INVER GROVE HEIGHTS CITY COUNCIL AGENDA
-REVISED-
MONDAY, OCTOBER 11, 2010
8150 BARBARA AVENUE
7:30 P.M.

1. CALL TO ORDER
2. ROLL CALL
3. PRESENTATIONS:
   A. Coyote Issues – MN DNR
4. CONSENT AGENDA – All items on the Consent Agenda are considered routine and have been made available to the City Council at least two days prior to the meeting; the items will be enacted in one motion. There will be no separate discussion of these items unless a Council member or citizen so requests, in which event the item will be removed from this Agenda and considered in normal sequence.

   A. Minutes – September 27, 2010 Regular Council Meeting _____

   B. Resolution Approving Disbursements for Period Ending October 6, 2010 _____

   C. Pay Voucher No. 16 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation Project _____

   D. Pay Voucher No. 6 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation – Low Voltage Contractors _____

   E. Pay Voucher No. 5 for City Project No. 2009-24, Rock Island Swing Bridge Project _____

   F. Final Pay Voucher No. 2, Engineer's Final Report and Resolution Accepting Work for City Project No. 2010-09A, Cracksealing _____

   G. Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report and Resolution Accepting Work for City Project No. 2010-09B, Sealcoating _____

   H. Authorize a Maintenance Project on Dixie Avenue from the North Connection with Dickman Trail for Approximately 418 LF _____

   I. Consider a Resolution Adopting a Policy Establishing Consultant Selection Process _____

   J. Resolutions Declaring Costs to be Assessed, Ordering Preparation of Proposed Assessments and Calling for Hearing on Special Assessments for 2010 Nuisance Abatement _____

   K. Accept Landowner Improvements within City Easement Agreement, Restrictive Use Agreements and Temporary Construction Easement Agreement for Landowners as part of the 2010 Storm Water Facility Maintenance Program – City Project No. 2010-19 _____

   L. Accept Grant for the Rock Island Swing Bridge from the State of Minnesota Historical Society _____

M. Resolution Waiving Remedy pertaining to Improvement Agreement with Short Properties, LLC _____

N. Resolution Consenting to Assignment of Improvement Agreement, Stormwater Facilities Maintenance Agreement, and Permanent Easement Agreement for Drainage and Utility related to Project of Flint Hills Resources, LP _____

O. Accept Donation from Wal-Mart for the Inver Grove Heights Fire Department _____

P. Approve Employee Out of State Travel Policy _____

Q. Personnel Actions _____

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

6. PUBLIC HEARINGS:

A. CITY OF INVER GROVE HEIGHTS; Consider Application of Apple Minnesota LLC dba Applebee's for an On-Sale/Sunday Intoxicating Liquor License for premises located at 5855 Blaine Ave. _____

7. REGULAR AGENDA:

PARKS AND RECREATION:

A. CITY OF INVER GROVE HEIGHTS; Discuss Siltation Issues _____

COMMUNITY DEVELOPMENT:

B. CITY OF INVER GROVE HEIGHTS; Consider the First Reading of an Ordinance regulating Outdoor Wood Burners/Boilers _____

C. PDB AUTOCARE, LLC; Consider a Resolution relating to a Conditional Use Permit Amendment to amend the site plan allowing for an addition to the existing building for property located at 6466 Cahill Avenue. _____

D. CITY OF INVER GROVE HEIGHTS; Consider Second Reading of an Ordinance Establishing Minimum Requirements for the Regulation of Subsurface Sewage Treatment Systems _____

8. MAYOR AND COUNCIL COMMENTS

9. ADJOURN

INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, SEPTEMBER 27, 2010 - 8150 BARBARA AVENUE

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, September 27, 2010, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:30 p.m. Present were Council members Grannis, Klein, Madden, and Piekarski Krech; City Administrator Lynch, Assistant City Administrator Teppen, City Attorney Kuntz, Public Works Director Thureen, Parks & Recreation Director Carlson, Community Development Director Link, Finance Director Lanoue, and Deputy Clerk Rheaume.

3. PRESENTATIONS: None.

4. CONSENT AGENDA:

Citizen Mark Colburn removed Item 4I, Resolution Accepting Bids and Awarding Contract for the 2010 Pavement Management Program, City Project No. 2010-09C – Mill and Overlay, from the Consent Agenda.

Councilmember Grannis removed Item 4J, Approve Proposal from Braun Intertec to prepare Response Action Plan Implementation Report for Heritage Village Park, from the Consent Agenda.

Councilmember Madden removed Item 4K, Accept Proposal for Engineering Services for Design, Construction Administration & Testing Services – Repair of Water Intrusion Damage in the Public Works Maintenance Building, from the Consent Agenda.

Citizen Rick Matthes removed Item 4O, Consider Non-Commercial Kennel License Application – 7745 Boyd Avenue, from the Consent Agenda.

A. Minutes – September 13, 2010 Regular Council Meeting

B. **Resolution No. 10-152** Approving Disbursements for Period Ending September 22, 2010

C. Pay Voucher No. 1 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation – Dascom Systems Group LLC

D. Pay Voucher No. 2 for City Project No. 2008-18, Public Safety Additon/City Hall Renovation – Dascom Systems Group LLC

E. Pay Voucher No. 5 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation – TRICOM Communications

F. Change Order No. 4 and Pay Voucher No. 4 for City Project No. 2010-09D, South Grove Street Reconstruction - Area 5

G. Final Compensating Change Order No. 6, Final Pay Voucher No. 8, Engineer's Report of Final Acceptance and **Resolution No. 10-153** Accepting Work for City Project No. 2008-09F, Salem Hills Farm Street Reconstruction/Mill and Overlay

H. **Resolution No. 10-154** Accepting Individual Project Order No. 12F to Kimley-Horn & Associates, Inc. for Preparation of Easement Exhibits and Descriptions for the Pavement Management Program, Urban Street Reconstruction – City Project No. 2009-09D (South Grove Area 4)

L. Consider Awarding the Replacement of the Front Parking Apron of Fire Station #1 to Bailey Construction

M. Accept Donation to Inver Grove Heights Police Department from Wal-Mart Foundation

N. **Resolution No. 10-156** Authorizing Execution of the Joint Traffic Safety Project Grant

P. **Resolution No. 10-157** Approving Application of CLIMB Theatre, Inc. for a Premises Permit to Conduct Lawful Purpose Gambling at Baja Sol Cantina, 5681 Blaine Ave.

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Q. Schedule Public Hearing – Liquor License (Eddy's Bar & Grill, LLC)

R. Personnel Actions

Motion by Klein, second by Grannis, to Approve the Consent Agenda

Ayes: 5
Nays: 0 Motion carried.

I. Resolution Accepting Bids and Awarding Contract for the 2010 Pavement Management Program, City Project No. 2010-09C, Mill and Overlay

Mr. Kaldunski stated the item being considered is a resolution accepting bids and awarding a contract for the mill and overlay project on Blaine Avenue. He explained the low bid of $167,839.05 was submitted by Northwest Asphalt, Inc. He noted if the contract was awarded the contractor would be ready to start work on the project October 4th. He stated the bid was 18% lower than the engineer's estimate.

Mark Colburn, 5986 Blaine Avenue, asked when the assessments would be finalized.

Mayor Tourville explained an assessment hearing would be scheduled after the project is finished and the final costs are known.

Motion by Madden, second by Klein, to Adopt Resolution No. 10-155 Accepting Bids and Awarding Contract for the 2010 Pavement Management Program, City Project No. 2010-09C, Mill and Overlay to Northwest Asphalt, Inc. in the amount of $167,839.05

Ayes: 5
Nays: 0 Motion carried.

J. Approve Proposal from Braun Intertec to Prepare Response Action Plan Implementation Report for Heritage Village Park

Councilmember Grannis stated he would not be in favor of hiring Braun Intertec because of the issues that occurred with the soil testing done at Skyview Park. He explained the mistake that was made cost the City additional money.

Motion by Madden, second by Piekarski Krech, to Approve Proposal from Braun Intertec to Prepare Response Action Plan Implementation Report for Heritage Village Park

Ayes: 4
Nays: 1 (Grannis) Motion carried.

K. Accept Proposal for Engineering Services for Design, Construction Administration & Testing Services – Repair of Water Intrusion Damage in the Public Works Maintenance Building

Councilmember Madden referred to the staff report and questioned if the proposal would fix the problem for a while or if there would be additional requests and costs in the future to repair the damage.

Mr. Thureen stated this proposal is only for the consulting services. He explained staff would come back with a request to award a contract after bids are received for the actual construction repair work.

Motion by Madden, second by Grannis, to Accept Proposal for Engineering Services for Design, Construction Administration & Testing Services – Repair of Water Intrusion Damage in the Public Works Maintenance Building

Ayes: 5
Nays: 0 Motion carried.

O. Consider Non-Commercial Kennel License Application – 7745 Boyd Ave.

Ms. Rheaume explained the city code currently allows property owners to house three dogs. She stated that anyone that would like to keep four or more dogs, primarily as pets, has to apply for non-commercial

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kennel license. She reviewed the provisions of the code that are in place to regulate non-commercial kennel licensees. She explained that property owners within 1,000 feet of the property were sent a notice regarding the proposed issuance of the non-commercial kennel license and indicated that a number of comments and questions were received.

Suzette Weller, 7745 Boyd Avenue, stated she has three dogs and the two additional dogs would be living with her temporarily. She explained that her daughter moved in with her and brought her two dogs. She indicated they were not aware that a kennel license was required. She stated her dogs are small house dogs and her daughter's dogs go outside approximately twice a day. She noted that the dogs have their own individual kennels inside the house and they are never left outside for extended periods of time without supervision.

Sindy Osterman, 7755 Boyd Ave. E., stated she is the applicant's next door neighbor and opposed the approval of a kennel license. She expressed concerns regarding excessive barking and the proper clean-up of waste in her neighbor's yard.

Rick Matthes, 2735 78th St. E., stated he lived behind the applicant. He indicated there were noise issues in the past, and noted that the dogs have been well behaved recently. He stated that the smaller dogs are not outside very often.

Mayor Tourville explained five emails were received between Friday and Monday from residents that were opposed to the kennel license.

Motion by Madden, second by Klein, to receive letters of opposition from Don & Renee Weirick, Dan Osterman, Dennis Ward, Jeffrey Huebscher, and John Sobaski

Ayes: 5
Nays: 0 Motion carried.

Ms. Weller stated the noise issues her neighbor referred to were many years ago with different dogs.

Ms. Osterman indicated that she lives downhill from the subject property and opined that when it rains the waste from the applicant's yard runs downhill into her yard and pool. She noted that she called the health department because of the smell and e-coli in her pool and was afraid that the conditions could be harmful to her family's health.

Ms. Weller explained that she has a sandbox on her property and the sand has started to wash onto her neighbor's property. She stated that the dog waste in her yard is cleaned up regularly.

Mr. Matthes stated he has not had any similar problems.

Councilmember Madden stated he was concerned about establishing a precedent.

Councilmember Grannis questioned if other non-commercial kennel licenses were granted in similar situations.

Ms. Rheaume explained this is the first application being considered since the revisions were made to the animal control ordinance. She stated non-commercial kennel licenses were granted in the past, however applicants were required to obtain written concurrence from neighbors within 500 feet of the subject property.

Councilmember Piekarski Krech reiterated that the licenses approved in the past all had concurrence from the neighbors and there were no health or noise concerns.

Councilmember Klein stated he is concerned because there were so many neighbors opposed to the approval of the license.

A resident of 7745 Boyd Avenue stated there are a lot of dogs in the neighborhood. He explained some of the comments that were received referenced general animal control concerns and were not specific to their dogs. He indicated that the dogs are let out into a fenced yard and are always on a leash when they

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are taken for walks. He noted the waste is always cleaned up before the lawn is mowed. He reiterated that the two additional dogs would only be living at the house temporarily. He commented that the noise concerns could be directed at the whole neighborhood, not just his dogs.

Councilmember Madden stated when he went to the house and knocked on the door he could hear the dogs inside and noted he was not able to hear the barking by the time he got to the street. He explained that the neighbor's opinions have to be considered and opined that five dogs at one property is too many to have in this neighborhood.

Councilmember Piekarski Krech opined that the major issue is that the neighbors have indicated their opposition to the issuance of the license.

Mayor Tourville suggested that the Council could consider giving the owner some time to find a suitable home for two of the dogs.

The City Council directed that the applicant would be given thirty days to reduce the number of dogs being housed on the property from five (5) to three (3).

Motion by Klein, second by Madden, to deny Non-Commercial Kennel License Application for property located at 7745 Boyd Ave. because the density of the neighborhood is too great to accommodate additional animals beyond the maximum allowed as per City Code, the existence of a demonstrable pattern of habitual barking issues, and odor concerns.

Ayes: 5
Nays: 0 Motion carried.

5. <u>PUBLIC COMMENT:</u>

Joe Harms, 4455 65th Street, recommended that the City Council visit the project site to view the siltation problems. He stated he was told by both the DNR and Army Corps of Engineers that there had been no on-site conversations with the City and that they had not been to the site to witness any of the siltation problems.

Mr. Lynch responded that the City has letters from both agencies that confirm the meeting and address the siltation concern. He indicated that the issue would be discussed at the October 11th City Council meeting.

6. <u>PUBLIC HEARINGS:</u>

A. CITY OF INVER GROVE HEIGHTS; Consider Resolution Ordering Improvements an Approving Plans and Specifications for City Project No. 2010-21, Boyd Avenue Street Lighting

Mr. Kaldunski stated the project was initiated by a petition, signed by 14 of the 24 residents, from the Boyd Avenue neighborhood between 80th Street and 79th Street. He explained the residents requested that four street lights be installed, one at Boyd Avenue East and Upper 79th Court East, and two by the existing crosswalks at Boyd Avenue East and 80th Street East. He stated the petition is seeking street lights for pedestrian traffic going to schools in the area.

Mr. Kaldunski stated a proposal was received from Xcel Energy for the installation of four, 100W cobra cut-off fixtures on 30-foot buried fiber glass poles. He noted that the installation of wiring would be done by directional boring. He estimated that the total cost of the project would be approximately $12,250 for the four street lights, including construction, engineering, and administrative costs. He stated funding sources included 100% special assessments, approximately $6,125 or $255.29 per resident, for two area benefit lights at 79th Street East and Upper 79th Court East. He noted that the City would cover the costs associated with safety and thoroughfare lighting at 80th Street, approximately $6,125, via the street lighting budget. He explained a quarterly service rate for the electric power usage to the benefit area would be collected from the residents if approved. He reviewed the City's policy relating to the installation of street lights and the payment of installation and operating expenses.

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Councilmember Grannis questioned what the criteria were for designation as a collector street.

Mr. Kaldunski indicated that collector street designations come from MnDOT. He discussed comments received from residents during an informational meeting that was held regarding the project. He stated one resident felt no benefit was justified where a light exists and several residents questioned if the school should be assessed for the lights and required to pay the quarterly electrical costs. He noted engineering was informed that a light had previously existed at Upper 79th Court East from 1986 to 2007 until the landowners stopped paying for the service and the utility company removed the light. He explained several residents felt the location warranted additional City funding and safety consideration due to the high volume of traffic in the area that is associated with various school activities. He stated many of the residents were in favor of the additional lighting, although some expressed concerns regarding the proposed quarterly fee for electrical use.

Motion by Klein, second by Madden, to receive letter from John & Donna Patterson, 7900 Boyd Avenue

Ayes: 5
Nays: 0 Motion carried.

Councilmember Klein stated there is a high volume of traffic in the area and significant safety issues associated with the school crossing. He noted that additional lighting was overdue in this location and opined that the City should fund the total cost of the project because it is safety lighting. He questioned when the project could be completed.

Mr. Kaldunski responded that the quotes are for installation of the lights this fall.

Bill McClean, 7935 Boyd Avenue, stated he initiated the petition. He explained the original intent was to increase the safety for the children walking to and from school. He stated there is a lot of pedestrian and vehicular traffic on Boyd Avenue and the lack of street lights present a big safety issue during the school year. He supported the installation of the lights and asked that the City consider paying the total cost of the project because of the safety concerns.

Elizabeth LaPointe, 2879 80th St. E., stated the additional lights would not benefit her property. She explained that she is on a limited income and would only support the project if it was funded by the City.

Councilmember Piekarski Krech asked if the quarterly cost for electrical would still be charged if the City funded the entire project.

Councilmember Klein commented that the quarterly fee for electrical use should be retained.

Councilmember Madden opined that this is a safety issue and he would like to see the City pay for the project.

Mr. Thureen indicated the electrical use fee could still be charged if the City funded the entire project.

Sindy Osterman, 7755 Boyd Ave. E., stated that the corner of 80th Street and Boyd Avenue is not safe and the additional lighting is needed.

Allan Cederberg, 1162 E. 82nd St., stated he is concerned about setting a precedent. He explained that if the City pays for the project they will be expected to pay for future street lighting requests.

Mayor Tourville responded that not all street lighting requests would be for intersections that are major school crossings.

Mr. Thureen stated he currently only has enough money in the budget for three street lights.

Councilmember Piekarski Krech suggested using discretionary money to pay for two of the lights that were proposed to be paid for through special assessments, and the street lighting budget could fund the other two.

Motion by Klein, second by Madden, to close the public hearing.

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Ayes: 5
Nays: 0 Motion carried.

Mr. Cedarburg suggested installing stop signs on 80th Street to control the intersection.

Councilmember Piekarski Krech stated that 80th Street is a county road.

Motion by Piekarski Krech, second by Madden, to adopt Resolution No. 10-158 Ordering Improvements and Approving Plans and Specifications for City Project No. 2010-21, Boyd Avenue Street Lighting with a 100% City Contribution via discretionary funds and the street lighting budget.

Ayes: 5
Nays: 0 Motion carried.

7. <u>REGULAR AGENDA:</u>

COMMUNITY DEVELOPMENT:

A. MAX STEININGER; Consider the following request for the property located at 11305 Clark Road:

i) An Ordinance Approving a Temporary Sand and Gravel Zoning Extension

ii) A Conditional Use Permit Amendment for the Processing of Sand and Gravel and Processing of Recycled Concrete and Asphalt

iii) An Interim Use Permit Extension to Allow a Temporary Contractor's Yard with Outdoor Storage

Mr. Link stated the applicant requested an extension of their Sand and Gravel Overlay Zoning District designation for an additional ten (10) years. He noted the extension of the conditional use permit and interim use permit would remain active until the sand and gravel zoning was requested to be terminated by the land owner. He explained the original sand and gravel zoning was approved in 1999 and a specific term of the approval was not specified in the resolution but the original submittal packet called for an approval period of 10 years. He stated the applicant is proposing to increase the total volume of material to be removed by 55,000 cubic yards because there is no longer the need to reserve an area for a septic system. He noted that no changes are being proposed to the operation, only the time frame and volume increase.

Mr. Link explained the revised final land use plan shows the property would be graded down to a level elevation and left as one lot on either side of Clark Road to provide ample area for future industrial development. He stated the City Engineer reviewed the plans and supported the plan based on the amount of excess topsoil in the berms on the property would be sufficient to fill the lot on the east side of Clark Road to the proposed elevations. He explained staff supported approval of the requests with a five year extension because it would be consistent with the approvals that have been given to other sand and gravel operations. He stated both the Planning and Environmental Commissions recommended approval of the requests with a ten year extension.

Councilmember Klein stated that the Steiningers own the property and would develop at their discretion. He opined that he did not see a problem with granting the ten year extension period.

Mr. Link responded that a five year extension is typical to account for the possibility of development.

Councilmember Madden agreed that a ten year extension period should be granted. He opined that once the economy improves the property value will increase and the applicant will be able to sell.

Greg Steininger, applicant, explained a ten year extension was requested because they did not want to go through the permit process again. He stated the process took a lot of time and effort and the costs associated with the process were also a factor in their request. He clarified that they are open to selling the property if the right offer comes along.

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Motion by Madden, second by Klein, to adopt Ordinance No. 1218 approving a Temporary Sand and Gravel Zoning Extension, Resolution No. 10-159 approving a Conditional Use Permit Amendment for the Processing of Sand and Gravel and Processing of Recycled Concrete and Asphalt, and Resolution No. 10-160 approving an Interim Use Permit Extension to Allow a Temporary Contractor's Yard with Outdoor Storage for a Ten (10) Year Approval Period

Ayes: 5
Nays: 0 Motion carried.

B. ALLIED WASTE RECYCLERY; Consider a Resolution Approving a Conditional Use Permit Amendment for a Recycling Facility and Transfer Station for Recyclable Materials for property located at 2795 117th Street

Mr. Link reviewed the location of the property and explained the applicant has proposed an amendment to the approved site plan to change truck circulation along the front of the building. He stated the change in circulation would result in a change to the traffic patterns providing stacking and queuing on the property rather than on 117th Street. He noted the change would improve traffic safety. He stated both Planning staff and the Planning Commission recommended approval of the request.

Motion by Klein, second by Grannis, to adopt Resolution No. 10-161 approving a Conditional Use Permit Amendment for a Recycling Facility and Transfer Station for Recyclable Materials for property located at 2795 117th Street

Ayes: 5
Nays: 0 Motion carried.

C. CITY OF INVER GROVE HEIGHTS; Consider a Resolution creating a Permanent Housing Committee

Mr. Link reviewed that the City Council adopted a resolution receiving the 2010 Housing Action Plan Report and Recommendations as presented by the Housing Task Force at the July 12, 2010 council meeting. He stated Council then directed staff to prepare a resolution to form a permanent Housing Committee that would be appointed by the Council. He explained staff prepared a resolution recommending that a group of five (5) individuals serve on the committee, that the group meet at least quarterly, and that the primary function of the group would be to research and make recommendations relative to the Housing Action Plan and housing issues that may be of interest to the City Council. He noted that the committee would be considered a public body that would be subject to open meeting laws and would have minutes and noticed agendas. He stated that staff would begin to notify the public regarding the committee and accept applications from interested residents. He added that staff would bring a list of applicants to the Council for consideration by the end of the year, and the committee would be expected to hold their first meeting in early 2011.

Councilmember Grannis asked if staff feels there is a need for a housing committee.

Mr. Link responded that staff supports the formation of the committee. He stated housing is an important issue for the City to stay up to date and focused on.

Mr. Lynch explained that the City does not have a short term solution in place to deal with and address housing issues. He noted the committee would not have taxing authority and a budget would have to be approved by the City Council.

Councilmember Grannis suggested that the meeting requirements be left open-ended so the committee could meet on an as-needed basis rather than mandating quarterly meetings.

Mr. Lynch responded that applicants need to have an idea of the commitment level that is expected and how often the committee would meet.

Allan Cederberg, 1162 E. 82nd Street, stated he is disappointed that they have to wait until next year to get the committee formed. He noted staff already has a list of people interested in serving and asked that the

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process be expedited.

Mayor Tourville indicated that staff would go through the process as quickly as they are able.

Motion by Piekarski Krech, second by Tourville, to adopt Resolution No. 10-162 creating a Permanent Housing Committee

Ayes: 5
Nays: 0 Motion carried.

D. CITY OF INVER GROVE HEIGHTS; Consider First Reading of an Ordinance Establishing Minimum Requirements for the Regulation of Subsurface Sewage Treatment Systems

Mr. Link explained that the City has completed revisions to the existing Subsurface Sewage Treatment System ordinance in order to comply with State and County regulations. He noted that state law mandates that the City adopt the Dakota County or equivalent code document within one calendar year of the County's adoption. He explained the revisions to the ordinance accommodate all of the new rules from both the State and County code updates, bring forth several historical amendments, and create new performance requirements for effluent screens and certifications.

Mayor Tourville asked if staff could provide the Council with an outline of the differences between the City's proposed ordinance and the regulations adopted by other cities.

Allan Cederberg, 1162 E. 82nd Street, questioned if existing septic systems would be subject to the new regulations.

Mr. Link indicated that any changes to the current ordinance would not apply to existing systems.

Motion by Piekarski Krech, second by Klein, to approve the First Reading of an Ordinance Establishing Minimum Requirements for the Regulation of Subsurface Sewage Treatment Systems

Ayes: 5
Nays: 0 Motion carried.

ADMINISTRATION:

E. CITY OF INVER GROVE HEIGHTS; Consider Change Order No. 14 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation

Ms. Teppen stated the nine items included on the change order total $13,966.10. She noted the revised contract total is $11,877,238.10 and the project contingency has a balance of $246,152.90. She explained that 61% of the contingency has been expended and 75% of the construction has been completed.

Councilmember Piekarski Krech questioned why the backdraft damper for the boiler and water heater was not included in the original plans and specifications.

Mr. Greg Metz, BKV Group, stated the electrical equipment was larger than anticipated and the electrical room was subsequently reconfigured. He explained that rather than rearranging all of the mechanical systems the supply and exhaust were reversed, and the backdraft damper was the least expensive method to do that as it allows the exhaust to be contained on the wall without duct work.

Councilmember Piekarski Krech questioned why we received mechanical equipment that was larger than anticipated.

Mr. Metz responded that the mechanical equipment that is planned for and included in the original specifications is frequently changed when alternates are chosen and ordered for the project. He stated this

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occurs frequently in public projects. He explained that equipment comes in many different sizes and architects have to pick a product, design to those criteria and then adapt as things change throughout the course of the project.

Mayor Tourville questioned why the City would need to request that a berm be created to divert potential storm water overflow. He stated the storm water plan should have been designed correctly from the start.

Mr. Lynch stated the City is the local governmental unit responsible for storm water management and the implementation of rules and regulations. He explained City staff felt that the proposed change would be a belt and suspender system that could be implemented to comply with storm water regulations and protect the front of the building from flooding.

Mayor Tourville stated he understood and agreed that the City should protect the building from flooding. He questioned why the City had to plan for that protection after the fact.

Councilmember Piekarski Krech agreed that the architects should have figured out how to protect the building from storm water before the building was constructed, not after it has already flooded.

Jack, BKV Group, stated there has been a lot of work done by everyone involved to make sure that the building does not flood again. He commented that the flooding that occurred was a construction phasing problem, not a final design problem. He explained the issue was not a function of the original design not working, but rather that the original design is not complete. He stated the current on-site conditions led to the flooding. He reiterated that in his estimation the original design will work. He noted that the berm will provide a second level of defense against any future flooding.

Mayor Tourville asked for an update on the conversations with the contractor.

Mr. Lynch explained the City did have to send a notice to the contractor notifying them that they were out of compliance. He stated all of the issues were brought into compliance with the exception of one. He indicated that the routine maintenance was not done and they wanted to make sure it did not back up. He noted the emergency overflow also does not work well.

Mayor Tourville commented on two dead evergreens that were planted in the front of the building and stated that needs to be addressed right away.

Mr. Lynch indicated that they are aware of the issue and it will be taken care of.

Motion by Madden, second by Grannis, to approve Change Order No. 14 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation

Ayes: 5
Nays: 0 Motion carried.

8. <u>MAYOR & COUNCIL COMMENTS:</u>

Councilmember Piekarski Krech commented on the success of Fall Clean-Up day and thanked staff from Dakota County, West St. Paul, and Inver Grove Heights that participated in the event.

9. <u>ADJOURN:</u> Motion by Grannis, second by Madden, to adjourn. The meeting was adjourned by a unanimous vote at 9:30 p.m.

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AGENDA ITEM _____4B_____

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

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent		None
Contact:	Cathy Shea 651-450-2521	X	Amount included in current budget
Prepared by:	Cathy Shea Asst. Finance Director		Budget amendment requested
Reviewed by:	N/A		FTE included in current complement
			New FTE requested – N/A
			Other

PURPOSE/ACTION REQUESTED

Approve the attached resolution approving disbursements for the period of September 23, 2010 to October 6, 2010.

SUMMARY

Shown below is a listing of the disbursements for the various funds for the period ending October 6, 2010. The detail of these disbursements is attached to this memo.

General & Special Reveune	$186,209.36
Debt Service & Capital Projects	955,046.06
Enterprise & Internal Service	61,589.54
Escrows	11,024.75
Grand Total for All Funds	$1,213,869.71

If you have any questions about any of the disbursements on the list, please call Vickie Gray, Accounting Technician at 651-450-2515 or Cathy Shea, Asst. Finance Director at 651-450-2521.

Attached to this summary for your action is a resolution approving the disbursements for the period September 23, 2010 to October 6, 2010 and the listing of disbursements requested for approval.

DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

RESOLUTION APPROVING DISBURSEMENTS FOR THE PERIOD ENDING OCTOBER 6, 2010

WHEREAS, a list of disbursements for the period ending October 6, 2010 was presented to the City Council for approval;

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

General & Special Reveune	$186,209.36
Debt Service & Capital Projects	955,046.06
Enterprise & Internal Service	61,589.54
Escrows	11,024.75
Grand Total for All Funds	$1,213,869.71

Adopted by the City Council of Inver Grove Heights this 11th day of October, 2010.

Ayes:

Nays:

_____
George Tourville, Mayor

ATTEST:

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Melissa Rheaume, Deputy City Clerk

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102605	ACE PAINT & HARDWARE	504115	101-6000-451.60-65		9/2010	16.52
			504156	101-5200-443.60-16		9/2010	23.48
			504160	101-4200-423.60-40		9/2010	7.47
			504165	101-5200-443.60-16		9/2010	6.39
						* Total	53.86
09/29/2010	102609	BARR ENGINEERING COMPAN	23190328141	101-5100-442.30-30		9/2010	1,523.00
						* Total	1,523.00
09/29/2010	102610	BERNARDY, DANIEL	materials training	101-4200-423.60-18		9/2010	98.26
						* Total	98.26
09/29/2010	102611	BLOOMINGTON SECURITY SO	S68237	101-6000-451.60-66		9/2010	14.75
			S70615	101-6000-451.40-40		9/2010	175.00
						* Total	189.75
09/29/2010	102614	BONESTROO, ROSENE, ANDE	180789	101-6000-451.30-70		9/2010	521.69
						* Total	521.69
09/29/2010	102619	C & H SPORT SURFACES IN	113	101-6000-451.40-47		9/2010	3,000.00
			114	101-6000-451.40-47		9/2010	12,050.00
						* Total	15,050.00
09/29/2010	102622	CARTE GRAPH SYSTEMS	R06532	101-5100-442.40-44		9/2010	3,500.00
			R06532	101-6000-451.30-70		9/2010	1,000.00
						* Total	4,500.00
09/29/2010	102623	CEMSTONE PRODUCTS COMPA	1222220	101-6000-451.60-40		9/2010	336.26
						* Total	336.26
09/29/2010	102625	DAKOTA COMMUNICATIONS C	october	101-4000-421.70-30		9/2010	24,934.00
			october	101-4200-423.70-50		9/2010	12,465.00
						* Total	37,399.00
09/29/2010	102626	DAKOTA CTY PROPERTY REC	truth in taxation	101-2000-415.30-70		9/2010	2,774.29
						* Total	2,774.29
09/29/2010	102627	DAKOTA CTY TECH COLLEGE	cust id 10744279	101-4200-423.50-80		9/2010	563.61
						* Total	563.61
09/29/2010	102629	DAKOTA CTY TREASURER	8269	101-5400-445.40-20		9/2010	411.04
						* Total	411.04
09/29/2010	102630	DAKOTA ELECTRIC ASSN	acct 1093947	101-5400-445.40-20		9/2010	1,163.60
						* Total	1,163.60
09/29/2010	102641	ENTENMANN-ROVIN CO.	64750	101-4000-421.60-45		9/2010	447.33
						* Total	447.33
09/29/2010	102645	FOX, KIM	lunches-work session	101-3000-419.60-65		9/2010	106.99
						* Total	106.99
09/29/2010	102647	G & K SERVICES	1182582608	101-5200-443.60-45		9/2010	16.89

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102647	G & K SERVICES	1182582608	101-6000-451.60-45		9/2010	25.48
			1182593604	101-5200-443.60-45		9/2010	16.89
			1182593604	101-6000-451.60-45		9/2010	25.48
						* Total	84.74
09/29/2010	102649	GRAINGER	9342229250	101-5200-443.60-16		9/2010	33.19
						* Total	33.19
09/29/2010	102653	HOME DEPOT CREDIT SERVI	acct 6035322502554813	101-4200-423.60-65		9/2010	59.78
						* Total	59.78
09/29/2010	102654	HOME DEPOT CREDIT SERVI	acct 6035322502061959	101-5200-443.60-16		9/2010	340.18
						* Total	340.18
09/29/2010	102656	IKON OFFICE SOLUTIONS	acct 1452531017392	101-6000-451.40-65		9/2010	29.28
						* Total	29.28
09/29/2010	102658	INVERCITY PRINTING INC	109015	101-4200-423.50-30		9/2010	74.09
						* Total	74.09
09/29/2010	102660	L'ALLIER CONCRETE, INC	916A	101-5200-443.40-46		9/2010	2,075.00
			917A	101-5200-443.40-46		9/2010	2,950.00
						* Total	5,025.00
09/29/2010	102661	LEAGUE OF MN CITIES	dues	101-1000-413.50-70		9/2010	19,619.00
						* Total	19,619.00
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	101-0000-203.09-00		9/2010	1,872.22
			OCTOBER	101-1100-413.20-62		9/2010	67.14
			OCTOBER	101-2000-415.20-62		9/2010	96.63
			OCTOBER	101-3000-419.20-62		9/2010	39.41
			OCTOBER	101-3200-419.20-62		9/2010	30.53
			OCTOBER	101-3300-419.20-62		9/2010	58.51
			OCTOBER	101-4000-421.20-62		9/2010	495.67
			OCTOBER	101-4200-423.20-62		9/2010	41.08
			OCTOBER	101-5000-441.20-62		9/2010	25.08
			OCTOBER	101-5100-442.20-62		9/2010	102.87
			OCTOBER	101-5200-443.20-62		9/2010	59.04
			OCTOBER	101-6000-451.20-62		9/2010	94.29
						* Total	2,982.47
09/29/2010	102666	MN MAYOR'S ASSN	mayor george tourville	101-1000-413.50-70		9/2010	20.00
						* Total	20.00
09/29/2010	102667	MN NCPERS LIFE INSURANC	OCTOBER 2010	101-0000-203.16-00		9/2010	384.00
						* Total	384.00
09/29/2010	102668	MN PIPE & EQUIPMENT	0258749	101-6000-451.40-47		9/2010	502.69
						* Total	502.69
09/29/2010	102670	NATURE CALLS, INC.	14774	101-6000-451.40-65		9/2010	675.00
						* Total	675.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102671	NEXTEL COMMUNICATIONS	POLICE	101-4000-421.50-20		9/2010	692.31
						* Total	692.31
09/29/2010	102672	NEXTEL COMMUNICATIONS	acct 487383319	101-6000-451.50-20		9/2010	403.23
						* Total	403.23
09/29/2010	102673	NEXTEL COMMUNICATIONS	acct 573073317	101-1100-413.50-20		9/2010	38.02
						* Total	38.02
09/29/2010	102678	PINE BEND PAVING, INC.	4888	101-6000-451.40-47		9/2010	8,900.00
						* Total	8,900.00
09/29/2010	102680	PLANTE, BRENDA	lunch - training	101-4000-421.50-75		9/2010	10.75
						* Total	10.75
09/29/2010	102682	PREVENTIVE CARE, INC.	117647	101-4000-421.60-65		9/2010	245.70
						* Total	245.70
09/29/2010	102683	QWEST	acct 6515520672	101-6000-451.50-20		9/2010	41.60
						* Total	41.60
09/29/2010	102684	QWEST	acct 6514530219	101-6000-451.50-20		9/2010	41.56
						* Total	41.56
09/29/2010	102686	S & T OFFICE PRODUCTS	VICKIE	101-2000-415.60-40		9/2010	106.13
			VICKIE A	101-2000-415.60-65		9/2010	73.36
			1321A	101-2000-415.60-40		9/2010	83.45
			1322	101-1100-413.60-65		9/2010	28.66
			1323	101-5000-441.60-10		9/2010	303.40
			1323 A	101-5000-441.60-10		9/2010	207.33
			1344	101-3300-419.60-40		9/2010	10.13
			1371	101-5200-443.60-40		9/2010	29.62
						* Total	842.08
09/29/2010	102687	SAFE STEP LLC	1026	101-5200-443.40-46		9/2010	5,592.09
						* Total	5,592.09
09/29/2010	102689	SHERWIN-WILLIAMS	60165	101-6000-451.40-47		9/2010	135.18
						* Total	135.18
09/29/2010	102695	SPRINT	POLICE	101-4000-421.50-20		9/2010	260.00
						* Total	260.00
09/29/2010	102696	SPRINT	acct 641378810034	101-4200-423.50-20		9/2010	39.99
						* Total	39.99
09/29/2010	102697	SPRINT	acct 266183728072	101-4200-423.50-20		9/2010	454.61
						* Total	454.61
09/29/2010	102698	ST CLOUD TECHNICAL COLL	93023	101-4200-423.50-80		9/2010	90.00
						* Total	90.00
09/29/2010	102699	ST. CROIX TREE SERVICE,	60752	101-6000-451.70-50		9/2010	942.64

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102699	ST. CROIX TREE SERVICE,	60753	101-6000-451.70-50		9/2010	972.56
			60755	101-6000-451.70-50		9/2010	272.53
			60756	101-6000-451.70-50		9/2010	496.97
						* Total	2,684.70
09/29/2010	102700	STEENBERG, LUKE	station supplies	101-4200-423.40-40		9/2010	44.31
						* Total	44.31
09/29/2010	102701	SYLVA CORPORATION	25369	101-6000-451.60-16		9/2010	1,760.77
			25376	101-6000-451.60-16		9/2010	1,760.77
						* Total	3,521.54
09/29/2010	102702	TDS METROCOM	acct 6514502500	101-4000-421.50-20		9/2010	130.27
			acct 6514502500	101-4200-423.50-20		9/2010	156.33
			acct 6514502500	101-6000-451.50-20		9/2010	34.90
						* Total	321.50
09/29/2010	102705	TRANS UNION LLC	acct 0924v0008542	101-1100-413.30-50		9/2010	12.40
						* Total	12.40
09/29/2010	102707	VIKING PAINTS, INC.	34033	101-6000-451.60-16		9/2010	569.12
						* Total	569.12
09/29/2010	102709	WELLER, SUZETTE	kennel license	101-0000-321.90-00		9/2010	50.00
						* Total	50.00
09/29/2010	102710	WILLOW CREEK CONCRETE P	8329300	101-5200-443.60-16		9/2010	411.74
						* Total	411.74
09/29/2010	102711	XCEL ENERGY	acct 5151854463	101-4000-421.40-42		9/2010	38.54
						* Total	38.54
09/29/2010	102713	XCEL ENERGY	act 5147791673	101-6000-451.40-10		9/2010	119.02
			act 5147791673	101-6000-451.40-20		9/2010	1,224.77
						* Total	1,343.79
10/05/2010	102715	US POSTMASTER	POSTAGE STAMPS	101-4000-421.50-35		10/2010	132.00
						* Total	132.00
10/06/2010	102716	ACE PAINT & HARDWARE	504123	101-5200-443.60-16		10/2010	16.00
			504234	101-4200-423.60-11		10/2010	3.50
			504234	101-4200-423.60-65		10/2010	4.49
			504247	101-4200-423.40-40		10/2010	4.26
			504250	101-5200-443.60-16		10/2010	12.31
						* Total	40.56
10/06/2010	102718	AFFORDABLE COMFORT MECH	duplicate license app	101-0000-321.95-00		10/2010	50.00
						* Total	50.00
10/06/2010	102719	AFSCME COUNCIL 5	9/18 - 10/1	101-0000-203.10-00		10/2010	882.78
						* Total	882.78
10/06/2010	102725	BARR ENGINEERING COMPAN	23190328142	101-5100-442.30-30		10/2010	3,371.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
						* Total	3,371.00
10/06/2010	102726	BATTLES, SHANNON	mngfoa - mileage	101-2000-415.50-65		10/2010	181.00
			mngfoa - food	101-2000-415.50-75		10/2010	7.36
						* Total	188.36
10/06/2010	102729	BOTTEN, HEATHER	conference	101-3200-419.50-80		10/2010	429.46
						* Total	429.46
10/06/2010	102730	BRINKMAN, AMY	food - flu shot clinic	101-1100-413.30-50		10/2010	43.80
						* Total	43.80
10/06/2010	102732	CDW GOVERNMENT INC	TWF7601	101-4000-421.60-40		10/2010	6,657.03
						* Total	6,657.03
10/06/2010	102735	CONSTRUCTION BOOK	order sc07156125	101-3300-419.60-18		10/2010	676.26
			order sc07156125	101-3300-419.60-18		10/2010	85.65
						* Total	761.91
10/06/2010	102736	DAKOTA CTY PROPERTY REC	july 2010	101-2000-415.30-70		10/2010	8.16
			july 2010	101-4000-421.30-70		10/2010	6.64
			july 2010	101-5100-442.30-70		10/2010	39.04
						* Total	53.84
10/06/2010	102737	DAKOTA CTY TREASURER-AU	AUG 2010	101-4000-421.70-30		10/2010	1,339.50
			AUG 2010	101-4200-423.70-50		10/2010	1,386.50
			AUG 2010	101-5200-443.30-70		10/2010	47.00
						* Total	2,773.00
10/06/2010	102738	DANNER LANDSCAPING	7631	101-5200-443.60-16		10/2010	47.03
						* Total	47.03
10/06/2010	102739	DECISION RESOURCES LTD	0927102	101-1100-413.30-70		10/2010	10,000.00
						* Total	10,000.00
10/06/2010	102741	EARL F ANDERSEN INC	92650	101-5200-443.60-16		10/2010	1,350.10
			92872	101-5200-443.60-16		10/2010	188.44
						* Total	1,538.54
10/06/2010	102743	FIRE SAFETY USA	38685	101-4200-423.60-40		10/2010	5,687.00
						* Total	5,687.00
10/06/2010	102746	FRED PRYOR SEMINARS	attendee; frank martin	101-3300-419.50-80		10/2010	149.00
						* Total	149.00
10/06/2010	102747	FUN JUMPS ENTERTAINMENT	10789	101-4200-423.30-70		10/2010	214.25
						* Total	214.25
10/06/2010	102749	G & K SERVICES	1182604449	101-5200-443.60-45		10/2010	54.80
			1182604449	101-6000-451.60-45		10/2010	25.48
						* Total	80.28
10/06/2010	102752	GOVERNMENT FINANCE OFFI	gaap updates-schroepfer	101-2000-415.50-80		10/2010	135.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
						* Total	135.00
10/06/2010	102753	GOVERNMENT FINANCE OFFI	member ann lanoue	101-2000-415.50-70		10/2010	205.00
						* Total	205.00
10/06/2010	102754	GRAINGER	9347043714	101-5200-443.60-16		10/2010	100.75
			9349412669	101-5200-443.60-16		10/2010	932.64
			9352614680	101-5200-443.60-16		10/2010	370.28
						* Total	1,403.67
10/06/2010	102759	HUNTING, ALLAN	conference	101-3200-419.50-80		10/2010	549.92
						* Total	549.92
10/06/2010	102760	ICC	memberfrank martin 296400	101-3300-419.50-70		10/2010	100.00
						* Total	100.00
10/06/2010	102761	ICC	1232769	101-3300-419.60-18		10/2010	518.93
						* Total	518.93
10/06/2010	102765	INVER GROVE STORAGE & R	SEPT RENTAL	101-4000-421.70-30		10/2010	266.88
						* Total	266.88
10/06/2010	102766	IUOE	9/18 - 10/1	101-0000-203.10-00		10/2010	1,447.65
						* Total	1,447.65
10/06/2010	102767	JUCKEL LAWNCARE & SNOW	1259	101-3300-419.30-70		10/2010	83.90
			1261	101-3300-419.30-70		10/2010	157.64
			1263	101-3300-419.30-70		10/2010	146.96
						* Total	388.50
10/06/2010	102771	LANOUE, ANN	mileage - software demo	101-2000-415.50-65		10/2010	23.62
						* Total	23.62
10/06/2010	102772	LELS	9/18 - 10/1	101-0000-203.10-00		10/2010	1,170.00
						* Total	1,170.00
10/06/2010	102773	LELS SERGEANTS	9/18 - 10/1	101-0000-203.10-00		10/2010	210.00
						* Total	210.00
10/06/2010	102775	LONE OAK GRAPHICS INC	23905	101-3300-419.50-30		10/2010	35.27
						* Total	35.27
10/06/2010	102777	MAHCO	new member nicole cook	101-3000-419.50-70		10/2010	100.00
						* Total	100.00
10/06/2010	102780	MIKE'S SHOE REPAIR, INC	9212010	101-4200-423.30-70		10/2010	26.00
						* Total	26.00
10/06/2010	102783	MN DEPT OF LABOR & INDU	registration-frank martin	101-3300-419.50-80		10/2010	85.00
						* Total	85.00
10/06/2010	102784	MN DEPT OF LABOR & INDU	attendee; joe merchak	101-3300-419.50-80		10/2010	85.00
						* Total	85.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
10/06/2010	102785	MN GLOVE & SAFETY, INC.	244790	101-5200-443.60-45		10/2010	149.46
						* Total	149.46
10/06/2010	102786	MN LOCKS	101037907	101-5200-443.60-16		10/2010	177.59
						* Total	177.59
10/06/2010	102787	MN STATE FIRE MARSHAL D	attendee-frank martin	101-3300-419.50-80		10/2010	40.00
						* Total	40.00
10/06/2010	102788	NEENAH FOUNDRY COMPANY	719771	101-5200-443.40-66		10/2010	1,308.15
						* Total	1,308.15
10/06/2010	102789	NEWMAN SIGNS INC	0226431	101-5200-443.60-16		10/2010	4,219.59
			0226529	101-5200-443.60-16		10/2010	34.85
						* Total	4,254.44
10/06/2010	102790	NEXTEL COMMUNICATIONS	acct 634573312	101-3300-419.50-20		10/2010	427.67
						* Total	427.67
10/06/2010	102791	NEXTEL COMMUNICATIONS	acct 249383315	101-5200-443.50-20		10/2010	64.35
						* Total	64.35
10/06/2010	102793	OHLHAUSER, KATIE	parking	101-4000-421.50-65		10/2010	5.00
			lunch - training	101-4000-421.50-75		10/2010	8.62
						* Total	13.62
10/06/2010	102794	OTIS, JOSHUA M	academy shirts	101-4000-421.60-45		10/2010	117.49
						* Total	117.49
10/06/2010	102797	QWEST	FIRE	101-4200-423.50-20		10/2010	40.09
						* Total	40.09
10/06/2010	102799	SAM'S CLUB	FIRE	101-4200-423.60-11		10/2010	18.38
			FIRE	101-4200-423.60-65		10/2010	41.28
						* Total	59.66
10/06/2010	102802	SHEA, CATHY	certified mail - bond doc	101-2000-415.50-35		10/2010	10.00
			mngroa - mileage	101-2000-415.50-65		10/2010	166.25
			mngroa - hotel	101-2000-415.50-75		10/2010	89.89
						* Total	266.14
10/06/2010	102804	SPECIALTY TURF & AG INC	attendee; m. borgwardt	101-6000-451.50-80		10/2010	15.00
						* Total	15.00
10/06/2010	102805	TAB PRODUCTS CO. LLC	1948940	101-4000-421.60-65		10/2010	136.49
						* Total	136.49
10/06/2010	102806	TERRI KENISON	SEPT	101-4200-423.30-70		10/2010	908.44
						* Total	908.44
10/06/2010	102810	TRACTOR SUPPLY CREDIT P	acct 6035301200183679	101-5200-443.60-16		10/2010	385.43
			acct 6035301200183679	101-6000-451.60-12		10/2010	66.51
						* Total	451.94

