any person to place or maintain a sign within any public right-of-way except as otherwise permitted by City Code Section 11.70, subdivision 3.D.
- D. **Placing Snow or Ice in a Public Right-of-Way.** It is a misdemeanor for any

person not acting under a specific contract with the City or without written permission from the Director to remove snow or ice from private property or a private driveway and cause the same to obstruct, encroach upon, encumber, or interfere wholly or partially with any public right-of-way, including but not limited to a public roadway, street, sidewalk, walkway, bike or trail way, easement, park, or other public property.

Where permission is not granted by the Director, the City may remove the snow or ice from the public right-of-way and the person shall be initially responsible for payment of all direct and indirect costs of removing the snow or ice from the street. If not paid within thirty (30) days of invoice, collection shall be by civil action or assessment against the property as any other special assessment.

- E. Each day that any person continues in violation of this subdivision 20 shall be a separate offense and punishable as such.

**Subd. 21. Indemnification and Liability.** By applying for and accepting a right-of-way permit under this section, a permit holder agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

**Subd. 22. Appeal.** A right-of-way user or potential right-of-way user that has been denied a right-of-way permit or has had a right-of-way permit revoked may appeal the denial or revocation to the City Manager. Such appeal shall be taken by filing with the City Clerk within ten (10) days after the denial or revocation, a written statement requesting a hearing before the City Manager and setting forth fully the grounds for the appeal. A hearing shall be held within fifteen (15) days of receipt of the request. Notice of the hearing shall be given by the City Clerk in writing, setting forth the time and place of hearing. Such notice shall be mailed, postage prepaid, to the applicant or permit holder at his/her/its last known address at least five (5) days prior to the date set for hearing.

**Subd. 24. Reservation of Regulatory and Police Powers.** A permit holder's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**Section 2.** City Code Chapter 6, Sections 6.05, 6.06, and 6.07 are hereby deleted in their entirety.

**Section 3.** City Code Chapter 1 entitled "General Provisions and Definitions Applicable to the Entire City Code Including Penalty for Violation" and Section 6.99 entitled "Violation a Misdemeanor or Petty Misdemeanor" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

**Section 4.** This ordinance shall become effective from and after its passage and publication.

FIRST READ at a regular meeting of the City Council for the City of Eden Prairie on the 24<sup>th</sup> day of May, 2016, and finally read and adopted and ordered published at a regular meeting of the City Council of said City on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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

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

PUBLISHED in the *Eden Prairie News* on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.