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
10/06/2010	102811	U OF M	STORMWATER ED	101-5200-443.50-80		10/2010	175.00
						* Total	175.00
10/06/2010	102812	U OF M - ONSITE SEWAGE	attendee; david neameyer	101-3300-419.50-80		10/2010	565.00
						* Total	565.00
10/06/2010	102813	ULINE	34366490	101-4200-423.60-40		10/2010	1,502.13
						* Total	1,502.13
10/06/2010	102814	UNITED WAY	9/18 - 10/1	101-0000-203.13-00		10/2010	178.00
						* Total	178.00
10/06/2010	102816	USA MOBILITY WIRELESS I	T6119266I	101-4000-421.50-20		10/2010	15.67
						* Total	15.67
10/06/2010	102818	WAL-MART BUSINESS	acct 6032202530257113	101-4000-421.60-65		10/2010	41.63
						* Total	41.63
10/06/2010	102819	WIEDERHOEFT, ADAM	training - food	101-4000-421.50-75		10/2010	125.89
						* Total	125.89
10/06/2010	102821	XCEL ENERGY	acct 5193598573	101-5400-445.40-20		10/2010	348.05
						* Total	348.05
10/06/2010	102822	XCEL ENERGY	acct 5160255967	101-5400-445.40-20		10/2010	32.97
						* Total	32.97
10/06/2010	102824	XCEL ENERGY	acct 5183943582	101-5400-445.40-20		10/2010	34.91
						* Total	34.91
10/06/2010	102825	XCEL ENERGY	acct 5170946691	101-5400-445.40-20		10/2010	35.15
						* Total	35.15
10/06/2010	102826	XCEL ENERGY	acct 5193897235	101-5400-445.40-20		10/2010	414.04
						* Total	414.04
10/06/2010	102828	10,000 LAKES CHAPTER	attendee; frank martin	101-3300-419.50-80		10/2010	420.00
						* Total	420.00
				118 Checks	** Fund Total		173,922.11
09/29/2010	102639	ENSEMBLE CREATIVE & MAR	AUG 2010	201-1600-465.50-25		9/2010	1,500.00
						* Total	1,500.00
09/29/2010	102640	ENSEMBLE CREATIVE & MAR	SEPT 2010	201-1600-465.50-25		9/2010	1,500.00
						* Total	1,500.00
09/29/2010	102642	EXPLORE MINNESOTA TOURI	ADVERTISING	201-1600-465.50-25		9/2010	275.00
						* Total	275.00
				3 Checks	** Fund Total		3,275.00
10/06/2010	102820	WSB & ASSOCIATES, INC.	1	399-9000-570.30-70		10/2010	1,060.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
						* Total	1,060.00
				1 Checks	** Fund Total		1,060.00
09/29/2010	102632	DASCOM SYSTEMS GROUP LL	JC20089	428-5918-728.80-61	0818	9/2010	278.20
						* Total	278.20
09/29/2010	102686	S & T OFFICE PRODUCTS	1325	428-5918-728.80-50	0818	9/2010	979.83
						* Total	979.83
10/06/2010	102744	FLUID INTERIORS LLC	13970	428-5918-728.80-50	0818	10/2010	1,084.78
						* Total	1,084.78
10/06/2010	102776	LOW VOLTAGE CONTRACTORS	VOUCHER 6	428-5918-728.80-20	0818	10/2010	9,500.00
						* Total	9,500.00
10/06/2010	102801	SHAW-LUNDQUIST ASSOCIAT	city hall	428-5918-728.80-20	0818	10/2010	393,178.40
						* Total	393,178.40
				5 Checks	** Fund Total		405,021.21
09/29/2010	102628	DAKOTA CTY TREASURER	8247	429-5911-729.80-30	0911	9/2010	187,971.91
			8247	429-5921-729.80-30	0921	9/2010	165,864.40
						* Total	353,836.31
10/06/2010	102770	LAMETTI & SONS, INC.	rock island swing bridge	429-5924-729.80-30	0924	10/2010	163,277.24
						* Total	163,277.24
				2 Checks	** Fund Total		517,113.55
10/06/2010	102723	ASTECH CORP	sealcoating	440-5900-740.40-46	1009B	10/2010	26,788.25
						* Total	26,788.25
10/06/2010	102724	ASTECH CORP	crack sealing	440-5900-740.40-46	1009A	10/2010	3,547.05
						* Total	3,547.05
				2 Checks	** Fund Total		30,335.30
09/29/2010	102613	BOLTON & MENK, INC.	0134329	446-5915-746.30-30	0315	9/2010	1,516.00
						* Total	1,516.00
				1 Checks	** Fund Total		1,516.00
09/29/2010	102607	ALARM & COMMUNICATION S	8671	501-7100-512.40-40		9/2010	244.97
						* Total	244.97
09/29/2010	102622	CARTE GRAPH SYSTEMS	R06532	501-7100-512.30-70		9/2010	3,500.00
						* Total	3,500.00
09/29/2010	102631	DANNER LANDSCAPING	7653	501-7100-512.60-16		9/2010	23.51
						* Total	23.51
09/29/2010	102647	G & K SERVICES	1182582608	501-7100-512.60-45		9/2010	31.75

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102647	G & K SERVICES	1182593604	501-7100-512.60-45		9/2010	5.21
						* Total	36.96
09/29/2010	102648	GERTEN'S LANDSCAPING	9277	501-7100-512.60-16		9/2010	164.12
			9281	501-7100-512.60-16		9/2010	270.52
						* Total	434.64
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	501-7100-512.20-62		9/2010	42.62
						* Total	42.62
09/29/2010	102677	OXYGEN SERVICE COMPANY,	05503698	501-7100-512.60-16		9/2010	15.34
						* Total	15.34
09/29/2010	102702	TDS METROCOM	acct 6514502500	501-7100-512.50-20		9/2010	211.59
						* Total	211.59
09/29/2010	102703	TKDA	201002777	501-7100-512.30-70		9/2010	1,302.10
						* Total	1,302.10
10/06/2010	102749	G & K SERVICES	1182604449	501-7100-512.60-45		10/2010	5.21
						* Total	5.21
10/06/2010	102751	GERLACH OUTDOOR POWER E	162660	501-7100-512.60-16		10/2010	38.88
			162665	501-7100-512.60-16		10/2010	14.24
						* Total	53.12
				11 Checks	** Fund Total		5,870.06
09/29/2010	102615	BOWMAN, MARGARET	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	50.37
						* Total	50.37
09/29/2010	102617	BURNET TITLE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	11.44
						* Total	11.44
09/29/2010	102618	BURNET TITLE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	91.39
						* Total	91.39
09/29/2010	102624	CENTURY TITLE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	36.57
						* Total	36.57
09/29/2010	102633	DCA TITLE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	57.99
						* Total	57.99
09/29/2010	102635	EDINA REALTY TITLE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	27.94
						* Total	27.94
09/29/2010	102644	FEENEY, DAN	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	65.68
						* Total	65.68
09/29/2010	102647	G & K SERVICES	1182582608	502-7200-514.60-45		9/2010	13.60
			1182593604	502-7200-514.60-45		9/2010	2.23
						* Total	15.83

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102655	HOME TITLE INC	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	100.00
						* Total	100.00
09/29/2010	102662	MIDWEST GUARANTY TITLE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	119.47
						* Total	119.47
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	502-7200-514.20-62		9/2010	22.94
						* Total	22.94
09/29/2010	102691	SIGNATURE TITLE MIDWEST	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	58.26
						* Total	58.26
09/29/2010	102714	YORK, JULIE	REQUESTED CREDIT REFUND	502-0000-116.00-00		9/2010	50.00
						* Total	50.00
10/06/2010	102749	G & K SERVICES	1182604449	502-7200-514.60-45		10/2010	2.23
						* Total	2.23
				14 Checks	** Fund Total		710.11
09/29/2010	102650	GRANDMA'S BAKERY	47065	503-8300-524.76-05		9/2010	42.98
						* Total	42.98
09/29/2010	102652	HILLYARD INC	6463791	503-8500-526.40-40		9/2010	91.72
						* Total	91.72
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	503-8000-521.20-62		9/2010	27.95
			OCTOBER	503-8500-526.20-62		9/2010	25.35
			OCTOBER	503-8600-527.20-62		9/2010	43.30
						* Total	96.60
09/29/2010	102686	S & T OFFICE PRODUCTS	1180	503-8500-526.60-65		9/2010	81.02
						* Total	81.02
09/29/2010	102712	XCEL ENERGY	acct 518775110	503-8600-527.40-20		9/2010	21.54
						* Total	21.54
10/06/2010	102716	ACE PAINT & HARDWARE	504215	503-8500-526.60-65		10/2010	4.80
						* Total	4.80
10/06/2010	102720	ALL STAR PRO GOLF, INC.	217570	503-8200-523.76-30		10/2010	76.76
						* Total	76.76
10/06/2010	102721	ARCTIC GLACIER, INC.	439026513	503-8300-524.60-65		10/2010	135.00
						* Total	135.00
10/06/2010	102722	ASPEN EQUIPMENT	10073363	503-8600-527.40-50		10/2010	1,068.75
						* Total	1,068.75
10/06/2010	102733	CHECKPOINT SYSTEMS INC	459942	503-8500-526.50-55		10/2010	190.00
						* Total	190.00
10/06/2010	102734	COLLEGE CITY BEVERAGE	205511	503-8300-524.76-15		10/2010	50.40

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
						* Total	50.40
10/06/2010	102740	DEX MEDIA EAST	GOLF COURSE	503-8500-526.50-25		10/2010	82.93
						* Total	82.93
10/06/2010	102748	G & K SERVICES	1182604450	503-8600-527.60-35		10/2010	85.36
						* Total	85.36
10/06/2010	102755	GRANDMA'S BAKERY	68125	503-8300-524.76-05		10/2010	23.20
			68720	503-8300-524.76-05		10/2010	37.78
			69024	503-8300-524.76-05		10/2010	46.03
			69274	503-8300-524.76-05		10/2010	35.29
			69524	503-8300-524.76-05		10/2010	23.20
			69818	503-8300-524.76-05		10/2010	23.20
						* Total	188.70
10/06/2010	102756	GREAT NORTHERN BUILDERS	1850 70TH ST	503-8500-526.40-40		10/2010	250.00
						* Total	250.00
10/06/2010	102769	LABOR READY MIDWEST INC	80192686	503-8600-527.50-45		10/2010	634.08
						* Total	634.08
10/06/2010	102778	MENARDS - WEST ST. PAUL	93764	503-8600-527.60-20		10/2010	174.53
			93917	503-8500-526.60-65		10/2010	16.18
						* Total	190.71
10/06/2010	102779	METRO CASH REGISTER SYS	69937	503-8500-526.60-10		10/2010	74.81
						* Total	74.81
10/06/2010	102786	MN LOCKS	101037914	503-8600-527.60-65		10/2010	275.97
						* Total	275.97
10/06/2010	102800	SCHAEFFER MFG CO	HV1302	503-8600-527.60-22		10/2010	844.80
						* Total	844.80
10/06/2010	102815	US FOODSERVICE	4717863	503-8300-524.60-65		10/2010	164.82
			4717863	503-8300-524.76-05		10/2010	645.87
			4834230	503-8300-524.76-05		10/2010	185.28
						* Total	995.97
10/06/2010	102817	VERIZON WIRELESS	acct 4805698913	503-8500-526.50-20		10/2010	8.71
						* Total	8.71
10/06/2010	102823	XCEL ENERGY	acct 5158775121	503-8600-527.40-20		10/2010	2,186.34
						* Total	2,186.34
				23 Checks	** Fund Total		7,677.95
09/29/2010	102616	BUDGET SIGN AND GRAPHIC	49151	504-6100-452.60-09	R32000	9/2010	76.95
						* Total	76.95
09/29/2010	102656	IKON OFFICE SOLUTIONS	acct 1452531017392	504-6100-452.40-65	R90100	9/2010	263.56
						* Total	263.56

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102657	INVER GROVE STORAGE & R	moon bounce	504-6100-452.40-50	R30720	9/2010	133.60
						* Total	133.60
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	504-6100-452.20-62	R90100	9/2010	61.31
						* Total	61.31
09/29/2010	102674	NEXTEL COMMUNICATIONS	acct 302193319	504-6100-452.50-20	R90100	9/2010	86.92
						* Total	86.92
09/29/2010	102688	SAVE A LIFE	1198	504-6100-452.60-09	R32000	9/2010	65.00
						* Total	65.00
09/29/2010	102693	SOUTH ST PAUL UMPIRES A	JULY 2010	504-6100-452.30-70	R50100	9/2010	3,672.00
						* Total	3,672.00
10/06/2010	102728	BOLLERUD, RACHEL	class canceled	504-0000-207.03-00		10/2010	5.00
			class canceled	504-0000-347.00-00	R20120	10/2010	60.00
						* Total	65.00
10/06/2010	102745	FOREMOST PROMOTIONS	94682	504-6100-452.60-09	R20680	10/2010	204.87
						* Total	204.87
10/06/2010	102750	GALLAHUE, NICK	canceled class	504-0000-207.03-00		10/2010	11.64
			canceled class	504-0000-347.00-00	R50150	10/2010	163.36
						* Total	175.00
10/06/2010	102763	INDEPENDENT SCHOOL DIST	SENIOR TRIP	504-0000-227.10-00		10/2010	1,494.00
						* Total	1,494.00
10/06/2010	102764	INVER GROVE HEIGHTS SEN	MEMBERSHIP	504-0000-227.10-00		10/2010	1,232.00
						* Total	1,232.00
10/06/2010	102781	MILIUS, SARAH	class canceled	504-0000-347.00-00	R40900	10/2010	30.00
						* Total	30.00
10/06/2010	102782	MISSISSIPPI PUB	class canceled	504-0000-207.03-00		10/2010	16.63
			class canceled	504-0000-347.00-00	R50150	10/2010	233.37
						* Total	250.00
				14 Checks	** Fund Total		7,810.21
09/29/2010	102656	IKON OFFICE SOLUTIONS	acct 1452531017392	505-6200-453.40-65	C10000	9/2010	439.26
						* Total	439.26
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	505-6200-453.20-62	C70000	9/2010	112.52
						* Total	112.52
09/29/2010	102673	NEXTEL COMMUNICATIONS	acct 573073317	505-6200-453.50-20	C25000	9/2010	377.35
						* Total	377.35
09/29/2010	102676	ORIENTAL TRADING COMPAN	64021594601	505-6200-453.60-65	C15500	9/2010	101.77
						* Total	101.77

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102692	SIMONSON, KATHLEEN	wrong rate membership	505-0000-352.35-00	C71000	9/2010	30.00
						* Total	30.00
09/29/2010	102702	TDS METROCOM	acct 6514502500	505-6200-453.50-20	C10000	9/2010	106.89
						* Total	106.89
10/06/2010	102717	ADAMS, BETHANY	postage	505-6200-453.50-30	C91000	10/2010	29.00
			photos for advertising	505-6200-453.50-35	C10100	10/2010	5.25
						* Total	34.25
				7 Checks	** Fund Total		1,202.04
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	602-2100-415.20-62		9/2010	2.14
						* Total	2.14
				1 Checks	** Fund Total		2.14
09/29/2010	102605	ACE PAINT & HARDWARE	504126	603-5300-444.40-41		9/2010	18.37
			504145	603-5300-444.60-12		9/2010	7.55
			504189	603-5300-444.60-12		9/2010	27.21
						* Total	53.13
09/29/2010	102608	AMERICAN FLAGPOLE & FLA	90178	603-5300-444.40-40		9/2010	160.10
						* Total	160.10
09/29/2010	102620	CANON BUSINESS SOLUTION	4004184629	603-5300-444.40-42		9/2010	460.07
						* Total	460.07
09/29/2010	102621	CARQUEST OF ROSEMOUNT	1596135657	603-5300-444.40-41		9/2010	36.41
			1596135671	603-5300-444.40-41		9/2010	8.93
			1596135767	603-5300-444.40-41		9/2010	52.02
			1596135902	603-5300-444.40-41		9/2010	9.84
			1596135933	603-5300-444.40-41		9/2010	14.95
			1596135934	603-5300-444.40-41		9/2010	9.84-
			1596136004	603-5300-444.60-12		9/2010	20.45
			1596136013	603-0000-145.50-00		9/2010	227.00
			1596136022	603-5300-444.60-12		9/2010	11.39
			1596136061	603-0000-145.50-00		9/2010	176.22
			1596136137	603-0000-145.50-00		9/2010	118.43
						* Total	665.80
09/29/2010	102634	DEALER AUTOMOTIVE SERVI	4125273	603-5300-444.40-41		9/2010	10.59
			4125273	603-5300-444.60-12		9/2010	803.92
			4125300	603-5300-444.40-41		9/2010	165.98
			4125416	603-5300-444.40-41		9/2010	5.29
			4125459	603-5300-444.40-41		9/2010	16.03
						* Total	1,001.81
09/29/2010	102637	EMERGENCY AUTOMOTIVE TE	920105	603-0000-145.50-00		9/2010	134.66
			92210	603-0000-145.50-00		9/2010	415.21
						* Total	549.87
09/29/2010	102643	FACTORY MOTOR PARTS COM	13455614	603-0000-145.50-00		9/2010	84.93

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/29/2010	102643	FACTORY MOTOR PARTS COM	13458560	603-5300-444.40-41		9/2010	10.50-
						* Total	74.43
09/29/2010	102646	FURY MOTORS INC	6034624/1	603-5300-444.40-41		9/2010	100.00
						* Total	100.00
09/29/2010	102647	G & K SERVICES	1182582608	603-5300-444.40-65		9/2010	83.01
			1182582608	603-5300-444.60-45		9/2010	23.04
			1182593604	603-5300-444.60-45		9/2010	143.96
						* Total	250.01
09/29/2010	102654	HOME DEPOT CREDIT SERVI	acct 6035322502061959	603-5300-444.40-40		9/2010	327.61
						* Total	327.61
09/29/2010	102659	KREMER SERVICES LLC	5917	603-5300-444.40-41		9/2010	100.24
						* Total	100.24
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	603-5300-444.20-62		9/2010	22.39
						* Total	22.39
09/29/2010	102679	PIONEER RIM & WHEEL CO	1978966	603-5300-444.40-41		9/2010	766.29
						* Total	766.29
09/29/2010	102704	TOWMASTER TRAILERS INC	323233	603-5300-444.40-41		9/2010	29.29
			323964	603-5300-444.40-41		9/2010	453.15
			323967	603-5300-444.40-41		9/2010	829.35
						* Total	1,311.79
10/06/2010	102716	ACE PAINT & HARDWARE	504230	603-5300-444.40-41		10/2010	31.49
			504292	603-5300-444.60-12		10/2010	9.60
						* Total	41.09
10/06/2010	102731	CARQUEST OF ROSEMOUNT	1596136149	603-0000-145.50-00		10/2010	19.40
			1596136432	603-0000-145.50-00		10/2010	7.52
			1596136432	603-5300-444.60-12		10/2010	12.02
						* Total	38.94
10/06/2010	102749	G & K SERVICES	1182604449	603-5300-444.40-65		10/2010	83.01
			1182604449	603-5300-444.60-45		10/2010	23.04
						* Total	106.05
10/06/2010	102754	GRAINGER	9347043706	603-5300-444.40-40		10/2010	83.88
						* Total	83.88
10/06/2010	102757	HANCO CORPORATION	539136	603-5300-444.40-41		10/2010	29.72
						* Total	29.72
10/06/2010	102758	HILLYARD INC	6477086	603-5300-444.60-11		10/2010	243.04
						* Total	243.04
10/06/2010	102768	KREMER SERVICES LLC	5794	603-5300-444.40-41		10/2010	137.20
						* Total	137.20

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
10/06/2010	102785	MN GLOVE & SAFETY, INC.	244621	603-5300-444.60-12		10/2010	121.19
						* Total	121.19
10/06/2010	102791	NEXTEL COMMUNICATIONS	acct 249383315	603-5300-444.50-20		10/2010	245.83
						* Total	245.83
10/06/2010	102792	NORTHLAND CHEMICAL CORP	5033925	603-5300-444.40-40		10/2010	193.12
			5033925	603-5300-444.60-12		10/2010	329.82
						* Total	522.94
10/06/2010	102795	POMP'S TIRE SERVICE, IN	837891	603-5300-444.60-14		10/2010	1,145.48
			848142	603-0000-145.50-00		10/2010	784.46
						* Total	1,929.94
10/06/2010	102803	SOUTH ST PAUL STEEL SUP	01113974	603-5300-444.40-40		10/2010	51.30
						* Total	51.30
10/06/2010	102807	TEWALT, CHRISTOPHER	reflective tape	603-5300-444.40-41		10/2010	19.15
						* Total	19.15
10/06/2010	102808	TOWMASTER TRAILERS INC	323966	603-5300-444.80-80		10/2010	2,443.16
			323968	603-5300-444.80-80		10/2010	2,394.00
						* Total	4,837.16
10/06/2010	102810	TRACTOR SUPPLY CREDIT P	acct 6035301200183679	603-5300-444.40-41		10/2010	34.24
						* Total	34.24
10/06/2010	102827	YOCUM OIL COMPANY, INC.	401846	603-0000-145.60-00		10/2010	2,345.40
			401847	603-0000-145.60-00		10/2010	476.27
			401870	603-0000-145.60-00		10/2010	9,482.00
			401871	603-0000-145.60-00		10/2010	4,107.60
						* Total	16,411.27
				30 Checks	** Fund Total		30,696.48
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	604-2200-416.20-62		9/2010	.98
						* Total	.98
09/29/2010	102681	PRECISION DATA SYSTEMS	8353	604-2200-416.60-10		9/2010	296.45
			igh letterhead envelopes	604-2200-416.60-10		9/2010	1,841.90
			1st class envelopes	604-2200-416.60-10		9/2010	538.90
						* Total	2,677.25
09/29/2010	102686	S & T OFFICE PRODUCTS	070710	604-2200-416.60-10		9/2010	79.00
			072110	604-2200-416.60-10		9/2010	433.83
			1321	604-2200-416.60-10		9/2010	386.24
			1345	604-2200-416.60-10		9/2010	8.20
			1370	604-2200-416.60-10		9/2010	18.49
			1371A	604-2200-416.60-10		9/2010	28.69
						* Total	954.45
				3 Checks	** Fund Total		3,632.68

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
09/27/2010	102603	US POSTMASTER	UTILITY MAILING	605-3100-419.50-35		9/2010	1,095.86
						* Total	1,095.86
09/27/2010	102604	US POSTMASTER	UTILITY MAILING	605-3100-419.50-35		9/2010	239.30
						* Total	239.30
09/29/2010	102636	ELECTRIC FIRE & SECURIT	70021	605-3100-419.40-40		9/2010	77.00
						* Total	77.00
09/29/2010	102651	HENRICKSEN PSG	457456	605-3100-419.60-40		9/2010	556.28
			457457	605-3100-419.60-40		9/2010	655.74
						* Total	1,212.02
09/29/2010	102652	HILLYARD INC	6471664	605-3100-419.60-16		9/2010	99.58
						* Total	99.58
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	605-3100-419.20-62		9/2010	8.33
						* Total	8.33
09/29/2010	102675	NS/I MECHANICAL CONTRAC	W20666	605-3100-419.40-40		9/2010	485.97
						* Total	485.97
09/29/2010	102694	SPERL IRRIGATION	balance	605-3100-419.40-40		9/2010	1,750.00
						* Total	1,750.00
09/29/2010	102702	TDS METROCOM	acct 6514502500	605-3100-419.50-20		9/2010	357.96
						* Total	357.96
10/06/2010	102727	BETTS, BETH	FALL	605-3100-419.30-70		10/2010	494.55
						* Total	494.55
10/06/2010	102744	FLUID INTERIORS LLC	14015	605-3100-419.60-40		10/2010	771.64
						* Total	771.64
10/06/2010	102796	QWEST	acct 6515524055	605-3100-419.50-20		10/2010	120.90
						* Total	120.90
				12 Checks	** Fund Total		6,713.11
09/29/2010	102606	ADVANCED TECHNOLOGY SYS	56130	606-1400-413.60-10		9/2010	2,018.95
						* Total	2,018.95
09/29/2010	102622	CARTE GRAPH SYSTEMS	R06532	606-1400-413.30-70		9/2010	3,025.00
						* Total	3,025.00
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	606-1400-413.20-62		9/2010	9.81
						* Total	9.81
09/29/2010	102669	MYLAN, PATRICK	back up	606-1400-413.60-10		9/2010	1,161.10
						* Total	1,161.10
09/29/2010	102706	VERIZON WIRELESS	acct 280581502	606-1400-413.50-20		9/2010	32.53
						* Total	32.53

CHECK DATE	CHECK NUMBER	VENDOR NAME	INVOICE# / DESCRIPTION	G/L NUMBER	PROJECT	PERIOD/ YEAR	AMOUNT
10/06/2010	102742	EASTON, DIANE	network cable	606-1400-413.60-41		10/2010	39.62
						* Total	39.62
				6 Checks	** Fund Total		6,287.01
09/29/2010	102638	EMMONS & OLIVIER RESOUR	95001335	702-0000-229.17-00		9/2010	51.00
						* Total	51.00
09/29/2010	102690	SHORT, WADE	escrow	702-0000-228.80-00		9/2010	506.13
						* Total	506.13
09/29/2010	102708	WATRUD, STEVE	escrow	702-0000-229.09-00		9/2010	731.62
						* Total	731.62
10/06/2010	102762	IGH DEVELOPMENT LLC	escrow summit pines	702-0000-228.45-00		10/2010	4,643.89
						* Total	4,643.89
				4 Checks	** Fund Total		5,932.64
09/29/2010	102612	BLUM, MELISSA	food-clean up days	703-5500-446.60-65		9/2010	37.73
						* Total	37.73
09/29/2010	102665	MN LIFE INSURANCE CO	OCTOBER	703-5500-446.20-62		9/2010	2.27
						* Total	2.27
10/06/2010	102774	LIGHTNING DISPOSAL INC	80716	703-5500-446.60-65		10/2010	4,841.80
						* Total	4,841.80
10/06/2010	102798	SAM'S CLUB	acct 7715090061172300	703-5500-446.60-65		10/2010	210.31
						* Total	210.31
				4 Checks	** Fund Total		5,092.11
				261 Checks	*** Bank Total		1,213,869.71
				261 Checks	*** Grand Total		1,213,869.71

AGENDA ITEM _____

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

Consider Pay Voucher No. 16 for City Project No. 2008-18 – Public Safety Addition/City Hall Renovation

Meeting Date: October 11, 2010
Item Type: Consent
Contact: Jenelle Teppen, Asst City Admin
Prepared by: CS
Reviewed by:

Fiscal/FTE Impact:

	None
	Amount included in current budget
	Budget amendment requested
	FTE included in current complement
	New FTE requested – N/A
X	Other: Project Fund

PURPOSE/ACTION REQUESTED Consider Pay Voucher No. 16 for City Project No. 2008-18 – Public Safety Addition/City Hall Renovation.

SUMMARY The contract was awarded in an amount of $11,501,900 to Shaw Lundquist Associates on April 27, 2009 for the project identified above. It has been subsequently amended with 14 change orders for a total contract amount now of $11,877,238.10

The contractor has completed the work through September 30, 2010 in accordance with the contract plans and specifications. A 5% retainage will be maintained until the project is completed.
Staff recommends approval of Pay Voucher No. 16 in the amount of $393,178.40 to Shaw Lundquist Associates for work on City Project No. 2008-18 – Public Safety Addition/City Hall Renovation.

Attachment: Pay Voucher No. 16

CITY OF INVER GROVE HEIGHTS
CONSTRUCTION PAYMENT VOUCHER

ESTIMATE NO: 16 (sixteen)
DATE: October 11, 2010
PERIOD ENDING: September 30, 2010
CONTRACT: Public Safety Addition City Hall Renovation
PROJECT NO: 2008-18 – Public Safety Addition/City Hall Renovation

TO: Shaw Lundquist Associates
2757 West Service Road
Saint Paul, MN 55121

Original Contract Amount	$11,501,900
Total Addition	$375,338.10
Total Deduction	$0.00
Total Contract Amount	$11,877,238.10
Total Value of Work to Date	$9,165,247.53
Less Retained (5%)	$458,262.38
Less Previous Payment	$8,313,806.75
Total Approved for Payment this Voucher	$393,178.40
Total Payments including this Voucher	$8,706,985.15

Approvals:

Pursuant to field observation, and approval by the Architect and Owner's Representative, I hereby recommend for payment the above stated amount for work performed through September 30, 2010.

Signed by: _____ October 11, 2010
Jenelle Teppen, Assistant City Administrator

Signed by: _____ _____
Shaw Lundquist Associates Date

Signed by: _____ October 11, 2010
George Tourville, Mayor

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

TO OWNER: City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077

PROJECT: **Public Safety Addition and City Hall Remodel**
8150 Barbara Ave.
Inver Grove Hts, MN

APPLICATION NO: 16 rev

APPLICATION DATE: October 1, 2010

PERIOD TO: September 30, 2010

Distribution to:
- [ ] OWNER
- [ ] ARCHITECT
- [ ] CONTRACTOR
- [ ]
- [ ]

FROM CONTRACTOR:
Shaw-Lundquist Associates, Inc. (09477)
Remit to: **SDS 12-0699 Box 86**
Minneapolis, MN 55486

VIA ARCHITECT: BKV Group, Inc.
222 North Second Street
Minneapolis, MN 55401

PROJECT NOS: **#1643.01**

CONTRACT FOR: Gerneral Construction

CONTRACT DATE: May 19, 2009

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM		$ 11,501,900.00
2. Net change by Change Orders		$ 375,338.10
3. CONTRACT SUM TO DATE (Line 1 ± 2)		$ 11,877,238.10
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)		$ 9,165,247.53
5. RETAINAGE:		
a. 5 % of Completed Work (Column D + E on G703)	$ 458,262.38	
b. 5 % of Stored Material (Column F on G703)	$ 0.00	
Total Retainage (Lines 5a + 5b or Total in Column I of G703)		$ 458,262.38
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)		$ 8,706,985.15
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)		$ 8,313,806.75
8. CURRENT PAYMENT DUE		$ 393,178.40
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)		$ 3,170,252.95

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	$361,372.00	
Total approved this Month	$13,966.10	
TOTALS	$375,338.10	$0.00
NET CHANGES by Change Order	$375,338.10	

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

CONTRACTOR: SHAW-LUNDQUIST ASSOCIATES, INC.

By: _____ Date: October 1, 2010
Hoyt Hsiao - President

State of: Minnesota County of:
Subscribed and sworn to before me this 1st day of October, 2010
Notary Public: _____
My Commission expires: 1/31/15

DEBORAH L. BOLES
Notary Public
State of Minnesota
My Commission Expires
January 31, 2015

ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED ..... $ 393,178.40

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

ARCHITECT:

By: _____ Date: 10/5/10

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

Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.

AGENDA ITEM _____

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

Consider Pay Voucher No. 6 for City Project No. 2008-18 – Public Safety Addition/City Hall Renovation Low Voltage Contractors

Meeting Date: October 11, 2010
Item Type: Consent
Contact: Jenelle Teppen, Asst City Admin
Prepared by:
Reviewed by:

Fiscal/FTE Impact:

	None
	Amount included in current budget
	Budget amendment requested
	FTE included in current complement
	New FTE requested – N/A
X	Other: Project Fund

PURPOSE/ACTION REQUESTED Consider Pay Voucher No. 6 for City Project No. 2008-18 – Public Safety Addition/City Hall Renovation – Low Voltage Contractors.

SUMMARY This contract was awarded in an amount of $237,000.00 to Low Voltage Contractors on January 11, 2010 for the project identified above.

The contractor has completed the work through August 25, 2010 in accordance with the contract plans and specifications. A 5% retainage will be maintained until the project is completed.

Staff recommends approval of Pay Voucher No. 6 in the amount of $9,500.00 to Low Voltage Contractors for work on City Project No. 2008-18 – Public Safety Addition/City Hall Renovation.

Attachment: Pay Voucher No. 6

CITY OF INVER GROVE HEIGHTS
CONSTRUCTION PAYMENT VOUCHER

ESTIMATE NO: 6 (six)
DATE: October 11, 2010
PERIOD ENDING: August 25, 2010
CONTRACT: Public Safety Addition City Hall Renovation
PROJECT NO: 2008-18 – Public Safety Addition/City Hall Renovation

TO: Low Voltage Contractors
4200 West 76th Street
Minneapolis, MN 55435

Original Contract Amount	$237,000.00
Total Addition	$4,806.00
Total Deduction	$0.00
Total Contract Amount	$241,806.00
Total Value of Work to Date	$220,000.00
Less Retained (5%)	$11,000.00
Less Previous Payment	$199,500.00
Total Approved for Payment this Voucher	$9,500.00
Total Payments including this Voucher	$209,000.00

Approvals:

Pursuant to field observation, and approval by the Architect and Owner's Representative, I hereby recommend for payment the above stated amount for work performed through May 25, 2010.

Signed by: _____ October 11, 2010
Jenelle Teppen, Assistant City Administrator

Signed by: _____ _____
Low Voltage Contractors Date

Signed by: _____ October 11, 2010
George Tourville, Mayor

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702 (Instructions on reverse side) PAGE 1 OF 2 PAGES

TO (OWNER): City of Inver Grove Heights
8150 Barbara Ave, Inver Grove Heights MN 55077

Project: Public Safety & City Hall

APPLICATION NO: 6

Distribution to:
☑ OWNER
☐ ARCHITECT
☐ CONTRACTOR

PERIOD TO: 8/25/2010

FROM (CONTRACTOR): Low Voltage Contractors
4200 West 76th Steert
Minneapolis, MN 55435

Via Architect:

PROJECT NOS: 1643.01

CONTRACT FOR:

CONTRACT DATE: 2/8/2010

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. **ORIGINAL CONTRACT SUM** . . . . . $ $237,000.00
2. **Net change by Change Orders** . . . . . $ $4,806.00
3. **CONTRACT SUM TO DATE (Line 1 + 2)**. . . . . $ $241,806.00
4. **TOTAL COMPLETED & STORED TO DATE**. . . . . $ $220,000.00
   Column G on G703)
5. **RETAINAGE**
   a. 5% % of Completed Work $ $11,000.00
   (Columns D + E on G703)
   b. 5% % of Stored Material $
   (Column F on G703)
   Total Retainage (line 5a + 5b or
   Total in Column I on G703) . . . . . $ $11,000.00
6. **TOTAL EARNED LESS RETAINAGE** . . . . . $ $209,000.00
   (Line 4 less Line 5 Total)
7. **LESS PREVIOUS CERTIFICATES FOR PAYMENT**
   (Line 6 from prior Certificate) . . . . . $ $199,500.00
8. **CURRENT PAYMENT DUE** . . . . . $ $9,500.00
9. **BALANCE TO FINISH, INCLUDING RETAINAGE**
   (Line 3 less Line 6) $ $32,806.00

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

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

CONTRACTOR:

By: Brian Gould Date: August 25, 2010

State of: Minnesota

County of:

Subscribed and sworn to before me this 30th day of August, 2010

Notary Public:

My Commission expires: Jan 31, 2012

WENDY A PATRICK
Notary Public
Minnesota
My Comm. Expires
Jan 31, 2012

ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED $ 9,500.00

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

ARCHITECT:

By: Date:

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

AIA DOCUMENT G702 * APPLICATION AND CERTIFICATE FOR PAYMENT * 1992 EDITION * AIA * ©1992 * THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292 * WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

AGENDA ITEM _____

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

Consider Pay Request No. 5 – Rock Island Swing Bridge Project (City Project 2009-24)

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent Agenda	[ ]	None
Contact:	Eric Carlson – 651.450.2587	[X]	Amount included in current budget
Prepared by:	Eric Carlson	[ ]	Budget amendment requested
Reviewed by:	Eric Carlson – Parks & Recreation	[ ]	FTE included in current complement
		[ ]	New FTE requested – N/A
		[ ]	Other

PURPOSE/ACTION REQUESTED

Approve pay request No. 5 in the amount of $163,277.24 for the Rock Island Swing Bridge Project – 2009-24.

SUMMARY

The City Council approved hiring Lametti & Sons Inc. on March 22, 2010 to construct the Rock Island Swing Bridge Recreational Pier project. The contractor is requesting payment of work completed to date. The project is funded from the following sources:

The project continues to move along without any significant issues. Pier 6, 7, 8, and 9 have been removed from the river. Delivery of the bridge spans are scheduled in October. The unusual flooding over the last few weeks have delayed the project completion date.

CITY OF INVER GROVE HEIGHTS
CONSTRUCTION PAYMENT VOUCHER

ESTIMATE NO. 5

DATE: October 11, 2010

PERIOD ENDING: September 30, 2010

CONTRACT: Rock Island Swing Bridge – City Project 2009-24

PROJECT NO: 2009-24

TO: Lametti & Sons, Inc.
16028 Forest Blvd. N.
Hugo, MN 55038

A. Original Contract Amount $1,877,732.00

B. Total Addition (Change Order No. 1, approved June 14, 2010) $41,782.84
Total Addition (Change Order No. 2 approved September 13, 2010) $4,825.00

C. Total Deductions ..... NA

D. TOTAL CONTRACT AMOUNT $1,924,339.84

E. TOTAL VALUE OF WORK TO DATE $954,316.58

F. LESS RETAINED 5% $47,715.83

G. Less Previous Payment $743,323.51

H. TOTAL APPROVED FOR PAYMENT THIS VOUCHER $163,277.24

I. TOTAL PAYMENTS INCLUDING THIS VOUCHER $906,600.75

APPROVALS:

Pursuant to our field observations, I hereby recommend for payment the above stated amount for work performed through September 30, 2010.

Signed by: _____ 10-5-10
Date

Signed by: _____ _____
George Tourville, Mayor Date

AGENDA ITEM 4F

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

Consider Final Pay Voucher No. 2, Engineer's Final Report and Resolution Accepting Work for City Project No. 2010-09A - Cracksealing

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent		None
Contact:	Thomas J. Kaldunski, 651.450.2572		Amount included in current budget
Prepared by:	Thomas J. Kaldunski, City Engineer		Budget amendment requested
Reviewed by:	Scott D. Thureen, Public Works Director		FTE included in current complement
			New FTE requested – N/A
		X	Other: Pavement Management Fund

TJK

SDT

PURPOSE/ACTION REQUESTED:

Consider Final Pay Voucher No. 2, Engineer's Final Report and Resolution Accepting Work for City Project No. 2010-09A – Cracksealing.

SUMMARY

The improvements were ordered as part of the 2010 Pavement Management Program. The contract was awarded in the amount of $70,941.00 to Astech Corp. on May 24, 2010 for City Project No. 2010-09A Cracksealing.

The contractor has completed the work through September 30, 2010 in accordance with the contract plans and specifications.

I recommend approval of Final Pay Voucher No. 2 in the amount of $3,547.05, Engineer's Final Report and a resolution accepting work for City Project No. 2010-09A – Cracksealing.

TJK/kf

Attachments: Final Pay Voucher No. 2
Engineer's Final Report
Resolution Accepting Work

CONSTRUCTION PAYMENT VOUCHER

ESTIMATE NO: Two (2) FINAL

DATE: October 4, 2010

PERIOD ENDING: September 30, 2010

CONTRACT: 2010 Pavement Management Program

PROJECT NO: 2010-09A Cracksealing

TO: Astech Corp.
P.O. Box 1025
St. Cloud, MN 56302
1-320-363-8500

Original Contract Amount	$70,941.00
Total Addition	$0.00
Total Deduction	$0.00
Total Contract Amount	$70,941.00
Total Value of Work to Date	$70,941.00
Less Retained (0%)	$0.00
Less Previous Payment	$67,393.95
Total Approved for Payment this Voucher	$3,547.05
Total Payments including this Voucher	$70,941.00

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above-stated amount for work performed through September 30, 2010.

Signed by: Thomas J. Kaldunski, City Engineer — October 4, 2010

Signed by: Astech Corp. — Date

Signed by: George Tourville, Mayor — October 11, 2010

FINAL PAYMENT

10/1/2010

2010 PAVEMENT MANAGEMENT PROGRAM
JOINT AND CRACKSEALING PROJECT
City Project # 2010-09A

ASTECH- Asphalt Surface Technologies Incorporated

BASE BID- AREA 1,2, and 3

Item No.	Item Description	Unit	Contract Quantity	Quantity to Date	Contract Unit Price	Total Estimated Cost	Contract Cost to Date
1	F & I CRACK SEALANT	STA	614.9	614.9	$ 90.00	$ 55,341.00	$ 55,341.00
2	STREET SWEEPING	HR	80	80	$ 90.00	$ 7,200.00	$ 7,200.00
3	TRAFFIC CONTROL	LS	1	1	$ 900.00	$ 900.00	$ 900.00

BID ALTERNATE 1-AREA 4

Item No.	Item Description	Unit	Contract Quantity	Quantity to Date	Contract Unit Price	Total Estimated Cost	Contract Cost to Date
1	F & I CRACK SEALANT (RICH VALLEY PARKING LOTS)	LS	1	1	$ 6,400.00	$ 6,400.00	$ 6,400.00

BID ALTERNATE 2-AREA 5

Item No.	Item Description	Unit	Contract Quantity	Quantity to Date	Contract Unit Price	Total Estimated Cost	Contract Cost to Date
1	F & I CRACK SEALANT (MAINTENANCE FACILITY PARKING LOT)	LS	1	1	$ 1,100.00	$ 1,100.00	$ 1,100.00

Original Contract Amount	**$ 70,941.00**	
Contract Work Completed to Date		**$70,941.00**
Retainage (0%)		**$0.00**
Previous Payments		**$67,393.95**
Amount Due This FINAL Payment		**$3,547.05**

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ENGINEER'S REPORT OF FINAL ACCEPTANCE

2009 PAVEMENT MANAGEMENT PROGRAM
CITY PROJECT NO. 2010-09A – CRACKSEALING

October 4, 2010

TO THE CITY COUNCIL
INVER GROVE HEIGHTS, MINNESOTA

HONORABLE MAYOR AND CITY COUNCIL MEMBERS:

This is to advise you that I have received the work under contract to Astech Corp. The work consisted of cracksealing within the City of Inver Grove Heights.

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

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

ORIGINAL CONTRACT PRICE	$70,941.00
FINAL CONTRACT AMOUNT	$70,941.00
FINAL VALUE OF WORK	$70,941.00
PREVIOUS PAYMENTS	$67,393.95
BALANCE DUE	$3,547.05

Sincerely,

Thomas J. Kaldunski, P.E.
City Engineer

TJK/kf

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION ACCEPTING WORK OF ASTECH CORP. AND AUTHORIZING FINAL PAYMENT IN THE AMOUNT OF $3,547.05

2010 PAVEMENT MANAGEMENT PROGRAM
CITY PROJECT NO. 2010-09A – CRACKSEALING

RESOLUTION NO. _____

WHEREAS, pursuant to a written contract with the City of Inver Grove Heights dated May 24, 2010, Astech Corp. satisfactorily completed improvements and appurtenances for the 2010 Pavement Management Program, City Project No. 2010-09A – Cracksealing.

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

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

Adopted by the City Council of Inver Grove Heights this 11th day of October 2010.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy Clerk

AGENDA ITEM 4G

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

Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report and Resolution Accepting Work for City Project No. 2010-09B – Sealcoating

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent	[ ]	None
Contact:	Thomas J. Kaldunski, 651.450.2572	[ ]	Amount included in current budget
Prepared by:	Thomas J. Kaldunski, City Engineer	[ ]	Budget amendment requested
Reviewed by:	Scott D. Thureen, Public Works Director	[ ]	FTE included in current complement
	SDT	[ ]	New FTE requested – N/A
		[X]	Other: Pavement Management Fund

PURPOSE/ACTION REQUESTED

Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 2, Engineer's Final Report and resolution accepting work for City Project No. 2010-09B – Sealcoating.

SUMMARY

The improvements were included as part of the 2010 Pavement Management Program. The contract was awarded in an amount of $234,350.00 to Astech Corp. on May 24, 2010.

The contractor has completed the work through September 30, 2010 in accordance with the contract plans and specifications. Final Compensating Change Order No. 1 reconciles the difference between contract quantities and the final actual quantities.

Engineering recommends approval of Final Compensating Change Order No. 1 in the amount of ($2,181.25), for a revised contract in the amount of $232,168.75, Final Pay Voucher No. 2 in the amount of $26,788.25, Engineer's Final Report and resolution accepting work for City Project No. 2010-09B – Sealcoating.

TJK/kf

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

CONSTRUCTION PAY VOUCHER

ESTIMATE NO: 2 (Two) FINAL

DATE: October 4, 2010

PERIOD ENDING: September 30, 2010

CONTRACT: 2010 Pavement Management Program

PROJECT NO: 2010-09B - Sealcoating

TO: Astech Corp.
P.O. Box 1025
St. Cloud, MN 56302
1-320-363-8500

Original Contract Amount	$234,350.00
Total Addition	$0.00
Total Deduction (Change Order No. 1)	($2,181.25)
Total Contract Amount	$232,168.75
Total Value of Work to Date	$232,168.75
Less Retained (0%)	$0.00
Less Previous Payment	$205,380.50
Total Approved for Payment this Voucher	$26,788.25
Total Payments including this Voucher	$232,168.75

Approvals:

Pursuant to our field observation, I hereby recommend for payment the above stated amount for work performed through September 30, 2010.

Signed by: Thomas J. Kaldunski, City Engineer — October 4, 2010

Signed by: Astech Corp. — Date

Signed by: George Tourville, Mayor — October 11, 2010

FINAL PAYMENT 10/1/2010

2010 PAVEMENT MANAGEMENT PROGRAM
SEALCOAT PROJECT
City Project # 2010-09B

ASTECH- Asphalt Surface Technologies Incorporated

BASE BID

Item No.	Item Description	Unit	Contract Quantity	Quantity to Date	Contract Unit Price	Total Estimated Cost	Contract Cost to Date
1	STREET SWEEPING	HR	80	65	$ 100.00	$ 8,000.00	$ 6,500.00
2	SEAL COATING (FA-2 CLASS A)	SY	177,900	179,150	$ 1.10	$ 195,690.00	$ 197,065.00
3	SEAL COATING (FA-3 CLASS A)	SY	15,300	15,300	$ 1.25	$ 19,125.00	$ 19,125.00
4	PAVEMENT MESSAGE (LEFT ARROW) LATEX	EA	5	5	$ 65.00	$ 325.00	$ 325.00
5	PAVEMENT MESSAGE (RIGHT/THRU ARROW) LATEX	EA	1	1	$ 85.00	$ 85.00	$ 85.00
6	LINEAR MARKINGS 4" WIDTH LATEX SOLID WHITE	LF	18,200	14,484	$ 0.10	$ 1,820.00	$ 1,448.40
7	LINEAR MARKINGS 4" WIDTH LATEX SOLID YELLOW	LF	1,650	1,381	$ 0.10	$ 165.00	$ 138.10
8	LINEAR MARKINGS 12" WIDTH LATEX SOLID WHITE	LF	600	293	$ 2.45	$ 1,470.00	$ 717.85
9	LINEAR MARKINGS 24" WIDTH LATEX SOLID WHITE	LF	100	86	$ 2.70	$ 270.00	$ 232.20
10	LINEAR MARKINGS 4" LATEX SOLID DOUBLE YELLOW	LF	12,000	7,661	$ 0.20	$ 2,400.00	$ 1,532.20
11	TRAFFIC CONTROL	LS	1	1	$ 5,000.00	$ 5,000.00	$ 5,000.00

Original Contract Amount	**$ 234,350.00**	
Contract Work Completed to Date		**$232,168.75**
Retainage (0%)		**$0.00**
Previous Payments		**$205,380.50**
Amount Due This FINAL Payment		**$26,788.25**

FINAL COMPENSATING CHANGE ORDER NO. 1

CITY PROJECT NO. 2010-09B
2010 PAVEMENT MANAGEMENT PROGRAM – SEALCOATING

Owner: City of Inver Grove Heights 8150 Barbara Avenue Inver Grove Heights, MN 55077	Date of Issuance: October 4, 2010
Contractor: Astech Corp. P. O. Box 1025 St. Cloud, MN 56302	Engineer: City of Inver Grove Heights

Purpose of Change Order

Adjustment for contract quantities versus actual quantities.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Contract Price: $234,350.00	Original Contract Time:
Previous Change Orders: $0.00	Net Change from Previous Change Orders
Contract Price Prior to this Change Order $234,350.00	Contract Time Prior to this Change Order
Net Decrease of this Change Order ($2,181.25)	Net Increase (Decrease) of Change Order
Contract Price with all Approved Change Orders Orders $232,168.75	Contract Time with Approved Change
Recommended By:_____ Mike Edwards, Sr. Engineering Technician	Approved By:_____

Approved By:	Approved By:	Date of Council Action:
Thomas J. Kaldunski, City Engineer	George Tourville, Mayor	October 11, 2010

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ENGINEER'S REPORT OF FINAL ACCEPTANCE

CITY PROJECT NO. 2010-09B
2010 PAVEMENT MANAGEMENT PROGRAM – SEALCOATING

October 4, 2010

TO THE CITY COUNCIL
INVER GROVE HEIGHTS, MINNESOTA

HONORABLE MAYOR AND CITY COUNCIL MEMBERS:

This is to advise you that I have received the work under contract with Astech Corp. The work consisted of sealcoating within the City of Inver Grove Heights.

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

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

ORIGINAL CONTRACT PRICE	$234,350.00
CHANGE ORDER NO. 1 (DEDUCTION)	($2,181.25)
FINAL CONTRACT AMOUNT	$232,168.75
FINAL VALUE OF WORK	$232,168.75
PREVIOUS PAYMENTS	$205,380.50
BALANCE DUE	$26,788.25

Sincerely,

Thomas J. Kaldunski, P.E.
City Engineer

TJK/kf

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION ACCEPTING WORK OF ASTECH CORP. AND AUTHORIZING FINAL PAYMENT IN THE AMOUNT OF $26,788.25

CITY PROJECT NO. 2010-09B
2010 PAVEMENT MANAGEMENT PROGRAM – SEALCOATING

RESOLUTION NO. _____

WHEREAS, pursuant to a written contract with the City of Inver Grove Heights dated May 24, 2010, Astech Corp. satisfactorily completed improvements and appurtenances for City Project No. 2010-09B – Sealcoating.

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

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

Adopted by the City Council of Inver Grove Heights this 11th day of October 2010.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy Clerk

AGENDA ITEM 4H

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

Authorize a Maintenance Project on Dixie Avenue from the North Connection with Dickman Trail for Approximately 418 LF

Meeting Date:	October 11, 2010
Item Type:	Consent
Contact:	Thomas J. Kaldunski, 651.450.2572
Prepared by:	Thomas J. Kaldunski, City Engineer
Reviewed by:	Scott D. Thureen, Public Works Director

Fiscal/FTE Impact:

	None
X	Amount included in current budget
	Budget amendment requested
	FTE included in current complement
	New FTE requested – N/A
	Other: Water Operating Fund

PURPOSE/ACTION REQUESTED

Consider a maintenance project on approximately 418 LF of Dixie Avenue from its northern terminus at Dickman Trail to place a bituminous milling surface and berm to repair damage from storm water runoff.

SUMMARY

The City has been in contact with residents along the northern portion of Dixie Avenue (see attached map). The residents have expressed concern with the damage that has occurred from storm water runoff following heavy rains this summer. The rain has washed ruts in the road and flood waters have washed past the series of railroad ties that some residents had placed to divert runoff.

The City Council ordered a survey of the Dixie Avenue right-of-way earlier this year to determine the actual alignment of the road. This survey indicated that the railroad ties were on public property. Staff worked with residents to remove these railroad ties. The resident removed them promptly. This will allow the City to place the proposed repairs along the right-of-way lines.

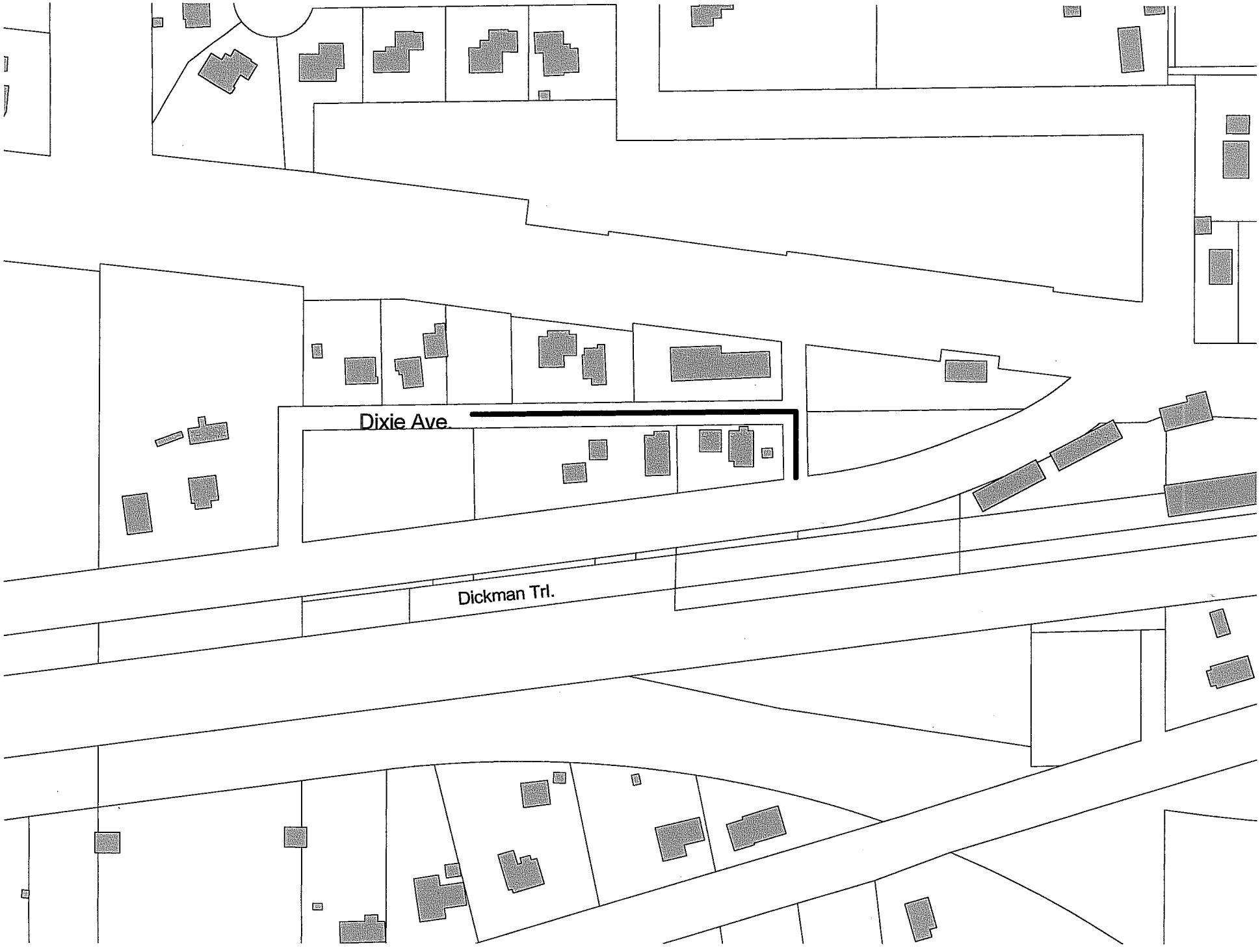
The maintenance project will consist of milling the existing combination of gravel and hardened bituminous millings onto a homogenous gravel base over a 12-foot width. This new aggregate base will be compacted and graded as needed. The selected contractor will then place new bituminous millings that are wetted using a 12-foot wide paving machine to place a new three-inch layer of bituminous millings. These millings will harden into a bituminous surface with the heat of the sun. They will be compacted in place. In addition, a seven-inch fresh bituminous berm will be placed along the east side of Dixie Avenue using a side dumping mechanism on a dump truck. This will be shaped and compacted to form a berm/curb to help contain the water on the recycled bituminous milling surface. Some minor grading and shaping will be done between the bituminous berm and the residential property. A City maintenance crew will seed the boulevard after the contractor has completed his work.

Attached is a proposal from Ace Blacktop Inc. to mill the existing surface, place the wet millings, and regrade for drainage and place the 7" berm. Ace Blacktop was selected to send in a proposal on this project because they are nearby and available. They also have the process to place fresh wetted millings to form a consistent bituminous milling surface which is unique to the local contractor. Their proposal to do this project is outlined on the attached proposal and is summarized as follows:

Mill existing surface, grade to drain and compact	$1,432.00
Place 3" fresh millings surface	$3,462.00
Place 7" high tamped hot asphalt berm	$2,474.00
	$7,368.00

It is recommended that the City Council authorize the hiring of Ace Blacktop to do this maintenance project at an estimated cost of $7,368. This work will be funded from the Street Maintenance Fund (40-46, Repair and Maintenance of Roads).

TJK/kf
Attachment: Map of area
Proposal


Dixie Ave.
Dickman Trl.

Proposal

ACE BLACKTOP INC

7280 Dickman Trail
Inver Grove Heights • Minnesota 55076
Ph. (651) 450-1237 • Fx. (651) 450-9057

PROPOSAL SUBMITTED TO: CITY OF INVER GROVE HEIGHTS	PHONE: 450-2500	DATE: 9-9-10
STREET: 8150 BARBARA AVE	JOB NAME: EROSION CONTROL	
CITY, STATE AND ZIP CODE: INVER GROVE HTS MN. 55077	JOB LOCATION: DIXIE AVE	
	TOM KALOUNSKI	JOB PHONE: 651-450-2572

APPROX. 716 SQ. YDS.

MILL EXISTING ASPHALT 3" DEEP
REGRADE FOR DRAINAGE
COMPACT IN PLACE — 1432.00

PLACE 3" FRESH ASPHALT MILLINGS
COMPACT IN PLACE — 3462.00

PLACE 7" HIGH FRESH MILLING BERM 418 LN. FT. — 1264.00

* ALTERNATE - PLACE 6" HIGH TAMPED HOT ASPHALT MIX BERM
418 LN. FT. — 2474.00

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: $ SEE ABOVE
Payment due upon completion of job or receipt of statement. A charge of **1 1/2 % per month** will be made on all past due balances. This charge applies to all accounts 30 days past due.

CONTRACTORS PRE LIEN NOTICE TO OWNER

"(A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

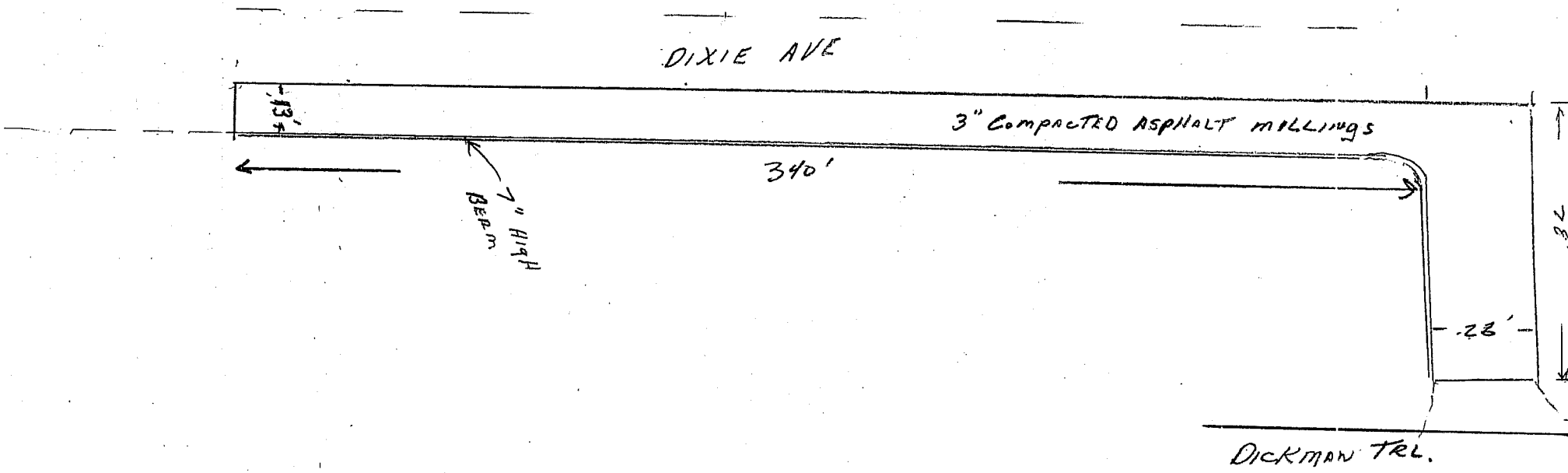
(B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE."

Authorized Signature: Thomas V. Stanton

Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance _____ Signature _____ Date _____


DIXIE AVE
13'
3" COMPACTED ASPHALT MILLINGS
340'
7" HIGH BERM
28'
DICKMAN TRL.

AGENDA ITEM 4I

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

Consider Resolution Adopting a Policy for the Consultant Selection Process

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent	X	None
Contact:	Scott D. Thureen, 651.450.2571		Amount included in current budget
Prepared by:	Scott D. Thureen, Public Works Director		Budget amendment requested
Reviewed by:	SDT		FTE included in current complement
			New FTE requested – N/A
			Other:

PURPOSE/ACTION REQUESTED

Consider a resolution adopting a formal policy addressing the selection of consultants that provide professional services, including the establishment of a consultant pool.

SUMMARY

The City's current practice with regard to the selection of a consultant for professional services involves the preparation of a detailed request for proposal (RFP) that is sent to a varying number of consulting firms (depending on the type of service being requested), a review of those proposals that results in a "short list" of consultants, interviews of this group of consultants and selection of a finalist for recommendation to the City Council. A contract is then negotiated with the consultant and brought before the Council for approval. This process is time-consuming for both staff and the consultants. The times that we are most likely to be requesting consultant services are those when we are already very busy. This process increases our workload in the short term. It also requires considerable effort on the part of the firms that respond to the RFPs.

A number of cities (e.g., Eagan, Minnetonka, Richfield, Savage and Shakopee) have established a consultant selection policy that provides for the selection of a pool of qualified consultants for a period of time (3 to 5 years). After the initial selection process, staff simply negotiates a scope of services for a particular project in which consultant assistance is desired. This scope and the associated costs, based on the firm's current fee schedule, are presented to the Council for approval. This process results in considerably less staff time being required to obtain consulting services.

The proposed policy is structured to ensure that the associated consultant services are rendered in a professional, unbiased, cost-effective manner. The policy addresses both recurring and non-recurring services. It would cover professional services such as appraisers, auditors, engineers, environmental scientists, financial advisors, and planners. Consultants would be approved for inclusion in the pool for a period of four years. The City would not be bound to using only those firms in the current pool. It could solicit proposals from other firms for a particular project, if it desired.

I recommend approval of the resolution establishing the policy for the selection of consultants in the City.

SDT/kf
Attachments: Resolution
Policy

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION ADOPTING A POLICY FOR THE SELECTION OF CONSULTANTS FOR THE CITY

RESOLUTION NO. _____

WHEREAS, the City of Inver Grove Heights requires assistance from various types of consulting businesses that provide professional services, such as municipal engineering, on a recurring basis (defined as recurring consultant services); and

WHEREAS, the City of Inver Grove Heights requires assistance from various types of consulting businesses that provide professional services, such as architects, on a non-recurring basis (defined as non-recurring consultant services); and

WHEREAS, the City desires to establish a formal policy for the selection of consultants providing professional services; and

WHEREAS, the City desires to establish a pool of consultants to provide recurring consultant services.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City of Inver Grove Heights adopts the attached policy for the selection of consultants for the City.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy Clerk

City of Inver Grove Heights
Policy for the Selection of Consultants for the City

Purpose

This policy establishes guidelines for evaluating and selecting consultants to ensure that the services are rendered in a professional, unbiased, cost-effective manner. Examples of consultants covered by this policy include appraisers, auditors, engineers, environmental scientists, financial advisors, and planners.

Introduction

The City of Inver Grove Heights City Council recognizes the desirability of hiring consultants to assist in providing quality services and programs to City residents. Consultants may be used to audit City activities, to analyze and propose solutions to problems, to provide technical assistance, and to supplement City workforces.

Professional consulting services such as engineering, legal, architectural and planning do not fall under the State or City competitive bidding process due to the subjective nature of the services provided. Cities, therefore, have latitude to define which vendor or consultant best meets their particular needs and are not constrained to the lowest responsible bid. The public interest should be served, however, through a mechanism which will insure quality service for the dollar spent.

The public interest is also served by the maintenance of ongoing relationships with reputable and qualified consultants. Nothing in this policy is intended to limit the ability of the City to solicit services and undertake projects in an expeditious manner, presuming that due care is taken to insure a responsible price for the services provided.

Consulting Services

Some consulting services are needed on a frequent or recurring basis while others are required sporadically.

Recurring consultant services are limited to the following areas: traffic, public improvements, utility improvements, financial auditing, materials testing, surveying, environmental analysis and investigation and property appraisals.

The City may retain more than one consultant to provide a recurring consultant service when it is deemed in the best interest of the City.

Non-recurring consultant services are all other consultant assignments such as architects, fiscal impact or tax increment analyses, and site selection analyses. A consultant may be retained on a non-recurring basis for a recurring service when the regular consultant cannot perform the service because of conflict of interest or workload.

Selection Procedure

Recurring Consultant Services

- The assigned department director will request a statement of qualifications (SOQ) from at least two consultants. This SOQ should contain at least the following information:
  - Technical experience (general and related experience).
  - Staffing (resumes of the key personnel that will work with the City).
  - Fee (a fee schedule and method of billing).
- After evaluating the SOQs, the department director and a member of the City Administrator's Office will conduct interviews with selected consultants.

- After the interviews, the City Administrator will recommend a consultant, or consultants, to the City Council for approval. The City Administrator will provide a report listing all the consultants that submitted SOQs and indicating the reasons for the recommendations.

- For recurring consultant services, the Council may approve contracts that provide for automatic yearly renewals, not to exceed a total of four years. New SOQs must then be solicited, but the Council may retain the same consultant after reviewing the SOQs.

- Once a pool of consultants is approved, work will be initiated with a selected consultant by negotiated work order, following authorization by the City Council.

Non-Recurring Consultant Services

- A department director who wants a consultant should submit a written report to the City Administrator including why a consultant is needed, why "in-house" staff cannot perform the task, what is the source of funds to pay for the services, and any other information requested by the City Administrator.

- After approval from the City Administrator, the department director should solicit a scope of qualifications proposal from at least two consultants and follow the same selection procedure outlined in Recurring Consultant Services. The proposals should contain, at least the following information:

  - Experience (history of the firm, general and related experience).

  - Staffing (resumes of personnel that will be assigned to the project).

  - Timetable (schedule and completion date for project).

  - Fee (how the fees will be charged and maximum cost for the project).

- After evaluating the SOQs, the department director and a member of the City Administrator's Office will conduct interviews with selected consultants.

- After the interviews, the City Administrator will recommend a consultant or consultants to the City Council for approval. The City Administrator will provide a report listing all the consultants that submitted SOQs and indicating the reasons for the recommendations.

- Contracts for non-recurring services may be for the time period needed to complete the project.

General Provisions

- To be retained, a consultant must disclose in writing, the work that the principals or other personnel in the firm are doing for other entities that will require a review by or approval of the City Council or City staff. A consultant may be removed from consideration for work if there might be a conflict of interest.

- A consultant may not be retained and may not provide non-recurring services for a City project if the consultant has been or will be involved in any other way in the same project, or if the consultant has any other financial interest in the project.

- The requirement for two scope of services proposals may be waived by the City Administrator when obtaining more than one proposal is not practical or appropriate.

- The product of any consultant service, including all plans, specifications, reports, drawings, architectural designs, renderings, computer models, or other such material must become the property of the City.

AGENDA ITEM _____

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

Resolution Calling for Hearing on Proposed Assessments and Declaring Costs to be Assessed and Ordering Preparation of Proposed Assessments for Nuisance Abatement 2010

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent Agenda	[ ]	None
Contact:	Nicole Cook, Code Compliance Specialist, 450-2491	[ ]	Amount included in current budget
Prepared by:	Nicole Cook, Code Compliance Specialist, 450-2491	[ ]	Budget amendment requested
Reviewed by:	Thomas J. Link, Community Development Director	[ ]	FTE included in current complement
		[ ]	New FTE requested – N/A
		[X]	Other

PURPOSE/ACTION REQUESTED

The City Council is to consider:

1) A Resolution Declaring Costs to be Assessed and Ordering the Preparation of the Proposed Assessments for 2010 Nuisance Abatement, and
2) A Resolution Calling for a Hearing on Proposed Assessments

BACKGROUND

Costs to be assessed pertain to the City having to cut grass in order to abate a nuisance. City Code stipulates the grass height cannot exceed 8 inches in height. The property owners have been given the opportunity to submit payment for the work but have not done so.

When a complaint is received, an inspection is performed and the property owner is contacted and given seven (7) days in which to cut their grass. If the work is not done by the property owner, the City will cut the grass and assess the property.

To date, there have been a total of 51 grass violation complaints in 2010. Of those complaints, 8 properties have required the City to cut the property. In 2009, there were a total of 43 grass violation complaints and of those complaints, 6 properties required abatements.

Staff recommends adopting the attached:

1) Resolution Declaring Costs to be Assessed and Ordering Preparation of Proposed Assessments
2) A Resolution Calling for a Hearing on Proposed Assessments

Enc: Resolutions (2)

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION DECLARING COSTS TO BE ASSESSED AND ORDERING PREPARATION OF PROPOSED ASSESSMENTS

CITY PROJECT NUISANCE ABATEMENT 2010

RESOLUTION NO. _____

WHEREAS, the City Clerk was directed to prepare proposed assessments of the costs of the improvements as follows:

2010 Nuisance Abatement

WHEREAS, the total final project cost is $2,049.65

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS THAT:

1. The amount to be specially assessed for City Project Nuisance Abatement 2010 is hereby declared to be $2,049.65.

2. The City Clerk with the assistance of the Community Development Director, shall forthwith calculate the proper amount to be specially assessed for such improvement against every assessable lot, piece or parcel of land within the district affected, without regard to cash valuation, as provided by law, and shall be filed in the City Clerk's office for public inspection.

Adopted by the City Council of Inver Grove Heights, Minnesota this 11th day of October 2010.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy City Clerk

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION CALLING FOR HEARING ON SPECIAL ASSESSMENTS

CITY PROJECT NUISANCE ABATEMENT 2010

RESOLUTION NO. _____

WHEREAS, by a resolution of the City Council on Monday October 11, 2010, the City Clerk was directed to prepare proposed assessments of the costs of abatement as follows:

2010 Nuisance Abatement

WHEREAS, the City Clerk has notified the City Council that such assessments have been completed and filed in the City Clerk's office for public inspection.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, MINNESOTA THAT:

1. A hearing shall be held on the November 8, 2010, in the City Council Chambers, 8150 Barbara Avenue at 7:30 p.m., to pass upon the proposed assessments; and, at such time and place, all persons owning property affected by such improvements shall be given an opportunity to be heard with reference to such assessments.

2. The City Clerk is hereby directed to cause a notice of hearing on the proposed assessments to be published once in the official newspaper and to be mailed to the owner of each parcel described in the assessment roll.

Adopted by the City Council of Inver Grove Heights, Minnesota this 11th day of October 2010.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy City Clerk

AGENDA ITEM 4K

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Acceptance of Landowner Improvements within City Easement Agreements, Restrictive Use Agreements and Temporary Construction Easement Agreement for Landowners as part of the 2010 Storm Water Facility Maintenance Program – City Project No. 2010-19

Meeting Date:	October 11, 2010
Item Type:	Consent
Contact:	Thomas J. Kaldunski, 651.450.2572
Prepared by:	Thomas J. Kaldunski, City Engineer
Reviewed by:	Scott D. Thureen, Public Works Director SDT

Fiscal/FTE Impact:

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

PURPOSE/ACTION REQUESTED

Consider acceptance of Landowner Improvements within City Easement Agreements, Restrictive Use Agreements and Temporary Construction Easement Agreement for landowners as part of the 2010 Storm Water Facility Maintenance Program – City Project No. 2010-19.

SUMMARY

The City has awarded a contract to conduct the 2010 Storm Water Facility Maintenance Program – Zone 7 near 77th Street and Blackwell Court.

City staff has been working closely with the four affected property owners on this project. The project has been discussed at several City Council work sessions. The City Attorney has prepared a number of documents associated with the project including encroachment agreements, restrictive use agreements and temporary easements that have been negotiated with the landowners. Copies of these documents are attached.

The City wants to complete the work this fall and has had discussions with the two landowners that are impacted the most. They understand the project and have signed the attached agreements. The Engineering Division recommends approval of the agreements and resolution as presented.

TJK/kf

Attachments:
- Resolution
- Temporary Construction Easement Agreement with Landowner
- Restrictive Use Agreements for Landowners
- Landowner Improvements within City Easement Agreements for Landowners

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CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION APPROVING RESTRICTIVE USE AGREEMENTS WITH LANDOWNERS, LANDOWNER IMPROVEMENTS WITHIN CITY EASEMENTS AND A TEMPORARY CONSTRUCTION EASEMENT AGREEMENT WITH RESIDENTS IN THE NW QUADRANT OF 77TH STREET AND BLACKWELL COURT FOR CITY PROJECT NO. 2010-19 – STORM WATER FACILITY MAINTENANCE AGREEMENT – ZONE 7

RESOLUTION NO. _____

WHEREAS, the City needs to obtain various agreements and easement rights for the project; and

WHEREAS, adjacent residents were in support of the maintenance project on City easements; and

WHEREAS, the City has negotiated with the landowners for such agreements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS, MN DOES HEREBY RESOLVE AS FOLLOWS:

1. The City Council approves the attached Landowner Improvements within City Easement Agreements, Restrictive Use Agreements and Temporary Construction Easement Agreement between the City of Inver Grove Heights and residents in the NW Quadrant of 77th Street and Blackwell Court relating to City Project No. 2010-19 – Storm Water Facility Maintenance Program – Zone 7.

2. The Mayor and Deputy Clerk are authorized to execute the Landowner Improvements within City Easement Agreements, Restrictive Use Agreements and Temporary Construction Easement Agreement between the City of Inver Grove Heights and residents in the NW Quadrant of 77th Street and Blackwell Court relating to City Project No. 2010-19 – Storm Water Facility Maintenance Program – Zone 7.

Adopted by the City Council of the City of Inver Grove Heights this 11th day of October 2010.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy Clerk

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AGREEMENT RELATING TO LANDOWNER IMPROVEMENTS WITHIN CITY EASEMENT ON LOT 12, BLOCK 1, OAK PARK HEIGHTS IN THE CITY OF INVER GROVE HEIGHTS, DAKOTA COUNTY, MINNESOTA

THIS AGREEMENT RELATING TO LANDOWNER IMPROVEMENTS WITHIN CITY EASEMENT ON LOT 12, BLOCK 1, OAK PARK HEIGHTS (Agreement) is made this 9th day of August, 2010, by and between the City of Inver Grove Heights (City), a Minnesota municipal corporation, and Douglas G. Kuchera and Linda A. Kuchera, husband and wife (Landowners). Based on the covenants, agreements, representations and recitals herein contained, the parties agree as follows:

ARTICLE 1
TERMS

1.1 **Terms.** Unless specifically defined elsewhere in this Agreement, the following terms shall have the following meanings.

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

1.3 **Subject Lot**. "Subject Lot" means Lot 12, Block 1, Oak Park Heights, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota. The Subject Lot is located in the City of Inver Grove Heights, Dakota County, Minnesota.

1.4 **City Easement.** "City Easement" means, individually and collectively, the following easements on the Subject Lot:

The permanent drainage and utility easement on Lot 12, Block 1, Oak Park Heights adjoining Lot 11, Block 1, Oak Park Heights, dedicated on the recorded plat of Oak Park Heights, Dakota County, Minnesota.

1.5 **Landowners.** "Landowners" means Douglas G. Kuchera and Linda A. Kuchera, husband and wife, and their assigns and successors in interest with respect to the Subject Lot.

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

IF TO CITY: City of City of Inver Grove Heights
Attention: Director of Public Works
8150 Barbara Avenue
Inver Grove Heights, MN 55077

IF TO LANDOWNERS: Douglas G. Kuchera and Linda A. Kuchera
7681 Blackwell Court N.
Inver Grove Heights, MN 55076

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

1.7 Landowner Improvements. "Landowner Improvements" means the following existing improvements located on the Subject Lot:

a. Deck;
b. Deck stairs;
c. Irrigation System;
d. Landscaping (perennial flowers); and
e. Concrete block wall.

All of the Landowner Improvements listed above are located within the City Easement.

The irrigation system listed in the Landowner Improvements is not depicted on the attached Encroachment Plan (Exhibit A) but is part of the Landowner Improvements; and the Encroachment Plan includes leaving the existing irrigation system in place even though the irrigation system is not depicted on the attached Exhibit A.

1.8 City Easement Improvements. "City Easement Improvements" means all existing and future sanitary sewer, municipal water and storm water pipes, conduits, culverts, ditches, ponds, catch basins, water collection mechanisms, drainage facilities, maintenance access routes and other utility appurtenances lying within the City Easement now or in the future.

1.9 Encroachment Plan. "Encroachment Plan" means the depiction of the Landowner Improvements attached hereto as Exhibit A prepared by the City Engineer relating to the Landowners Improvements. The Encroachment Plan is on file with the City.

1.10 City Utility Costs. "City Utility Costs" means all costs incurred by the City, (whether performed by the City or its agents or contractors), for the inspection of and access to and repair, maintenance and replacement of the City's Easement Improvements located in the City Easement and the placement of additional City Easement Improvements in the City Easement. City Utility Costs, include, without limitation: excavation costs, labor costs, costs of removing fill, costs of re-burying the City Easement Improvements, re-compacting the soils over the City Easement Improvements, restoring the City Easement area, and all engineering and attorneys' fees incurred in connection therewith. City Utility Costs also include the costs of temporarily removing the Landowner Improvements and subsequently replacing the Landowner Improvements in the City Easement, if such costs have not already been paid by the Landowners.

1.11 Pre-Encroachment Costs. "Pre-Encroachment Costs" means a reasonable estimate by the City of the costs the City would have incurred for City Utility Costs if the Landowner Improvements did not exist.

1.12 Cost Differential. "Cost Differential" means the difference between the Pre-Encroachment Costs and the City Utility Costs caused by the existence of the Landowner Improvements. The City's reasonable determination of the amount of the Cost Differential shall be binding on the Landowners. The City's reasonable determination shall be appropriately supported by cost estimates obtained from independent contractors or engineers.

1.13 Item's To Be Removed By Landowner. "Item's To Be Removed By Landowner" means the following existing improvements located on the Subject Lot and depicted on Exhibit A attached hereto which the Landowner will remove from the Subject Lot, at Landowner's expense, no later than August 24, 2010:

1. Landscaping (perennial flowers);
2. Concrete block wall; and
3. Deck stairs (Deck stairs can be reinstalled with a temporary method for ease of future removal following Project).

All of the Item's To Be Removed By Landowner listed above are located within the City Easement.

The Landscaping (perennial flowers) listed in the Item's To Be Removed By Landowner may be reinstalled in the City Easement by the Landowner, at the Landowner's expense, after the City has completed its work in the City Easement associated with City Project No. 2010-19. If the City removes the perennial flowers on Lot 11, Block 1, Oak Park Heights, Landowner may not relocate perennial flowers on Lot 11, Block 1, Oak Park Heights.

ARTICLE 2
RECITALS

Recital No. 1. The undersigned Douglas G. Kuchera and Linda A. Kuchera, husband and wife, are the fee title owners of real estate in the City described as the Subject Lot.

Recital No. 2. The City Easement is on the Subject Lot. The City owns the City Easement. The City Easement Improvements are within the City Easement and future City Easement Improvements may be located within the City Easement.

Recital No. 3. Landowners have requested permission from the City to retain the Landowner Improvements within the City Easement, subject to paragraphs 1.7 and 1.13 hereof.

Recital No. 4. The Landowner Improvements will make the City's access to the Utilities more difficult and costly.

Recital No. 5. The Landowner Improvements result in permanent structures being located within the City Easement.

Recital No. 6. The location of the Landowner Improvements may result in damage to the Utilities.

Recital No. 7. The City desires to obtain a right of access over and across certain portions of the Subject Lot to access the City Easement due to the fact that the additional work needed to access the Utilities may result in the need for additional and larger equipment to access the Utilities.

Recital No. 8. Subject to the terms of this Agreement, the City is willing to allow the Landowner Improvements to remain within the City Easement if the following conditions are met:

a.) The Landowners maintain the Landowner Improvements;

b.) The Landowners agree to pay the City any Cost Differential relating to inspections, access, repair, maintenance and replacement of the existing City Easement Improvements and the placement of any future City Easement Improvements in the City Easement;

c.) The Landowners agree to temporarily remove the Landowner Improvements in the event the City has need to access the area where the Landowner Improvements exist in order for the City to inspect, repair, maintain, and replace the existing City Easement Improvements or construct future City Easement Improvements in the Easement Area; and

d.) The Landowners agree to modify the Landowner Improvements if the Landowner Improvements interfere with the City Easement Improvements or reduce the capacity of the City Easement for storm water retention.

NOW, THEREFORE, THE CITY OF INVER GROVE HEIGHTS AND THE UNDERSIGNED LANDOWNERS, FOR THEMSELVES, AND THEIR SUCCESSORS, HEIRS AND ASSIGNS DO HEREBY AGREE:

ARTICLE 3
AGREEMENTS

3.1 Maintenance Of Landowner Improvements; Items To Be Removed By Landowner. Under the terms and conditions stated herein, the Landowner, at Landowner's own cost, is hereby authorized by the City to retain the Landowner Improvements as currently located within the City Easement. Other than the Landowner Improvements, the Landowner shall not place any other structure, retaining wall, irrigation system, building, fence, landscaping, trees or shrubs in the City Easement.

Under the terms and conditions stated herein, the Landowner, at Landowner's own cost, will remove the Items To Be Removed By Landowner identified in Article 1.13 of this Agreement currently located within the City Easement. Landowner consents to the removal of the Items To Be Removed By Landowner.

3.2 City Not Responsible For Landowner Improvements. Nothing contained herein shall be deemed an assumption by the City of any responsibility for construction, maintenance, replacement or repair of the Landowner Improvements.

The City agrees to restore the Landowner's irrigation system if it is affected by work performed by the City associated with City Project 2010-19.

3.3 Continuing Right To City Easement. Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the City holds to the City Easement.

3.4 Subordinate Position Of Landowner Improvements. The Landowner Improvements are subordinate to the rights of the City in the City Easement and in the City Easement Improvements.

3.5 Risk of Loss. The Landowners understand and agree that the Landowner Improvements within the City Easement may be adversely affected by use of the City Easement. The parties agree that the City is not responsible for such events; the City shall have no liability to the Landowners for such events. The Landowners assume the risk of installing the Landowner Improvements in the City Easement area.

3.6 Landowners To Bear Cost of Relocating Landowner Improvements. The City is responsible for the repair and maintenance of the City Easement Improvements in the City Easement.

The City may require the Landowners to temporarily remove and subsequently replace the Landowner Improvements in the City Easement in order for the City to gain access to the City Easement Improvements for the purpose of inspecting, repairing, maintaining, or replacing, the City Improvements or adding future City Easement Improvements.

If the Landowners do not perform such tasks, the City may perform such tasks and in such case the Landowners shall reimburse the City for the City's costs and expenses. Prior to commencing such tasks, the City shall send Formal Notice to the Landowners and allow the Landowners thirty (30) days from the date of the Formal Notice to perform the tasks. If the Landowners have not completed the work within the thirty (30) days, then the City may proceed to perform the tasks. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowners. The Landowners must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility billings within the City.

3.7 **Emergency.** Notwithstanding the requirements contained in Sections 3.6 relating to a thirty (30) day Formal Notice to the Landowners to perform its obligations under Sections 3.6, the City shall not be required to give such Formal Notice if the City's engineer determines that an emergency exists. For purposes of this Agreement, an emergency is an event or condition that, in the reasonable judgment of the City, immediately threatens to cause or has caused either damage to property or danger to persons. In such instance, the City, without giving Formal Notice to the Landowners may perform the work and in such case the Landowners shall reimburse the City for the costs and expenses relating to the work. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowners. The Landowners must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility bills within the City.

3.8 **Cost Deferential.** If a Cost Deferential occurs relating to the access to or inspection, maintenance, repair or replacement of the City Easement Improvements or relating to construction of new City Easement Improvements in the future, then the Landowners shall pay the Cost Deferential to the City. The Landowners must make payment for the Cost Deferential within 30 days after the City has sent a written invoice for the Cost Deferential to the Landowners.

3.9 **Modifications To Landowner Improvements.** If in the future the City reasonably determines that the Landowner Improvements interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Easement Improvements or with ponding and drainage or if the City reasonably determines that the Landowner Improvements have lessened the capacity of the City Easement for storm water retention, then the Landowners, at their own expense, shall make such modifications to the Landowner Improvements as directed by the City. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Landowner Improvements.

If Landowners do not make the modifications, the City may make the modifications and in such case the Landowners shall reimburse the City for the City's costs and expenses. Prior to

commencing such modifications, the City shall send Formal Notice to the Landowners and allow the Landowners thirty (30) days from the date of the Formal Notice to make the modifications. If Landowners do not completely make the modifications, the City may proceed to make the modifications. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowners. The Landowners must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work relating to the modifications.

3.10 Remedies. If the Landowners fail to perform their obligations under this Agreement, then the City may avail itself of any remedy afforded by law or in equity and any of the following non-exclusive remedies:

a.) The City may specifically enforce this Agreement.

b.) If the Landowners fail to make payments under Section 3.6, 3.7, 3.8 or 3.9, then the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Subject Lot in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Landowners waive any and all procedural and substantive objections to the imposition of such usual and customary charges on the Subject Lot.

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

No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

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

a.) The Landowner Improvements;

b.) Installation and maintenance of the Landowners Improvements;

c.) Failure by the Landowners to observe or perform any covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement; and

d.) Use of the City Easement for Landowner Improvements.

Notwithstanding anything to the contrary contained in this Section 3.11, Landowners are not responsible for and have no obligation to defend the City for any negligent acts or omissions of the City, its agents or contractors.

3.12 **City Duties.** Nothing contained in this Agreement shall be considered an affirmative duty upon the City to perform the Landowners' obligations contained in Article 3 if the Landowners does not perform such obligations.

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

3.14 **Recording.** The Landowners shall record this Agreement with the Dakota County Recorder against the Subject Lot and within 30 days after the date of this Agreement, the Landowners shall present evidence to the City that this Agreement has been recorded.

3.15 **Binding Agreement.** The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Lot and shall be binding upon the heirs, successors, administrators and assigns of the parties.

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

3.17 **Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

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

3.19 **Headings.** The subject headings of the sections this Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

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

IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

ATTEST:

By: _____
Melissa Rheaume, Deputy City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 9th day of August, 2010, before me a Notary Public within and for said County, personally appeared George Tourville and Melissa Rheaume, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

Amy Sue Brinkman
Notary Public
Minnesota
My Commission Expires January 31, 2012

LANDOWNER

Douglas G. Kuchera

Linda A. Kuchera

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 9th day of ~~August~~ September, 2010, before me a Notary Public within and for said County, personally appeared Douglas G. Kuchera and Linda A. Kuchera, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public

LISA KEREN HOEFT
NOTARY PUBLIC
MINNESOTA
My Commission Expires 01/31/2014

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

After Recording, Please Return This Instrument To:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

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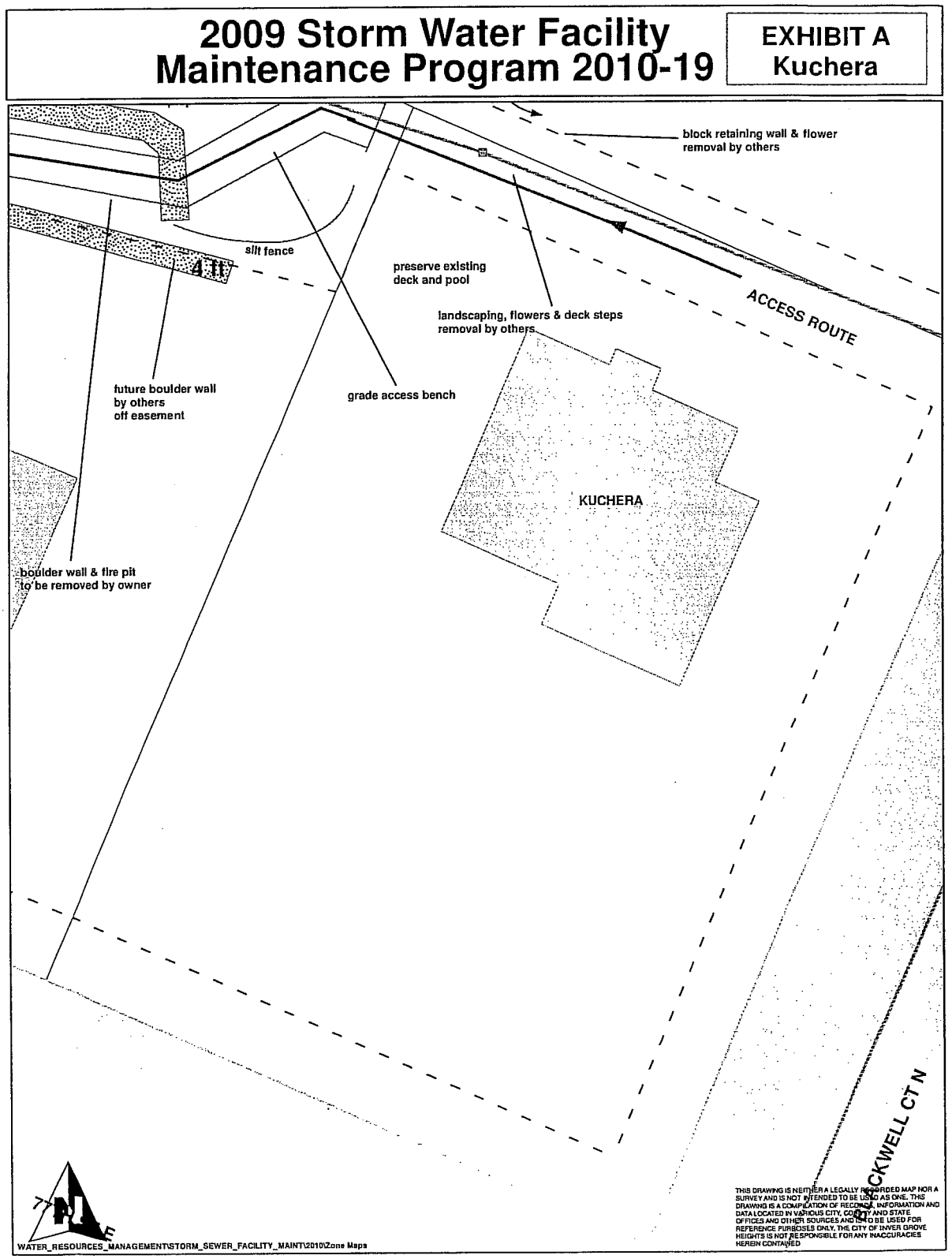
EXHIBIT A
DEPICTION OF LANDOWNER IMPROVEMENTS



RESTRICTIVE USE EASEMENT

THIS EASEMENT AGREEMENT (Agreement) is made and entered into this 9th day of August, 2010, by and between Douglas G. Kuchera and Linda A. Kuchera, husband and wife, hereinafter individually and collectively referred to as "Grantor" and the City of Inver Grove Heights, a Minnesota municipal corporation, hereinafter referred to as "City".

WHEREAS, Grantor is the fee owner of land located in Dakota County, Minnesota, more fully described in Exhibit A, attached hereto and made a part hereof, (hereinafter referred to as "the Property"); and

WHEREAS, a portion of the Easement Area is burdened by a utility and drainage easement (hereinafter referred to as the "Utility Easement") in favor of the City depicted and dedicated on the plat of Oak Park Heights Addition (hereinafter "Plat") on file and of record with the Dakota County Recorder.

WHEREAS, Grantor and City wish to enter into an agreement which will grant to City an easement that prohibits the placement of any trees, shrubs, or other vegetation without the prior written consent of the City, and further prohibits the construction of any buildings, impervious surfaces or other man-made structures thereon, over that portion of the Property described in Exhibit B, attached hereto (hereinafter referred to as the "Easement Area");

WHEREAS, the City agrees to allow those Landowner Improvements identified in Section 1.7 of that certain Agreement Relating to Landowner Improvements Within City Easement on Lot 12, Block 1, Oak Park Heights between the Landowner and City dated August 9, 2010, to remain within the Easement Area on the Property.

WHEREAS, this easement shall not limit the rights of the City to utilize the Easement Area in accordance with its rights under the Utility Easement.

NOW, THEREFORE, in consideration of the premises, it is hereby agreed by the parties as follows:

1. **Grant of Easement**. Grantor hereby forever grants to City and its successors and assigns a Restrictive Use Easement with those restrictions, terms, provisions, duties, and obligations herein contained in, under, on, over and through the Easement Area.

2. **Restrictions Relating to Vegetation**. Without the prior written consent of the City, no trees, shrubs, or other vegetation (except grass, native vegetation, perennial flowers or wildflowers) may be planted upon the Easement Area. No trees or shrubs shall be removed from the Easement Area without the prior written consent of the City, except that any landowner on whose lot any part of the Easement Area exists shall keep such part of the Easement Area free of noxious weeds and diseased trees. Landowner may plant trees, shrubs or other vegetation within the 20 foot buffer area around the existing wetland, upon receiving written approval from the City. Landowner may retain the perennial flowers located in the Easement Area adjoining the existing deck on the Property. Landowner retains the right to replace any perennial flowers that are destroyed or removed by the City adjoining the existing deck on the Property as a result of work performed by the City associated with City Project No. 2010-19. This Agreement does not give Landowner the right to replace any perennial flowers that are destroyed or removed by the City on the property which adjoins the Property, legally described as Lot 11, Block 1, Oak Park Heights.

3. **Restrictions Relating to Vehicles and Structures**. No vehicles, building, impervious surface, or other man-made structures, (including, but not limited to: fences, sheds, fire pits, retaining walls, play equipment, gazebo's, rock gardens, landscape boulders, woodpiles, above-ground swimming pools, horse-shoe pits, volleyball pits, sport courts, animal kennels or vehicles) shall be placed in the Easement Area without the prior written consent of the City, except for those Landowner Improvements identified in Section 1.7 of that certain Agreement Relating to Landowner Improvements Within City Easement on Lot 12, Block 1, Oak Park Heights between the Landowner and City dated August 9, 2010.

4. **Restrictions Relating to Waste Material**. No trash, waste, or other offensive material, soil, or landfill shall be placed upon or within the Easement Area without the prior written consent of the City.

5. **Restrictions Relating to Grade**. No change in the general topography of the Easement Area landscape, (including, but not limited to, excavation, movement, or removal of soil), shall be allowed without the prior written consent of the City.

6. **Duration of Easement**. The duration of the easement is perpetual.

7. **Tree Removal**. Grantor shall be responsible for the removal and disposal of any dead, damaged or diseased tree(s) lying within such portion of the Easement Area and the payment of all costs and expenses associated therewith. Nothing

contained herein shall prohibit or restrict the owner of the Easement Area from cutting the grass, planting grass or pruning vegetation or flowers.

8. **Continuing Maintenance**. With respect to the Easement Area, Grantor, at Grantor's sole cost and expense, shall be responsible for perpetually maintaining the Easement Area according to the terms and provisions set forth in this Easement Agreement.

9. **No Impairment of City Rights**. Nothing contained herein shall impair any right of the City now held or hereafter acquired to construct, repair, replace, or maintain any public utilities which are, or come to be placed in, on, or under the Easement Area or within the Utility Easement.

10. **City Remedies**. If the Grantor fails to perform any of its covenants or obligations under this Easement Agreement, the City may avail itself of any remedy afforded by law and any of the following non-exclusive remedies:

    a) The City may specifically enforce this Easement Agreement.

    b) **Notice of Non-Compliance; Cure Period.** If the City's Director of Public Works ("DPW") determines, at his sole discretion, that the Grantor has not complied with the terms and provisions set forth in this Easement Agreement, the DPW shall provide written notice to the Grantor of such failure to comply with the terms and provisions of this Easement Agreement. This notice shall specify that the Grantor will have thirty (30) days to comply with the terms and provisions of this Easement Agreement, unless thirty (30) days is not practicable for the Grantor to so comply, in which case the Grantor shall be given a reasonable time, as determined by the DPW, to comply with the terms and provisions of this Easement Agreement provided the Grantor has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Grantor to comply with the terms and provisions of this Easement Agreement, in the event of an emergency as determined by the DWP, the City may perform the work necessary for compliance with the terms and provisions of this Easement Agreement without giving any notice to the Grantor and without giving the Grantor thirty (30) days to comply with the terms and provisions of this Easement Agreement. For purposes of this Agreement, an emergency is an event or condition that, in the reasonable judgment of the City, immediately threatens to cause or has caused either damage to property or danger to persons. If the City performs emergency service work, the Grantor shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow those procedures set forth in Sections 9 (c) and 9 (d) with respect to the billing, collection and/or tax certification of such costs.

c) **Payment of Costs Incurred by City.** If the Grantor fails to comply with the terms and provisions of this Easement Agreement within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the DWP, the City may perform those tasks necessary for compliance and the City shall have the right of access to the Property to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Grantor. The amount of costs charged by the City to the Grantor shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the terms and provisions of this Easement Agreement. The Grantor shall make payment directly to the City within twenty (20) days after invoicing ("Due Date") by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

d) **Certification of Costs Payable With Taxes.** If payment is not made by the Grantor as provided in Section H(3.), the City may certify to Dakota County the amounts due as payable with the real estate taxes for Property owned by the Grantor in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Grantor waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Property owned by the Grantor. The Grantor hereby further waive any and all procedural and substantive objections to special assessments for the maintenance costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Property owned by the Grantor. The Grantor waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Grantor acknowledges that the benefit to the Property owned by the Grantor from the performance of tasks by the City to ensure compliance with the terms and provisions of this Easement Agreement equal or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Property owned by the Grantor.

e) **Obligation For Maintenance Notwithstanding Public Easement.** The Grantor agrees that their obligations relating to the Easement Area and relating to complying with the terms and provisions of this Easement Agreement exists notwithstanding the existence of this Easement Agreement in favor of the City. City hereby grants to the Grantor a temporary right and license to enter the Easement Area for the purpose of performing the obligations hereunder relating to the Easement Area for the duration of the performance of the maintenance. The Grantor hereby perpetually grants the City a temporary right and license to enter the

Property for the purpose of performing those tasks necessary to assure compliance with this Easement Agreement.

12. **Binding Effect**. This easement shall run with the Property and shall inure to the benefit of the Grantor and the City and shall bind the Grantor and the successors and assigns of the Grantor and shall be binding upon the City and the successor's and assigns of the City.

13. **No Assumption of Duty.** Nothing contained in this Agreement shall be considered an affirmative duty upon the City to perform the Grantor's obligations.

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

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

16. **Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

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

18. **Headings.** The subject headings of the sections this Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

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

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be executed as of the day and year aforesaid by its duly authorized representatives.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:
_____
Melissa Rheaume, Deputy City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 9th day of August, 2010, before me a Notary Public within and for said County, personally appeared George Tourville and Melissa Rheaume to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

Amy Sue Brinkman
Notary Public
Minnesota
My Commission Expires January 31, 2012

GRANTOR

Douglas G. Kuchera

Linda A. Kuchera

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 9 day of ~~August~~ September, 2010, before me a Notary Public within and for said County, personally appeared Douglas G. Kuchera and Linda A. Kuchera, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public

LISA KEREN HOEFT
NOTARY PUBLIC
MINNESOTA
My Commission Expires 01/31/2014

THIS INSTRUMENT DRAFTED BY:

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

AFTER RECORDING PLEASE RETURN TO:

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

L:\CLIENTS\810\81000\10000\2010-19\Restrictive Use Easement - Kuchera.doc

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The property located in Inver Grove Heights, Dakota County, Minnesota, described as follows:

Lot 12, Block 1, Oak Park Heights, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota.

EXHIBIT B
EASEMENT AREA

The permanent drainage and utility easement on Lot 12, Block 1, Oak Park Heights adjoining Lot 11, Block 1, Oak Park Heights, dedicated on the recorded plat of Oak Park Heights, Dakota County, Minnesota.

AGREEMENT RELATING TO CITY EASEMENT ON LOT 13, BLOCK 1, OAK PARK HEIGHTS, IN THE CITY OF INVER GROVE HEIGHTS, DAKOTA COUNTY, MINNESOTA

THIS AGREEMENT RELATING TO CITY EASEMENT ON LOT 13, BLOCK 1, OAK PARK HEIGHTS (Agreement) is made this 11th day of October, 2010, by and between the City of Inver Grove Heights (City), a Minnesota municipal corporation, and Todd A. Bulson and Nancy L. Bulson, husband and wife (Landowners). Based on the covenants, agreements, representations and recitals herein contained, the parties agree as follows:

ARTICLE 1
TERMS

1.1 **Terms.** Unless specifically defined elsewhere in this Agreement, the following terms shall have the following meanings.

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

1.3 **Subject Lot**. "Subject Lot" means Lot 13, Block 1, Oak Park Heights, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota. The Subject Lot is located in the City of Inver Grove Heights, Dakota County, Minnesota.

1.4 **City Easement.** "City Easement" means, individually and collectively, the following easements on the Subject Lot:

> The northerly permanent drainage and utility easement on Lot 13, Block 1, Oak Park Heights which adjoins Lots 12, 13 and 14, Block 1, Oak Park Heights and the westerly permanent drainage and utility easement on Lot 13, Block 1, Oak Park Heights, between Lot 13 and Lot 14, Block 1, Oak Park Heights, all dedicated on the recorded plat of Oak Park Heights Dakota County, Minnesota.

1.5 **Landowners.** "Landowners" means Todd A. Bulson and Nancy L. Bulson, husband and wife, and their assigns and successors in interest with respect to the Subject Lot.

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

IF TO CITY:	City of City of Inver Grove Heights Attention: Director of Public Works 8150 Barbara Avenue Inver Grove Heights, MN 55077
IF TO LANDOWNERS:	Todd A. Bulson and Nancy L. Bulson 2407 – 77th Street E. Inver Grove Heights, MN 55076

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

1.7 **Remaining Items.** "Remaining Items" means items that can be replaced in the City Easement after construction of the City Project or items that can stay in the City Easement during construction of the City Project, and thereafter.

The only Remaining Items that can stay in the City Easement during construction of the City Project and thereafter are:

a. Wooden retaining walls located on the northwest and southwest sides the house.

The only Remaining Items that can be replaced in the City Easement after construction of the City Project are:

a. grass
b. perennial flowers, flowerbed edging and mulch per the provisions of Article 3.1 herein.

1.8 **City Easement Improvements.** "City Easement Improvements" means all existing and future sanitary sewer, municipal water and storm water pipes, conduits, culverts, ditches, ponds, catch basins, water collection mechanisms, drainage facilities, maintenance access routes and other utility appurtenances lying within the City Easement now or in the future.

1.9 **Items To Be Removed By Landowner**. "Items To Be Removed By Landowner" means the following existing improvements located on the Subject Lot, which the Landowner will remove from the Subject Lot, at Landowner's expense, no later than October 12, 2010:

1. Boulder retaining walls located near the wetland;
2. One boulder on the west property line of the Subject Lot;

3. Campfire ring;
4. Large boulder near the northeast corner of the Subject Lot; and
5. Landscaping (perennial flowers) in the flowerbed near the northeast corner of the Subject Lot.

All of the Items To Be Removed By Landowner listed above are located within the City Easement.

1.10 **Items To Be Removed By City**. "Items To Be Removed By City" means the following existing improvements located on the Subject Lot which the City will remove from the Subject Lot, at the City's expense, as needed to access the City Easement:

1. Earthen material located into pond storage area;
2. Cluster of trees marked by the City Engineer near the northeast corner of the Subject Lot including removal of tree stumps to avoid re-growth; and
3. Blue Spruce Tree located near the west property line of the Subject Lot.

All of the Items To Be Removed By City listed above are located within the City Easement.

In addition to removing the items listed above, the City, at its sole expense, also agrees to grade the south slope on the City Easement line to accommodate the Landowner's future boulder retaining wall off of the City Easement pursuant to Section 3.3.

1.11 **City Project**. "City Project" means City Project No. 2010-19 – Storm Water Facility Maintenance Program.

ARTICLE 2
RECITALS

Recital No. 1. The undersigned Todd A. Bulson and Nancy L. Bulson, husband and wife, are the fee title owners of real estate in the City described as the Subject Lot.

Recital No. 2. The City Easement is on the Subject Lot. The City owns the City Easement. The City Easement Improvements are within the City Easement and future City Easement Improvements, if any, shall be located within the City Easement.

Recital No. 3. The City desires to construct the City Project. In order to construct the City Project, the Items To Be Removed By City and the Items To Be Removed by Landowner have to be removed from the City Easement.

Recital No. 4. Landowners have requested permission from the City to keep the Remaining Items in the City Easement after construction of the City Project.

Recital No. 5. Subject to the terms of this Agreement, the City is willing to allow the Remaining Items to remain within the City Easement after construction of the City Project if the following conditions are met:

a.) The Landowners maintain the Remaining Items;

b) The Landowners agree to temporarily remove the Remaining Items in the event the City, in the future, has need to access the area where the Remaining Items exist in order for the City to inspect, repair, maintain, construct, and replace the City Easement Improvements.

Recital No. 6. The terms and provisions of the letter from the City of Inver Grove Heights to Landowners dated August 27, 2010 are hereby incorporated into this Agreement by reference herein. A copy of said letter is attached hereto and incorporated by reference herein as "Exhibit A".

NOW, THEREFORE, THE CITY OF INVER GROVE HEIGHTS AND THE UNDERSIGNED LANDOWNERS, FOR THEMSELVES, AND THEIR SUCCESSORS, HEIRS AND ASSIGNS DO HEREBY AGREE:

ARTICLE 3
AGREEMENTS

3.1 Maintenance of Remaining Items. Under the terms and conditions stated herein, the Landowner, at Landowner's own cost, is hereby authorized by the City after construction of the City Project to keep the Remaining Items as currently located within the City Easement. Those Remaining Items that are identified in Section 1.7 as being allowed to stay in the City Easement during construction of the City Project may remain in the City Easement during construction of the City Project. Those Remaining Items that are identified in Section 1.7 as being allowed to be replaced within the City Easement after construction of the City Project may be replaced in the City Easement after construction of the City Project.

Landowner is responsible for maintenance of the Remaining Items.

The City also authorizes Landowner to plant perennials, place flowerbed edging and mulch in the City Easement upon completion of the City Project.

With the exception of the provisions set forth in this Paragraph 3.1, the Landowner shall not place any other structure, retaining wall, irrigation system, building, fence, landscaping, trees or shrubs in the City Easement.

3.2 Removal. Under the terms and conditions stated herein, the Landowner, at Landowner's own cost, will remove the Items To Be Removed By Landowner. Removal must occur by October 12, 2010. Landowner consents to the removal of the Items To Be Removed By Landowner.

Under the terms and conditions stated herein, the City, at City's own cost, will remove the Items To Be Removed By City. Landowner consents to the removal of the Items To Be Removed By City.

3.3 **Grading for Future Boulder Retaining Wall**. The City, at its sole expense, also agrees to grade the south slope on the City Easement line to accommodate the Landowner's future boulder retaining wall off of the City Easement. Landowner will provide temporary easement for grade for future boulder wall. Equipment used for the grading of the future boulder wall will remain in the City Easement during the 1:1 cut that the City is providing for Landowner and will not go on the Subject Lot.

3.4 **Relocation of Landowner's Irrigation System**. The City agrees to relocate the Landowner's irrigation system located on the City Easement as part of the City Project, at no expense to the Landowner. The irrigation system shall be relocated to and along the new boulder retaining wall. The City shall retain the services of LMS Irrigation to relocate the irrigation system for Landowner. The irrigation system shall be in working order upon completion of the City Project or as soon as possible thereafter based upon the availability and direction of representatives from LMS Irrigation. Landowner and the City acknowledge that weather conditions and timing for the City Project may preclude LMS Irrigation from completing their work until 2011.

3.5 **City Not Responsible.** Except as stated in Sections 3.3 and 3.4, nothing contained herein shall be deemed an assumption by the City of any responsibility for construction, maintenance, replacement or repair of the Remaining Items.

3.6 **Continuing Right To City Easement.** Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the City holds to the City Easement.

3.7 **Subordinate Position Of Landowner Improvements.** The Remaining Items are subordinate to the rights of the City in the City Easement and in the City Easement Improvements.

3.8 **Risk of Loss.** The Landowners understand and agree that they assume the risk of installing or leaving the Remaining Items in the City Easement. The City understands and agrees that the City assumes the risk of installing City Easement Improvements in the City Easement.

3.9 **Modifications To Landowner Improvements.** If in the future the City reasonably determines that the Remaining Items interfere with access for inspection or with repair, construction, maintenance, reconstruction, or replacement of City Easement Improvements or with ponding and drainage or storm water retention, then the Landowners, at their own expense, shall make such modifications to the Remaining Items as directed by the City. Such modifications may include, but are not limited to, removal and relocation of the Remaining Items.

3.10 **Remedies.** If the Landowners fail to perform their obligations under this Agreement, then the City may avail itself of any remedy afforded by law or in equity. If the City fails to perform its obligations under this Agreement, then the Landowner may avail themselves of any remedy afforded by law or in equity.

3.11 City and Landowner Duties. Nothing contained in this Agreement shall be considered an affirmative duty upon the City to perform the Landowners' obligations contained in Article 3 if the Landowners do not perform such obligations. Northing contained in this Agreement shall be considered an affirmative duty upon the Landowners to perform the City's obligations contained in the provisions of this Agreement if the City does not perform such obligations.

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

3.13 Recording. The City may record this Agreement.

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

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

ATTEST:

By: _____
Melissa Rheaume, Deputy City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 11th day of October 2010, before me a Notary Public within and for said County, personally appeared George Tourville and Melissa Rheaume, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

LANDOWNERS

Todd A. Bulson

Nancy L. Bulson

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 6th day of October, 2010, before me a Notary Public within and for said County, personally appeared Todd A. Bulson and Nancy L. Bulson, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public

KAREN KASMIRSKI
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

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

EXHIBIT A
LETTER FROM CITY TO LANDOWNER

City of Inver Grove Heights

www.ci.inver-grove-heights.mn.us

August 27, 2010

Todd and Nancy Bulson
2407 77th Street E.
Inver Grove Heights, MN 55076

AUG 30 2010

Re: 2010 Storm Water Facility Maintenance Program – Zone 7
City Project No. 2010-19

Dear Mr. & Mrs. Bulson:

This letter is being sent as a follow-up to the pre-construction meeting for this project held on August 26, 2010. Thanks for participating in the project. I look forward to getting your comments on the various documents early next week.

As discussed, the construction will tentatively start on or about September 14, 2010 and be completed by October 31, 2010. The following is a tentative schedule to assist in coordinating contract activities:

- Removal of private boulder wall on easement by September 14, 2010.
- Gartzke Construction will start work on or about September 14, 2010. It is anticipated that the grubbing, earthwork and pipe installation will occur in about one week, weather dependent.
- Once the site is graded, your landscaper will install the boulder wall in its new location in one or two days.
- Gartzke Construction will follow up with restoration of the access bench and slopes on the easement after the boulder wall has been placed. Sod will be used in the bench area for your use as a lawn. Seeding will occur on the slopes to stabilize slopes and provide a natural buffer for the wetland. You will be responsible for lawn repair above the boulder wall and the landscape work area. The limits will be reviewed and marked in the field.
- The City has a budget allowance for the sprinkler system adjustments. We agree to utilize Allen Metz Irrigation because they are familiar with your system.
- Trees on the easement will be removed as discussed at the pre-construction meeting. The stump removal by the timber wall near the northwest corner of your home will be reviewed in the field to determine the proper action to prevent damage to the wall.

Z:\PublicWorks\Engineering\PROJECTS_PUBLIC\2010_PROJECTS\2010-19_Zone 7_StormWaterFacilityMaintenance\CORRESPONDENCE\BulsonFollowup_8-27-10.docx

8150 Barbara Ave. • Inver Grove Heights, MN 55077-3412
Telephone: 651-450-2500 • Fax: 651-450-2502

The City Attorney has indicated that your landscaper can access the site using the City's easements because the work is related to the City Drainage Project.

Thanks for your cooperation and input on this project. Feel free to contact me at 651-450-2572 if you have any questions.

Sincerely,

Thomas J. Kaldunski, P.E.
City Engineer

TJK/rs

cc: Timothy Kuntz, City Attorney
Gartzke Construction
Nicholas Hahn, Engineering Technician

Z:\PublicWorks\Engineering\PROJECTS_PUBLIC\2010_PROJECTS\2010-19_Zone 7_StormWaterFacilityMaintenance\CORRESPONDENCE\BulsonFollowup_8-27-10.docx

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (Easement) is made this 11th day of October, 2010, by and between Todd A. Bulson and Nancy L. Bulson, husband and wife, hereinafter individually and collectively referred to as "Landowner" and the City of Inver Grove Heights, a Minnesota municipal corporation, hereinafter referred to as "City".

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

The Landowner in consideration of the sum of One Dollar and other good and valuable consideration to it in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey unto the City, its successors and assigns, the following:

1.) A **temporary easement, subject to all of the terms, provisions and restrictions set forth in the Encroachment Agreement executed by the parties on even date herewith, for grading, sloping and construction purposes, and all such purposes ancillary, incident or related thereto in connection with and arising out of City Project No. 2010-19** (hereinafter "**Temporary Easement**") under, over, across, through and upon that real property depicted and shown on **Exhibit B**, (hereinafter the "**Temporary Easement Area**") attached hereto and incorporated herein by reference. The Temporary Easement shall expire on November 1, 2010. This Temporary Easement specifically authorizes the City to grade and slope for the Landowner's future installation of a boulder retaining wall outside of the Temporary Easement Area.

EXEMPT FROM STATE DEED TAX

The rights of the City also include the right of the City, its contractors, agents and servants:

a.) to perform those tasks as agreed to in the Encroachment Agreement executed by the parties on even date herewith; and

b.) to cut or excavate a 1 to 1 (1:1) slope for the future four (4) foot boulder retaining wall to be built by the Landowner immediately off the southerly easement line on the Landowner's Property, as depicted and shown on the attached Exhibit B.

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

The City shall indemnify and hold the Landowner harmless from all costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings related to this City Project and the actions of the City, its contractors, agents and servants.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise.

The Landowner, for themselves and their successors and assigns, do hereby warrant to and covenant with the City, its successors and assigns, that they are well seized in fee of the Landowner's Property described on Exhibit A and have good right to grant and convey the Temporary Easement herein to the City.

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

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

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

ATTEST:

By: _____
Melissa Rheaume, Deputy City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 11th day of October 2010, before me a Notary Public within and for said County, personally appeared George Tourville and Melissa Rheaume, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

LANDOWNER

Todd A. Bulson

Nancy L. Bulson

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 6th day of October, 2010, before me a Notary Public within and for said County, personally appeared Todd A. Bulson and Nancy L. Bulson, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public

KAREN KASMIRSKI
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

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

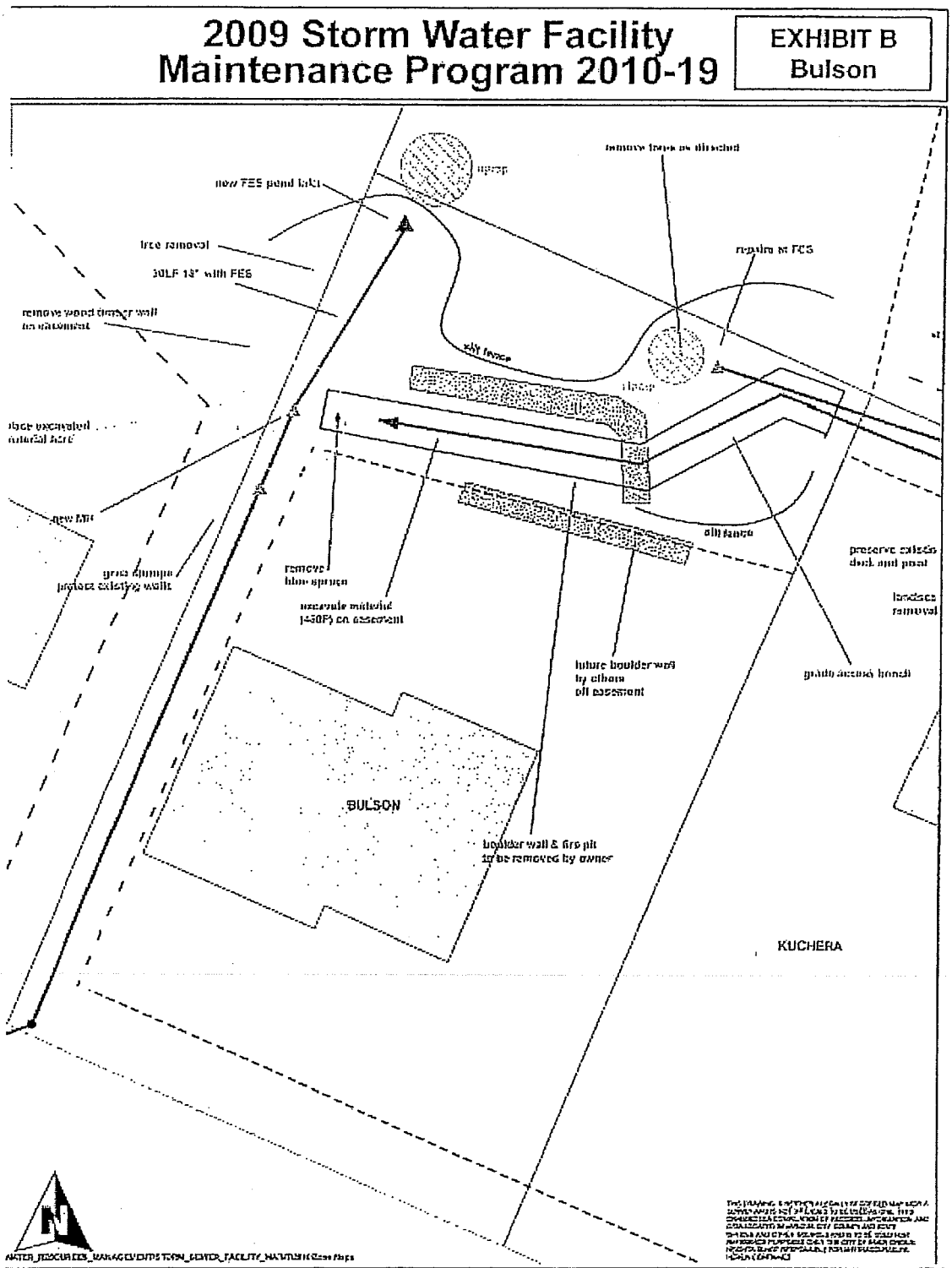
EXHIBIT A

LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

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

> Lot 13, Block 1, Oak Park Heights, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota.

EXHIBIT B
TEMPORARY EASEMENT AREA DEPICTION



RESTRICTIVE USE EASEMENT

THIS EASEMENT AGREEMENT (Agreement) is made and entered into this 27th day of September, 2010, by and between William E. White and Kim M. White, husband and wife, hereinafter individually and collectively referred to as "Grantor" and the City of Inver Grove Heights, a Minnesota municipal corporation, hereinafter referred to as "City".

WHEREAS, Grantor is the fee owner of land located in Dakota County, Minnesota, more fully described in Exhibit A, attached hereto and made a part hereof, (hereinafter referred to as "the Property"); and

WHEREAS, the Easement Area is burdened by a utility and drainage easement (hereinafter referred to as the "Utility Easement") in favor of the City depicted and dedicated on the plat of Oak Park Heights Addition (hereinafter "Plat") on file and of record with the Dakota County Recorder.

WHEREAS, Grantor and City wish to enter into an agreement which will grant to City an easement that prohibits the placement of any trees, shrubs, or other vegetation without the prior written consent of the City, and further prohibits the construction of any buildings, impervious surfaces or other man-made structures thereon, over that portion of the Property described in Exhibit B, attached hereto (hereinafter referred to as the "Easement Area");

WHEREAS, the City agrees to allow those Landowner Improvements identified in Section 1.7 of that certain Agreement Relating to Landowner Improvements Within City Easement on Lot 11, Block 1, Oak Park Heights dated September 27, 2010, between the Landowner and the City to remain within the Easement Area on the Property.

WHEREAS, this easement shall not limit the rights of the City to utilize the Easement Area in accordance with its rights under the Utility Easement.

NOW, THEREFORE, in consideration of the premises, it is hereby agreed by the parties as follows:

1. **Grant of Easement**. Grantor hereby forever grants to City and its successors and assigns a Restrictive Use Easement with those restrictions, terms, provisions, duties, and obligations herein contained in, under, on, over and through the Easement Area.

2. **Restrictions Relating to Vegetation**. Without the prior written consent of the City, no trees, shrubs, or other vegetation (except grass, native vegetation, perennial flowers or wildflowers) may be planted upon the Easement Area, except for those Landowner Improvements identified in Section 1.7 of that certain Agreement Relating to Landowner Improvements Within City Easement on Lot 11, Block 1, Oak Park Heights between the Landowner and the City dated September 27, 2010. No trees or shrubs shall be removed from the Easement Area without the prior written consent of the City, except that any landowner on whose lot any part of the Easement Area exists shall keep such part of the Easement Area free of noxious weeds and diseased trees. Landowner may plant trees, shrubs or other vegetation within the 20 foot buffer area around the existing wetland, upon receiving written approval from the City. Landowner may retain the perennial flowers located in the Easement Area on the Property. Landowner retains the right to replace any perennial flowers that are destroyed or removed by the City as a result of work performed by the City associated with City Project No. 2010-19.

3. **Restrictions Relating to Vehicles and Structures**. No vehicles, building, impervious surface, or other man-made structures, (including, but not limited to: fences, sheds, fire pits, retaining walls, play equipment, gazebo's, rock gardens, landscape boulders, woodpiles, above-ground swimming pools, horse-shoe pits, volleyball pits, sport courts, animal kennels or vehicles) shall be placed in the Easement Area without the prior written consent of the City, except for those Landowner Improvements identified in Section 1.7 of that certain Agreement Relating to Landowner Improvements Within City Easement on Lot 11, Block 1, Oak Park Heights between the Landowner and the City dated September 27, 2010.

4. **Restrictions Relating to Waste Material**. No trash, waste, or other offensive material, soil, or landfill shall be placed upon or within the Easement Area without the prior written consent of the City, except for those Landowner Improvements identified in Section 1.7 of that certain Agreement Relating to Landowner Improvements Within City Easement on Lot 11, Block 1, Oak Park Heights between the Landowner and the City dated September 27, 2010.

5. **Restrictions Relating to Grade**. No change in the general topography of the Easement Area landscape, (including, but not limited to, excavation, movement, or removal of soil), shall be allowed without the prior written consent of the City.

6. **Duration of Easement**. The duration of the easement is perpetual.

7. **Tree Removal**. Grantor shall be responsible for the removal and disposal of any dead, damaged or diseased tree(s) lying within such portion of the Easement Area and the payment of all costs and expenses associated therewith. Nothing contained herein shall prohibit or restrict the owner of the Easement Area from cutting the grass, planting grass or pruning vegetation or flowers.

8. **Continuing Maintenance**. With respect to the Easement Area, Grantor, at Grantor's sole cost and expense, shall be responsible for perpetually maintaining the Easement Area according to the terms and provisions set forth in this Easement Agreement.

9. **No Impairment of City Rights**. Nothing contained herein shall impair any right of the City now held or hereafter acquired to construct, repair, replace, or maintain any public utilities which are, or come to be placed in, on, or under the Easement Area or within the Utility Easement.

10. **City Remedies**. If the Grantor fails to perform any of its covenants or obligations under this Easement Agreement, the City may avail itself of any remedy afforded by law and any of the following non-exclusive remedies:

    a) The City may specifically enforce this Easement Agreement.

    b) **Notice of Non-Compliance; Cure Period.** If the City's Director of Public Works ("DPW") determines, at his sole discretion, that the Grantor has not complied with the terms and provisions set forth in this Easement Agreement, the DPW shall provide written notice to the Grantor of such failure to comply with the terms and provisions of this Easement Agreement. This notice shall specify that the Grantor will have thirty (30) days to comply with the terms and provisions of this Easement Agreement, unless thirty (30) days is not practicable for the Grantor to so comply, in which case the Grantor shall be given a reasonable time, as determined by the DPW, to comply with the terms and provisions of this Easement Agreement provided the Grantor has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Grantor to comply with the terms and provisions of this Easement Agreement, in the event of an emergency as determined by the DWP, the City may perform the work necessary for compliance with the terms and provisions of this Easement Agreement without giving any notice to the Grantor and without giving the Grantor thirty (30) days to comply with the terms and provisions of this Easement Agreement. For purposes of this Agreement, an emergency is an event or condition that, in the reasonable judgment of the City, immediately threatens to cause or has caused either damage to property or danger to persons. If the City performs emergency service work, the Grantor shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow

those procedures set forth in Sections 9 (c) and 9 (d) with respect to the billing, collection and/or tax certification of such costs.

c) **Payment of Costs Incurred by City.** If the Grantor fails to comply with the terms and provisions of this Easement Agreement within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the DWP, the City may perform those tasks necessary for compliance and the City shall have the right of access to the Property to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Grantor. The amount of costs charged by the City to the Grantor shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the terms and provisions of this Easement Agreement. The Grantor shall make payment directly to the City within twenty (20) days after invoicing ("Due Date") by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

d) **Certification of Costs Payable With Taxes.** If payment is not made by the Grantor as provided in Section H(3.), the City may certify to Dakota County the amounts due as payable with the real estate taxes for Property owned by the Grantor in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Grantor waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Property owned by the Grantor. The Grantor hereby further waive any and all procedural and substantive objections to special assessments for the maintenance costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Property owned by the Grantor. The Grantor waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Grantor acknowledges that the benefit to the Property owned by the Grantor from the performance of tasks by the City to ensure compliance with the terms and provisions of this Easement Agreement equal or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Property owned by the Grantor.

e) **Obligation For Maintenance Notwithstanding Public Easement.** The Grantor agrees that their obligations relating to the Easement Area and relating to complying with the terms and provisions of this Easement Agreement exists notwithstanding the existence of this Easement Agreement in favor of the City. City hereby grants to the Grantor a temporary right and license to enter the Easement Area for the purpose of performing the obligations hereunder relating to the Easement Area for the

duration of the performance of the maintenance. The Grantor hereby perpetually grants the City a temporary right and license to enter the Property for the purpose of performing those tasks necessary to assure compliance with this Easement Agreement.

12. **Binding Effect**. This easement shall run with the Property and shall inure to the benefit of the Grantor and the City and shall bind the Grantor and the successors and assigns of the Grantor and shall be binding upon the City and the successor's and assigns of the City.

13. **No Assumption of Duty.** Nothing contained in this Agreement shall be considered an affirmative duty upon the City to perform the Grantor's obligations.

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

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

16. **Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

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

18. **Headings.** The subject headings of the sections this Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

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

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be executed as of the day and year aforesaid by its duly authorized representatives.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

_____
Melissa Rheaume, Deputy City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of September, 2010, before me a Notary Public within and for said County, personally appeared George Tourville and Melissa Rheaume to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

Amy Sue Brinkman
Notary Public
Minnesota
My Commission Expires January 31, 2012

Fax Oct 7 2010 01:48pm P007/020

GRANTOR

Kim M. White

Kim M. White

William E. White

William E. White

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 23rd day of September, 2010, before me a Notary Public within and for said County, personally appeared Kim M. White and William E. White, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Michele Frances Iaria

Notary Public

MICHELE FRANCES IARIA
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2013

THIS INSTRUMENT DRAFTED BY:

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

AFTER RECORDING PLEASE RETURN TO:

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

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EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The property located in Inver Grove Heights, Dakota County, Minnesota, described as follows:

Lot 11, Block 1, Oak Park Heights, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota.

EXHIBIT B
EASEMENT AREA

The permanent drainage and utility easement on the Property which adjoins Blackwell Circle N., the permanent drainage and utility easement on the Property which adjoins Lot 12, Block 1, Oak Park Heights and the permanent drainage and utility easement on the Property which runs east to west through the southern half of the Property, all dedicated on the recorded plat of Oak Park Heights Dakota County, Minnesota.

AGREEMENT RELATING TO LANDOWNER IMPROVEMENTS WITHIN CITY EASEMENT ON LOT 11, BLOCK 1, OAK PARK HEIGHTS IN THE CITY OF INVER GROVE HEIGHTS, DAKOTA COUNTY, MINNESOTA

THIS AGREEMENT RELATING TO LANDOWNER IMPROVEMENTS WITHIN CITY EASEMENT ON LOT 11, BLOCK 1, OAK PARK HEIGHTS (Agreement) is made this 27th day of September, 2010, by and between the City of Inver Grove Heights (City), a Minnesota municipal corporation, and Kim M. White and William E. White, husband and wife (Landowners). Based on the covenants, agreements, representations and recitals herein contained, the parties agree as follows:

ARTICLE 1
TERMS

1.1 **Terms.** Unless specifically defined elsewhere in this Agreement, the following terms shall have the following meanings.

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

1.3 **Subject Lot**. "Subject Lot" means the following described property:

Lot 11, Block 1, Oak Park Heights, according to the plat thereof on file and of record in the office of the Dakota County Recorder, Dakota County, Minnesota.

The Subject Lot is located in the City of Inver Grove Heights, Dakota County, Minnesota.

1.4 **City Easement.** "City Easement" means, individually and collectively, the following easements on the Subject Lot:

The permanent drainage and utility easement on the Subject Lot which adjoins Blackwell Circle N., the permanent drainage and utility easement on the Subject Lot which adjoins Lot 12, Block 1, Oak Park Heights and the permanent drainage

and utility easement on the Subject Lot which runs east to west through the southern half of the Subject Lot, all dedicated on the recorded plat of Oak Park Heights Dakota County, Minnesota.

1.5 **Landowners.** "Landowners" means Kim M. White and William E. White, husband and wife, and their assigns and successors in interest with respect to the Subject Lot.

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

IF TO CITY: City of City of Inver Grove Heights
Attention: Director of Public Works
8150 Barbara Avenue
Inver Grove Heights, MN 55077

IF TO LANDOWNERS: Kim M. White and William E. White
7659 Blackwell Court N.
Inver Grove Heights, MN 55076

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

1.7 **Landowner Improvements.** "Landowner Improvements" means the following existing improvements located on the Subject Lot:

a. Earthen material placed into the pond storage volume behind that specific portion of the wood retaining wall lying within the City Easement;
b. Storage building;
c. That specific portion of the wood retaining wall lying within the City Easement; and
d. Landscaping.

All of the Landowner Improvements listed above are located within the City Easement.

1.8 **City Easement Improvements.** "City Easement Improvements" means all existing and future sanitary sewer, municipal water and storm water pipes, conduits, culverts, ditches, ponds, catch basins, water collection mechanisms, drainage facilities, maintenance access routes and other utility appurtenances lying within the City Easement now or in the future.

1.9 **City Utility Costs.** "City Utility Costs" means all costs incurred by the City, (whether performed by the City or its agents or contractors), for the inspection of and access to and repair, maintenance and replacement of the City's Easement Improvements located in the

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City Easement and the placement of additional City Easement Improvements in the City Easement. City Utility Costs, include, without limitation: excavation costs, labor costs, costs of removing fill, costs of re-burying the City Easement Improvements, re-compacting the soils over the City Easement Improvements, restoring the City Easement area, and all engineering and attorneys' fees incurred in connection therewith. City Utility Costs also include the costs of temporarily removing the Landowner Improvements and subsequently replacing the Landowner Improvements in the City Easement, if such costs have not already been paid by the Landowners.

1.10 Pre-Encroachment Costs. "Pre-Encroachment Costs" means a reasonable estimate by the City of the costs the City would have incurred for City Utility Costs if the Landowner Improvements did not exist.

1.11 Cost Differential. "Cost Differential" means the difference between the Pre-Encroachment Costs and the City Utility Costs caused by the existence of the Landowner Improvements. The City's reasonable determination of the amount of the Cost Differential shall be binding on the Landowners. The City's reasonable determination shall be appropriately supported by cost estimates obtained from independent contractors or engineers.

ARTICLE 2
RECITALS

Recital No. 1. The undersigned Kim M. White and William E. White, husband and wife, are the fee title owners of real estate in the City described as the Subject Lot.

Recital No. 2. The City Easement is on the Subject Lot. The City owns the City Easement. The City Easement Improvements are within the City Easement and future City Easement Improvements may be located within the City Easement.

Recital No. 3. Landowners have requested permission from the City to retain the Landowner Improvements within the City Easement.

Recital No. 4. The Landowner Improvements will make the City's access to the City Easement Improvements more difficult and costly.

Recital No. 5. The Landowner Improvements result in permanent structures being located within the City Easement.

Recital No. 6. The location of the Landowner Improvements may result in damage to the City Easement Improvements.

Recital No. 7. The City desires to obtain a right of access over and across certain portions of the Subject Lot to access the City Easement due to the fact that the additional work needed to access the City Easement Improvements may result in the need for additional and larger equipment to access the City Easement Improvements.

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Recital No. 8. Subject to the terms of this Agreement, the City is willing to allow the Landowner Improvements to remain within the City Easement if the following conditions are met:

a.) The Landowners maintain the Landowner Improvements;

b.) The Landowners agree to pay the City any Cost Differential relating to inspections, access, repair, maintenance and replacement of the existing City Easement Improvements and the placement of any future City Easement Improvements in the City Easement;

c.) The Landowners agree to temporarily remove the Landowner Improvements in the event the City has need to access the area where the Landowner Improvements exist in order for the City to inspect, repair, maintain, and replace the existing City Easement Improvements or construct future City Easement Improvements in the Easement Area; and

d.) The Landowners agree to modify the Landowner Improvements if the Landowner Improvements interfere with the City Easement Improvements or reduce the capacity of the City Easement for storm water retention.

NOW, THEREFORE, THE CITY OF INVER GROVE HEIGHTS AND THE UNDERSIGNED LANDOWNERS, FOR THEMSELVES, AND THEIR SUCCESSORS, HEIRS AND ASSIGNS DO HEREBY AGREE:

ARTICLE 3
AGREEMENTS

3.1 **Maintenance Of Landowner Improvements.** Under the terms and conditions stated herein, the Landowner, at Landowner's own cost, is hereby authorized by the City to retain the Landowner Improvements as currently located within the City Easement. Other than the Landowner Improvements, the Landowner shall not place any other structure, retaining wall, irrigation system, building, fence, landscaping, trees or shrubs in the City Easement.

3.2 **City Not Responsible For Landowner Improvements.** Nothing contained herein shall be deemed an assumption by the City of any responsibility for construction, maintenance, replacement or repair of the Landowner Improvements.

3.3 **Continuing Right To City Easement.** Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the City holds to the City Easement.

3.4 **Subordinate Position Of Landowner Improvements.** The Landowner Improvements are subordinate to the rights of the City in the City Easement and in the City Easement Improvements.

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3.5 **Risk Of Loss.** The Landowners understand and agree that the Landowner Improvements within the City Easement may be adversely affected by use of the City Easement. The parties agree that the City is not responsible for such events; the City shall have no liability to the Landowners for such events. The Landowners assume the risk of installing the Landowner Improvements in the City Easement area.

3.6 **Landowners To Bear Cost Of Relocating Landowner Improvements.** The City is responsible for the repair and maintenance of the City Easement Improvements in the City Easement.

The City may require the Landowners to temporarily remove and subsequently replace the Landowner Improvements in the City Easement in order for the City to gain access to the City Easement Improvements for the purpose of inspecting, repairing, maintaining, or replacing, the City Improvements or adding future City Easement Improvements.

If the Landowners do not perform such tasks, the City may perform such tasks and in such case the Landowners shall reimburse the City for the City's costs and expenses. Prior to commencing such tasks, the City shall send Formal Notice to the Landowners and allow the Landowners thirty (30) days from the date of the Formal Notice to perform the tasks. If the Landowners have not completed the work within the thirty (30) days, then the City may proceed to perform the tasks. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowners. The Landowners must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility billings within the City.

3.7 **Emergency.** Notwithstanding the requirements contained in Sections 3.6 relating to a thirty (30) day Formal Notice to the Landowners to perform its obligations under Sections 3.6, the City shall not be required to give such Formal Notice if the City's engineer determines that an emergency exists. For purposes of this Agreement, an emergency is an event or condition that, in the reasonable judgment of the City, immediately threatens to cause or has caused either damage to property or danger to persons. In such instance, the City, without giving Formal Notice to the Landowners may perform the work and in such case the Landowners shall reimburse the City for the costs and expenses relating to the work. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowners. The Landowners must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility bills within the City.

3.8 **Cost Deferential.** If a Cost Deferential occurs relating to the access to or inspection, maintenance, repair or replacement of the City Easement Improvements or relating to construction of new City Easement Improvements in the future, then the Landowners shall pay

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the Cost Deferential to the City. The Landowners must make payment for the Cost Deferential within 30 days after the City has sent a written invoice for the Cost Deferential to the Landowners.

3.9 **Modifications To Landowner Improvements.** If in the future the City reasonably determines that the Landowner Improvements interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Easement Improvements or with ponding and drainage or if the City reasonably determines that the Landowner Improvements have lessened the capacity of the City Easement for storm water retention, then the Landowners, at their own expense, shall make such modifications to the Landowner Improvements as directed by the City. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Landowner Improvements.

If Landowners do not make the modifications, the City may make the modifications and in such case the Landowners shall reimburse the City for the City's costs and expenses. Prior to commencing such modifications, the City shall send Formal Notice to the Landowners and allow the Landowners thirty (30) days from the date of the Formal Notice to make the modifications. If Landowners do not completely make the modifications, the City may proceed to make the modifications. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowners. The Landowners must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work relating to the modifications.

3.10 **Remedies.** If the Landowners fail to perform their obligations under this Agreement, then the City may avail itself of any remedy afforded by law or in equity and any of the following non-exclusive remedies:

a.) The City may specifically enforce this Agreement.

b.) If the Landowners fail to make payments under Section 3.6, 3.7, 3.8 or 3.9, then the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Subject Lot in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Landowners waive any and all procedural and substantive objections to the imposition of such usual and customary charges on the Subject Lot.

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

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No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

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

a.) The Landowner Improvements;

b.) Installation and maintenance of the Landowners Improvements;

c.) Failure by the Landowners to observe or perform any covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement; and

d.) Use of the City Easement for Landowner Improvements.

Notwithstanding anything to the contrary contained in this Section 3.11, Landowners are not responsible for and have no obligation to defend the City for any negligent acts or omissions of the City, its agents or contractors.

3.12 **City Duties.** Nothing contained in this Agreement shall be considered an affirmative duty upon the City to perform the Landowners' obligations contained in Article 3 if the Landowners does not perform such obligations.

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

3.14 **Recording.** The City may record this Agreement with the Dakota County Recorder.

3.15 **Binding Agreement.** The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Lot and shall be binding upon the heirs, successors, administrators and assigns of the parties.

3.16 **Amendment And Waiver.** The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance

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

3.17 **Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

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

3.19 **Headings.** The subject headings of the sections this Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

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IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville, Mayor

ATTEST:

By: _____
Melissa Rheaume, Deputy City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 27th day of September, 2010, before me a Notary Public within and for said County, personally appeared George Tourville and Melissa Rheaume, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Deputy City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

Amy Sue Brinkman
Notary Public
Minnesota
My Commission Expires January 31, 2012

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LANDOWNER

Kim M. White

Kim M. White

William E. White

William E. White

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 23rd day of September, 2010, before me a Notary Public within and for said County, personally appeared Kim M. White and William E. White, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Michele Frances Iaria

Notary Public

MICHELE FRANCES IARIA
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2013

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

After Recording, Please Return This Instrument To:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

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Fax Oct 7 2010 01:51pm P020/020

AGENDA ITEM _____

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

Accept Grant for the Rock Island Swing Bridge Project from the Minnesota Historical Society

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent Agenda	[ ]	None
Contact:	Eric Carlson 651.450.2587	[ ]	Amount included in current budget
Prepared by:	Eric Carlson – Parks & Recreation	[ ]	Budget amendment requested
Reviewed by:	Eric Carlson	[ ]	FTE included in current complement
		[ ]	New FTE requested – N/A
		[X]	Other

PURPOSE/ACTION REQUESTED
Authorize the execution by the Mayor of a grant agreement with the State of Minnesota. The grant of $100,000 will be used for the Rock Island Swing Bridge.

SUMMARY
During the 2009 Legislative Session, the City of Inver Grove Heights received a $100,000 grant from the Minnesota Historical Society. The grant agreement calls for:

- City to receive $100,000 in proceeds to be used for park, trail and scenic overlooks of the Mississippi River
- We have assumed a project value of $1,500,000 for the purposes of the project
- If we sell the bridge we will need to refund the State the grant amount

A resolution approving the grant's execution is attached. It is recommended that the City accept the grant and authorize it's execution.

RESOLUTION NO. _____

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION APPROVING GENERAL OBLIGATION BOND PROCEEDS GRANT AGREEMENT – END GRANT FOR THE ROCK ISLAND SWING BRIDGE

WHEREAS, the City is the record owner of the remaining portion of the Rock Island Swing Bridge and adjacent property located in the City of Inver Grove Heights, Dakota County, Minnesota.

WHEREAS, the City of Inver Grove Heights has undertaken the renovation and reconstruction of the remaining portion of the Rock Island Swing Bridge located in Dakota County, Minnesota in order to reopen the remaining portion of the Rock Island Swing Bridge for various park and/or recreation purposes.

WHEREAS, under the provisions contained in the Laws of Minnesota, 2009, Chapter 93, Article 1, Section 18, the State of Minnesota has allocated $100,000 from the proceeds of state general obligation bonds, which amount is to be given to the City as a grant to assist it in the improvement of the Rock Island Swing Bridge as authorized by such legislation.

WHEREAS, in order to receive this grant to assist with the improvement of the Rock Island Swing Bridge, the City is required to enter into a General Obligation Bond Proceeds Grant Agreement with the Minnesota Historical Society.

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

1. The City Council hereby approves the attached General Obligation Bond Proceeds Grant Agreement – End Grant for the Rock Island Bridge Project.

2. The Mayor and Deputy Clerk are authorized to execute the attached General Obligation Bond Proceeds Grant Agreement – End Grant for the Rock Island Bridge Project.

Adopted by the City Council of the City of Inver Grove Heights this 11th day of October, 2010.

_____
George Tourville, Mayor

Attest:

_____
Melissa Rheaume, Deputy Clerk

General Obligation Bond Proceeds Grant Agreement - End Grant for the Rock Island Bridge Project

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General Obligation Bond Proceeds
Grant Agreement - End Grant
for the Rock Island Bridge
Project

THIS AGREEMENT shall be effective as of October 11, 2010 and is between the city of Inver Grove Heights, a Minnesota Municipal Corporation (the "Public Entity"), and the Minnesota Historical Society (the "State Entity").

RECITALS

A. Under the provisions contained in Minn. Stat. § 165.09, the Public Entity has been given the authority to design and renovate the remaining portion of the Rock Island Swing Bridge located in Dakota County, Minnesota (the "Rock Island Bridge") ; and

B. Under the provisions contained in Laws of Minnesota, 2009, Chapter 93, Article 1, Section 18 (the "GO Bonding Legislation"), the State of Minnesota has allocated $ 100,000 (the "Grant"), which is to be given to the Public Entity as a grant to assist it in the designing and renovating of the Rock Island Bridge as authorized by such legislation; and

C. Under the provisions contained in Minn. Stat. § 412.491, the Public Entity has been given the authority to design and renovate the Rock Island Bridge for park and/or recreational purposes, which include but are not limited to park, trail, and scenic overlooks of the Mississippi River, a connection to the Mississippi River Regional Trail, and other similar purposes (the "Governmental Program"); and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity's receipt and use of the Grant to acquire and/or improve real property (the "Real Property") and, if applicable, structures situated thereon (the "Facility") will cause all of such real property and structures, as specifically defined in Exhibit A to Declaration I herein, to become "state bond financed property," as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Third Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of the Minnesota Department of Management and Budget on August 26, 2010 (the "Commissioner's Order"), even though such funds may only be a portion of the funds being used to acquire and/or improve the Real Property and, if applicable, Facility and that such funds may be used to only acquire and/or improve a part of the Real Property and/or, if applicable, Facility.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating

to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows:

Article I
DEFINITIONS

Section 1.0 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"Agreement" - means this General Obligation Bond Proceeds Grant Agreement – End Grant for the Rock Island Bridge Project.

"Approved Debt" – means public or private debt that is consented to and approved, in writing, by the Commissioner, the proceeds of which were or will used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

"Code" - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

"Commissioner" - means the commissioner of the Minnesota Department of Management and Budget, and any designated representatives thereof.

"Commissioner's Order" - means that certain "Third Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of the Minnesota Department of Management and Budget on August 26, 2010.

"Counterparty" - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Declaration" - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Public Entity's interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

"Event of Default" - means one or more of those events delineated in Section 2.07.

"Facility," this term is not applicable to this Agreement. .

"Fair Market Value" – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

"GO Bonding Legislation" – means the legislation delineated in Recital B hereinabove.

"G.O. Bonds" - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution the proceeds of which are used to fund the Grant and any bonds issued to refund or replace such bonds.

"G.O. Compliance Legislation" - means Minn. Stat. § 16A.695 as such may be subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

"Governmental Program" – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

"Grant" - means a grant of monies from the State Entity to the Public Entity in the amount identified as the "Grant" in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained in Sections 2.11 and 6.01.

"Initial Acquisition and Betterment Costs" – means the cost to acquire the Public Entity's ownership interest in Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the

Commissioner is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

"Leased Premises" - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a leasehold interest under a Real Property/Facility Lease. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Lessor" – means the fee owner/lessor of the Leased Premises. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Outstanding Balance of the Grant" – means the portion of the Grant that has been disbursed to or on behalf of the Public Entity minus any amounts received by the Commissioner under Section 2.08.B.

"Ownership Value," if any – means the value of the Public Entity's ownership interest, if any, in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity's execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner. The parties hereto agree and acknowledge that such value is approximately one million five hundred thoursand dollars ($ 1.5 million) or ____Not Applicable; provided, however, the Commissioner is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is $0.00 shall be created. (*The blank "Not Applicable" should only be selected and checked when a portion of the funds delineated in **Attachment III** attached hereto are to be used to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in **Attachment III** and not in this definition for Ownership Value).*

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03 herein. (*If the Public Entity is not using any portion of the Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in **Attachment III***

hereto and instead shall be included in the definition for Ownership Value under this Section 1.01.)

"Public Entity" - means the entity identified as the "Public Entity" in the lead-in paragraph of this Agreement.

"Real Property" - means the real property located in the County of Dakota, State of Minnesota, legally described in **Attachment II** to this Agreement.

"Real Property/Facility Lease" - means a long term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

"Subsequent Betterment Costs" – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner.

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Useful Life of the Real Estate and, if applicable, Facility" – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments delineated in Attachment III attached hereto for Facilities that are to be constructed or bettered.

Article II
GRANT

Section 2.01 **Grant of Monies.** The State Entity shall make and issue the Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner under certain circumstances.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to the State Entity that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

x Fee simple ownership of the Real Property.

☐ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.

☐ An easement for the Real Property (i) that is in form and substance acceptable to the State Entity and the Commissioner, (ii) that is for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or for a term authorized by a Minnesota statute, rule or session law, and (iii) which cannot be modified, restated, amended, changed in any other way, or prematurely cancelled or terminated without the prior written consent of the State Entity and the Commissioner.

Ownership Interest in, if applicable, the Facility.

☐ Fee simple ownership of the Facility.

☐ A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.

Section 2.03 **Use of Grant Proceeds.** The Public Entity shall use the Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the Grant for any other purpose.

(Check all appropriate boxes.)

☐ Acquisition of fee simple title to the Real Property.

☐ Acquisition of a leasehold interest in the Real Property.

☐ Acquisition of an easement for the Real Property.

x Improvement of the Real Property.

☐ Acquisition of fee simple title to the Facility.

☐ Acquisition of a leasehold interest in the Facility.

☐ Construction of the Facility.

☐ Renovation of the Facility.

X For park and/or recreational purposes.

Section 2.04 **Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the State Entity and the Commissioner and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03. The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a

statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner certified copies of such resolution and budget.

Section 2.05 **Public Entity Representations and Warranties.** The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation and the Commissioner's Order.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner relating to the Grant or the disbursement of any of the Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project has been or will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. t will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity and the Commissioner, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described in Section 2.02 for the entire Useful Life of the Real Estate and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the Grant to complete and fully pay for the Project.

U. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner.

Section 2.06 **Leasehold Ownership.** *This Section shall only apply if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease. For all other circumstances this Section is not needed and should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.*

A. A Real Property/Facility Lease must comply with the following provisions.

1. It must be in form and contents acceptable to the State Entity and the Commissioner, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the State Entity and the Commissioner.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased Premises or the Lessor's interest in the Real Property/Facility Lease, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the

Commissioner will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease as if such holder had been an original Lessor under the Real Property/Facility Lease.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease, and that such use restrictions will terminate and not apply to any successor lessee who purchases the Public Entity's interest in the Real Property/Facility Lease.

B.) The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease that are not inconsistent with or contrary to the requirements contained in this Section.

C.) The expiration of the term of a Real Property/Facility Lease shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the Grant, and upon such expiration the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D.) The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/ Facility Lease or a short form or memorandum thereof.

Section 2.07 **Event(s) of Default.** The following events shall, unless waived in writing by the State Entity and the Commissioner, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation or the Commissioner's Order.

D. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner giving the Public Entity written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default does not involve a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner.

C. If the Event of Default involves a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner.

D. Either the State Entity or the Commissioner, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity. The rights and remedies herein specified are cumulative and not exclusive of any rights

or remedies that the State Entity or the Commissioner would otherwise possess. If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the State Entity and/or the Commissioner, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 **Notification of Event of Default.** The Public Entity shall furnish to the State Entity and the Commissioner, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 **Effect of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only be terminated upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or in accordance with the provisions contained in Section 2.11.

Section 2.11 **Termination/Modification of Grant.** If the full amount of the Grant has not been disbursed on or before the date that is 5 years from the effective date of this Agreement or such later date to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the Grant shall terminate. In such event, (i) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date. This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Article III
USE CONTRACTS

This Article III and its contents is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents is not needed and should be ignored and treated as if were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 **General Provisions.** If the Public Entity has statutory authority to enter into a Use Contract, then it may enter Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which it was entered into must be to operate the Governmental Program.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity; (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Governmental Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the Governmental Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the Governmental Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

I. It must be approved, in writing, by the State Entity and the Commissioner, and any Use Contract that is not approved, in writing, by the State Entity and the Commissioner shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner, take such actions and furnish such documents to the Commissioner as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the Grant exceeds $200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the term of the Use Contract.

Section 3.02 **Initial Term and Renewal.** The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Estate and, if applicable, Facility for

the portion of the Real Estate and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (i) the term of any renewal may not exceed the initial term, (ii) the Public Entity must make a determination that renewal will continue to carry out the Governmental Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (iii) the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (iv) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

Section 3.03 **Reimbursement of Counterparty.** A Use Contract may, but need not, contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 **Receipt of Monies Under a Use Contract.** If the Public Entity receives any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner shall be determined by the Commissioner, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Grant and the denominator of which is sum of the Grant and the Approved Debt.

Article IV
SALE

Section 4.01 **Sale.** The Public Entity shall not sell its interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

A. The Public Entity determines, by official action, that the Real Property and, if applicable, Facility is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the Real Property or, if applicable, Facility is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. The written consent of the Commissioner has been obtained.

The acquisition of the Public Entity's interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02. The Public Entity may participate in any public auction of its interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

Section 4.02 **Proceeds of Sale.** Upon the sale of the Public Entity's interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale, but not including the repayment of any debt associated with the Public Entity's interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner in an amount equal to the Outstanding Balance of the Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the Grant then all of such net proceeds shall be distributed to the Commissioner.

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to pay in full any outstanding Approved Debt in the order of priority of such debt.

C. The remaining portion, after the distributions specified in Sections 4.02A and B, shall be distributed to (i) reimburse the Public Entity for its Ownership Value, and (ii) to pay interested public and private entities, other than any such entity that has

already received the full amount of its contribution, the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing.

D. The remaining portion, after the distributions specified in Sections 4.02.A, B and C, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other then lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs. The distribution to the State Entity shall be made to the Commissioner, and the Public Entity may direct its distribution to be made any other entity including, but not limited to, a Counterparty. All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner, and no such disbursements shall be made without such consent. The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the Grant.

Article V
COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 **State Bond Financed Property**. The Public Entity and the State Entity acknowledge and agree that the Public Entity's interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property," as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the GO Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either; (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 **Changes to G.O. Compliance Legislation or the Commissioner's Order.** In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity's interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

Article VI
DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 **Disbursement of Grant.** Upon compliance with all of the conditions delineated in Section 6.02, the State Entity shall disburse the Grant to the Public Entity in one lump sum. Under no circumstance shall the State Entity be required to disburse funds in excess

of the amount requested by the Public Entity under the provisions contained in Section 6.02.A even if the amount requested is less than the amount of the Grant delineated in Section 1.01. If the amount of Grant that the State Entity disburses hereunder to the Public Entity is less than the amount of the Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to disburse any of the Grant shall terminate as of the date specified in such Section even if the entire Grant has not been disbursed by such date. The Grant shall only be for expenses that (i) are for those items of a capital nature delineated in **Attachment III** to this Agreement, (ii) accrued no earlier than the effective date of the GO Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the Commissioner.

Section 6.02 **Condition Precedent to Disbursement of Grant.** The obligation of the State Entity to disburse the Grant to the Public Entity is subject to the following conditions precedent:

A. The State Entity shall have received a request for disbursement of the Grant specifying the amount of funds being requested, which such amount shall not exceed the amount of the Grant delineated in Section 1.01.

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has fully and completely paid for the Project and all other expenses that may occur in conjunction therewith. E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23 and that all of such matching funds, if any, have been expended for the Project.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, Facility and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or

regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project was completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04, which requirement may be satisfied by a certificate of occupancy or such other equivalent document from the municipality in which the Real Property is located.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and

(iii) the Chair of the Minnesota House of Representatives Capital Investment Committee has, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

Article VII
MISCELLANEOUS

Section 7.01 **Insurance.** The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity or by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity, and shall name the State Entity and the Public Entity as loss payee thereunder. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (ii) sell its interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the Real Property and Facility. If the Public Entity elects to sell its interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

The State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have the State Entity named as an additional named insured therein.

At the written request of either the State Entity or the Commissioner, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 **Condemnation.** If, after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity. As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any

building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's interest in the Real Property and, if applicable, Facility, is a leasehold interest, and (vi) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

The Public Entity shall not, without the written consent of the State Entity and the Commissioner, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may to necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may to necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 **Records Keeping and Reporting.** The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, and the Commissioner's Order, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 **Inspections by State Entity.** Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.

Section 7.06 **Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified, or replaced from time to time.

Section 7.07 **Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 Subd. 2 & 176.182 that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 **Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner all claims it may have for over charges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 **Review of Plans and Cost Estimates.** The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity and the State Entity agree to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project, the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C.; (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C.; and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04 that exists as of the date of this Agreement and as such may subsequently be amended, modified, or replaced from time to time, ice arenas, local government projects with a construction cost of less than $1,500,000.00, or any other capital project with a construction cost of less than $750,000.00.

Section 7.11 **Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.44 and corresponding Rules 5200.1000 to 5200.1120 that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time with respect to the Project and the operation

of the Governmental Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and, if applicable, Facility.

Section 7.12 **Liability.** The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 **Indemnification by the Public Entity.** The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the Commissioner, or the State of Minnesota, or others including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06. The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 **Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners or a joint venture between the Public Entity, the State Entity, or the Commissioner, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee

of either the State Entity, the Commissioner, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility. The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with either the State Entity, the Commissioner, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of Inver Grove Heights
8055 Barbara Avenue
Inver Grove Heights, MN 55077
Attention: Parks and Recreation Director

To the State Entity at:

Minnesota Historical Society
345 Kellogg Boulevard West
Saint Paul, MN 55102
Attention: Contracting Officer

To the Commissioner at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155

Attention: Commissioner

Section 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 **Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project: NONE.

(If there are no matching funds requirements then insert the word "NONE".)

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner whatever documentation the Commissioner may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner.

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner that **Attachment III** to this Agreement is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down amongst the following categories:

(i) State funds including the Grant, identifying the source and amount and of such funds.

(ii) Matching funds, identifying the source and amount of such funds.

(iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.

(iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.

(v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner may request to support or explain any of the information contained in **Attachment III** to this Agreement.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** to this Agreement if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

Section 7.25 **Third-Party Beneficiary.** The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner, is and shall be a third-party beneficiary of this Agreement.

Section 7.26 **Public Entity Tasks**. Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 7.27 **State Entity and Commissioner Required Acts and Approvals.** The State entity and the Commissioner shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.28 **Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's interest in the Real Property.

Section 7.29 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control: NONE.

(If there are no additional requirements, then insert the word "NONE".)

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IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement - End Grant for the Rock Island Bridge Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:
The City of Inver Grove Heights,
a Minnesota Municipal Corporation

By: _____
George Tourville
Its: Mayor

Dated: _____, _____

And:

_____
Melissa Rheaume
Its: Deputy City Clerk

Dated: _____, _____

STATE ENTITY:

Minnesota Historical Society,

By: _____
Nina Archabal
Its: Director

Dated: _____, _____

Subscribed and sworn to (or affirmed) before me this _____day of October, 2010
by _____ and _____

My Commission Expires: _____ (Notary Public)

Subscribed and sworn to (or affirmed) before me this _____day of October, 2010
by _____ and _____

My Commission Expires: _____ (Notary Public)

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Attachment I to Grant Agreement

DECLARATION

The undersigned has the following interest in the real property legally described in **Exhibit A** attached and all facilities situated thereon (cumulatively referred to as the "Restricted Property"):

(Check the appropriate box.)

X a fee simple title,

☐ a lease, or

☐ an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

A. The Restricted Property is bond-financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in B hereinafter, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the commissioner of the Minnesota Department of Management and Budget, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed or instrument used to sell or otherwise dispose of the Restricted Property; and

B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in the General Obligation Bond Proceeds (End) Grant Agreement for the Rock Island Bridge Project between the city of Inver Grove Heights and the Minnesota Historical Society, dated October 11, 2010.

The Restricted Property shall remain subject to such restrictions and encumbrances until it is released therefrom by way of a written release in recordable form signed by both the Minnesota Historical Society and the commissioner of the Minnesota Department of Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the commissioner of the Minnesota Department of Management and Budget.

PUBLIC ENTITY:
The City of Inver Grove Heights,
a Minnesota Municipal Corporation

By: _____
George Tourville
Its: Mayor

Dated: _____, _____

And:

_____
Melissa Rheaume
Its: Deputy City Clerk

Dated: _____, _____

Subscribed and sworn to (or affirmed) before me this _____day of October, 2010
by _____ and _____

My Commission Expires: _____ (Notary Public)

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Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

LEGAL DESCRIPTION FOR THE WEST HALF OF THE BRIDGE ACROSS THE MISSISSIPPI RIVER SITUATED IN DAKOTA COUNTY AND CONVEYED FROM THE STATE OF MINNESOTA TO THE CITY OF INVER GROVE HEIGHTS PURSUANT TO STATE DEED NO. 0204367 RECORDED AS DOCUMENT NO. 2692651

All of the following premises situated in the Town of Inver Grove, in the County of Dakota, State of Minnesota, in Township 27 North, Range 22 West, in the Northeast Quarter of the Southwest Quarter of Section 2 and extending into the Northwest Quarter of the Southeast Quarter of Section 2, described as follows:

Commencing at the intersection of the South line of Gladstone Street and the West bank of the Mississippi River; thence Southeast along the West bank of the Mississippi River for a distance of approximately 68 feet; thence West along a line being approximately 65 feet South of and parallel to the South line of Gladstone Street for a distance of approximately 175 feet; thence South 86 degrees West, more or less, for a distance of approximately 720 feet; thence South along a line being approximately 200 feet West of and parallel to the North/South centerline of said Section 2 for a distance of approximately 355 feet to the South line of Government Lot 6 in said Section 2; thence West along the South line of said Government Lot 6 for a distance of approximately 610 feet; thence Northerly and on a 2 curve to the left for a distance of approximately 625 feet to the South line of Gladstone Street; thence Easterly along the South line of Gladstone Street for a distance of approximately 1,460 feet to the point of commencement.

Except any part thereof that lies within the following:

That part of Government Lots 5 and 6, Section 2, Township 27, Range 22, Dakota County, Minnesota, described as follows:

Commencing at a cast iron judicial landmark set pursuant to Torrens Case No. 77717, which monument is on the North line of 66th Street East, also known as Dakota County Road No. 24, (formerly Gladstone Street in the plat of "Inver Grove Factory Addition, Dakota County, Minnesota") and 47.17 feet Easterly of a cast iron judicial landmark set pursuant to Torrens Case No. 77717 at the intersection of the center line of vacated Pullman Street and the North line of 66th Street East, measured along said North line; thence South 89 degrees 52 minutes West (assumed bearing) along the North line of 66th Street East as marked by judicial landmarks set pursuant to Torrens Case No. 77717 a distance of 151.29 feet; thence South 16 degrees 53 minutes 49 seconds East 54.39 feet to the point

of beginning of the land to be described said point being marked by a judicial landmark set in District Court File C7-98-9466; thence South 16 degrees 53 minutes 49 seconds East 265 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 73 degrees 06 minutes 11 seconds East 5.45 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 16 degrees 53 minutes 49 seconds East 33.29 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 15 degrees 32 minutes 28 seconds East 363.98 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 19 degrees 52 minutes 47 seconds East 270.08 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 28 degrees 54 minutes 23 seconds East 279.16 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 48 minutes 53 seconds West 59.96 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 also being on a non-tangential curve concave to the Southeast a radial line of which bears South 57 degrees 05 minutes 22 seconds East from said point; thence Northerly along said curve, radius 1407.39 feet, central angle 29 degrees 46 minutes 32 seconds 731.39 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 00 degrees 11 minutes 07 seconds East 11.53 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 on a non-tangential curve concave to the North, a radial line of which bears North 16 degrees 56 minutes 08 seconds West from said point; thence Westerly along said curve, radius 565.00 feet, central angle 24 degrees 50 minutes 15 seconds 244.93 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 82 degrees 05 minutes 53 seconds West, tangent to said curve 1.09 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence Northwesterly along a 528.69 foot radius tangential curve, concave to the Northeast, central angle 33 degrees 33 minutes 49 seconds 309.70 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 48 minutes 53 seconds West 126.71 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 on a non-tangential curve concave to the West, a radial line of which bears South 85 degrees 31 minutes 23 seconds West from said point; thence Northerly along said curve, radius 2914.93 feet, central angle 00 degrees 42 minutes 27 seconds 36.04 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 34 minutes 47 seconds West 241.54 feet to the point of beginning which point is marked by a judicial landmark set in District Court File C7-98-9466.

AND

The west half of the remaining portion of the bridge across the Mississippi River situated in the County of Dakota, State of Minnesota, and adjacent on the East of the above described premises. Said west half of the bridge across the Mississippi River situated in the County of Dakota, State of Minnesota, and adjacent on the East of the above described premises was conveyed from the

State of Minnesota to the City of Inver Grove Heights pursuant to State Deed No. 0204367 dated October 23, 2009, and said State Deed was recorded as Document No. 2692651 on October 26, 2009, with the Dakota County Recorder's Office.

EXCEPTING THE FOLLOWING DESCRIBED PREMISES FROM THE COMBINED ABOVE DESCRIBED PREMISES AND SAID BRIDGE PROPERTY:

All of the following premises situated in the Town of Inver Grove, in the County of Dakota, State of Minnesota, in Township 27 North, Range 22 West, in the Northeast Quarter of the Southwest Quarter of Section 2 and extending into the Northwest Quarter of the Southeast Quarter of Section 2, described as follows:

> Commencing at the intersection of the South line of Gladstone Street and the West bank of the Mississippi River; thence Southeast along the West bank of the Mississippi River for a distance of approximately 68 feet; thence West along a line being approximately 65 feet South of and parallel to the South line of Gladstone Street for a distance of approximately 175 feet; thence South 86 degrees West, more or less, for a distance of approximately 720 feet; thence South along a line being approximately 200 feet West of and parallel to the North/South centerline of said Section 2 for a distance of approximately 355 feet to the South line of Government Lot 6 in said Section 2; thence West along the South line of said Government Lot 6 for a distance of approximately 610 feet; thence Northerly and on a 2 curve to the left for a distance of approximately 625 feet to the South line of Gladstone Street; thence Easterly along the South line of Gladstone Street for a distance of approximately 1,460 feet to the point of commencement.
>
> Except any part thereof that lies within the following:
>
> That part of Government Lots 5 and 6, Section 2, Township 27, Range 22, Dakota County, Minnesota, described as follows:
>
> Commencing at a cast iron judicial landmark set pursuant to Torrens Case No. 77717, which monument is on the North line of 66th Street East, also known as Dakota County Road No. 24, (formerly Gladstone Street in the plat of "Inver Grove Factory Addition, Dakota County, Minnesota") and 47.17 feet Easterly of a cast iron judicial landmark set pursuant to Torrens Case No. 77717 at the intersection of the center line of vacated Pullman Street and the North line of 66th Street East, measured along said North line; thence South 89 degrees 52 minutes West (assumed bearing) along the North line of 66th Street East as marked by judicial landmarks set pursuant to Torrens Case No. 77717 a distance of 151.29 feet; thence South 16 degrees 53 minutes 49 seconds East 54.39 feet to the point of beginning of the land to be described said point being marked by a judicial landmark set in District Court File C7-98-9466; thence South 16 degrees 53 minutes 49 seconds East 265 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 73 degrees 06 minutes 11 seconds

East 5.45 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 16 degrees 53 minutes 49 seconds East 33.29 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 15 degrees 32 minutes 28 seconds East 363.98 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 19 degrees 52 minutes 47 seconds East 270.08 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 28 degrees 54 minutes 23 seconds East 279.16 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 48 minutes 53 seconds West 59.96 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 also being on a non-tangential curve concave to the Southeast a radial line of which bears South 57 degrees 05 minutes 22 seconds East from said point; thence Northerly along said curve, radius 1407.39 feet, central angle 29 degrees 46 minutes 32 seconds 731.39 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 00 degrees 11 minutes 07 seconds East 11.53 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 on a non-tangential curve concave to the North, a radial line of which bears North 16 degrees 56 minutes 08 seconds West from said point; thence Westerly along said curve, radius 565.00 feet, central angle 24 degrees 50 minutes 15 seconds 244.93 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 82 degrees 05 minutes 53 seconds West, tangent to said curve 1.09 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence Northwesterly along a 528.69 foot radius tangential curve, concave to the Northeast, central angle 33 degrees 33 minutes 49 seconds 309.70 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 48 minutes 53 seconds West 126.71 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 on a non-tangential curve concave to the West, a radial line of which bears South 85 degrees 31 minutes 23 seconds West from said point; thence Northerly along said curve, radius 2914.93 feet, central angle 00 degrees 42 minutes 27 seconds 36.04 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 34 minutes 47 seconds West 241.54 feet to the point of beginning which point is marked by a judicial landmark set in District Court File C7-98-9466.

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Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY

LEGAL DESCRIPTION FOR THE WEST HALF OF THE BRIDGE ACROSS THE MISSISSIPPI RIVER SITUATED IN DAKOTA COUNTY AND CONVEYED FROM THE STATE OF MINNESOTA TO THE CITY OF INVER GROVE HEIGHTS PURSUANT TO STATE DEED NO. 0204367 RECORDED AS DOCUMENT NO. 2692651

All of the following premises situated in the Town of Inver Grove, in the County of Dakota, State of Minnesota, in Township 27 North, Range 22 West, in the Northeast Quarter of the Southwest Quarter of Section 2 and extending into the Northwest Quarter of the Southeast Quarter of Section 2, described as follows:

Commencing at the intersection of the South line of Gladstone Street and the West bank of the Mississippi River; thence Southeast along the West bank of the Mississippi River for a distance of approximately 68 feet; thence West along a line being approximately 65 feet South of and parallel to the South line of Gladstone Street for a distance of approximately 175 feet; thence South 86 degrees West, more or less, for a distance of approximately 720 feet; thence South along a line being approximately 200 feet West of and parallel to the North/South centerline of said Section 2 for a distance of approximately 355 feet to the South line of Government Lot 6 in said Section 2; thence West along the South line of said Government Lot 6 for a distance of approximately 610 feet; thence Northerly and on a 2 curve to the left for a distance of approximately 625 feet to the South line of Gladstone Street; thence Easterly along the South line of Gladstone Street for a distance of approximately 1,460 feet to the point of commencement.

Except any part thereof that lies within the following:

That part of Government Lots 5 and 6, Section 2, Township 27, Range 22, Dakota County, Minnesota, described as follows:

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of beginning of the land to be described said point being marked by a judicial landmark set in District Court File C7-98-9466; thence South 16 degrees 53 minutes 49 seconds East 265 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 73 degrees 06 minutes 11 seconds East 5.45 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 16 degrees 53 minutes 49 seconds East 33.29 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 15 degrees 32 minutes 28 seconds East 363.98 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence South 19 degrees 52 minutes 47 seconds East 270.08 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 28 degrees 54 minutes 23 seconds East 279.16 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 48 minutes 53 seconds West 59.96 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 also being on a non-tangential curve concave to the Southeast a radial line of which bears South 57 degrees 05 minutes 22 seconds East from said point; thence Northerly along said curve, radius 1407.39 feet, central angle 29 degrees 46 minutes 32 seconds 731.39 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 00 degrees 11 minutes 07 seconds East 11.53 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 on a non-tangential curve concave to the North, a radial line of which bears North 16 degrees 56 minutes 08 seconds West from said point; thence Westerly along said curve, radius 565.00 feet, central angle 24 degrees 50 minutes 15 seconds 244.93 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 82 degrees 05 minutes 53 seconds West, tangent to said curve 1.09 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence Northwesterly along a 528.69 foot radius tangential curve, concave to the Northeast, central angle 33 degrees 33 minutes 49 seconds 309.70 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 48 minutes 53 seconds West 126.71 feet to a point marked by a judicial landmark set in District Court File C7-98-9466 on a non-tangential curve concave to the West, a radial line of which bears South 85 degrees 31 minutes 23 seconds West from said point; thence Northerly along said curve, radius 2914.93 feet, central angle 00 degrees 42 minutes 27 seconds 36.04 feet to a point marked by a judicial landmark set in District Court File C7-98-9466; thence North 89 degrees 34 minutes 47 seconds West 241.54 feet to the point of beginning which point is marked by a judicial landmark set in District Court File C7-98-9466.

AND

The west half of the remaining portion of the bridge across the Mississippi River situated in the County of Dakota, State of Minnesota, and adjacent on the East of the above described premises. Said west half of the bridge across the Mississippi River situated in the County of Dakota, State of Minnesota, and adjacent on the East of the above described premises was conveyed from the

State of Minnesota to the City of Inver Grove Heights pursuant to State Deed No. 0204367 dated October 23, 2009, and said State Deed was recorded as Document No. 2692651 on October 26, 2009, with the Dakota County Recorder's Office.

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Attachment III to Grant Agreement
SOURCE AND USE OF FUNDS FOR THE PROJECT
Source of Funds Use of Funds

Federal Grant	$1,300,000	59%
County State Aid Disaster Funds (demolition)	$372,367	17%
Dakota County	$150,000	7%
State of MN Historical Grant	$100,000	5%
Host Community Fund (City)	$95,000	4%
Closed Bond Fund (City)	$95,000	4%
Park Acquisition & Development Fund (City)	$95,000	4%
Total	**$2,207,367**	

PROJECT EXPENSES:

Lametti & Sons (Construction & Demolition)	$1,877,732
SEH Inc. (Engineering & Inspection)	$147,800
AGCS Marine Insurance Company	$8,509
MN DNR (Mussel Remediation)	$38,879
MN DOT (Testing)	$10,000
Project Contingency Budget	$124,447
Total	**$2,207,367**

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LEVANDER,
GILLEN &
MILLER, P.A.
ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
○STEPHEN H. FOCHLER
✧JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
ANN C. O'REILLY
□*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
BRIDGET McCAULEY NASON
DAVID B. GATES
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
• ROGER C. MILLER
1924-2009

*ALSO ADMITTED IN WISCONSIN
✧ALSO ADMITTED IN NORTH DAKOTA
○ALSO ADMITTED IN MASSACHUSETTS
□ALSO ADMITTED IN OKLAHOMA

MEMO

TO: **Inver Grove Heights mayor and Councilmembers**
FROM: **Timothy J. Kuntz, City Attorney**
DATE: **October 5, 2010**
RE: **Resolution Waiving Remedy with Respect to Suspending or Denying Building or Occupancy Permits with Regard to Improvement Agreement by and between the City Of Inver Grove Heights and Short Properties, LLC – October 11, 2010 Council Meeting**

Section 1. Background. The City of Inver Grove Heights (City) and Short Properties, LLC (Developer) and James G. Short and Patricia G. Short, husband and wife (Owner) entered into an Improvement Agreement dated August 25, 2008, recorded on June 18, 2009, as Dakota County Recorder Document No. 2665264 (Improvement Agreement) relating to Lot 2, Block 1, Short Properties, Dakota County, Minnesota (the Property). On or about August 30, 2010, a Certificate of Occupancy was issued for the dance studio building which has been constructed on the Property.

Section 12.1(d) of the Improvement Agreement provides that if there is a Developer Default, one of the remedies available to the City is that the City may suspend or deny building or occupancy permits for buildings on the Property. There has not been a Developer Default. As evidenced by the Certificate of Occupancy, the building has already been built on the Property and a Certificate of Occupancy has been issued.

The Developer is on the process of securing permanent financing for the Property through the Small Business Administration and Developer has requested that he City waive any remedy under Section 12.1(d) of the Improvement Agreement. The request for this waiver stems from the Small Business Administration.

Section 2. Council Action. The Council is asked to consider the attached resolution. This will assist the Shorts in obtaining permanent financing.

Attachment

633 SOUTH CONCORD STREET • SUITE 400 • SOUTH SAINT PAUL, MINNESOTA 55075 • 651-451-1831 • FAX 651-450-7384
OFFICE ALSO LOCATED IN SPOONER, WISCONSIN

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

RESOLUTION WAIVING REMEDY WITH RESPECT TO SUSPENDING OR DENYING BUILDING OR OCCUPANCY PERMITS WITH REGARD TO IMPROVEMENT AGREEMENT BY AND BETWEEN THE CITY OF INVER GROVE HEIGHTS AND SHORT PROPERTIES, LLC

WHEREAS, the City of Inver Grove Heights (City) and Short Properties, LLC (Developer) and James G. Short and Patricia G. Short, husband and wife (Owner) entered into an Improvement Agreement dated August 25, 2008, recorded on June 18, 2009, as Dakota County Recorder Document No. 2665264 (Improvement Agreement) relating to Lot 2, Block 1, Short Properties, Dakota County, Minnesota (the Property).

WHEREAS, on or about August 30, 2010, a Certificate of Occupancy was issued for the dance studio building which has been constructed on the Property.

WHEREAS, Section 12.1(d) of the Improvement Agreement provides that if there is a Developer Default, one of the remedies available to the City is that the City may suspend or deny building or occupancy permits for buildings on the Property.

WHEREAS, there has not been a Developer Default.

WHEREAS, as evidenced by the Certificate of Occupancy, the building has already been built on the Property and a Certificate of Occupancy has been issued.

WHEREAS, the Developer is on the process of securing permanent financing for the Property through the Small Business Administration and Developer has requested that he City waive any remedy under Section 12.1(d) of the Improvement Agreement.

WHEREAS, the request for this waiver stems from the Small Business Administration.

WHEREAS, the City is willing to waive any remedy under Section 12.1(d) of the Improvement Agreement relating to the Property.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS:

1. The City of Inver Grove Heights does hereby waive any remedy under Section 12.1(d) of the Improvement Agreement relating to the Property.

2. A copy of this resolution may be provided to the Owner, Developer and any financing institution that is providing financing for the Property.

Passed this 11th day of October, 2010.

_____

George Tourville, Mayor

ATTEST:

_____

Melissa Rheaume, Deputy City Clerk

LEVANDER,
GILLEN &
MILLER, P.A.
ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
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1924-2009

*ALSO ADMITTED IN WISCONSIN
✧ALSO ADMITTED IN NORTH DAKOTA
○ALSO ADMITTED IN MASSACHUSETTS
□ALSO ADMITTED IN OKLAHOMA

MEMO

TO: **Inver Grove Heights Mayor and Councilmembers**
FROM: **Timothy J. Kuntz, City Attorney**
DATE: **October 5, 2010**
RE: **Assignment of Agreements Related to Project of Flint Hills Resources, LP – October 11, 2010, City Council Meeting**

Section 1. <u>Background</u>. In conjunction with construction of its administration building, Flint Hills Resources, LP (Flint Hills) and the City of Inver Grove Heights (City) entered into the following three (3) documents hereafter referred to as (Agreements):

1. Improvement Agreement (recorded as Doc. No. 2464153);
2. Stormwater Facilities Maintenance Agreement (recorded as Doc. No. 2464154); and
3. Permanent Easement Agreement for Drainage and Utility (recorded as Doc. No. 2464155).

All of the Agreements run with and bind the property made the subject of the Agreements. The Improvement Agreement is not assignable unless the City consents.

Flint Hills is in the process of restructuring its business entities and proposes to assign the Agreements to a subsidiary operating entity to be known as Flint Hills Resources Pine Bend, LLC. The new operating entities are going to be aligned along the basis of each plant; there will be an operating entity for each plant. The Agreements will still be binding upon and run with the property made the subject of the Agreements. See the attached letter from Flint Hills.

Section 2. <u>Council Action</u>. The Council is asked to approved the attached Resolution whereby the City consents to assignment of the Agreements from Flint Hills Resources, LP to Flint Hills Resources Pine Bend, LLC.

Attachments

633 SOUTH CONCORD STREET • SUITE 400 • SOUTH SAINT PAUL, MINNESOTA 55075 • 651-451-1831 • FAX 651-450-7384
OFFICE ALSO LOCATED IN SPOONER, WISCONSIN

FLINT HILLS
RESOURCES®

August 11, 2010

City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, Minnesota 55075

Re: Consent to assignment of Improvement Agreement, Storm Water Facilities Maintenance Agreement and Permanent Easement Agreement by and between the City of Inver Grove Heights and Flint Hills Resources, LP, dated June 12, 2006 (as amended, if applicable) (the "Agreement")

Dear Sir/Madam

Pursuant to a corporate restructuring scheduled to close on November 1, 2010, Flint Hills Resources, LP ("FHR LP") plans to contribute its U.S. operating assets to subsidiary operating entities organized along plant and product lines (the "Transaction"). Specifically, as part of the Transaction, FHR LP anticipates assigning the above-referenced Agreement to a subsidiary operating entity known as Flint Hills Resources Pine Bend, LLC ("FHR Pine Bend"), effective as of the closing of the Transaction (the "Closing Date").

In accordance with the terms of the Agreement, FHR LP and FHR Pine Bend hereby request consent from your company for the above-noted assignment. Under such assignment, FHR Pine Bend would assume, effective as of the Closing Date, all of FHR LP's rights and obligations under the Agreement. Such consent may be indicated by having a copy of this letter signed where noted below, and returning such signed copy to the attention of Mick Dooms at the address shown below, or via fax to (316) 828-8748, or via e-mail to mick.dooms@fhr.com.

Your prompt attention to this matter is very much appreciated. If you have any questions regarding the restructure or the change of the operating entity, please contact Mick Dooms at (316) 828-7397 or via e-mail to mick.dooms@fhr.com.

Sincerely,

Anthony J. Sementelli
Exec. Vice Pres./CFO
Flint Hills Resources, LP

Jeff Wilkes
Exec. Vice Pres. - Operations
Flint Hills Resources Pine Bend, LLC

Consent to assign the Agreement, as detailed above, is granted this ____ day _____ of 2010, by:

City of Inver Grove Heights

By: _____
Printed Name: _____
Title: _____

– 4111 East 37th Street North – Wichita, Kansas 67220 –

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

RESOLUTION CONSENTING TO ASSIGNMENT OF IMPROVEMENT AGREEMENT, STORMWATER FACILITIES MAINTENANCE AGREEMENT AND PERMANENT EASEMENT AGREEMENT FOR DRAINAGE AND UTILITY RELATED TO PROJECT OF FLINT HILLS RESOURCES, LP

WHEREAS, in conjunction with construction of its administration building, Flint Hills Resources, LP (Flint Hills) and the City of Inver Grove Heights (City) entered into the following three (3) documents hereafter referred to as (the Agreements):

1. Improvement Agreement (recorded as Doc. No. 2464153);
2. Stormwater Facilities Maintenance Agreement (recorded as Doc. No. 2464154); and
3. Permanent Easement Agreement for Drainage and Utility (recorded as Doc. No. 2464155).

WHEREAS, all of the Agreements run with and bind the property made the subject of the Agreements.

WHEREAS, the Improvement Agreement is not assignable unless the City consents.

WHEREAS, Flint Hills is in the process of restructuring its business entities and proposes to assign the Agreements to a subsidiary operating entity to be known as Flint Hills Resources Pine Bend, LLC.

WHEREAS, the City is willing to consent to the assignment of the Agreements to Flint Hills Resources Pine Bend, LLC.

WHEREAS, the Agreements will still be binding upon and run with the property made the subject of the Agreements.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS:

1. The City of Inver Grove Heights does hereby consent to assignment of the Agreements from Flint Hills Resources, LP to Flint Hills Resources Pine Bend, LLC.

2. The Mayor and Deputy Clerk are authorized to sign a Consent to Assignment relating to the Agreements.

3. A certified copy of this Resolution may be provided to Flint Hills Resources, LP and to Flint Hills Resources Pine Bend, LLC.

4. A certified copy of this Resolution may be recorded against the property made the subject of the Agreements.

Passed this 11th day of October, 2010.

_____

George Tourville, Mayor

ATTEST:

_____

Melissa Rheaume, Deputy City Clerk

AGENDA ITEM _____

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

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent	x	None
Contact:	Judy Thill, 651-450-2495		Amount included in current budget
Prepared by:	Judy Thill, Fire Chief		Budget amendment requested
Reviewed by:	n/a		FTE included in current complement
			New FTE requested – N/A
			Other

PURPOSE/ACTION REQUESTED Consider acceptance of a $1,000 donation from the Inver Grove Heights Wal-Mart.

SUMMARY

At their grand re-opening, the Inver Grove Heights Wal-Mart kindly presented a $1,000 check to the Inver Grove Heights Fire Department. This generous donation will be used for fire prevention in the City. The Inver Grove Heights Fire Department sincerely appreciates this donation as well as the ongoing support of the IGH Wal Mart.

AGENDA ITEM _____

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

Approve Out of State Travel Policy

Meeting Date: October 11, 2010
Item Type: Consent
Contact: JTeppen, Asst City Admin
Prepared by:
Reviewed by:

Fiscal/FTE Impact:

- [ ] None
- [ ] Amount included in current budget
- [ ] Budget amendment requested
- [ ] FTE included in current complement
- [ ] New FTE requested – N/A
- [X] Other

PURPOSE/ACTION REQUESTED Approve the attached Out of State Travel Policy.

SUMMARY Council recently reviewed the draft of the Out of State Travel policy that was prepared in response to discussions centering on the 2010 budget.

One change resulted from the discussion with the Council, and that is the deletion of 'Minnesota' and the addition of 'an adjoining state' in its place.

CITY OF INVER GROVE HEIGHTS

OUT OF STATE TRAVEL POLICY

Purpose: The City recognizes that attending workshops, conferences, events and other assignments will contribute to improving the quality of services to our residents while facilitating the skill enhancement and career development for its employees. Due to declining budgets, this policy sets forth the conditions under which traveling out-of-state to attend these events will be reimbursed by the City for regular full and part-time employees.

1. The event, workshop, conference or assignment must be approved in advance by the department head and include an estimate of the cost of the travel. In evaluating the out-of-state travel request, the department head will consider the following:
    - Whether the department has sufficient funding available in the budget to pay the cost of the trip.
    - Whether the employee will receive training on issues relevant to the City and his/her position.
    - Whether the employee will be meeting and networking with other employees from around the country to exchange ideas on topics relevant to the City.
    - The department head will evaluate the training and location to determine if it might be available 1) within the metro area, or 2) the State of Minnesota, or 3) if it might be available in an adjoining state for less than it would be outside the twin city metro area.

2. No reimbursements will be made for attendance at events sponsored by or affiliated with political parties.

3. The City will make payments in advance for airfare, lodging and registration if approved by department head. Otherwise, all payments will be made as reimbursements to employee.

4. The City will reimburse for transportation, lodging, and registration, and incidental costs using the same procedure, limitations and quidelines outlined in SECTION III of the existing Travel and Conference Reimbursement of Expenses Policy.

AGENDA ITEM _____

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

PERSONNEL ACTIONS

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Consent		None
Contact:	Jenelle Teppen, Asst. City Admin	X	Amount included in current budget
Prepared by:	Amy Brinkman, H.R. Coordinator		Budget amendment requested
Reviewed by:	n/a		FTE included in current complement
			New FTE requested – N/A
			Other

PURPOSE/ACTION REQUESTED Staff requests that the Council approve the personnel actions listed below:

Please confirm the seasonal/temporary employment of: Megan Blum, Jessica Salo, and Ana Audueza.

Please confirm the seasonal/temporary termination of: Mary Cowette.

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

PUBLIC HEARING – ON SALE/SUNDAY INTOXICATING LIQUOR LICENSE APPLICATION

Meeting Date: October 11, 2010
Item Type: Public Hearing
Contact: 651.450.2513
Prepared by: Melissa Rheaume
Reviewed by:

Fiscal/FTE Impact:

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

PURPOSE/ACTION REQUESTED: Consider application of Apple Minnesota, LLC dba Applebee's Neighborhood Grill and Bar for an On-Sale/Sunday Intoxicating Liquor License

SUMMARY: All of the Applebee's locations in Minnesota are being sold to a new company, Apple Minnesota, LLC. In connection with that sale, an application for an On Sale/Sunday Intoxicating Liquor License has been submitted to reflect the change in corporate ownership. The closing date for the sale is scheduled on October 13, 2010 and the applicant has requested that the new liquor license be made effective as of that date.

At this time the day to day operations of each Applebee's location, including the on-site manager, employees, menu and hours of operation will remain the same. In discussions with the on-site manager, Adam Wien, the curriculum for the in-house alcohol server training program will remain the same as what was previously approved by our Police Department.

All required documentation was submitted by the applicant, including the necessary license fees. Background investigations were conducted by the Police Department, and no basis for denial of the request was found.

Based on the fact that the new ownership will be in place so close to the date on which renewal applications will be considered, staff suggests that the applicant not be required to submit a renewal application for the 2011 calendar year. The applicant would still be required to submit the necessary license fees for 2011, however requiring another application that would only serve to provide duplicate information may be burdensome.

AGENDA ITEM _____

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

Discuss Siltation Issues

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Regular Agenda	[ ]	None
Contact:	Eric Carlson – 651.450.2587	[ ]	Amount included in current budget
Prepared by:	Eric Carlson	[ ]	Budget amendment requested
Reviewed by:	Eric Carlson – Parks & Recreation	[ ]	FTE included in current complement
		[ ]	New FTE requested – N/A
		[X]	Other

PURPOSE/ACTION REQUESTED
River Heights Marina and residents living on River Road have requested that the issue of siltation be discussed with the City Council.

SUMMARY
The Mississippi River stretches from Lake Itasca to the Gulf of Mexico and is approximately 2,350 miles long. At Lake Itasca, the river is 1,475 feet above sea level with more than half of its drop in elevation happening in Minnesota until it reaches an elevation of 0 at the Gulf of Mexico. The river carries an average of 436,000 tons of sediment each day and over the course of one year averages 159 million tons of sediment. The US Army Corps of Engineers maintains a 9-foot shipping channel from Baton Rouge, La to Minneapolis, MN.

On March 22, 2010 the City Council approved construction of the Rock Island Swing Bridge and Lametti & Sons Inc. was awarded a contract for the construction. On October 22, 2009 the MN DNR issued a permit for the project and on May 17, 2010 the COE issued its permit for the project. Both the DNR and COE approved a permit amendment allowing Lametti & Sons Inc. to construct a temporary causeway and to allow for some minor access dredging.

On July 28, 2010, River Heights Marina sent a letter to the City indicating that they believed the construction methods used on the project had created a siltation issue in their marina. The letter clearly states that the marina hasn't experienced any siltation issues since the Harm's took ownership in 1991.

In 2005, Lametti & Sons Inc. was hired by River Heights Marina to remove approximately 1,700 cubic yards of silt material near the boat launch and gas dock. To date, Lametti & Sons Inc. and River Heights Marina have an on-going dispute regarding payment for work performed by Lametti & Sons Inc. According to Lametti & Sons, River Heights Marina has paid $18,500 out of a total of $32,719 leaving a balance owed of $13,219. Many attempts to collect the balance owed have been made by Lametti but the marina recently filed for bankruptcy.

On August 24, 2010 the City sent a letter to River Heights Marina indicating that the City believes that any siltation issues the Marina may be experiencing are normal and not caused by our construction project.

On August 30, 2010 River Heights Marina responded with a letter stating in part that they had taken depth soundings on the river bottom on September 9, 2009 and again on August 31, 2010. The Harm's indicated that they have taking soundings of the river bottom for a number of years, but when requested to provide such data they said they hadn't kept that information in their files.

On Wednesday, September 8, 2010 at 1:00pm the City met with the COE and DNR on the construction site holding the entire meeting while standing on the temporary causeway. The people attending the meeting included:

- Joe Lynch; City Administrator
- Eric Carlson; Parks & Recreation Director
- Jeff Johnson; SEH Inc.
- Molly Shodeen; MN DNR
- Sarah Wingert; COE
- Tim Fell; COE
- Mark Jay; Lametti & Sons Inc.

Following the meeting the COE sent a letter stating that:

- The causeway will need to be removed from the site and the river bottom restored to pre-existing elevations as required in the permit (this applies to the immediate area of the temporary causeway)
- Based on the COE experience, without a detailed study of the river reach at this location, it would be difficult to point to a specific cause of siltation
- Fluctuations in scouring and deposition rates are common in rivers, especially in years with higher than normal flow events such as 2010
- The boat launch area is located immediately downstream of a series of boat docks which would reduce flows and be a source of siltation

Following the meeting the DNR sent an email stating that:

- Dredging was done in 2005 and the DNR was contacted but there was no permit issued for the dredging
- It would be extremely difficult and costly to try to determine what the various sources of sediment are in this reach of the river and to demonstrate a cause/effect relationship
- Dredging in a marina in a riverine environment is more frequent due to many factors

In November 2007, Parson Brinckerhoff working for Washington and Dakota Counties performed a survey of the river bottom. According to the survey the water depths near the marina boat launch and gas dock range from 2 – 4 feet. In talking with Parson Brinkerhoff staff, the underwater contour survey performed in November 2007 is accurate and reliable and represent the existing conditions at the time the survey was performed. The survey included 500' north of the bridge and 300' south of the bridge from the west bank to the east bank.

Staff also spoke to Mr. Tom McDonald from BARR Engineering. Mr. McDonald has been studying the river on behalf of the St. Paul Airport over the last several years. Mr. McDonald also stated that without a complex engineering study and computer modeling it would be difficult to prove or disprove that the construction project has affected siltation in the area. A typical scope of work for such a study would include:

- Bottom survey of the river
- Velocity measurements
- Two dimensional flow model

The estimated cost for a study is $20,000 - $30,000.

River Elevation Data 2005 – 2010

Data from the COE shows river elevations from 2005 – 2010.

	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
2005	Ave	Ave	Ave	High	High	High	High	Ave	Ave	High	Ave	Ave
2006	Ave	Ave	Ave	High	High	Ave	Ave	Ave	Ave	Ave	Ave	Ave
2007	Ave	Ave	High	High	High	Ave	Ave	Ave	Ave	High	Ave	Ave
2008	Ave	Ave	Ave	High	High	Ave	Ave	Ave	Ave	Ave	Ave	Ave
2009	Ave	Ave	Ave	High	High	Ave	Ave	Ave	Ave	Ave	Ave	Ave
2010	Ave	Ave	Ave	High	High	Ave	High	Ave	High	High		

River Road Residents

Residents living on River Road indicate they have a signed petition and are asking the City to accept responsibility for the siltation problem. They too claim that their backwater channel has been affected by the Rock Island Swing Bridge construction project and that siltation has occurred because of it. In discussing the issue with the MN DNR, these residents have had on-going issues with siltation of the backwater area over the last several years. The COE and DNR have both indicated that they have been contacted on multiple occasions about their desires to have siltation removed.

Summary

Rivers are complex ever changing bodies of water that are influenced by a number of factors beyond the control of any governmental entity. It is unfortunate that the marina and residents have experienced siltation issues this past year during what can certainly be said has been a very abnormal year for the river. The fact that professional engineers, the Army Corp of Engineers, and the Minnesota Department of Natural Resources all state that it would take extensive and complex study to determine the cause of the siltation should not be ignored. It certainly appears that in both cases these two groups are trying to improve their own river conditions at the expense of the taxpayers of Inver Grove Heights and are taking advantage of the situation by making statements that are designed to convince the City of Inver Grove Heights to perform expensive dredging of the river when there isn't any proof that our actions have caused any issues. The dredging being requested by these two groups would likely cost $60,000 - $70,000 to complete.

Given the above information, it is believed that neither the construction project nor the methods used to construct the project have had an adverse impact on siltation. It is recommended that if River Heights Marina or residents living on River Road want siltation dredged they be required to apply for the necessary permits and hire the appropriate contractors without any City involvement.

Time Line

1991	Paul and Joe Harms gain ownership of River Heights Marina
May 4, 2005	**River Heights Marina records river depth information**
May 2005	**River Heights Marina dredges gas dock and boat launch area**
November 14, 2007	**Parson Brinkerhoff hydrographic survey shows a range of 2-4 feet of water in the subject area near the marina**
September 9, 2009	**River Heights Marina records river depth information**
May 17, 2010	COE issue a permit for the project
July 28, 2010	River Heights Marina sends letter to City regarding concerns about damage to driveway, siltation, and future parking issues
August 12, 2010	Meet with River Heights Marina concerning letter
August 12, 2010	Letter from City responses to River Heights Marina regarding damage to driveway and future parking issues
August 24, 2010	Letter from City responses to River Heights Marina regarding siltation
August 30, 2010	River Heights Marina sends letter defending its claim for siltation damages
August 31, 2010	**River Heights Marina records river depth information**
September 8, 2010	City, DNR, COE, Contractor, and SEH Inc. meet at site to discuss siltation issue
September 15, 2010	Letter from the COE stating that to assess the situation it would take significant study
September 17, 2010	Letter from City summarizes a meeting between the City and the Marina
September 21, 2010	Email from DNR stating that to assess the situation it would take significant study
September 22, 2010	Email from DNR stating siltation has been an ongoing issue
September 22, 2010	Letter from River Heights Marina requesting the issue be discussed at the October 11, 2010 Council meeting
September 27, 2010	Mr. Harvey calls to cancel the meeting on Thursday
September 28, 2010	Meeting with Mr. Harvey and neighbors is scheduled for Thursday, September 30th as directed by the City Council
October 1, 2010	River Road residents send petition to the City asking for the City to dredge an area approximately 40' x 25'

July 28, 2010

Letter from River Heights Marina

Concerns about:

- Damage to driveway
- Siltation
- Parking issues

RIVER HEIGHTS MARINA
Mile 830 Mississippi River

4455 66th Street East
Inver Grove Heights, MN 55076
(651) 455-4974

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BROKERAGE • RESTROOMS
BAR & RESTAURANT • LAUNDRY FACILITIES

July 28, 2010

Mr. Joe Lynch, City Administrator
City of Inver Grove Heights
8150 Barbara Ave
Inver Grove Heights, MN 55076

RE: Rock Island Bridge Project

This correspondence is written to bring attention to our concerns with the construction methods being used for demolition and restoration of the referenced project. First, the construction of a riprap dam for the transportation of materials and equipment from shore to the project site has restricted the flow of the Mississippi River upstream of the project. The dam is perpendicular to the rivers current and is causing silt materials to be deposited up to 300 feet upstream of the project area. It has become noticeable with the high river level during June. Since 1991, we have not had any problems with settlement of silt materials downstream of our gas dock, in our marina entrance or in our launch ramp area. We hope that in the best interest of the City and the contractor, this situation will be resolved immediately or the proper dredging will be done this fall upon completion of the project.

Second, due to a lack of maneuvering space at the project site, the contractor has used River Heights Marina's property and entrance frequently. They have used the facilities for loading and unloading equipment and maneuvering oversized vehicles. Due to this abnormal usage and heavy equipment, it has destroyed the asphalt surface installed by the Marina in the area of the entrance. Again, in the best interest of the City and contractor we hope this situation is going to be repaired upon completion of the project.

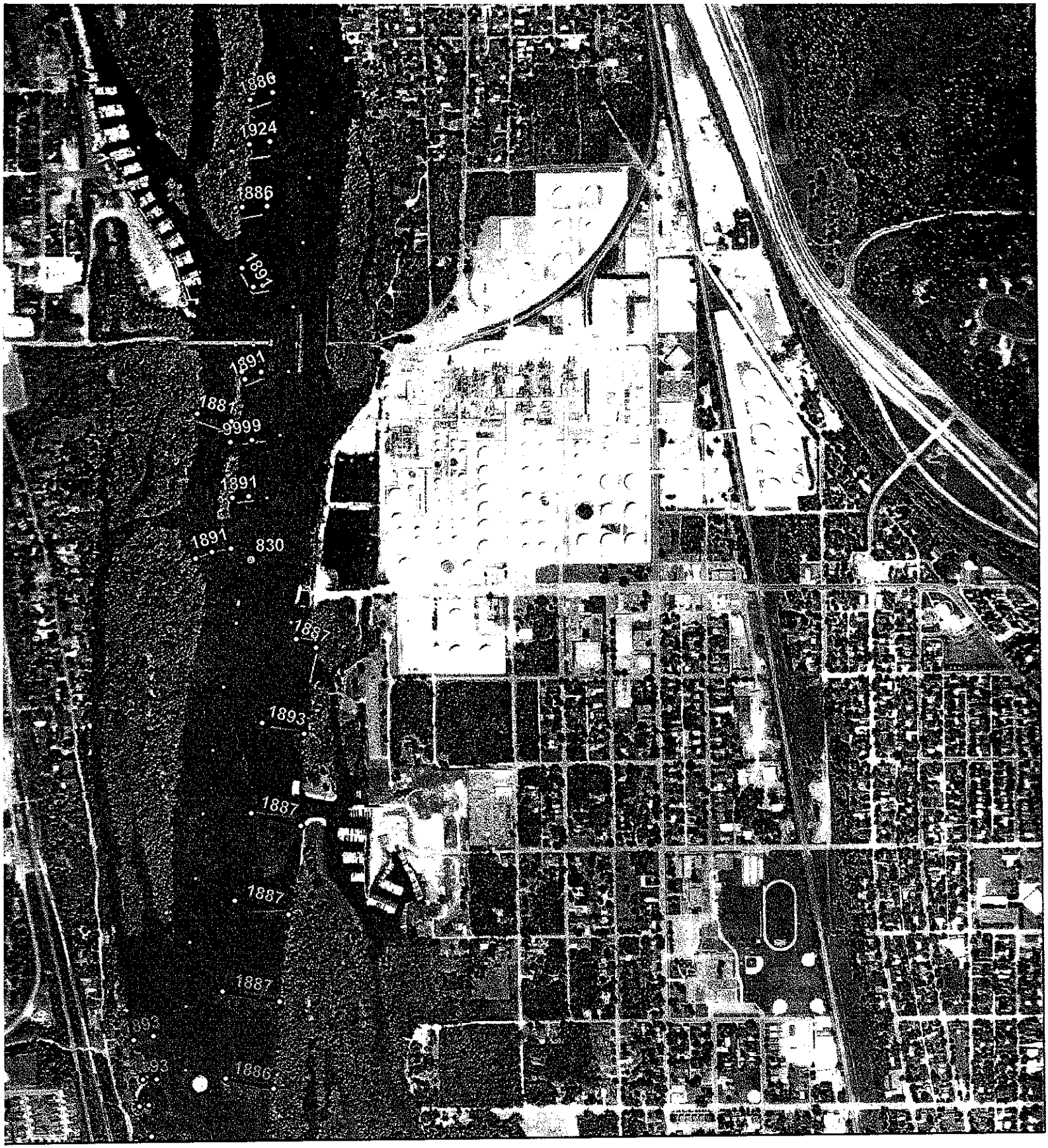
Finally, we are concerned about the lack of parking areas during construction and after the official opening of the completed project. Currently, during construction it has been very common to have vehicles parked on both sides of 66th street plus on our property near the entrance. Because of this, it has limited space available for delivery vehicles and traffic to pass each other and access our facilities. The narrow roadway of 66th Street does not have adequate roadway shoulders for vehicle parking. We are very concerned with where the public is going to park once the project is complete. We do not feel that we should have to monitor our entrance and property adjacent to the property and deal with the increased possibility of people parking on our property to access the bridge site. Again, after the project is open to the public, will this be an ongoing problem?

Respectfully Submitted,

River Heights Marina, Inc.

Paul Harms, P.E. and Joe Harms, Vice President

CC: Eric Carlson



2,000 4,000

Feet

N
W E
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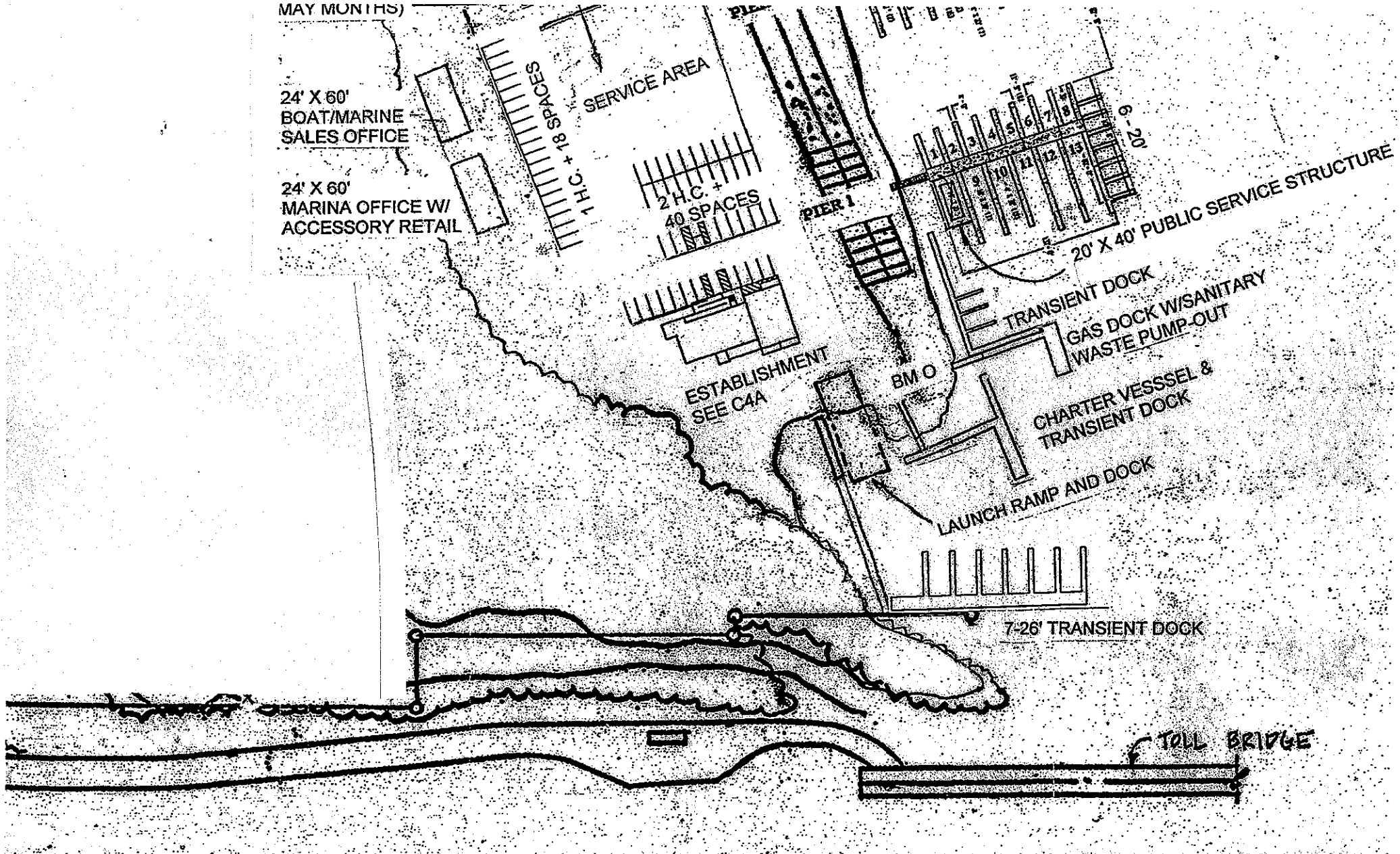
Legend

- RiverMileMVP
- StructureWingdamDikeCorrectedPts
- RiverMileTenthsMVP
- StructureWingdamDikeHistoric
- StructureWingdamDikeCorrected



DRAWN BY

DATE 11-15-97

CHECKED

REVISIONS

1 5-04-05

RIVER HEIGHTS MARINA, INC.

August 12, 2010

City's Response to River Heights Marina's Concerns

- Damage to driveway
- Parking issues

City of Inver Grove Heights
Parks & Recreation Department

"Discover the Opportunities"

8055 Barbara Avenue • Inver Grove Heights, MN 55077 • Phone: 651-450-2585 • Fax: 651-450-2490 • www.ci.inver-grove-heights.mn.us

August 12, 2010

River Heights Marina
Attn: Paul Harms and Joe Harms
4455 – 66th St E
Inver Grove Heights MN 55076

Subject: **Rock Island Swing Bridge – Response to your letter dated July 28, 2010**

Dear Paul and Joe

Thanks for taking the time to meet with Joe Lynch and myself the other day, additionally ,thanks for meeting me on site so we could determine the exact extent of bituminous damage on your property.

I have researched your concerns and have the following response:

Damage to asphalt driveway near 66th St
On, Thursday, August 12, 2010 we met on site and identified the area(s) in which there has been damage to the bituminous. During our reconstruction of 66th St in 2011 we will see that these areas are repaired. Further, the contractor will instruct his employees and all deliveries to refrain from using your property or driveway during the remainder of the project. We will also post signs at your entrance indicating that there should be no construction traffic on your property.

Contractor Parking
The contractor will instruct all employees to park on the south side of 66th St during the remainder of the project.

Parking after opening
It is currently anticipated that the construction of the project will be completed sometime in late October 2010 and we plan to host a ribbon cutting ceremony in early November 2010. As winter approaches, we plan to seal off the structure for the winter months and plan to make accommodations for on-site parking in 2011.

As you are aware, we recently hired Brauer and Associates to update the Heritage Village Park Master Plan along with incorporating the Rock Island Swing Bridge site into the plan. There will be an opportunity as a part of this process for public input and I will make you aware of that as more information is known.

It is anticipated that it will take a number years to implement all of the planned improvements in the park. In the long run, we sincerely hope that the park and recreational pier are a positive catalyst that improves private businesses like yours. We want the experience to be positive and hope that you continue to communicate any concerns you have to us so we can address them appropriately.

Should you have any questions or concerns, please feel free to call me at 651.450.2587 or email me at ecarlson@ci.inver-grove-heights.mn.us.

Sincerely,

Eric Carlson

Eric Carlson
Parks & Recreation Director
City of Inver Grove Heights

Cc Mayor and Council
Joe Lynch – City Administrator
Jeff Johnson – SEH Inc.
Mark Jay – Lametti & Sons Inc.

August 24, 2010

City's Response to River Heights Marina's Concerns

- Siltation

City of Inver Grove Heights
Parks & Recreation Department

"Discover the Opportunities"

8055 Barbara Avenue • Inver Grove Heights, MN 55077 • Phone: 651-450-2585 • Fax: 651-450-2490 • www.ci.inver-grove-heights.mn.us

August 24, 2010

River Heights Marina
Attn: Paul Harms and Joe Harms
4455 – 66th St E
Inver Grove Heights MN 55076

Subject: Rock Island Swing Bridge – Response to your letter dated July 28, 2010 - Siltation

Dear Paul and Joe

Please accept this letter in response to your claim that the Rock Island Swing Bridge project and the construction methods used on the project have created a siltation issue at your gas dock and boat launch. In your letter you cite that you haven't had any problems with settlement of silt materials downstream of your gas dock or in your marina launch ramp area since 1991.

In checking with the Minnesota Department of Natural Resources they indicate that River Heights Marina had a permit to perform maintenance dredging in 1991.

In checking with Lametti & Sons, our contractor on the project, their files indicate they performed maintenance dredging for you in 2005 when they removed approximately 1,700 cubic yards of material.

It is my understanding that maintenance dredging is a regular occurrence for marinas on a river. It is believed that any siltation issues you are experiencing are normal and not caused by our construction project.

Should you have any questions or concerns, please feel free to call me at 651.450.2587 or email me at ecarlson@ci.inver-grove-heights.mn.us.

Sincerely,

Eric Carlson

Eric Carlson
Parks & Recreation Director
City of Inver Grove Heights

Cc. Mayor and Council
Joe Lynch – City Administrator
Jeff Johnson – SEH Inc.
Mark Jay – Lametti & Sons Inc.
Molly Shodeen – MN DNR

August 30, 2010

River Heights Marina letter defending their claim regarding siltation

RIVER HEIGHTS MARINA
Mile 830 Mississippi River

4455 66th Street East
Inver Grove Heights, MN 55076
(651) 455-4974

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BROKERAGE • RESTROOMS
BAR & RESTAURANT • LAUNDRY FACILITIES

August 30, 2010

Eric Carlson
Parks & Recreation Director
City of Inver Grove Heights
8055 Barbara Ave
Inver Grove Heights, MN 55076

Re: Rock Island Swing Bridge – Response to your letter dated August 24, 2010

Dear Mr. Carlson,

This letter is in response to your letter regarding the silting issues at River Heights Marina, Inc. As far as a permit to perform maintenance dredging being issued in 1991, that is when River Heights Marina became a permitted Marina. There was no dredging work performed in relation to that permit.

In relation to the dredging work performed in 2005 by Lametti & Sons, that work was performed for two reasons. Reason one reference Exhibit A, there was a barge with a service building and slips located next to our launch ramp, which was removed in 2005. The second reason as shown on Exhibit B was preparation for a 93' cruise boat operation, which needed a transient dock and more water depth at the specific location. Exhibit A1 shows the area that was dredged in 2005. In addition, Exhibit B1 shows depth soundings of the river bottom on September 9, 2009. There has never been maintenance dredging performed since we have owned the marina in 1991.

WEDNESDAY

As was stated in our letter and in our meeting, we have a silting problem from our launch ramp to our gas dock and to the Rock Island Bridge due to construction methods used by your contractor on this project. This spring we did not have the issues that we now have with our water depth in the areas shown on Exhibit B1. We hauled out all of our boats last fall and launched all of our boats this spring without incident. Now we can barely get a 30' boat into our launch ramp for haul out. We are a little concerned with the city's response to this issue as we have our fall haul out season approaching and the current conditions will create problems performing our regular operations. This problem is not a maintenance dredging issue and has arose solely since the beginning of the construction on the Rock Island project. With the dam (causeway) that was constructed and the large equipment always resting perpendicular to the current for the last 4 months, it has caused serious flowage issues for us with the river. Exhibit B2 show the soundings taken on August 31, 2010. The normal flow of the river current has been altered and is the sole cause of these silting problems.

TUESDAY

According to your Amended Regulatory Permit (2007-01169 EMS) dated May 17, 2010, the City of Inver Grove Heights is responsible to "Upon completion of the project, the causeway (Dam) will be removed from the site and the river bottom will be restored to preexisting elevations." As noted in condition 1. This includes the River Heights Marina upstream silt settlement caused by the temporary causeway. In addition, as noted in the permit issued in November 06, 2009, the Permittee accepts the responsibility and liabilities caused by the construction activities. In addition, there was no consideration taking into account the impact a causeway (dam) would have on adjacent property owners and their operations.

We are concerned with the lack of cooperation on the City's part to remedy this serious situation after submitting a letter stating our concerns and scheduling a meeting with yourself and Mr. Lynch to make sure this issue is addressed properly. We look forward to getting this matter resolved before it causes us operating problems with our business.

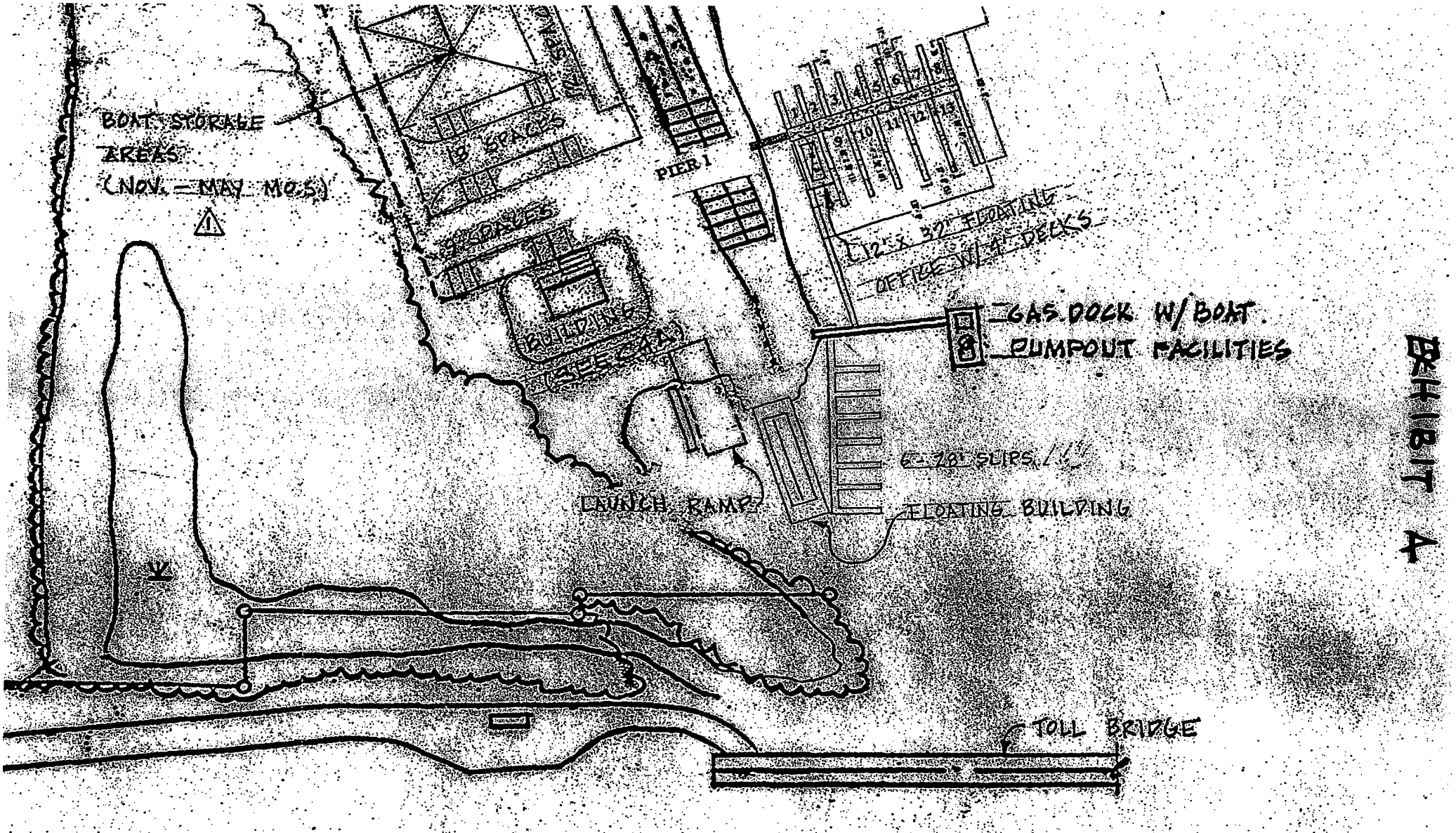
Respectfully submitted,

River Heights Marina, Inc.

Paul Harms, P.E.
President

Joe Harms
Vice President

CC: Mayor and Council
Joe Lynch – City Administrator
Sarah Wingert - COE
Molly Shodeen – MDNR



DRAWN BY

DATE 11-15-97

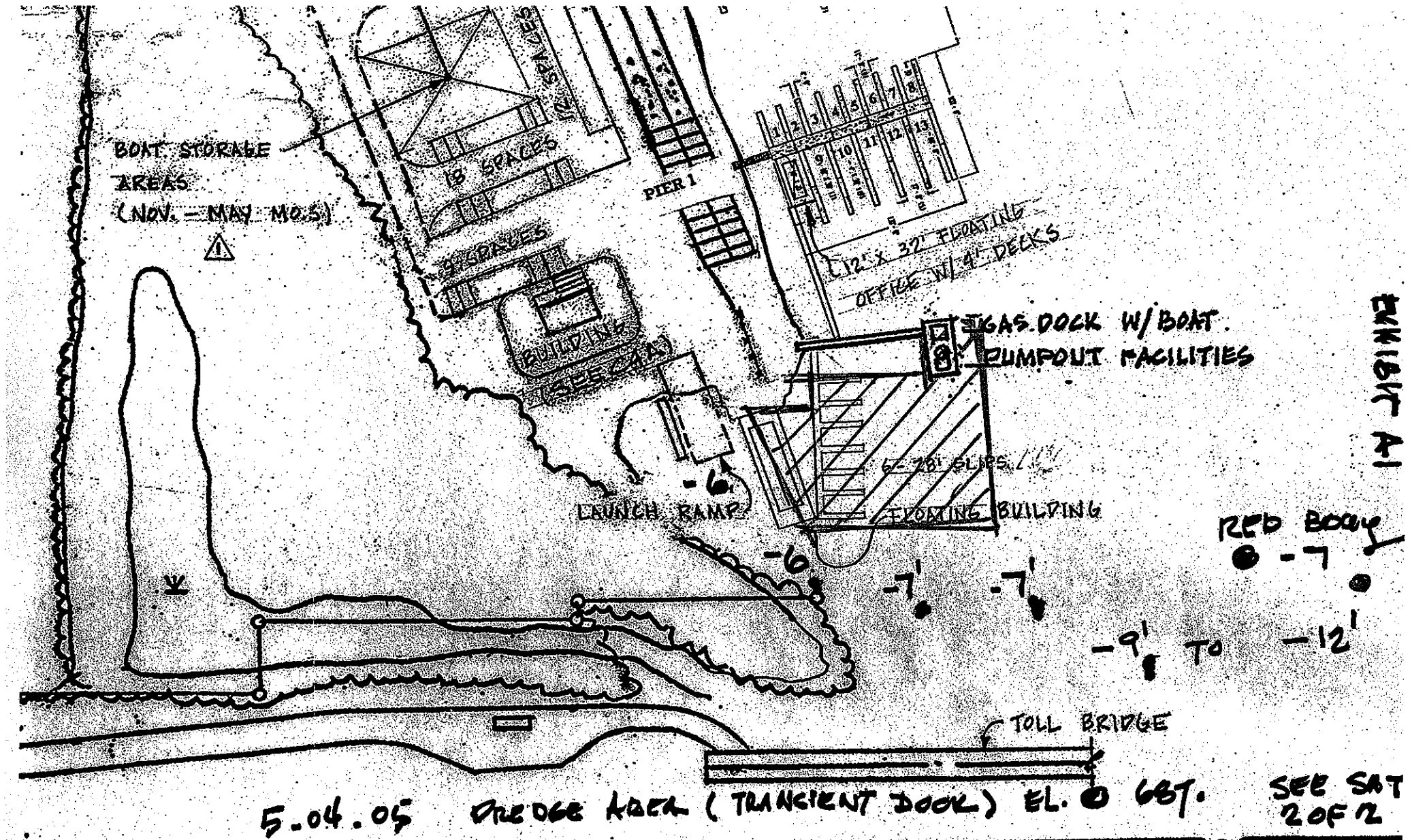
CHECKED

REVISIONS
1 2-15-98
2 1-30-98
3 2-16-98
4 4-22-98

RIVER HEIGHTS MARINA, INC.

EXHIBIT A

EXHIBIT A1

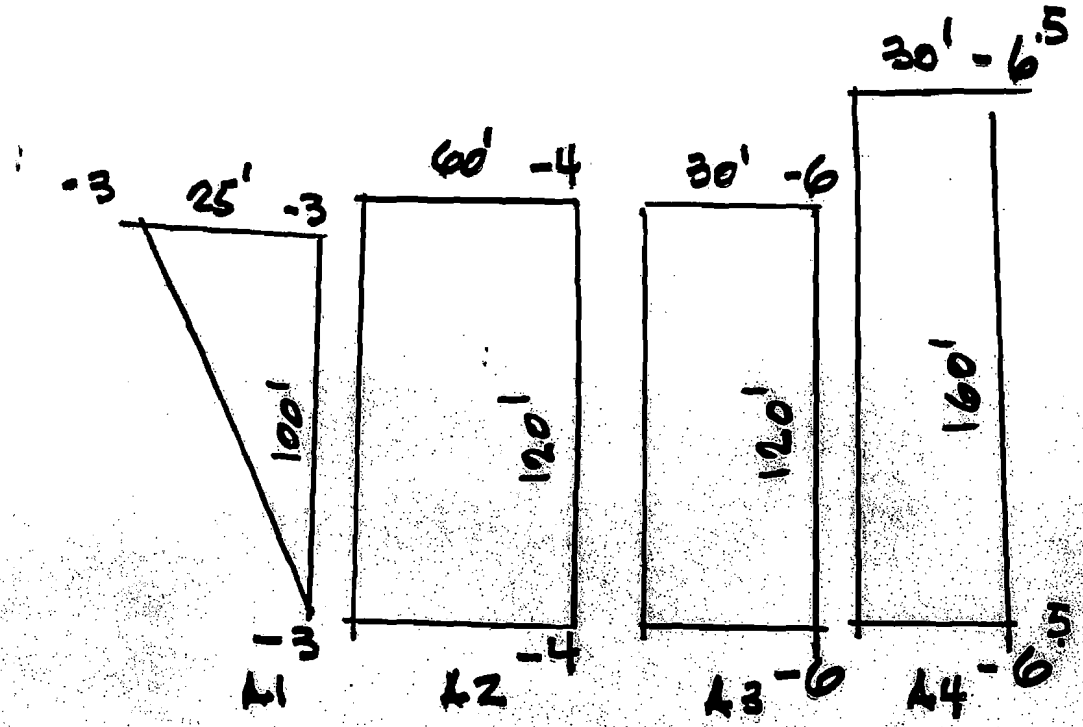


5.04.05 DREDGE AREA (TRANSIENT DOCK) EL. 0 GBT.

SEE SHT 2 OF 2

DRAWN BY	REVISIONS	RIVER HEIGHTS MARINA, INC.	SHT 1 OF
DATE 11-15-97	1 2-16-98		
CHECKED	2 T-30-98		
	3 2-16-98		
	4 4-22-98		

7-07-05



Volume 10,000 ft 25,200 ft 7,200 ft 3660 ft

46,000 ft ÷ 27 = 1704 c.y.

1. AREA TO DREDGE FOR 7' depth
2. TRANSIENT – COMMERCIAL DOCK FOR 93' CRUISE VESSEL.
3. ALLOW VESSEL 1' CLEARANCE BELOW 1' BELOW NORMAL POOL @ 687. VESSEL 5' DRAFT

EXHIBIT 7

by P. HARMS, P.E. I

RH MARINA.

SHT. 2 OF 2.

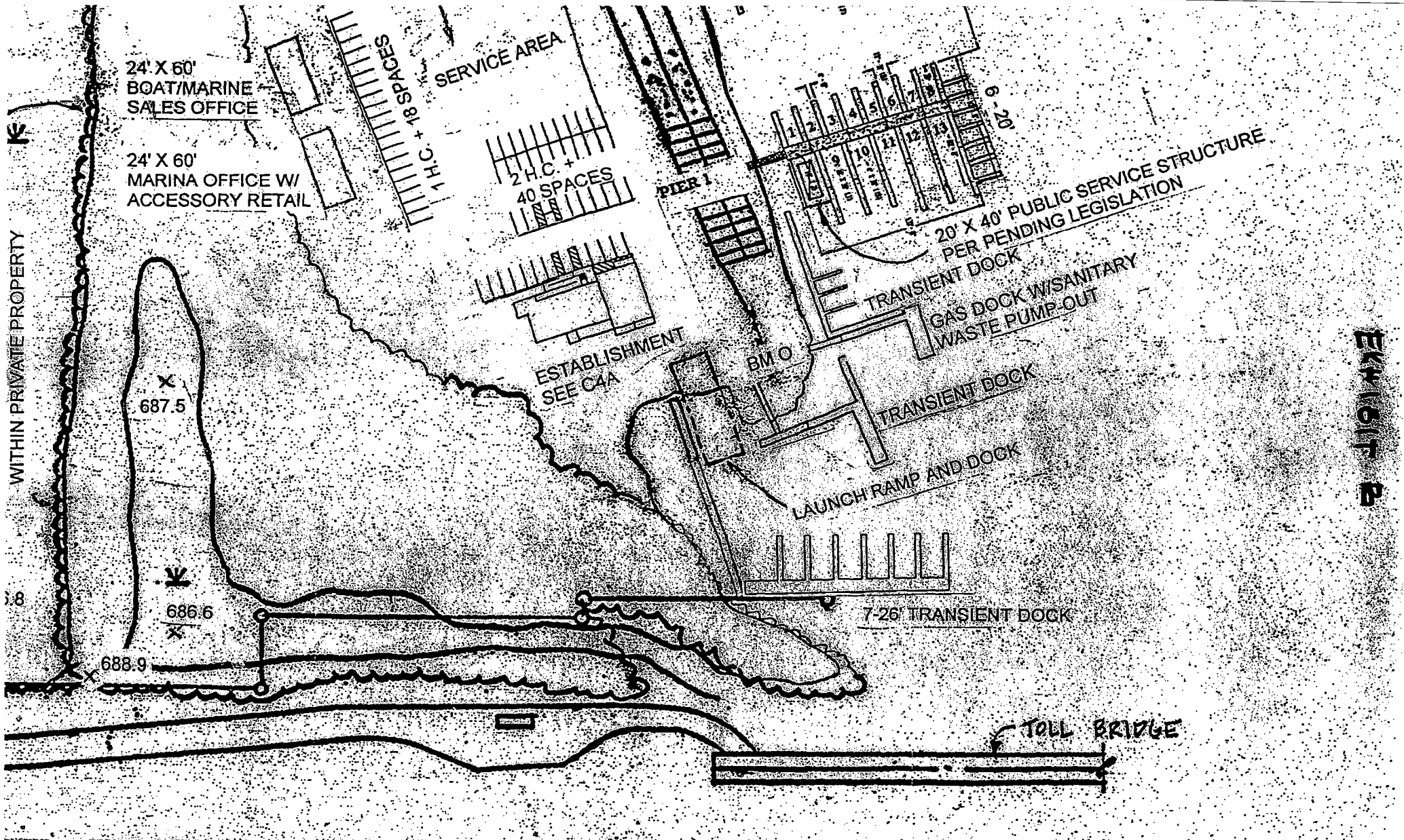


EXHIBIT B

DRAWN BY

DATE 10-17-97

CHECKED

REVISIONS

1 5-04-05

RIVER HEIGHTS MARINA, INC.

(NOV. - MAY MONTHS)

24' X 60'
BOAT/MARINE
SALES OFFICE

24' X 60'
MARINA OFFICE W/
ACCESSORY RETAIL

1 H.C. + 18 SPACES

SERVICE AREA

2 H.C. +
40 SPACES

PIER 1

20' X 40' PUBLIC SERVICE STRUCTURE
PER PENDING LEGISLATION

TRANSIENT DOCK

GAS DOCK W/SANITARY
WASTE PUMP-OUT

ESTABLISHMENT
SEE C4A

BM O

TRANSIENT DOCK

LAUNCH RAMP AND DOCK

7-26' TRANSIENT DOCK

WITHIN PRIVATE PROPERTY

687.5

686.6

688.9

TOLL BRIDGE

EXHIBIT B

RED BOOK
@ -7

-7 to -11

9-09-09 SOUNDINGS BELOW 687.0

DRAWN BY

DATE 11-12-97

CHECKED

REVISIONS

5-04-05

RIVER HEIGHTS MARINA, INC.

SHT 1 of 1

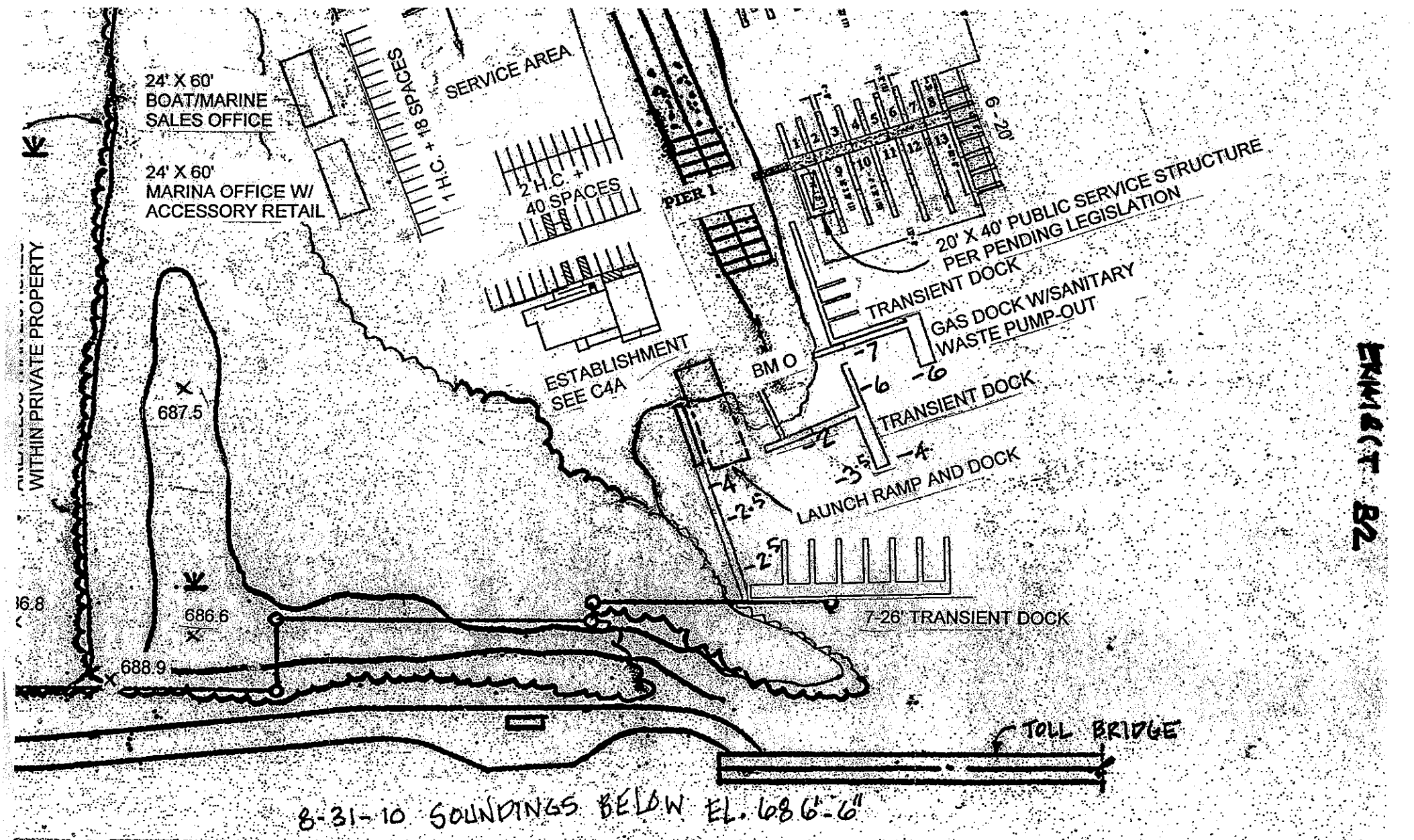

24' X 60'
BOAT/MARINE
SALES OFFICE
24' X 60'
MARINA OFFICE W/
ACCESSORY RETAIL
1 H.C. + 18 SPACES
SERVICE AREA
2 H.C. +
40 SPACES
PIER 1
ESTABLISHMENT
SEE C4A
BM O
20' X 40' PUBLIC SERVICE STRUCTURE
PER PENDING LEGISLATION
TRANSIENT DOCK
GAS DOCK W/SANITARY
WASTE PUMP-OUT
TRANSIENT DOCK
LAUNCH RAMP AND DOCK
7-26' TRANSIENT DOCK
WITHIN PRIVATE PROPERTY
687.5
686.6
688.9
TOLL BRIDGE
8-31-10 SOUNDINGS BELOW EL. 686'-6"
DRAWN BY
DATE
CHECKED
REVISIONS
5-04-05
RIVER HEIGHTS
MARINA, INC.

EXHIBIT B2

September 15, 2010

Army Corps of Engineers letter

- Upon completion of the project, the causeway will be removed form the site and the river bottom will be restored to pre-existing elevations. Condition applies to immediate area of the temporary causeway.
- Without detailed study it would be difficult to point to a cause of siltation

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MINNESOTA 55101-1678

SEP 15 2010

REPLY TO
ATTENTION OF
Operations
Regulatory (2007-01169-EMN)

Mr. Eric Carlson
City of Inver Grove Heights
8055 Barbara Avenue
Inver Grove Heights, Minnesota 55077

Dear Mr. Carlson:

This is in response to your request for comments regarding an August 30, 2010, letter you received from Mr. Paul Harms of River Heights Marina ("the Marina"). The letter suggests that the recent construction of a temporary causeway ("work pad") between Pier 2 of the Rock Island Swing Bridge and the Mississippi River shoreline has caused siltation in the Marina's boat launch area. The construction of the temporary work pad was authorized by Department of the Army permit 2007-01169-EMN on May 17, 2010, under General Permit GP-001-MN, which is for specific kinds of activities approved or permitted by the Minnesota Department of Natural Resources (MDNR). The work pad has been in place since May 2010 for the purpose of demolishing and reconstructing spans of the Rock Island Swing Bridge. The Rock Island Bridge project site is located in Section 2, Township 27N., Range 22W., Dakota County, Minnesota, and the Marina is located immediately upstream of the Rock Island Swing Bridge at Mississippi River mile 830.3.

A permit condition in the Corps' May 17, 2010, general permit authorization states: "Upon completion of the project, the causeway will be removed from the site and the river bottom will be restored to pre-existing elevations". We want to clarify that this condition applies only to the immediate area of the temporary causeway. It is expected that the work pad will be removed within the next two to three months.

Information in Mr. Harms' letter indicates that boats were launched from the Marina without problems in the spring of 2010. Since then, water depths have decreased around the Marina's launch ramp. The letter indicates that increased siltation has caused the decrease in water depths, and that the increase in siltation has resulted from the work at the Rock Island Swing Bridge, including the installation of the temporary work pad.

This is a matter that will have to be resolved between the City of Inver Grove Heights and the Marina. However, based on our experience, we believe that without a detailed study of the river reach at this location, it would difficult to point to a specific cause of the current siltation at the Marina. It is possible that several factors are involved. For instance, the Marina is located on the right descending river bank and is partially protected from the higher river

currents by upstream islands. Higher river flows would be expected along the left descending bank; therefore, the Marina would be susceptible to lower flows and increased siltation due to its location in a low-flow area of the river. Fluctuations in scouring and deposition rates are common in rivers, especially in years with higher than normal flow events. The spring of 2010 had several higher than normal flow events, so an increase in deposition would be expected in areas outside the main channel. Also, the boat launch area of the Marina is located immediately downstream of a series of boat docks, which would serve to reduce flows in this area.

Conducting maintenance dredging at an existing marina basin is authorized by Department of the Army Nationwide Permit #35. Under this permit, excavation of accumulated sediment to previously authorized depths is permitted provided the dredged material is placed in an upland disposal area and proper siltation controls are used. If it is decided that maintenance dredging in the River Heights Marina is necessary, the Marina owner should contact the Corps to receive a Nationwide Permit confirmation letter.

If you have any questions, contact Sarah Wingert in our St. Paul office at (651) 290-5358. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

Marie C. Valencia

for Tamara E. Cameron
Chief, Regulatory Branch

Copy Furnished:
Kevin Baumgard – USACE
Jeff Johnson – Short Elliott Hendrickson, Inc.
Molly Shodeen – MDNR
Paul Harms – River Heights Marina

September 17, 2010

City letter to River Heights Marina

- City of Inver Grove Heights is not responsible for the siltation
- City would support the Marina's application for dredging

City of Inver Grove Heights
Parks & Recreation Department

"Discover the Opportunities"

8055 Barbara Avenue • Inver Grove Heights, MN 55077 • Phone: 651-450-2585 • Fax: 651-450-2490 • www.ci.inver-grove-heights.mn.us

Email Only

September 17, 2010

River Heights Marina
Attn: Paul Harms and Joe Harms
4455 – 66th St E
Inver Grove Heights MN 55076

Subject: Rock Island Swing Bridge – Meeting Follow up - Siltation

Dear Paul and Joe

Please accept this letter in response to our meeting on September 16th regarding your claim that the Rock Island Swing Bridge project and the construction methods used on the project have created a siltation issue at your gas dock and boat launch.

It is the position of the City of Inver Grove Heights that we are not responsible for the siltation you have experienced this summer. We have discussed the situation with the Army Corp of Engineers and the Minnesota Department of Natural Resources and both agencies indicate that without a detailed study of the situation it would be difficult to prove any damages.

If you feel removal of siltation is necessary, you will need to apply for the necessary permits and hire appropriate contractors to remove any obstructions. Should you decide to obtain a permit(s) to perform maintenance dredging at your location, the City of Inver Grove Heights would be supportive of your request.

Should you have any questions or concerns, please feel free to call me at 651.450.2587 or email me at ecarlson@ci.inver-grove-heights.mn.us.

Sincerely,

Eric Carlson
Parks & Recreation Director
City of Inver Grove Heights

Cc Mayor and Council
Joe Lynch – City Administrator
Jeff Johnson – SEH Inc.
Mark Jay – Lametti & Sons Inc.

September 21, 2010

DNR email to City

- River Heights Marina did dredging in 2005 without a permit
- Difficult and expensive to determine the source/cause of siltation

Eric Carlson

From: Shodeen, Molly (DNR) [Molly.Shodeen@state.mn.us]
Sent: Tuesday, September 21, 2010 10:37 AM
To: Eric Carlson
Cc: timothy.j.fell@usace.army.mil; sarah.wingert@usace.army.mil
Subject: Dredging River Heights Marina

Eric, based on our field inspection Sept. 8, 2010 at the Swing Bridge construction site, and my review of the upstream marina permit, it appears that maintenance dredging upstream of the swing bridge has not been a frequent activity over the years. The last dredging was in 2005 and DNR was contacted, but there was no follow through between Mr. Harms and the DNR, so the dredging occurred without a permit. In fact, the current permit for the marina does not include a provision allowing maintenance dredging.

It would be extremely difficult and costly to try to determine what the various sources of sediment are in this reach of the river and to demonstrate a cause/effect relationship. It has been our experience that the need to perform maintenance dredging in a marina in a riverine environment is more frequent due to many factors such as: location with respect to islands; whether it is on a backwater reach (slower flow); the position of the dock structures and watercraft which can accelerate the rate of deposition; frequency of high water events etc.

I would expect that in the spring there would not be issues with launching boats due to higher expected water levels and in the fall, generally the water levels are at seasonal lows, which could make it more difficult, all other things being equal. This particular year, higher than normal flows were documented several times, which would likely increase the sedimentation rate in a backwater area.

The issues associated with the need to remove sediment upstream of the construction site would need to be sorted out between the property owners and the city. If dredging is proposed, Mr. Harms would need to apply for the permit, and in this case he would need to apply to amend the existing permit to allow maintenance excavation. Keep us posted.

September 22, 2010

Letter from River Heights Marina

- Request to have siltation issue addressed by the City Council

4455 66th Street East
Inver Grove Heights, MN 55076
(651) 455-4974

RIVER HEIGHTS MARINA
Mile 830 Mississippi River

GAS • PUMP OUT • ICE
LAUNCH RAMP • SLIP RENTAL • SERVICE
BROKERAGE • RESTROOMS
BAR & RESTAURANT • LAUNDRY FACILITIES

September 22, 2010

EMK

Mr. Joe Lynch
City Administrator
City of Inver Grove Heights
8150 Barbara Ave
Inver Grove Heights, MN 55077

Re: City Council Agenda Oct 11, 2010

Mr. Lynch,

We are hereby requesting to be put on the City Council agenda for October 11, 2010, regarding the silting issue located at River Heights Marina caused by the Rock Island Bridge Project. Please forward all correspondence between River Heights Marina, Inc. and the City of Inver Grove Heights to the Council Members and include the information in their packets.

Sincerely,
River Heights Marina, Inc.

Paul Harms P.E.
President

Joe Harms
Vice President

No Date

Petition from River Road Neighborhood

- Request the City remove siltation
- Form a committee to study the silt accumulation

PETITION FOR RELIEF

TO: **City of Inver Grove Heights, Minnesota**

8150 Barbara Avenue, Inver Grove Heights MN 55076

RE: Rock Island Swing Bridge Recreational Pier

Background: Inver Grove Heights Minnesota is blessed with having it's entire eastern edge of the city border the Mississippi River. Much of this shoreline is either residential or City property. A large portion of this Mississippi River shoreline is adjacent to a large island, between the island and the main shoreline exists a recreational channel where city residents enjoy a myriad of recreational activities without being subjected to the commercial traffic of the main river channel. Throughout the last fifteen years, several man-made events have contributed to the degradation of the recreational channel. First, in the lower recreational channel there was a large blockage of material caused by errant construction efforts on river road. This was eventually improved, although the improvements were not performed correctly and the corrected flow actually reduced the water throughput significantly. Secondly, most of the of the roadway gravel applied to River Road each year before the road was paved washed into the channel further degrading the channel. The cause of the degradation was eventually remedied with the paving of River road. Thirdly, multiple storm sewers discharge fine sediment into the river channel further degrading the river channel. The City has recently placed several catch basins in place to curb this degradation of the river. These events have caused the lower end of the recreational channel to fill in with fine sediment. The lower channel no longer navigable, it has a maximum depth of between 18 inches and 2 feet.

The most recent event involves the $2.2 million dollar construction of the Rock Island Swing Bridge Recreational Pier. In constructing this park structure, the western portion of the Mississippi river has been dammed with rock and earth or blocked with construction barges. This has severely constricted the natural flow of water into the recreational channel. Because of the river flow changes caused by this construction, the upper entrance to the recreational channel is rapidly silting closed. Since construction began, the flow to the channel has been severely altered, resulting in a twenty foot wide ridge of silt which has formed choking off the natural and historic water flow. The recreational channel is in danger of becoming a stagnant backwater. The reduced flow has adverse effects on the environment, wildlife habitat, mosquito proliferation , aesthetics, and ultimately property values. The City failed to study or anticipate the downstream effects of the recreational pier construction project. This failure is detrimental to all the citizens of Inver Grove Heights and ultimately to the City itself.

Petition:

We the citizens of Inver Grove Heights petition the City of Inver Grove Height to provide specific relief in correcting the issues outlined above. Specifically:

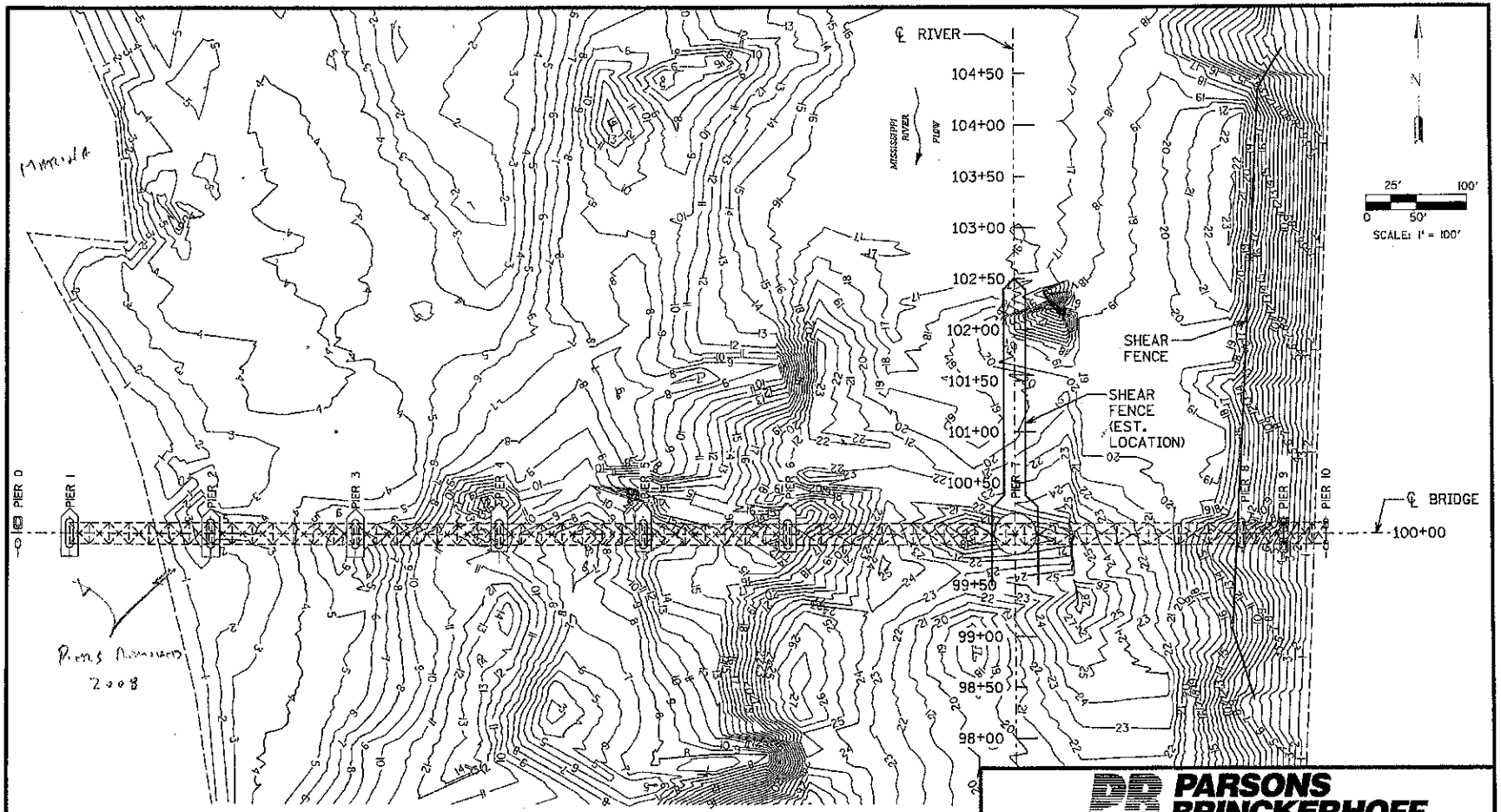
1. Immediately dredge the silt ridge forming in front of the upper entrance of the recreational channel to restore the flow to its natural state.
2. Form a committee to study the reversal of silt accumulation from City activities in the lower recreational channel. Implement the recommendations of the committee.

NAME	ADDRESS	Telephone

November 14, 2007

Hydrographic survey

- Parsons Binckerhoff performed hydropraphic survey of bridge including 500' upstream and 300' downstream of bridge including all areas from west bank to east bank of river
- Survey is extremely accurate
- Survey shows water depths of 2'-4' in the area of the boat launch and gas dock



2007 HYDROGRAPHIC SURVEY PLAN

GENERAL NOTES:

1. THE HYDROGRAPHIC SURVEY WAS COMPLETED ON NOV. 14, 2007 BY COLLINS ENGINEERS, INC.
2. SOUNDINGS WERE OBTAINED USING A CONTINUOUSLY RECORDING FATHOMETER OPERATING AT 200KHZ AND LINKED TO A WAAS CAPABLE GPS RECEIVER.
3. ALL WATER DEPTHS ARE IN FEET AND ARE REFERENCED TO THE WATERLINE ELEVATION STATED IN THE TITLE BLOCK.
4. BASE MAP INFORMATION SHOWN ON THIS DRAWING SHALL BE CONSIDERED APPROXIMATE.

PARSONS BRINCKERHOFF

STRUCTURE NO.: 5600

WATERLINE REFERENCE: 2.5' BELOW TOP OF STEEL WALE AT U/S NOSE OF PIER 4

11/14/2007 WATERLINE EL. = REFERANCE ELEVATION UNKNOWN

BRIDGE LOCATION: MISSISSIPPI RIVER BETWEEN INVER GROVE & ST. PAUL PARK, MN

BOAT LAUNCH: MARINA AT NORTHWEST CORNER OF BRIDGE.

INSP BY: JAL	COLLINS ENGINEERS, INC. 121 N. WACKER DR. CHICAGO, IL 60606 SUITE 300 (312) 236-7300	Date: 11/14/07
Drawn By: RAF		Scale: 1" = 100'
Checked By: TAD		Figure No.: 1

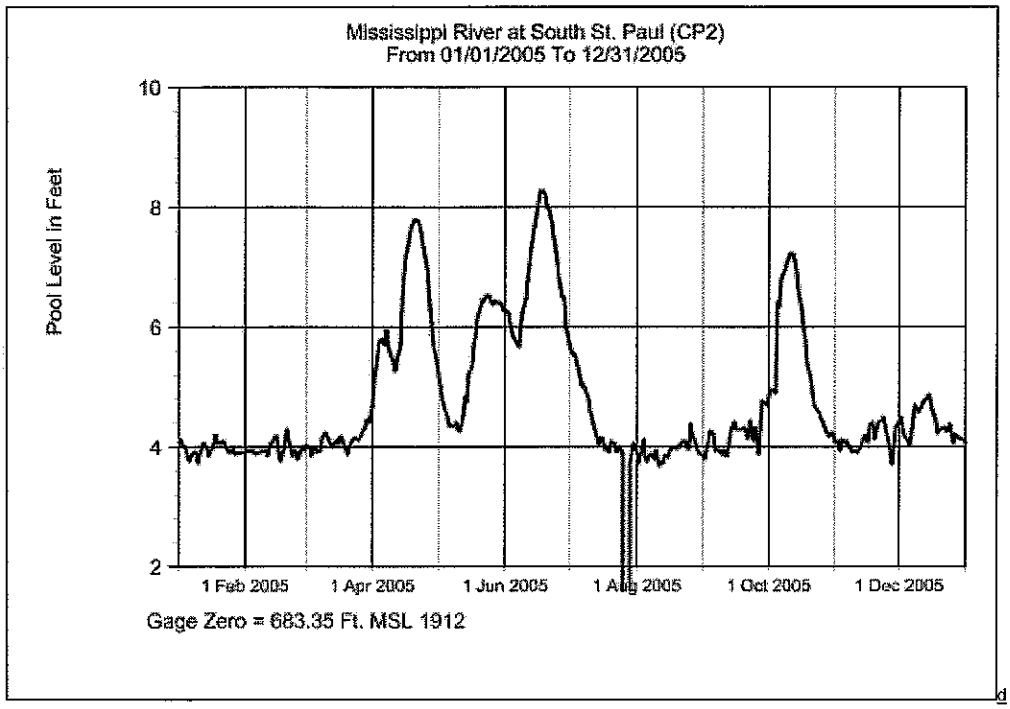
NOTE: THIS PB SHEET IS A DUPLICATE OF THE ORIGINAL HYRDO MAP AND IS FOR PLOTTING PURPOSES ONLY.

SHEET NO. 1 OF 7 SHEETS

BRIDGE NO. 5600

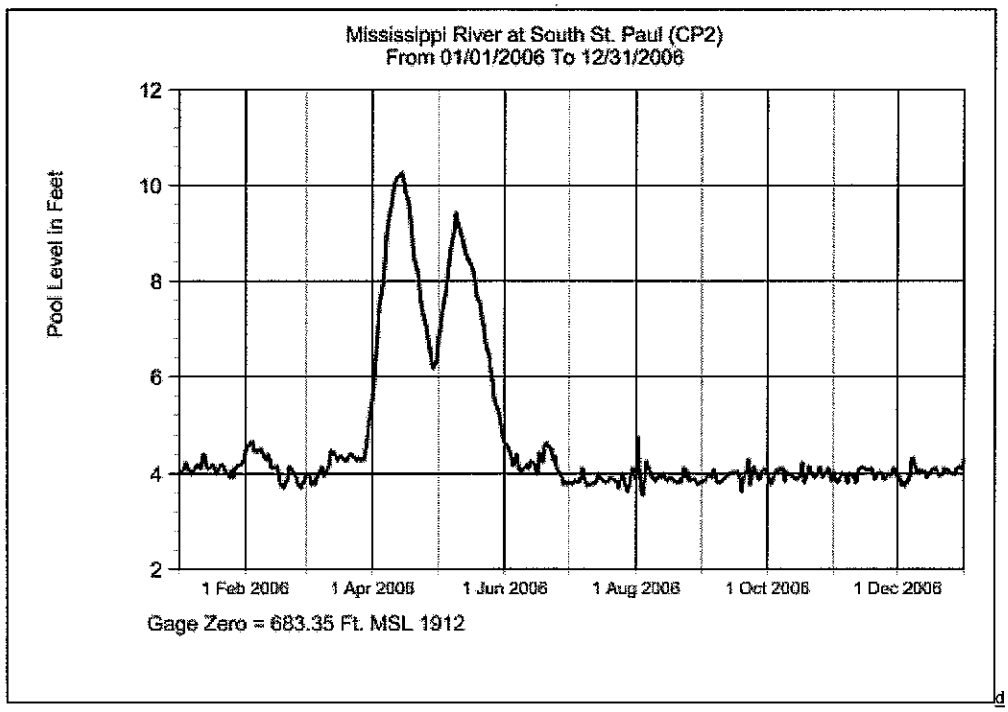
5-Year Hydropgaph Information from S. St. Paul

Mississippi River at South St. Paul (CP2)
(08:00 Central)



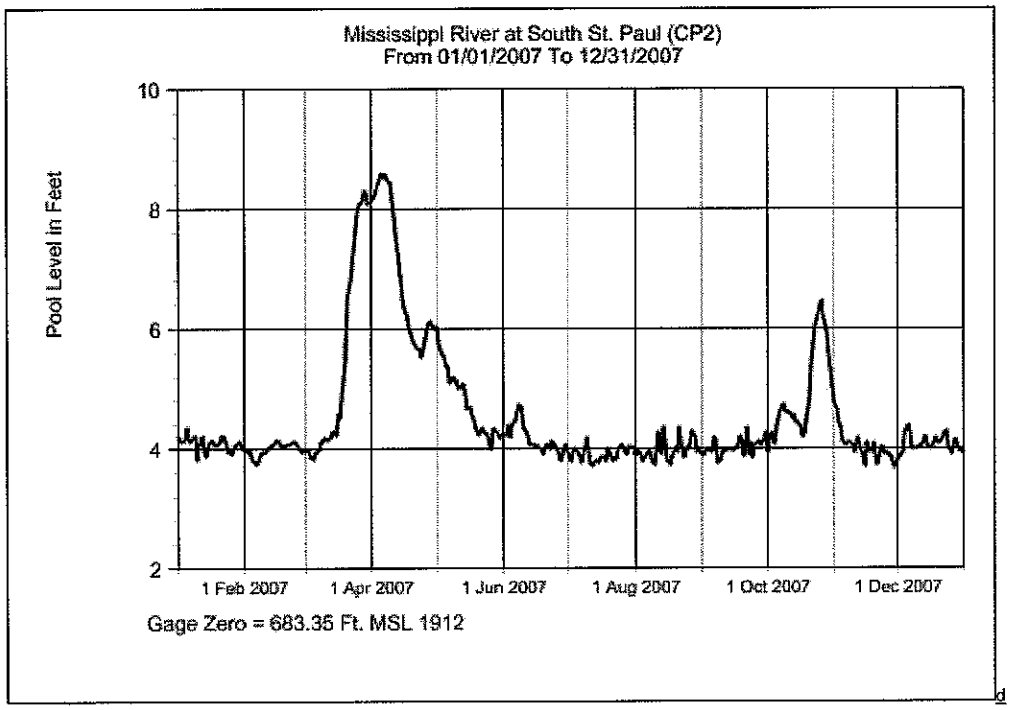
US Army Corps of Engineers - St. Paul District - Water Control Center - Contact Us

Mississippi River at South St. Paul (CP2)
(08:00 Central)



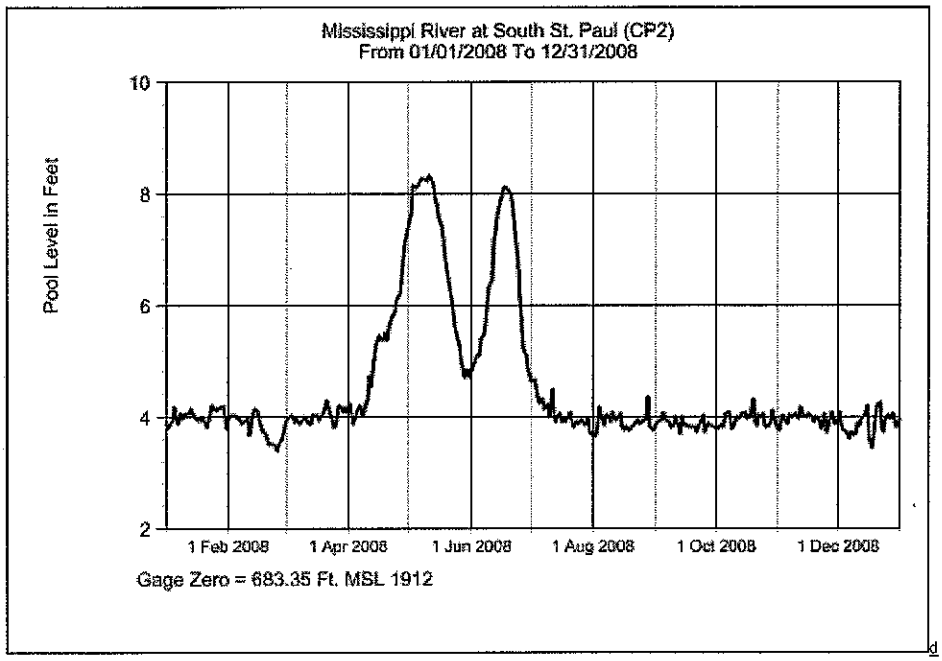
US Army Corps of Engineers - St. Paul District - Water Control Center - Contact Us

Mississippi River at South St. Paul (CP2)
(08:00 Central)



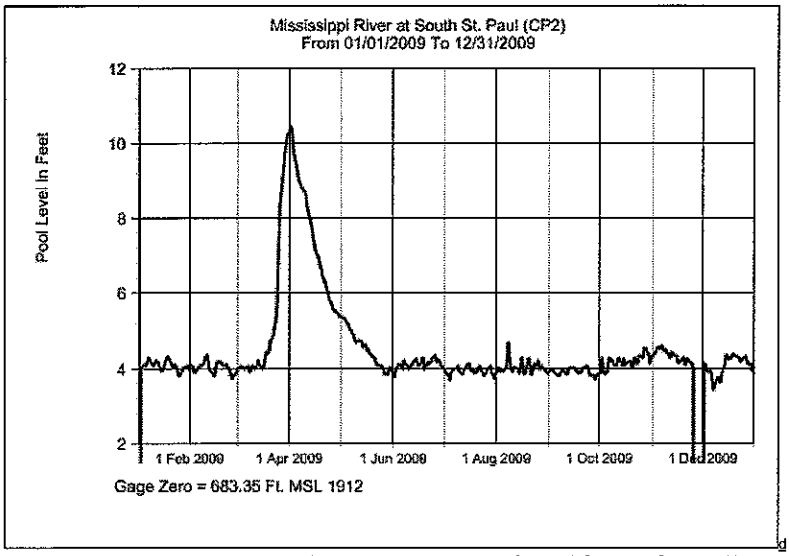
US Army Corps of Engineers - St. Paul District - Water Control Center - Contact Us

Mississippi River at South St. Paul (CP2)
(08:00 Central)



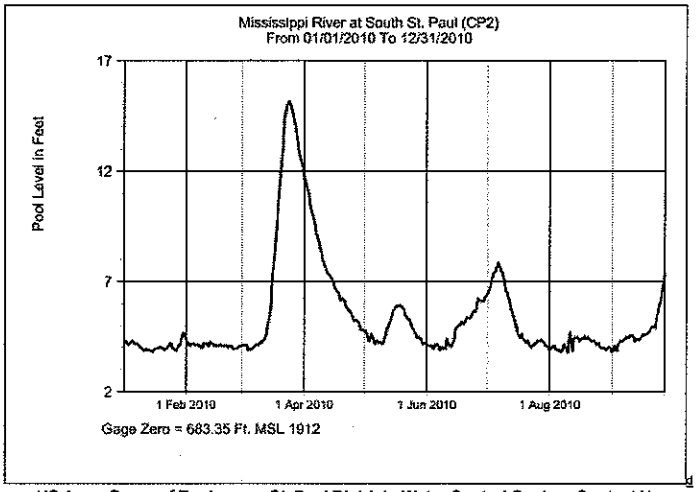
US Army Corps of Engineers - St. Paul District - Water Control Center - Contact Us

Mississippi River at South St. Paul (CP2)
(08:00 Central)



US Army Corps of Engineers - St. Paul District - Water Control Center - Contact Us

Mississippi River at South St. Paul (CP2)
(08:00 Central)



US Army Corps of Engineers - St. Paul District - Water Control Center - Contact Us

Joe

From: Joe Lynch [jlynch@ci.inver-grove-heights.mn.us]
Sent: Wednesday, September 22, 2010 11:32 AM
To: Joe Harms; Eric Carlson
Cc: Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis; Mark Borgwardt; Tracy Petersen
Subject: RE: Rock Island Swing Bridge - Siltation

Joe,

Thanks for sharing your opinion.

Joe Lynch
City Administrator
City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077
651.450.2511
651.450.2502 Fax

From: Joe [mailto:joe@riverheightsmarina.com]
Sent: Wednesday, September 22, 2010 11:11 AM
To: Joe Lynch; Eric Carlson
Cc: Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis; Mark Borgwardt; Tracy Petersen
Subject: RE: Rock Island Swing Bridge - Siltation

Joe,

That's great but I think we have the details and documentation to support our claim and I also believe that in one way or another they are going to be brought to the city's attention where you will actually listen to what we have to say. Don't you think it's a coincidence that neither we nor the neighborhood had these problems until this project began? Oh and by the way without Paul's help and input on this project it wouldn't even be there! We are very disappointed with your response to this matter from day 1 and are not done fighting this battle that was created by the City of Inver Grove Heights.

Thank you,

Joe Harms
River Heights Marina
651.455.4974 O
651.789.0075 F
joe@riverheightsmarina.com
"You Want It, We've Got It!"

From: Joe Lynch [mailto:jlynch@ci.inver-grove-heights.mn.us]
Sent: Wednesday, September 22, 2010 10:24 AM
To: Joe Harms; Eric Carlson
Cc: Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis; Mark Borgwardt; Tracy Petersen
Subject: RE: Rock Island Swing Bridge - Siltation

Joe,

I asked Eric to respond to you that this would not go on the Parks & Recreation Commission Agenda. As we stated, we are doing what we are allowed to do by permit and will fulfill the obligations of that permit. which includes the removal of the causeway and siltation surrounding the construction of that portion of the project.

We have stated, and will again for the neighborhood immediately to the spout of this project, that our Bridge project did not cause the fluctuations in the level of the siltation in and around your marina and the backwaters to the south of it. We agree that siltation has occurred. We understand your concern and the impact it might have on your business. We disagree on the fact that we caused it and are responsible for the removal of silt around your marina operation. Because you do not like our answer does not make us wrong

The Bridge Project did not originate with the Parks & Recreation Commission. It originated with the City Council. They are the body that would deal with this type of project and all of its' implications. While the Park Commissioner may have been well intentioned, it is not their final call on what will and will not appear on an Agenda. You have made us aware of your concern. We met with you. The neighborhood to the south has made us aware of a concern they have and we will meet with them. I feel tht we have made you aware of an option to resolve a short term problem and that is to apply for a permit for maintenance dredging and the City would support you in your application..

Joe Lynch
City Administrator
City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077
651.450.2511
651.450.2502 Fax

From: Joe [mailto:joe@riverheightsmarina.com]
Sent: Wednesday, September 22, 2010 9:38 AM
To: Eric Carlson
Cc: Joe Lynch; Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis; Mark Borgwardt; Tracy Petersen
Subject: RE: Rock Island Swing Bridge - Siltation

Eric,

I was asked by a commissioner to request to have it put on the agenda for the 13th. Are you concerned about the fact that this is going to become a larger problem than it already is and that quite frankly you are wrong! This is our second request fro this to have this issue put on the agenda for the Oct 13th Park and Rec Commission meeting.

Thank you,

Joe Harms
River Heights Marina
651.455.4974 O
651.789.0075 F
joe@riverheightsmarina.com
"You Want It, We've Got It!"

From: Eric Carlson [mailto:ecarlson@ci.inver-grove-heights.mn.us]
Sent: Wednesday, September 22, 2010 7:26 AM
To: Joe Harms
Cc: Joe Lynch; Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis; Mark Borgwardt; Tracy Petersen
Subject: RE: Rock Island Swing Bridge - Siltation

Joe

Thanks for the email and the request to have the siltation issue placed on the Park and Recreation Commission Agenda. The siltation issue is not an issue that the Park and Recreation Commission will be discussing, and the item and information will not be shared with the Commission. Please let me know if you have any questions or concerns.

Sincerely,

Eric Carlson

From: Joe [mailto:joe@riverheightsmarina.com]
Sent: Tuesday, September 21, 2010 4:45 PM
To: Eric Carlson
Cc: Joe Lynch; 'Jeff Johnson'; 'Mark Jay'; Mark Borgwardt; Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis
Subject: RE: Rock Island Swing Bridge - Siltation

Eric,

This is our request to have this matter put on the agenda at the next Park and Rec meeting I believe Oct 13th. In addition, we request that all of the commissioners receive the info we have distributed to you in their packets.

Thank you,

Joe Harms
River Heights Marina
651.455.4974 O
651.789.0075 F
joe@riverheightsmarina.com
"You Want It, We've Got It!"

From: Eric Carlson [mailto:ecarlson@ci.inver-grove-heights.mn.us]
Sent: Friday, September 17, 2010 1:41 PM
To: Joe Harms
Cc: Joe Lynch; Jeff Johnson; Mark Jay; Mark Borgwardt; Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Vance Grannis
Subject: Rock Island Swing Bridge - Siltation

Paul & Joe

Here is the letter you requested following our meeting on Thursday. Please let me know if you have any questions or concerns.

Eric

Water Crossing Permit Application

Rock Island Swing Bridge Recreational Trail

** This Project has been selected to receive TE ARRA Funding

City of Inver Grove Heights, Minnesota

SEH No. INVER 108546

July 2009

SEH

Multidisciplined. Single Source.
Trusted solutions for more than 75 years.

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

For Internal Use Only

Application No.	Field Office Code	Date Initial Application Received	Date initial Application Deemed Complete

PART I: BASIC APPLICATION

"See HELP" directs you to important additional information and assistance in Instructions, Page 1.

1. LANDOWNER/APPLICANT CONTACT INFORMATION *(See Help 1)*

Name: CITY OF INVER GROVE HEIGHTS, MINNESOTA Phone: 651.450.2587 E-mail: ecarlson@ci.inver-grove-heights.mn.us

Complete mailing address: ERIC CARLSON, PARKS AND RECREATION DIRECTOR, CITY OF INVER GROVE HEIGHTS, 8055 BARBARA AVENUE, INVER GROVE HEIGHTS, MN 55077

1A. AUTHORIZED AGENT *(See Help 1A) (Only if applicable; an agent is not required)*

Name: RON LEAF Phone: 651.765.2998 E-mail: rleaf@schinc.com

Complete mailing address: SHORT ELLIOTT HENDRICKSON INC., 3535 VADNAIS CENTER DR, ST PAUL, MN 55110

2. NAME, TYPE AND SIZE OF PUBLIC WATERS or WETLANDS IMPACTED (Attach *Additional Project Area* sheets if needed)

Name or I.D. # of Waters Impacted (if applicable; if known): MISSISSIPPI RIVER

(Check all that apply): ☐ Lake ☒ River ☐ Circular 39 Wetland type: ☐ 1, ☐ 1L, ☐ 2, ☐ 3, ☐ 4, ☐ 5, ☐ 6, ☐ 7, ☐ 8

Wetland plant community type[1]: ☐ shallow open water, ☐ deep marsh, ☐ shallow marsh, ☐ sedge meadow, ☐ fresh meadow, ☐ wet to wet-mesic prairie, ☐ calcareous fen, ☐ open bog or coniferous bog, ☐ shrub-carr/alder thicket, ☐ hardwood swamp or coniferous swamp, ☐ floodplain forest, ☐ seasonally flooded basin

Indicate size of entire lake or wetland (check one): ☐ Less than 10 acres (indicate size:) ☐ 10 to 40 acres ☐ Greater than 40 acres

3. PROJECT LOCATION *(Information can be found on property tax statement, property title or title insurance):*

Project street address: Fire #: City (if applicable): INVER GROVE HEIGHTS

¼ Section: SE Section: 2 Township #: 27 Range #: 22 County: DAKOTA

Lot #: 2 Block: 2722 Subdivision: - Watershed (name or #) LOWER MISSISSIPPI UTM location: N 48.853 E -93.0038

Attach a simple site locator map. If needed, include on the map written directions to the site from a known location or landmark, and provide distances from known locations. Label the sheet *SITE LOCATOR MAP*. –*SEE ATTACHED FIGURE 1.*

4. TYPE OF PROJECT: Describe the type of proposed work. Attach *TYPE OF PROJECT* sheet if needed.

REUSE OF EXISTING AND REHABILITATED BRIDGE STRUCTURE FOR REGIONAL RECREATIONAL TRAIL DESTINATION WITH HISTORIC SIGNIFICANCE

5. PROJECT PURPOSE, DESCRIPTION AND DIMENSIONS: Describe what you plan to do and why it is needed, how you plan to construct the project with dimensions (length, width, depth), area of impact, and when you propose to construct the project. **This is the most important part of your application. See HELP 5 before completing this section; see What To Include on Plans** (Instructions, page 1). Attach *PROJECT DESCRIPTION* sheet.

SEE ATTACHED MEMORANDUM.

Footprint of project: acres or square feet drained, filled or excavated.

6. PROJECT ALTERNATIVES: What alternatives to this proposed project have you considered that would avoid or minimize impacts to wetlands or waters? List at least **TWO** additional alternatives to your project in Section 5 that avoid wetlands (one of which may be "no build" or "do nothing"), and explain why you chose to pursue the option described in this application over these alternatives. Attach *PROJECT ALTERNATIVES* sheet if needed.

SEE ATTACHED MEMORANDUM.

7. ADJOINING PROPERTY OWNERS: For projects that impact more than 10,000 square feet of water or wetlands, list the complete mailing addresses of adjacent property owners on an attached separate sheet. (See **HELP 7**)

8. PORTION OF WORK COMPLETED: Is any portion of the work in wetland or water areas already completed? ☐ Yes ☒ No. If yes, describe the completed work on a separate sheet of paper labeled **WORK ALREADY COMPLETED.** (See **HELP 8**)

9. STATUS OF OTHER APPROVALS: List any other permits, reviews or approvals related to this proposed project that are either pending or **have already been approved or denied on a separate attached sheet. See HELP 9.** SEE ATTACHED MEMORANDUM

10. I am applying for state and local authorization to conduct the work described in this application. I am familiar with the information contained in this application. To the best of my knowledge and belief, all information in Part I is true, complete, and accurate. I possess the authority to undertake the work described, or I am acting as the duly authorized agent of the applicant.

Signature of applicant (Landowner)	*Date*	*Signature of agent (if applicable)*	*Date*
	7/13/09		7-13-09

This block must be signed by the person who desires to undertake the proposed activity and has the necessary property rights to do so. If only the Agent has signed, please attach a separate sheet signed by the landowner, giving necessary authorization to the Agent.

[1]See *Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed, 1997)* as modified by the Board of Water and Soil Resources, United States Army Corps of Engineers.

and ties would be removed from the upper railroad deck. The roadway deck that will become the pedestrian deck is in good condition. The few cracks in the bituminous surface would be filled and a seal coat with sand aggregate would be applied to the surface to extend the life and to cover the graffiti.

An 8-foot cantilevered deck overlook is proposed to be added to the east end of the truss. This deck would provide an open viewing area of the navigation channel of the river. It would end several feet short of the end of the pier sheet pile protection so that it will be protected from navigational traffic.

The loose paint and graffiti on the vertical and diagonal truss members near the railing will be tool cleaned to remove the loose lead based paint and most of the graffiti. No repainting of the new or existing trusses is anticipated.

Option 2 – New Trusses on Existing Piers

In this option shown in Figure 3, the existing two truss spans would be removed and replaced with new truss spans. The west abutment and new Spans 1 and 2 would be the same as in Option 1 with the use of a 250 and 140 foot through truss for these spans. The four piers would also be reused and repairs made as in Option 1. The existing truss Spans 3 and 4 would be removed and replaced with new trusses. Span 3 would be replaced with a 12 foot wide truss. Span 4 would be replaced with a 20 foot wide span to allow for more observation area for pedestrian gatherings and the opportunity to place seating benches without restricting movement. The lighting, railing and overlook would also be the same as in Option 1. This option was not selected as the existing span 3 and span 4 have been determined to be feasible for reuse.

Options 1A and 2A – Including a Replacement Pier 1

Options 1A and 2A are identical to Options 1 and 2, respectively, except that a replacement Pier 1 would be constructed where the previous Pier 1 was located. This would reduce the span from a single 250 feet to a 110 foot and a 140 foot span. While adding cost for a new pier, this approach would reduce the cost of the truss. This option is shown as Option 1A in Figure 4. Construction of Pier 1 would generally have a greater construction disturbance on the river bank for building the pier and its associated cofferdam to temporarily retain the water and sediment from the foundation excavation. Piers along the shoreline are also more prone to collect debris and ice during high water events on this river.

Evaluation of this option found it would cost $84,000 more than the construction cost of Options 1 and 2 while annual maintenance costs could also increase by $10,000 for debris removal at the pier. Earlier discussions with the DNR staff included this new pier on the shoreline with no objection. However, based on the increased construction costs, the replacement pier 1 will not be built. Elimination of these options will allow all work to be completed without having to place new structures within the channel and eliminates permanent impacts to wetland or water habitat.

7. ADJOINING PROPERTY OWNERS

The project is not expected to impact 10,000 square-feet of waters or wetland area; therefore adjacent property owners are not being identified.

8. PORTION OF WORK COMPLETED

Although portions of the span have been demolished under previous contracts, no portion of this proposed project has been completed.

AGENDA ITEM 7B

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

CITY OF INVER GROVE HEIGHTS; Outdoor wood burners – CASE NO. 10-20ZA

Meeting Date: October 11, 2010
Item Type: Regular
Contact: Heather Botten 651.450.2569
Prepared by: Heather Botten, Associate Planner
Reviewed by: Planning

Fiscal/FTE Impact:

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

PURPOSE/ACTION REQUESTED

Consider the First Reading of an **Ordinance** regulating Outdoor Wood Burners/Boilers.

- Requires 3/5th's vote.
- 60-day deadline: N/A

SUMMARY

City Council directed the Planning Commission to hold a public hearing and to consider the prohibition of OWBs or regulation of OWBs through establishment of performance standards. The City Council has discussed Outdoor Wood Burner/Boilers (OWBs) at three worksessions this last spring. Additionally, the City Council passed a moratorium on the construction of OWBs within the City to permit the City time to further study their potential regulation. These proposed performance standards would only apply to OWBs and not indoor wood stoves, fireplaces, or fire pits. The Planning Commission has held three public hearings regarding OWBs on July 6, August 17, and September 21, 2010. There has been hours of public discussion in recent months.

There are currently six known OWBs located in the City of Inver Grove Heights.

Considerable research and information has been put together over the last 7 months. The City Council has previously received information such as a memo from the League of MN Cities, correspondence from property owners, an article about Outdoor Wood Boilers in New York State, draft ordinances and minutes from the public hearings. Staff is not re-distributing information that was previously given to you. If you would like another copy of any of the information sent to you in the past let staff know.

Attached for your information are the three staff reports given to the Planning Commission. In summary the following is discussed in each memo:

July 6, 2010 report: First public hearing regarding the prohibition of OWBs or the regulation of OWBs through establishment of performance standards. This report includes research and general information about OWBs. The report also starts to discuss performance standards.

August 17, 2010 report: An ordinance to ban all future OWBs and to incorporate reasonable performance standards for existing OWBs in the City, as directed by the Planning Commission.

September 21, 2010 report: Addresses five questions the Planning Commission raised as concerns. Additionally, a memo from the City Attorney's office addresses legal questions that had come up throughout the public hearing process.

The City Council may consider one of the following ordinances for the first reading:

A. **Ordinance prohibiting future OWBs** and **regulating existing OWBs** with performance standards that could include smokestack heights, times of operation, and what type of materials are allowed to be burned.

The City is considering performance standards for all existing OWBs; some that have been in existence for over 10 years and staff has received a complaint about one of them. The existing OWB owners obtained approval of necessary city permits and have made a significant investment in their legal outdoor burners.

Staff believes the most effective way to control emissions is to burn only seasoned, dry wood and to operate only during the colder months when people generally have their windows closed and are not outside as often. The attached ordinance also states that the chimney stack shall be at least two feet taller than the height of the tallest peak or point of the roof of the principal structure as measured from the elevation of the principal structure. This is typically the same height as a chimney installed for an indoor fireplace/woodstove on a principle structure.

Planning Staff has discussed the need to require setbacks from property lines. The lot sizes with existing OWBs range from .5 acres to 5 acres in size, with a maximum width of 400 feet and a minimum width of 140 feet. Discussions with other metro cities have found that no city, that we are aware of, has required existing OWB owners to move or relocate the OWB. Complaints stopped in the cities that had existing OWBs once the owners increased the chimney/stack height. As such, it appears that stack height adequately abates or more effectively abates the nuisance posed by OWBs. Additionally, the minimal setback distances that could physically be done on the existing lots would not have a significant impact to the surrounding properties. Therefore, staff does not support setback requirements for existing OWBs.

There is no magic setback or chimney height that will eliminate the emission or smells from an OWB. Staff has based the performance standard recommendations from what has worked with other communities. However, no other community has dealt with as many existing OWBs, differing lot sizes from large to small, and varying topography. If the City adopts performance standards for new OWBs the standards could be more restrictive.

B. **Ordinance prohibiting future and existing OWBs** completely in the nuisance ordinance and through the zoning ordinance.

The City may determine that performance standards are insufficient to ameliorate the public health nuisance presented by OWBs and may decide to eliminate existing OWBs. Also, there will not be a conclusion reached on specific performance standard that will satisfy either those in favor or opposed to the use of OWB and the City could face constant, continual complaints for which there will be no enforcement solution.

RECOMMENDATIONS

Staff: Staff has general agreement that future OWBs should be prohibited. Regarding the existing OWBs, staff does not have a consensus for a recommendation. There are six known existing OWBs in the city. Planning staff believes they should be considered legal non-conformities as long as they comply with approved performance standards. The City Administrator believes that OWBs constitute a nuisance and even with performance standards there will be continual complaints with no enforcement solutions, and therefore believe all future OWBs should be banned and existing ones should be removed.

Planning Commission: Recommended to ban all future OWBs based on the fact that they have been determined to be a public nuisance (6-0). The Planning Commission was split (3-3) on whether the existing OWBs shall be allowed with performance standards or be banned. Therefore, there is no recommendation from the Planning Commission on what to do with the existing OWBs.

Attachments: Ordinance banning future and existing OWBs
Ordinance banning future and allowing existing OWBs with performance standards
Planning staff reports from July 6, August 17, and, September 21, 2010
E-mail correspondence from City Administrator, Joe Lynch, September 17, 2010

Ord. No. 10-

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

AN ORDINANCE DECLARING OUTDOOR BURNERS/BOILERS TO BE NUISANCES, PROHIBITING CONSTRUCTION OF NEW OUTDOOR BURNERS/BOILERS, PROHIBITING THE USE AND OPERATION OF EXISTING OUTDOOR BURNERS/BOILERS, AND DECLARING NEW AND EXISTING OUTDOOR BURNERS/BOILERS USED OR OPERATED FROM AND AFTER OCTOBER 1, 2011 TO BE NUSIANCES

The City Council of Inver Grove Heights does hereby ordain:

Section 1. Enactment. Title 10, Chapter 17, Sections 1A though 1D are enacted to read as follows:

10-17-1: OUTDOOR BURNERS/BOILERS:

A. Findings: The City Council of the City of Inver Grove Heights adopts the following findings concerning outdoor burners/boilers and the need to prohibit new outdoor burners/boilers:

1. Wood smoke is one of the chief causes of certain types of air pollution in the United States. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p. 6)

2. Residential wood smoke contains fine particles and toxic air pollutants (e.g. benzene and formaldehyde). (Strategies for Reducing Residential Wood Smoke, Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, October 29, 2009, p. 4)

3. Outdoor wood burners/boilers may emit significant pollution because the basic design of the outdoor wood burner/boiler causes fuel to burn incompletely, or smolder, which results in thick smoke and high particulate emissions. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p.5)

4. Smoke emitted from outdoor wood burners/boilers can cause or contribute to short-term health harms such as eye, nose, throat and lung irritation, coughing and shortness of breath, and may exacerbate asthma or trigger asthma attacks. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p.5)

5. Chronic exposure to smoke can cause long-term effects such as asthma, heart and lung disease, and cancer. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p. 5)

6. There is public concern about the use of older technology hydronic heaters (also known as outdoor wood boilers) and their growing use, particularly in the Northeast and Midwest. (Strategies for Reducing Residential Wood Smoke, Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, October 29, 2009, p. 4)

7. As traditional sources of fuel (e.g. natural gas and heating oil) prices have gone up over the last several years, the purchase and use of wood-fired hydronic heaters, also known as "outdoor wood boilers" have increased. (Strategies for Reducing Residential Wood Smoke, Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, October 29, 2009, p. 6)

8. Outdoor wood burner/boiler chimneys are often short and thus do not carry the smoke past the heights of neighboring homes, thus resulting in undispersed smoke and more concentrated pollutions at lower elevations. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p.5, 12).

9. The United States Environmental Protection Agency does not currently regulate the manufacture, sale, or efficiency claims of outdoor wood burner/boilers. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p. 17).

10. In light of the significant harm that wood smoke can present, the City Council finds that the burning of other plant-based materials, including but not limited to wood pellets and corn, poses health risks similar to those posed by wood smoke.

11. Given the potential for significant harm to residents' health, the City Council hereby finds and declares that outdoor burner/boilers constitute a public nuisance.

12. The City Council hereby finds and declares that an outdoor burner/boiler that is a legal nonconforming use as of December 1, 2010 and that is not operated in accordance with the performance standards of this Chapter constitutes a public nuisance.

B. Definitions:

1. OUTDOOR BURNER/BOILER: A device, designed and used for the burning of wood or other fuel sources including, but not limited to wood pellets or corn, for the purpose of heating the interior of a primary or accessory structure or heating a

structure, including, but not limited to the following: outdoor wood burners, outdoor wood boilers, outdoor wood boiler systems, outdoor wood burning furnaces, outdoor wood heaters, outdoor wood-fired boilers, and outdoor wood-fired furnaces, as well as outdoor burners, outdoor boilers, outdoor boiler systems, outdoor furnaces, outdoor boilers, and outdoor heaters.

Outdoor burner/boiler does not include fire pits, recreational fires, indoor furnaces or fireplaces, whether fueled by wood logs or natural gas in the interior of a dwelling.

C. Prohibition of New Outdoor Burners/Boilers

As of the effective date of this ordinance, no person may install an outdoor burner/boiler for the purpose of heating the interior of any structure on the property or for the purpose of heating water for any use or purpose on the property.

D. Prohibition of Use and Operation of Existing Outdoor Burners/Boilers

The owner of an existing outdoor burner/boiler must not use or operate the outdoor burner/boiler from and after October 1, 2011.

Section 2. <u>Amendment.</u> Title 5, Chapter 9, Section 2(A) is amended to read as follows:

PROPERTY NUISANCE: A. Means and includes any of the following:

1. Violations of this chapter.

2. Violations of the fencing regulations (section 10-15-12 of this code).

3. Violations of the mixed municipal solid waste disposal regulations (section 8-6-5 of this code).

4. Violations of the compost regulations (section 8-6-6 of this code).

5. Violations of the sidewalk regulations (section 7-1-2 of this code).

6. Digging, excavating, or doing any act that alters or affects the drainage of property or alters or affects flows of the public storm sewer and drainage ditch system, except in accordance with the regulations of the city.

7. Noises, odors, vibrations or emissions of smoke, fumes, gas, soot, cinders, ash or otherwise that exceed the standards of the Minnesota pollution control agency.

8. Permitting, suffering, maintaining, or failing to remove any unsanitary, unsafe, dangerous or unhealthy condition outside of a building or shed on the property resulting from a failure to properly dispose of garbage, sewage, waste, debris

or any other unwholesome or offensive substance, liquid, or thing upon property, or dropping, discharging, depositing or otherwise delivering the same upon the property of another or public property.

9. Any fence, dock, deck, tree, pole, excavation, hole, pit, or uncovered foundation, which, by reason of the condition, creates a public health or safety hazard.

10. An outdoor burner/boiler installed after the effective date of this ordinance.

11. Any outdoor burner/boiler existing as of effective date of this ordinance that is used or operated from and after October 1, 2011.

Section 3. Effective Date. This ordinance shall be in full force and effect from December 1, 2010.

Passed this _____ day of _____, 2010.

_____
George Tourville, Mayor

Attest

_____
Melissa Rheaume, Deputy City Clerk

Ord. No. 10-

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

AN ORDINANCE PROHIBITING NEW OUTDOOR BURNERS/BOILERS AND ESTABLISHING PERFORMANCE STANDARDS FOR EXISTING OUTDOOR BURNERS/BOILERS AND DECLARING NEW OUTDOOR BURNERS/BOILERS AND LEGALLY EXISTING OUTDOOR BURNERS/BOILERS OPERATED IN VIOLATION OF PERFORMANCE STANDARDS TO BE NUISANCES

The City Council of Inver Grove Heights does hereby ordain:

Section 1. <u>Enactment.</u> Title 10, Chapter 17, Sections 1A though 1D are enacted to read as follows:

10-17-1: OUTDOOR BURNERS/BOILERS:

A. Findings: The City Council of the City of Inver Grove Heights adopts the following findings concerning outdoor burners/boilers and the need to prohibit new outdoor burners/boilers:

1. Wood smoke is one of the chief causes of certain types of air pollution in the United States. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p. 6)

2. Residential wood smoke contains fine particles and toxic air pollutants (e.g. benzene and formaldehyde). (Strategies for Reducing Residential Wood Smoke, Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, October 29, 2009, p. 4)

3. Outdoor wood burners/boilers may emit significant pollution because the basic design of the outdoor wood burner/boiler causes fuel to burn incompletely, or smolder, which results in thick smoke and high particulate emissions. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p.5)

4. Smoke emitted from outdoor wood burners/boilers can cause or contribute to short-term health harms such as eye, nose, throat and lung irritation, coughing and shortness of breath, and may exacerbate asthma or trigger asthma attacks. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p.5)

5. Chronic exposure to smoke can cause long-term effects such as asthma, heart and lung disease, and cancer. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p. 5)

6. There is public concern about the use of older technology hydronic heaters (also known as outdoor wood boilers) and their growing use, particularly in the Northeast and Midwest. (Strategies for Reducing Residential Wood Smoke, Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, October 29, 2009, p. 4)

7. As traditional sources of fuel (e.g. natural gas and heating oil) prices have gone up over the last several years, the purchase and use of wood-fired hydronic heaters, also known as "outdoor wood boilers" have increased. (Strategies for Reducing Residential Wood Smoke, Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, October 29, 2009, p. 6)

8. Outdoor wood burner/boiler chimneys are often short and thus do not carry the smoke past the heights of neighboring homes, thus resulting in undispersed smoke and more concentrated pollutions at lower elevations. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p.5, 12).

9. The United States Environmental Protection Agency does not currently regulate the manufacture, sale, or efficiency claims of outdoor wood burner/boilers. (When Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, Eliot Spitzer, Attorney General of New York State, Environmental Protection Bureau, August 2005, p. 17).

10. In light of the significant harm that wood smoke can present, the City Council finds that the burning of other plant-based materials, including but not limited to wood pellets and corn, poses health risks similar to those posed by wood smoke.

11. Given the potential for significant harm to residents' health, the City Council hereby finds and declares that outdoor burner/boilers constitute a public nuisance.

12. The City Council hereby finds and declares that an outdoor burner/boiler that is a legal nonconforming use as of December 1, 2010 and that is not operated in accordance with the performance standards of this Chapter constitutes a public nuisance.

B. Definitions:

1. OUTDOOR BURNER/BOILER: A device, designed and used for the burning of wood or other fuel sources including, but not limited to wood pellets or corn, for the purpose of heating the interior of a primary or accessory structure or heating a

structure, including, but not limited to the following: outdoor wood burners, outdoor wood boilers, outdoor wood boiler systems, outdoor wood burning furnaces, outdoor wood heaters, outdoor wood-fired boilers, and outdoor wood-fired furnaces, as well as outdoor burners, outdoor boilers, outdoor boiler systems, outdoor furnaces, outdoor boilers, and outdoor heaters.

Outdoor burner/boiler does not include fire pits, recreational fires, indoor furnaces or fireplaces, whether fueled by wood logs or natural gas in the interior of a dwelling.

2. PERSON: An individual, partnership, corporation, company or other association.

3. STACK or CHIMNEY: Means any vertical structure incorporated into a building, or upon an outdoor burner/boiler, and enclosing a flue or flues that carry off smoke or exhaust from an outdoor burner/boiler; especially that part of such a structure extending above a roof.

C. Prohibition of New Outdoor Burners/Boilers

As of December 1, 2010, no person may install an outdoor burner/boiler for the purpose of heating the interior of any structure on the property or for the purpose of heating water for any use or purpose on the property.

D. Regulation of Existing Outdoor Burners/Boilers

1. The lawful use of any outdoor burner/boiler existing as of December 1, 2010 is a legal non-conforming use pursuant to Minnesota Statutes Section 462.357, Subd. 1e that may be continued provided, however, that it is operated in accordance with and complies with the performance standards of this Section.

   Such performance standards are reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, and safety, as permitted by Minnesota Statutes Section 462.357, Subd. 1e(b).

2. Burners/boilers legally existing as December 1, 2010 are subject to the following regulations:

   a. Chimney/Stack Height: The stack of an outdoor burner/boiler shall be at least two feet taller than the height of the tallest peak or point of the roof of the principal structure as measured from the elevation of the principal structure, regardless of where the outdoor burner/boiler is located on the property. Compliance with this provision shall be verified through site inspection.

   b. Burning Materials: Only fuels approved by the outdoor burner/boiler manufacturer for burning in the outdoor burner/boiler may be burned. In the event wood is burned in an outdoor burner/boiler, only dry, seasoned wood may be burned. The following list is a non-exhaustive list of prohibited burning materials:

(1) Food waste
(2) Leaves
(3) Grass clippings
(4) Vegetative matter
(5) Animal carcasses
(6) Packaging material and food wraps
(7) Paper products, including newsprint, magazine print, any paper material with ink or dye, and cardboard
(8) Plywood
(9) Composite wood products or other wood products that are painted, varnished or treated with preservatives
(10) Treated wood
(11) Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam
(12) Fibers, natural and synthetic
(13) Rubber and synthetic rubber-like products
(14) Asphalt and asphalt containing materials
(15) Furniture
(16) Composite shingles, construction or demolition debris or other household or business wastes

c. Seasonal Burning Restrictions. Burners/boilers may only be operated from October 1 through April 30 each year. It is unlawful for a person to operate outdoor burners/boilers from May 1 through September 30 each year.

3. Deadline for Existing Outdoor Burners/Boilers. Owners of existing outdoor burners/boilers must comply with Sections 10-17-D-2(b) and 10-17-D-2(c) on or before December 1, 2010. Owners of existing outdoor burners/boilers must comply with Section 10-17-D-2(a) on or before October 1, 2011.

4. A legal non-conforming outdoor burner/boiler existing as of December 1, 2010 that is not operated in accordance with the performance standards of this Section is a public nuisance that the City may remedy pursuant to Minnesota Statute Section 462.357, Subd. 1d.

Section 2. <u>Amendment.</u> Title 5, Chapter 9, Section 2(A) is amended to read as follows:

PROPERTY NUISANCE: A. Means and includes any of the following:

1. Violations of this chapter.

2. Violations of the fencing regulations (section 10-15-12 of this code).

3. Violations of the mixed municipal solid waste disposal regulations (section 8-6-5 of this code).

4. Violations of the compost regulations (section 8-6-6 of this code).

5. Violations of the sidewalk regulations (section 7-1-2 of this code).

6. Digging, excavating, or doing any act that alters or affects the drainage of property or alters or affects flows of the public storm sewer and drainage ditch system, except in accordance with the regulations of the city.

7. Noises, odors, vibrations or emissions of smoke, fumes, gas, soot, cinders, ash or otherwise that exceed the standards of the Minnesota pollution control agency.

8. Permitting, suffering, maintaining, or failing to remove any unsanitary, unsafe, dangerous or unhealthy condition outside of a building or shed on the property resulting from a failure to properly dispose of garbage, sewage, waste, debris or any other unwholesome or offensive substance, liquid, or thing upon property, or dropping, discharging, depositing or otherwise delivering the same upon the property of another or public property.

9. Any fence, dock, deck, tree, pole, excavation, hole, pit, or uncovered foundation, which, by reason of the condition, creates a public health or safety hazard.

10. An outdoor burner/boiler installed on or after December 1, 2010.

11. An outdoor burner/boiler legally existing as December 1, 2010 that is operated in violation of the performance standards set forth in section 10-17-1 of this code.

Section 3. Effective Date. This ordinance shall be in full force and effect from December 1, 2010.

Passed this _____ day of _____, 2010.

_____
George Tourville, Mayor

Attest

_____
Melissa Rheaume, Deputy City Clerk

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

REPORT DATE: June 21, 2010 **CASE NO:** 10-20ZA

APPLICANT: City of Inver Grove Heights

REQUEST: Outdoor Wood Burners

HEARING DATE: July 6, 2010

REVIEWING DIVISIONS: Planning **PREPARED BY:** Heather Botten
Assistant Planner

BACKGROUND

The City Council directed staff to hold a public hearing regarding the regulation of outdoor wood burners/boilers ("OWB"s). This issue arose from a complaint received regarding an OWB and the concern of health hazards from their emissions.

The City Council has discussed OWBs at three worksessions over the past few months. Additionally, the City Council recently passed a moratorium on the construction of OWBs within the City to permit the City time to further study their potential regulation. City Council directed staff to hold a public hearing and to consider the prohibition of OWBs or regulation of OWBs through establishment of performance standards. These performance standards would only apply to OWBs and not indoor wood stoves, fireplaces, or fire pits. There are currently four OWBs located in the City of Inver Grove Heights.

At this time, staff is looking for public input and direction from the Planning Commission on how to proceed with OWBs. Staff will then bring back an ordinance for a formal recommendation.

ANALYSIS

OWBs are used as water heaters and/or a primary heat source for buildings. OWBs are located outside of the home, typically 30-50 feet (but as far as 500 feet) away from the owner's home or business. Usually, OWBs look like a small shed with a short smokestack. A water jacket surrounds the furnace firebox and heat exchanger and heated water is circulated to the home or building through insulated underground pipes. Water-to-air or water-to-water heat exchangers or direct circulation conveys the heat into the structure's forced-air furnace, boiler, or radiant floor heating system. With the recent increase in the cost of natural gas and oil, the use of OWBs is becoming more common across the nation. Most often, OWBs are used in rural settings. However, in recent years, the use of OWBs has increased in more densely residential neighborhoods.

Staff has researched and gathered information from other sources to provide the Planning Commission with background. This information is provided solely for research purposes.

As stated in *Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State, August 2005*: "To obtain the most efficient - and thus cleanest - burn from a wood combustion device, dry wood should be burned in a manner that allows airflow and oxygen to the greatest amount of surface area. OWBs create smoldering conditions which in turn produce excess smoke. An efficient fire should produce clear exhaust during warmer months, and white exhaust (steam) during colder months. An inefficient fire produces gray, black, or thick smoke and releases much more harmful particulate matter. Because OWBs are designed to respond to the thermostatic setting by smoldering when less heat is required, they produce heavy smoke emissions more often than most other wood combustion devices."

The smoke and emissions problems associated with OWBs can be exacerbated if owners use the burner to dispose of trash, tires, or treated wood, potentially releasing toxic chemicals into the air.

During summer months and calm winter days, wood smoke is slow to rise and disperse. With OWB chimneys often not high enough to carry the smoke past the tops of surrounding homes and local terrain, wood smoke, soot, and toxins may enter homes and yards of owners and neighbors who are situated close to OWBs. Due to their small size, wood smoke particulates can remain suspended in the air for long periods of time, can cause a smoky haze, and can easily enter homes through air intakes, cracks, doors, and windows. Effects on neighbors are especially apparent when OWBs are installed at the outermost limit of the owner's property, and in close proximity to structures on adjacent properties. *(Smoke Gets in Your Lungs: Outdoor wood Boilers in New York State)*

Although no federal or state regulations currently exist, some cities have opted to regulate OWBs on a local level through their nuisance ordinances. A nuisance is generally defined as anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with a comfortable enjoyment of life or property.

The Commission has a few alternatives to discuss;

- Do nothing at all. Currently, OWBs are allowed by the state building code and require a City building permit prior to installation;
- *Regulate OWBs with performance standards that could include minimum setbacks and lot size requirements, smokestack heights, time of operation, or allow in certain zoning districts;
- *Prohibit OWBs completely either in the nuisance ordinance or through the zoning ordinance.

Any changes to the Code would require an ordinance amendment and an additional public hearing.

*If regulating or prohibiting OWBs, a decision would have to be made on what to do with the four OWBs that currently exist within the City limits.

DO NOTHING:
Currently the Minnesota Mechanical Code permits the installation of OWBs provided they have been tested and listed by an independent testing agency approved by the Chief Building Official. The City Zoning Code requires OWBs to meet accessory structure setbacks.

REGULATION WITH PERFORMANCE STANDARDS:
If the direction given to staff is to create an ordinance, then additional language to be considered might include but not be limited to, definitions and types of materials allowed to be burned. Listed below are general performance standards taken from regulations in other cities.

Zoning districts
The City of Forest Lake allows OWBs in the agricultural, rural residential and Industrial Zoning Districts. The City of St. Michael allows OWBs in the A-1 and A-2 districts.

The Planning Commission may want to follow a similar path and consider OWBs to only be allowed in A, Agricultural and E, Estate districts, excluding the Northwest Area as this district is planned to develop at urban densities.

The Agricultural and Estate districts are typically larger lots in a rural residential setting.

Setbacks:
Setbacks for the OWB could be from the property line and/or neighboring structures. Some ordinances do one or the other and some ordinances have both setbacks.

The Forest Lake ordinance requires OWBs to be located at least 300 feet from any residence not being served by the system.

The City of Oak Park Heights requires OWBs to be setback 100 feet from property lines and 300 feet from the nearest occupied building not served by an OWB.

The Agency of Natural Resources in Waterbury, Vermont requires different setbacks depending on the quality of the OWB; setbacks range from 100 – 200 feet from structures not served by the OWB.

The Planning Commission may want to follow a similar path and consider OWBs shall be setback at least 100 feet from the property line ***AND*** *300 feet from any residence not being served by the system.*

Stack/chimney height:
The City of Oak Park Heights requires all outdoor wood burning furnaces to maintain a chimney height that extends at least two (2) feet above the highest peak of the residence for which is serves, or the chimney shall extend at least two (2) feet above the highest peak of any residence not served by the furnace within three hundred (300) feet, whichever is greater.

The City of Forest Lakes requires the chimney height to be 2 feet higher than residences within a 500-foot radius.

The Agency of Natural Resources in Waterbury, Vermont requires different stack heights depending on the quality of the OWB; the most restrictive requirement is a permanent stack extending higher than the peak of the roof of the structure served by the OWB, if any residence not served by the OWB is located less than 500 feet from the OWB.

The Planning Commission may want to follow a similar path and consider a chimney height two (2) feet higher than any residence within 300 feet of the OWB, similar to the Oak Park Heights requirements.

Times of operation
The OWB ordinance in Forest Lake prohibits the operation of the systems from April 1 to October 1 each year.

The Planning Commission may want to follow a similar path and consider similar times of operation for Inver Grove Heights.

Certain performance standards such as setbacks, height of structures on the applicant's property, and zoning are easy for staff to administer and enforce. Standards relating to the operation of the OWB, height of structures beyond the applicant's property, and whether a particular complaint is truly a nuisance would be much more difficult for staff to administer and enforce.

PROHIBITING OWBs
As discussed previously, an alternative to the creation of performance standards for OWBs is the complete prohibition of OWBs. If the City deems OWBs to be a nuisance, an ordinance could be drafted prohibiting OWBs within Inver Grove Heights starting from the date the ordinance passes. The City would still have to address the four existing OWBs; the City Attorney provided some information regarding the existing OWBs (see below).

EXISTING OWBs IN THE CITY

Currently there are four known OWBs located in the City. The following table illustrates the lot size, zoning, and estimated setbacks from the nearest property line and the nearest home not served by the OWB.

Address	Lot size	Zoning	Estimated setback of OWB from nearest property line	Estimated setback of OWB from nearest neighboring home	Estimated Lot Width	When a permit was issued for the OWB
11068 Albavar Path	2.5 acres	E-1, Estate residential	≥10'	≥120'	166'	No permit
11780 Albavar Path	5 acres	A, Agricultural	≥100'	≥220'	380'	March 2008
9277 Old Concord Blvd	2.8 acres	PUD	≥30'	≥270'	247'	November 2005
4301 – 64th Street	0.5 acres	I-1, Industrial	≥13'	≥180'	140'	1997

ATTORNEY COMMENTS - EXISTING OWBs

While Minnesota Statute Section 462.357, Subd. 1c. law forbids cities from enacting, amending or enforcing ordinances that provide for elimination or termination of a non-conforming use by amortization, Minnesota Statute Section 462.357, Subd. 1e permits cities to impose upon non-conformities reasonable regulations to prevent and abate nuisances and to protect the public health, safety and welfare. Accordingly, the City may require existing OWBs to meet certain conditions within a period of time, four months, for example, to abate the nuisance caused by their operation. These conditions could include minimum chimney heights, seasonal operation restrictions, restrictions on the type of fuel burned, and location. If the existing OWB cannot meet the **reasonable** standards imposed by the City, then the OWB cannot be operated.

OTHER CITIES – EXISTING OWBs

The City of Burnsville has a voluntary agreement with the one OWB owner allowing him to keep the OWB for 20 years or until the boiler fails, which ever happens first. Additionally, the owner of the OWB extended the chimney height and installed a re-burner to help reduce the emissions. The OWB is located on a lot about .63 acres in size. In Burnsville, a voluntary agreement was reached with the OWB owner. The City of Oak Park Heights grandfathered in the existing OWBs and the City of Forest Lake required the existing OWBs to be in compliance with the ordinance except if the zoning or setbacks were not met they were grandfathered in for those requirements. The City of Stillwater adopted an ordinance prohibiting outdoor wood burners; they had an OWB located on a lot less than 10,000 sq ft in size, this OWB has recently been removed from the City.

ALTERNATIVES

At this time, staff is looking for direction from the Planning Commission on how to proceed with the issue so that a draft ordinance can be prepared for further consideration and an additional public hearing. The following alternatives are available:

A. **Do nothing at all.** Currently, OWBs are allowed by the state building code and require a City building permit prior to installation;

B. **Regulate OWBs** with performance standards that could include minimum setbacks and lot size requirements, smokestack heights, time of operation, or allow in certain zoning districts;

C. **Prohibit OWBs** completely either in the nuisance ordinance or through the zoning ordinance.

*If regulating or prohibiting OWBs, a decision would also have to be made on what to do with the four OWBs that currently exist within the City limits.

RECOMMENDATION

Planning staff does not have a recommendation at this time. On one hand, the regulatory approach along with the newer models of OWBs may address the health issues, assuming the regulatory objectives are easy to enforce. On the other hand, staff has concerns regarding the enforcement of smoke as a nuisance because it is subjective and hard for staff to adequately enforce. Moreover, banning OWBs clearly addresses the health concerns. Banning future OWBs in Inver Grove Heights is favored by the City Administrator because of the enforcement difficulties and staff resources. This would still allow the City to apply performance standards to existing OWBs. Staff can further research means on how to address existing OWBs.

Attachments:

- FAQ's EPA's Phase 2 Voluntary Partnership Program (2008)
- Article- *Regulating Outdoor Furnaces and Boilers*, Minnesota Cities (2008)
- Article - *Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State* (2005)
- Brochure- pages from a Central Boiler handout (centralboiler.com)
- Examples of OWB ordinances:
  - Oak Park Heights
  - Forest Lake
  - Vermont
  - Stillwater

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

REPORT DATE: August 9, 2010 **CASE NO:** 10-20ZA

HEARING DATE: August 17, 2010

APPLICANT: City of Inver Grove Heights

REQUEST: Outdoor Wood Burners

REVIEWING DIVISIONS: Planning
City Attorney

PREPARED BY: Heather Botten
Assistant Planner

BACKGROUND

The City Council recently passed a moratorium on the construction of outdoor wood burners/boilers ("OWB"s) within the City to permit the City time to further study their potential regulation. City Council directed staff to hold a public hearing and to consider the prohibition of OWBs or regulation of OWBs through establishment of performance standards. These performance standards would only apply to OWBs and not indoor wood stoves, fireplaces, or fire pits.

The Planning Commission held a public hearing on July 6, 2010 regarding the prohibition of OWBs or the regulation of OWBs through establishment of performance standards. At this public hearing the direction given to staff was to create an ordinance to ban all future OWBs and to incorporate reasonable performance standards for existing OWBs in the City. There are currently six known OWBs located in the City of Inver Grove Heights.

ANALYSIS

OWBs are used as water heaters and/or a primary heat source for buildings. OWBs are located outside of the home, typically 30-50 feet (but as far as 500 feet) away from the owner's home or business. Usually, OWBs look like a small shed with a short smokestack. A water jacket surrounds the furnace firebox and heat exchanger and heated water is circulated to the home or building through insulated underground pipes. Water-to-air or water-to-water heat exchangers or direct circulation conveys the heat into the structure's forced-air furnace, boiler, or radiant floor heating system. With the recent increase in the cost of natural gas and oil, the use of OWBs is becoming more common across the nation. Most often, OWBs are used in rural settings. However, in recent years, the use of OWBs has increased in more densely populated residential neighborhoods.

There is considerable literature from various governmental agencies documenting the potential for significant harm to residents' health from the smoke emitted from OWBs. Therefore, based on the review of that literature, the City finds that OWBs constitute a public nuisance. Attached is an ordinance prohibiting NEW OWBs and establishing performance standards for existing OWBs.

Existing OWBs pose those potential health risks. As such, the City may require existing OWBs to meet certain conditions within a period of time to abate the nuisance caused by their operation. The following performance standards are addressed in the attached ordinance relating to existing OWBs. Planning staff and the City Attorney have discussed the performance standards and feel the following are reasonable requirements that should address the nuisance concerns.

It is important to note that this ordinance will regulate OWBs, but that staff has broadened the definition of OWB to include outdoor burners/boilers that burn wood pellets and corn, as well, because staff anticipates that outdoor burners/boilers burning those materials would pose the same health risk as the outdoor burners/boilers burning wood. This memo will continue using the term OWB, but the ordinance will regulate outdoor burners/boilers that burn wood, wood pellets, corn or other fuel sources.

Stack/chimney height:
The chimney stack shall be at least two feet taller than the height of the tallest peak or point of the roof of the principal structure as measured from the elevation of the principal structure. For example, if the tallest point of the house is 20 feet from the ground elevation and the OWB is located 10 feet lower in ground elevation than the ground elevation of the house, the chimney would have to measure 32 feet from the ground elevation of the OWB. None of the existing OWBs currently meet the proposed stack/chimney heights.

Seasonal Burning Restrictions
OWBs may only be operated during the cooler months, from October 1 through April 30 each year.

What not to burn
Only fuels approved by the OWB manufacturer for burning may be burned so as to minimize the smoke generated by the OWB. A non-exhaustive list of materials not allowed to be burned is listed in the ordinance, and it includes items such as leaves, treated wood, rubber, and furniture.

Zoning Districts
Planning staff did not feel it was necessary to address allowed zoning districts since the performance standards apply to only existing OWBs, no matter what the zoning district is and all future OWBs would be banned in all zoning districts.

Operational Permits
At the previous public hearing it was recommended that staff review the possibility of requiring an annual permit for the existing OWBs. After staff discussion it was determined that an annual permit would not be necessary for the enforcement of the existing OWBs. First, there are few OWBs within the City and given the ban on future OWBs, the number of OWBs should remain small. Second, Staff believes that the OWB performance standard violations may be enforced like other performance standards, utilizing the City's code enforcement officer. The

City's code enforcement officer would respond to complaints concerning the OWBs and pursue enforcement, if a violation were found to exist. Finally, Staff has concern that the issuance of an annual permit may create the false impression that the City is somehow warranting that the owner's OWB is mechanically sound.

Setbacks

Planning Staff discussed the need to require setbacks from property lines. The City has six known OWBs and has received a complaint about just one of them. The lot sizes range from .5 acres to 5 acres in size, with a maximum width of 400 feet and a minimum width of 140 feet. Discussions with other metro cities have found that no city, that we are aware of, has required existing OWB owners to move or relocate the OWB. Complaints stopped in the cities that had existing OWBs once the owners increased the chimney/stack height. As such, it appears that stack height adequately abates or more effectively abates the nuisance posed by OWBs. Additionally, the minimal setback distances that could physically be done on the existing lots would not have a significant impact to the surrounding properties. Therefore, staff does not support setback requirements for existing OWBs.

Staff also reviewed setbacks relating to neighboring structures. After staff discussion it was determined that monitoring setbacks from neighboring structures would have administration difficulties, it would be difficult to have accurate measurements, and there could potentially be future issues with new construction or additions. Therefore, staff does not support setback requirements from neighboring structures.

The following tables illustrate lot sizes, estimated OWB setback from the nearest property line, estimated lot width, and estimated setback of the OWB from the nearest neighboring home.

Address	Lot size	Zoning	Est. setback of OWB from nearest property line	Est. setback of OWB from nearest neighboring home	Estimated Lot Width	Was a permit issued
11068 Albavar Path	2.5 acres	E-1, Estate residential	≥10'	≥120'	166'	No permit
11780 Albavar Path	5 acres	A, Agricultural	≥100'	≥220'	380'	March 2008
9277 Old Concord	2.8 acres	PUD	≥35'	≥280'	247'	November 2005
4301 – 64th Street	0.5 acres	I-1, Industrial	≥13'	≥180'	140'	1997
11632 Akron Avenue	5 acres	A	≥70'	≥317'	400'	No permit was req'd
7038 Angus Avenue	2.94	A	≥80'	≥190'	318'	No permit was req'd

The following table illustrates what properties could meet some suggested setbacks from a property line.

Address	100′ Setback		200′ Setback		300′ Setback	
	Currently meets setback	Could meet setback on the property	Currently meets setback	Could meet setback on the property	Currently meets setback	Could meet setback on the property
11068 Albavar	No	No	No	No	No	No
11780 Albavar	YES	YES	No	No	No	No
9277 Old Concord	No	YES	No	No	No	No
4301 – 64th Street	No	No	No	No	No	No
11632 Akron Ave	No	YES	No	YES	No	No
7038 Angus Ave	No	YES	No	No	No	No

Owners of existing OWBs must comply with the burning materials and the seasonal burning restrictions on or before December 1, 2010 and the chimney height requirements by December 1, 2011.

ALTERNATIVES

The Planning Commission has the following actions available for the request:

A. Approval

If the Planning Commission finds the application acceptable, the Commission should recommend approval of the code amendment or approval with recommended changes.

B. Denial

If the Planning Commission finds that the code amendment is not acceptable, a recommendation of denial should be forwarded to the City Council. With a recommendation of denial, findings or the basis for the denial should be given.

RECOMMENDATION

Planning staff recommends **approval** of the attached code amendment banning all future OWBs and establishing performance standards for existing OWBs as proposed. Since the majority of properties would not meet setbacks, thus requiring the OWB to be moved, staff is recommending that no setback requirements be included with the performance standards for existing OWBs.

Attachments:

Ordinance language
Topography and setbacks for properties with OWBs
Minutes from the July 6, 2010 public hearing

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

REPORT DATE: September 15, 2010 **CASE NO:** 10-20ZA

HEARING DATE: September 21, 2010

APPLICANT: City of Inver Grove Heights

REQUEST: Outdoor Wood Burners

REVIEWING DIVISIONS: Planning
City Attorney

PREPARED BY: Heather Botten
Associate Planner

BACKGROUND

The Planning Commission has held two public hearings regarding Outdoor Wood Burner/Boilers (OWBs) on July 6 and August 17, 2010. At the July 6, 2010 public hearing the direction given to staff was to create an ordinance to ban all future OWBs and to incorporate reasonable performance standards for existing OWBs in the City. There are currently six known OWBs located in the City of Inver Grove Heights. These performance standards would only apply to OWBs and not indoor wood stoves, fireplaces, or fire pits. At the August 17, 2010 public hearing the Planning Commission tabled action for staff to obtain additional information.

As stated in the August 17th minutes:
Motion by Commissioner Simon, second by Commissioner Schaeffer, to table until September 21, 2010, the request for an ordinance amendment prohibiting new outdoor boilers and establishing performance standards for existing outdoor wood burners/boilers, to give staff time to look into the following issues: 1) whether scrubbers were used on OWBs and whether they were effective, 2) eliminating OWBs on point of sale, 3) establishing a deadline or sunset provision, 4) explore further the reasoning for stack height, especially as it relates to the impact on neighboring properties, 5) adding verbiage that existing OWBs will not be extended, enlarged, or expanded.

In regards to question #1 whether scrubbers were used on OWBs and whether they were effective; staff spoke with a representative from a Central Boiler Dealer, he stated he was not aware of any re-burners or scrubbers that could be added to existing units. Some of the newer models have a fusion chamber/ re-burner which would help reduce emissions.

Questions 2, 3, and 5 (along with some additional information) are addressed by the City Attorney's office in the attached correspondence.

Question #4: explore further the reasoning for stack height, especially as it relates to the impact on neighboring properties. There is no magic setback or chimney height that will eliminate the emission or smells from an OWB. Staff has based the performance standard recommendations from what has worked with other communities. If the City was adopting performance standards for new OWBs the standards could be more restrictive. The City is considering

performance standards for six OWBs, some that have been in existence for over 10 years with no complaints.

Staff conducted some rough estimates on topography and building heights within 500 feet of an OWB located in Inver Grove Heights, going with a chimney height 2′ taller than the highest point, the most extreme case of a chimney height could exceed 75′. After staff review it was determined that monitoring chimney heights from neighboring structures would have administration difficulties, it would be difficult to have accurate measurements, and there could potentially be issues with access to neighboring properties. Therefore, staff does not support chimney height requirements from neighboring structures.

Staff believes the most effective way to control emissions (besides upgrading to a new system) is to burn only seasoned, dry wood and to operate only during the colder months when people generally have their windows closed and are not outside as often. Additionally, from talking with other communities in the metro that have OWBs, complaints stopped once the owners increased the chimney/stack height. However, no other studies that we are aware of have been done comparing the lot sizes and topography for the location of these OWBs. Other communities seem to have existing OWBs located on lots less than 12,000 square feet in size. Finally, Inver Grove Heights is the only city, that we are aware of, that is dealing with at least 6 existing OWBs.

ALTERNATIVES

The Planning Commission has the following actions available for the request:

A. **Approval**

If the Planning Commission finds the code amendments acceptable, the Commission should recommend approval of the code amendments or approval with recommended changes.

B. **Denial**

If the Planning Commission finds that the code amendments are not acceptable, a recommendation of denial should be forwarded to the City Council.

RECOMMENDATION

Planning staff recommendation has not changed since the August 17, 2010 meeting. Planning staff recommends **approval** of the code amendment banning all future OWBs and establishing performance standards for existing OWBs as proposed

Attachments:

- City Attorney memo
- Proposed ordinance
- Minutes from the August 17, 2010 public hearing
- August 17, 2010 Planning Report
- Information submitted from resident

Heather Botten

From: Joe Lynch
Sent: Friday, September 17, 2010 4:22 PM
To: Heather Botten; Allan Hunting; Tom Link
Cc: Bill Klein; Dennis Madden; George Tourville; Rosemary Piekarski-Krech; Tim Kuntz; Vance Grannis
Subject: OWB

After having read the staff memorandum in the Planning commission packet I have come to the conclusion that the City's position should be one of banning all OWB's and allowing a one year time frame (Dec. 1, 2011) for removal of all existing such uses. I base this on the following:

- ✓ As defined in our Nuisance section, OWB's constitute a nuisance and should not be allowed to exist. We can agree that at the very least they are a disturbance of the comfort of those surroudnign them and at a maximum a public health risk by virtue of the undetermined nature of the exhaust. Section 5-5-6 does not define what "any considerable amount" of people affected
- ✓ We will not reach a conclusion on specific performance standard that will satisfy either those in favor or opposed to the use of OWB and we will face constant, continual complaints for which we will have no enforcement solution
- ✓ Because we cannot regulate them out upon sale of the property or upon need for replacement parts, the six in existence could conceivably remain so forever
- ✓ If and when new technology arises making these "safer", "more efficient" or eliminates "odor and exhaust" we will have those in existence clamoring for replacement/upgrade and those opposed calling for action on the part of the city
- ✓ This will never be a priority issue for the city and as such the resources to deal with it will not increase, nor should they
- ✓ Staff should not continue to be the recipients of complaining by many about the few without the real possibility of being able to "fix" the problem

The City should bite the bullet once and be done with this issue. Better to deal with six angry owners than the 12-15 that are currently active in opposition and will grow to more the longer these are in use and continue to emit exhaust which is of a questionable nature.

Joe Lynch
City Administrator
City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077
651.450.2511
651.450.2502 Fax

AGENDA ITEM 7C

PDB AUTOCARE, LLC **REQUEST FOR COUNCIL ACTION**

CITY OF INVER GROVE HEIGHTS

Meeting Date: October 11, 2010
Item Type: Regular Agenda
Contact: Allan Hunting 651.450.2554
Prepared by: Allan Hunting, City Planner
Reviewed by:

Fiscal/FTE Impact:

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

PURPOSE/ACTION REQUESTED

Consider a Resolution relating to a **Conditional Use Permit Amendment** to amend the site plan allowing for an addition to the existing building for property located at 6466 Cahill Avenue.

- Requires 4/5th's vote.
- 60-day deadline: October 29, 2010 (first 60-days)

SUMMARY

Applicant is proposing to amend the approved site plan by adding an approximate 1000 square foot service bay addition to the northeast corner of the existing building. The business operates under a conditional use permit for a motor fuel station that was last amended in 1994.

ANALYSIS

The proposed building addition complies with all setback and impervious surface coverage limits. The addition would match the existing building utilizing a painted block material. Engineering is requiring the construction of two infiltration basins on the property to treat runoff and to help overall storm drainage for the area.

RECOMMENDATION

Planning Staff: Recommends approval of the request as presented with the conditions listed in the attached resolution.

Planning Commission: Recommends approval of the request with the conditions listed in the attached resolution. (8-0).

Attachments: Conditional Use Permit Amendment Resolution
Planning Commission Recommendation
Planning Report

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

RESOLUTION APPROVING AN AMENDMENT TO A CONDITIONAL USE PERMIT FOR A MOTOR FUEL STATION

Case No. 10-31CA
(PDB Autocare)

WHEREAS, an application for Conditional Use Permit Amendment has been submitted for the property legally described as:

> **The South 230 feet of the West 280 feet of the Northwest ¼ of Section 3, Township 27, Range 22**

WHEREAS, an application for a conditional use permit amendment to said conditional use permit has been submitted for said property in order to allow an expansion of the existing building;

WHEREAS, the aforedescribed property is zoned B-2, Limited Commercial;

WHEREAS, the request has been reviewed against Title 10, Chapter 3, Article A, Section 10-3A-5 regarding the criterion for a Conditional Use Permit such as consistency with the Comprehensive Plan, conformity with the Zoning Ordinance and compatibility with adjacent properties, among other criteria, the request meets all of the minimum standards;

WHEREAS, a public hearing concerning the conditional use permit was held before the Inver Grove Heights Planning Commission in accordance with Minnesota Statute, Section 462.357, Subdivision 3 on October 5, 2010;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS, that a Conditional Use Permit Amendment to allow an expansion of the existing building is hereby approved subject to the following conditions:

1. The site shall be developed in substantial conformance with the following plans on file with the Planning Department except as may be modified by the conditions below.

   Site Plan dated 8/24/10

2. A minimum front setback of 10 feet is to be maintained from Cahill Avenue and 65th Street right-of-way lines to the paved asphalt or concrete area of the service station.

3. All display pennants, flags, searchlights balloons and other special sales promotion devices shall be limited to not more than 10 days per year.

4. All areas not paved or on which buildings are constructed shall be landscaped.

5. The business on the site shall be engaged primarily in the sale of motor fuel but also may be engaged in supplying services and goods generally required in the operation and maintenance of motor vehicles. These may include sales of petroleum products, sales and service of tires, batteries, automotive accessories and replacement items, washing and lubrication services and the performance of minor automobile maintenance and repair.

6. A 1000 gallon propane tank shall be permitted on site for the retail sale of propane subject to the following conditions:

   a. The propane tank shall be located and installed in accordance with Exhibits A, B, C attached and on file with the Planning Division except as may be modified by the conditions herein.
   b. The fueling area shall be provided with lighting.
   c. Guard posts shall be installed as defined on Exhibit D on file with the Planning Division.
   d. The installation must be in conformance with NFPA Standard 58 as adopted by the 1991 Minnesota Uniform Fire Code Article 82.
   e. Protection against trespassing and tamper must be provided in accordance with NFPA 58. If not provided by fencing, the unit must be inspected and approved by the Fire Marshal prior to bringing it into the City.

7. Prior to commencement of any grading, the final grading, drainage and erosion control, and utility plans shall be approved by the City Engineer.

8. A storm water facilities maintenance agreement shall be drafted by the City Attorney and executed by the owner prior to issuance of the certificate of occupancy. The rain garden shall be constructed and vegetation placed by June 15, 2011.

9. Prior to the issuance of a building permit, an Engineering cash escrow of $750 shall be submitted to ensure the proper construction of the improvements by June 15, 2011. In addition the City will utilize the cash escrow for the attorney's expenses, staff review time, engineering staff inspections, fees, and maintenance requirements. The remaining escrow will be released when the project is completed, turf is established, punch list items have been addressed and approved by the City Engineer

10. The City Code Enforcement Officer, or other designee, shall be granted right of access to the property at all reasonable times to ensure compliance with the conditions of this permit.

11. No storage of vehicles for a period longer than forty eight (48) hours shall be permitted. All storage of vehicles shall be on paved surfaces only. No storage or parking allowed on landscaped areas.

12. No sales of motor vehicles shall be permitted.

13. Resolution #6192 shall become null and void and replaced with the conditions of this permit.

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

Adopted by the City Council of Inver Grove Heights this 11th day of October, 2010.

AYES:
NAYS:

_____
George Tourville, Mayor

ATTEST:

_____
Melissa Rheaume, Deputy Clerk

RECOMMENDATION TO
CITY OF INVER GROVE HEIGHTS

TO: Mayor and City Council of Inver Grove Heights

FROM: Planning Commission

DATE: October 5, 2010

SUBJECT:
PDB AUTOCARE LLC – CASE NO. 10-31CA

Reading of Notice
Commissioner Simon read the public hearing notice to consider the request for a conditional use permit amendment to amend the approved site plan allowing for a 30' x 34' building addition, for the property located at 6466 Cahill Avenue. 19 notices were mailed.

Presentation of Request
Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is proposing to construct a 1020 square foot addition to the back of the Sinclair gas and service station located at the northeast corner of Cahill and 65th Street. Additional improvements will be made to the inside of the front of the building as well. Mr. Hunting advised that a conditional use permit for an automobile service station was issued around 1972. An amendment was later approved in 1994 to add a propane tank. No additional impervious coverage is being added since the addition will be constructed over existing bituminous. He noted that Engineering has reviewed the request and is requiring the applicant construct two depression ponds on their property to address stormwater runoff. Staff recommends approval of the request with the conditions listed in the report.

Commissioner Simon asked if the proposed depression ponds would be rain gardens, to which Mr. Hunting replied in the affirmative.

Commissioner Simon asked if Condition 8 covered the maintenance of the rain gardens, to which Mr. Hunting replied in the affirmative.

Opening of Public Hearing
The applicant, Paul Boehme, 1232 Wilderness Park Court East, Eagan, stated he would have to get permission from the abutting landowner as a portion of one of the proposed rain gardens would be located on the property to the north.

Mr. Hunting stated the City Engineer would finalize the design and ensure the rain garden was located only on the applicant's property.

Chair Bartholomew reiterated Condition 11 regarding prohibiting storage of vehicles for a period longer than 48 hours, and Condition 12 prohibiting the sale of motor vehicles on the property.

Mr. Boehme stated normally he pushed vehicles he was working on into the garage in the evening; however, occasionally there may be an exception.

Planning Commission Recommendation

Motion by Commissioner Wippermann, second by Commissioner Schaeffer, to approve the conditional use permit amendment to amend the approved site plan allowing for a 30' x 34' building addition, with the 13 conditions listed in the report, for the property located at 6466 Cahill Avenue.

Motion carried (8/0). This item goes to the City Council on October 11, 2010.

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

REPORT DATE: September 30, 2010 **CASE NO:** 10-31CA

APPLICANT: PDB Autocare, LLC

PROPERTY OWNER: PDB Autocare, LLC

REQUEST: Conditional Use Permit Amendment

HEARING DATE: October 5, 2010

LOCATION: 6466 Cahill Avenue

COMPREHENSIVE PLAN: CC, Community Commercial

ZONING: B-2, Neighborhood Business

REVIEWING DIVISIONS: Planning, Engineering

PREPARED BY: Allan Hunting, City Planner

BACKGROUND

The applicant is proposing to construct a 1020 square foot addition to the Sinclair gas and service station located at the northeast corner of Cahill and 65th Street. The addition would be for additional garage service area. Additional improvements would be made to the front of the building replacing some of the front glass and rearranging the interior rooms to update the building. The addition would be an extension to the northeast corner of the existing building. No other changes to the site are proposed

An automobile service station is a conditional use within the B-2 District. The building was constructed in 1972 and a conditional use permit was issued around that time frame. An amendment was approved in 1994 to add the propane tank to the south side of the site.

The specific requests consist of the following:

a) A Conditional Use Permit amendment for an automobile service station to allow an expansion of the existing building.

EVALUATION OF THE REQUEST

The following land uses, zoning districts and comprehensive plan designations surround the subject property:

North Commercial multi-tenant building; zoned B-3; guided CC

East Car wash building; zoned B-3; guided CC

West Commercial multi-tenant building; zoned B-3; guided CC

South Commercial multi-tenant building; zoned B-3; guided CC

CONDITIONAL USE PERMIT REVIEW

Setbacks. The proposed building addition exceeds setback requirements and the existing building and gas pump island also meet current setbacks. No changes are proposed to any paved areas. All setback requirements have been met.

Parking Lot. As stated earlier, no changes are being proposed to the paved areas. All required areas are paved and the layout is consistent with previous approvals and no further changes are required.

Lot Coverage. Alowable impervious surface coverage in the B-2 district is 75%. While no additional impervious surface is being added, a calculation was done to determine compliance. The site currently contains approximately 55% impervious surface which falls under the allowed maximum.

Landscaping. The site contains existing landscaping in the open yard areas along the north, east and south sides of the property. Based on previous CUP reviews, no further landscaping

Building Materials. The building expansion would be constructed of block painted to match the existing building. The proposed building materials would comply with code standards.

Engineering. The City, as a MS4 community, has been required by the Minnesota Pollution Control Agency (MPCA) to implement infiltration and storm water management practices in conjunction with redevelopment sites. The non-degradation guidance is in place to reduce the volume of run-off, sediment, phosphorous, and total suspended solids leaving the site.

In compliance with MPCA guidance, staff have reviewed the site drainage and determined that there are two locations on the site where a rain garden or infiltration pond would be beneficial to meeting the non-degradation requirements and reducing run-off reaching the neighbor to the north. Rain garden 1 and rain garden 2 locations are shown on the attached map and coincide with natural low points which accept a good portion of impervious surface from the site.

Staff have completed calculations and discussed the construction of the rain garden options with the Owner's Contractor in order to minimize expense and impact. It has been decided that type 1a and 2a rain gardens can be built, 200 sf and 300 sf respectively, with 1-foot depth, 1.5-foot engineered soils (existing soils mixed with 30% leaf litter compost), 1-foot of scarifying (below grade), and plantings of the owner's choice (spaced in accordance with standard landscaping recommendations), as approved by the City Engineer.

General CUP Criteria

This section reviews the plans against the CUP criteria in the Zoning Ordinance.

1. The use is consistent with the goals, policies and plans of the City Comprehensive Plan, including future land uses, utilities, streets and parks.

   The description of the Community Commercial District states that these areas are for lots that contain retail sales and services located along community collector and arterial roadways that serve the community. The proposed expansion and existing operation provide goods and services that are needed by the residents of Inver Grove Heights in an existing community shopping node. There would be no negative impacts on existing land uses, street systems or the park system.

2. The use is consistent with the City Code, especially the Zoning Ordinance and the intent of the specific Zoning District in which the use is located.

   Suitability of the use is discussed above with the Comprehensive Plan. The proposed project does comply with all of the performance criteria of the B-2 Zoning District.

3. The use would not be materially injurious to existing or planned properties or improvements in the vicinity.

   All of the surrounding property is developed with a mix of retail uses. The building expansion would not have a negative impact on the surrounding area as it lies within areas of the lot that are currently developed and used as part of the service station.

4. The use does not have an undue adverse impact on existing or planned City facilities and services, including streets, utilities, parks, police and fire, and the reasonable ability of the City to provide such services in an orderly, timely manner.

   This commercial neighborhood is all developed and the land use patterns set. The proposed use would not have an adverse impact on fire protection or on any city service as the building expansion provides for a small addition to the service capability of the business.

5. The use is generally compatible with existing and future uses of surrounding properties, including:
   i. Aesthetics/exterior appearance
   The design of the proposed addition would be compatible with the existing building and with the surrounding uses. Materials are similar to others in the area.
   ii. Noise

The building addition is to provide additional enclosed service space. No additional noise is expected since the service use would be inside the building.

iii. Fencing, landscaping and buffering

There are no buffering or fencing requirements. Landscaping has been satisfied with previous approvals and plantings are in place.

6. The property is appropriate for the use considering: size and shape; topography, vegetation, and other natural and physical features; access, traffic volumes and flows; utilities; parking; setbacks; lot coverage and other zoning requirements; emergency access, fire lanes, hydrants, and other fire and building code requirements.

   The property contains ample size to allow for the addition without impacting neighboring properties. The addition would be located over areas that are currently paved. The building addition would not have a negative impact on city services or emergency services.

7. The use does not have an undue adverse impact on the public health, safety or welfare.

   The service station operation has been in existence since the early 1970's. Any auto service would be done inside the building. The building expansion would not have an adverse impact on the surrounding uses.

8. The use does not have an undue adverse impact on the environment, including, but not limited to, surface water, groundwater and air quality.

   The building addition would enclose the automobile service performed and building code and fire code requirements must be met so any fluid handling into any city system would be required to meet all current standards. The addition would not have an undue adverse impact.

ALTERNATIVES

The Planning Commission has the following actions available on the following requests:

A. **Approval.** If the Planning Commission finds the application to be acceptable, the following action should be taken:

o Approval of the **Conditional Use Permit Amendment** for an automobile service station to allow an expansion of the existing building subject to the following conditions:

1. The site shall be developed in substantial conformance with the following plans on file with the Planning Department except as may be modified by the conditions below.

Site Plan dated 8/24/10

2. A minimum front setback of 10 feet is to be maintained from Cahill Avenue and 65th Street right-of-way lines to the paved asphalt or concrete area of the service station.

3. All display pennants, flags, searchlights balloons and other special sales promotion devices shall be limited to not more than 10 days per year.

4. All areas not paved or on which buildings are constructed shall be landscaped.

5. The business on the site shall be engaged primarily in the sale of motor fuel but also may be engaged in supplying services and goods generally required in the operation and maintenance of motor vehicles. These may include sales of petroleum products, sales and service of tires, batteries, automotive accessories and replacement items, washing and lubrication services and the performance of minor automobile maintenance and repair.

6. A 1000 gallon propane tank shall be permitted on site for the retail sale of propane subject to the following conditions:
   a. The propane tank shall be located and installed in accordance with Exhibits A, B, C attached and on file with the Planning Division except as may be modified by the conditions herein.
   b. The fueling area shall be provided with lighting.
   c. Guard posts shall be installed as defined on Exhibit D on file with the Planning Division.
   d. The installation must be in conformance with NFPA Standard 58 as adopted by the 1991 Minnesota Uniform Fire Code Article 82.
   e. Protection against trespassing and tamper must be provided in accordance with NFPA 58. If not provided by fencing, the unit must be inspected and approved by the Fire Marshal prior to bringing it into the City.

7. Prior to commencement of any grading, the final grading, drainage and erosion control, and utility plans shall be approved by the City Engineer.

8. A storm water facilities maintenance agreement shall be drafted by the City Attorney and executed by the owner prior to issuance of the certificate of occupancy. The rain garden shall be constructed and vegetation placed by June 15, 2011.

9. Prior to the issuance of a building permit, an Engineering cash escrow of $750 shall be submitted to ensure the proper construction of the improvements by June 15, 2011. In addition the City will utilize the cash escrow for the attorney's expenses, staff review time, engineering staff inspections, fees, and maintenance requirements. The remaining escrow will be released when the project is completed, turf is established, punch list items have been addressed and approved by the City Engineer

10. The City Code Enforcement Officer, or other designee, shall be granted right of access to the property at all reasonable times to ensure compliance with the conditions of this permit.

11. No storage of vehicles for a period longer than forty eight (48) hours shall be permitted. All storage of vehicles shall be on paved surfaces only. No storage or parking allowed on landscaped areas.

12. No sales of motor vehicles shall be permitted.

13. Resolution #6192 shall become null and void and replaced with the conditions of this permit.

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

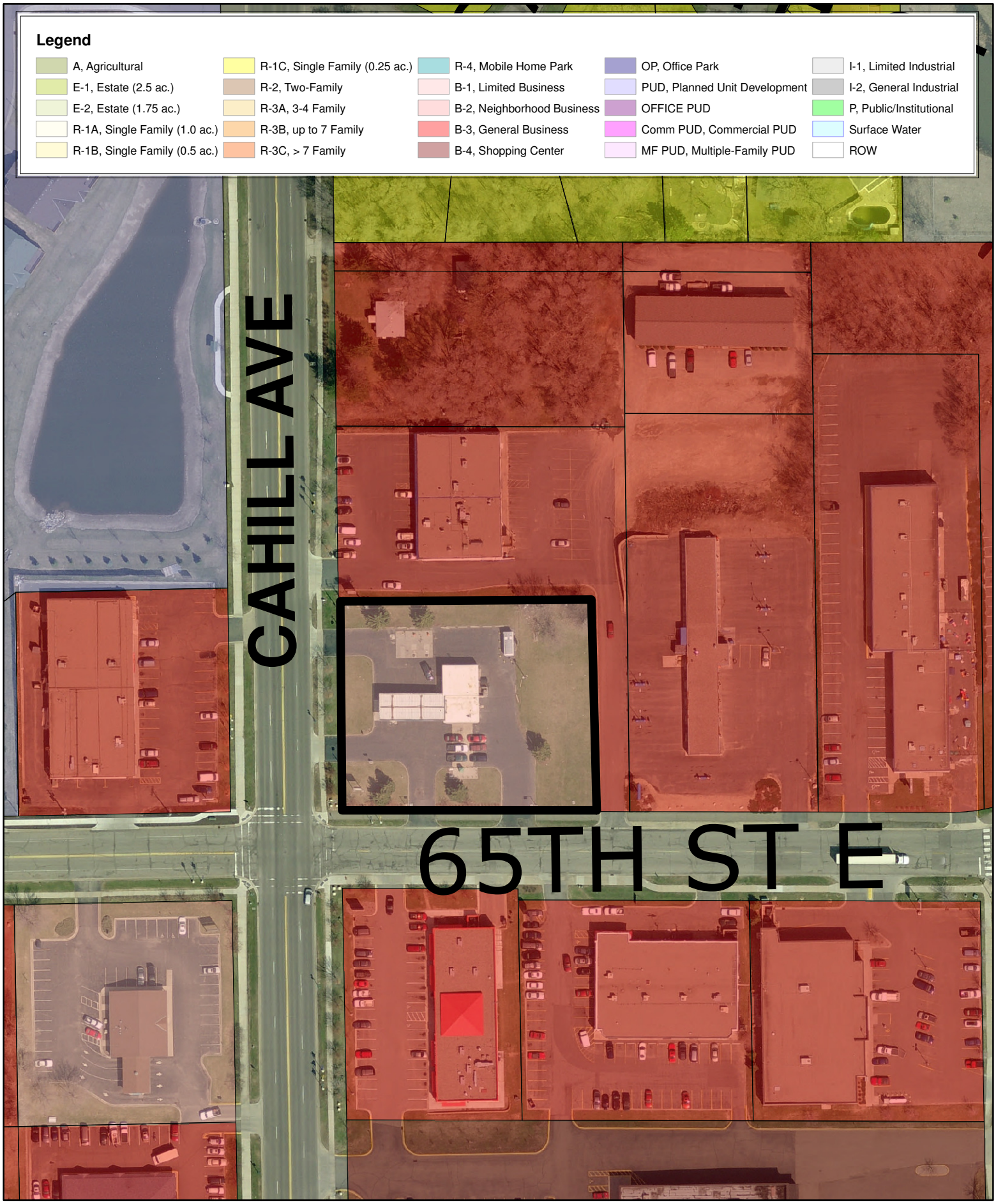
RECOMMENDATION

Based on the preceding report, staff recommends approval of the conditional use permit amendment with the conditions listed.

Attachments: Location Map
Applicant Narrative
Site Plan
Floor Plan

Location Map
Case No. 10-31CA

Inver Grove Heights



Heather Botten

From: JOHN STREIFF STREIFF CNSTRCTN [bearslayer25@msn.com]
Sent: Sunday, September 12, 2010 10:31 PM
To: Heather Botten
Subject: PDB Auto Care LLC

Heather Botten
Associate Planner
8150 Barbara Avenue
Inver Grove Heights, MN 55077

Heather,

My name is John Streiff of Streiff Construction Services, Inc. I am giving a narative of the project for PDB Auto Care LLC. We propose to make the property much more customer friendly and handicap accessible with more work capacity and upgrade plumbing for environmental purposes and a more energy efficient facility.

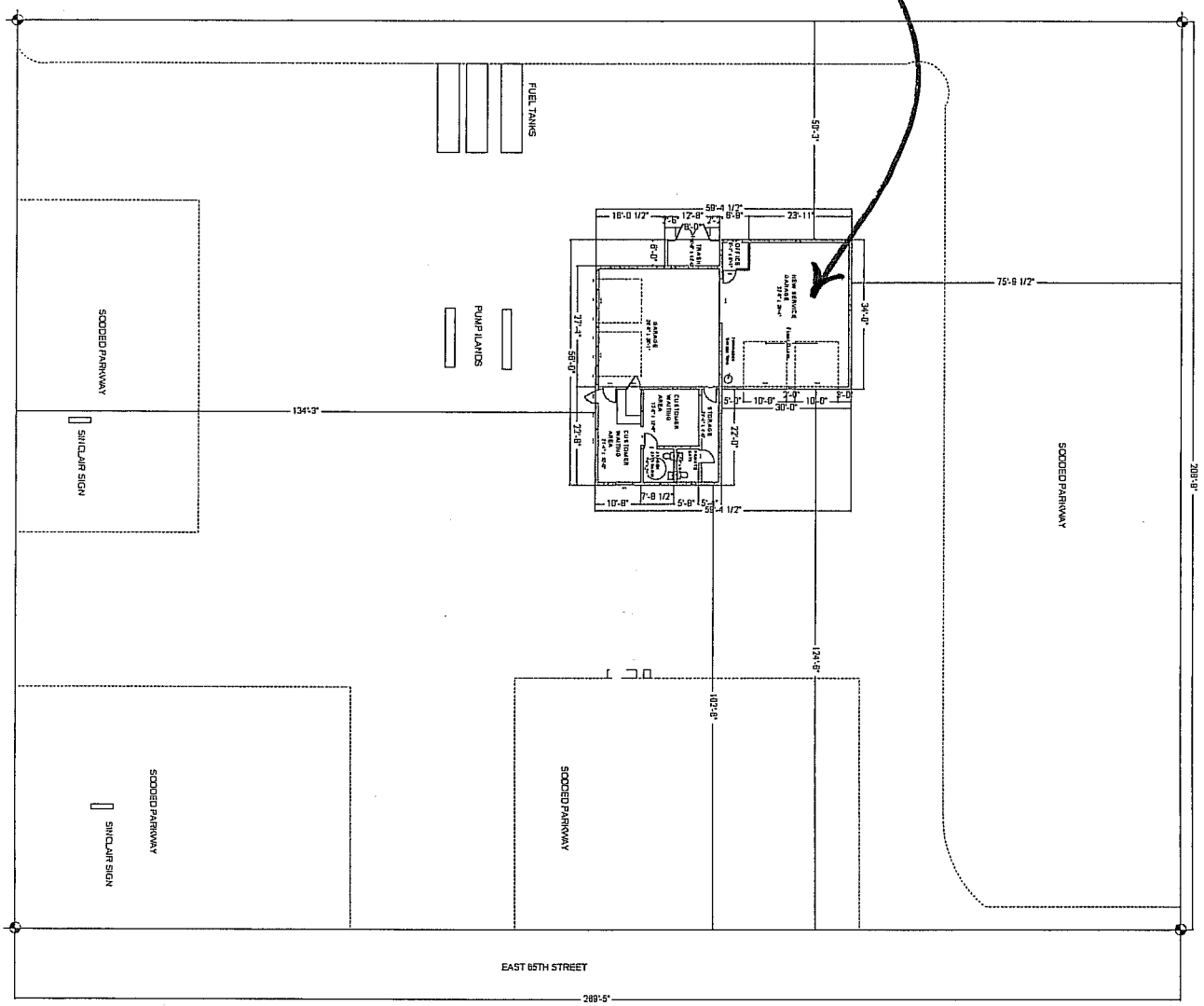
To start off, we will remove and replace the sidewalk on the front with a 5 ft sidewalk and handicap ramp and replace the glass front with a half wall and upper thermal pane windows only. Next we will relocate the rest room doors creating a unisex handicap lavatory, a "private" lavatory, a customer lounge and merchandise display area, general cleanup & fresh paint, up to code equipment, and doors to the shop.

The main phase of the job is the shop addition at the rear with an office and the installation of a "flammable waste" tank and an up to code HVAC system, adding insulation in some areas. With these improvements, we hope to achieve an energy efficient, attractive, accessible customer friendly facility.

Thank you for your time and attention to this matter.

John Streiff
Streiff Construction Services, Inc.

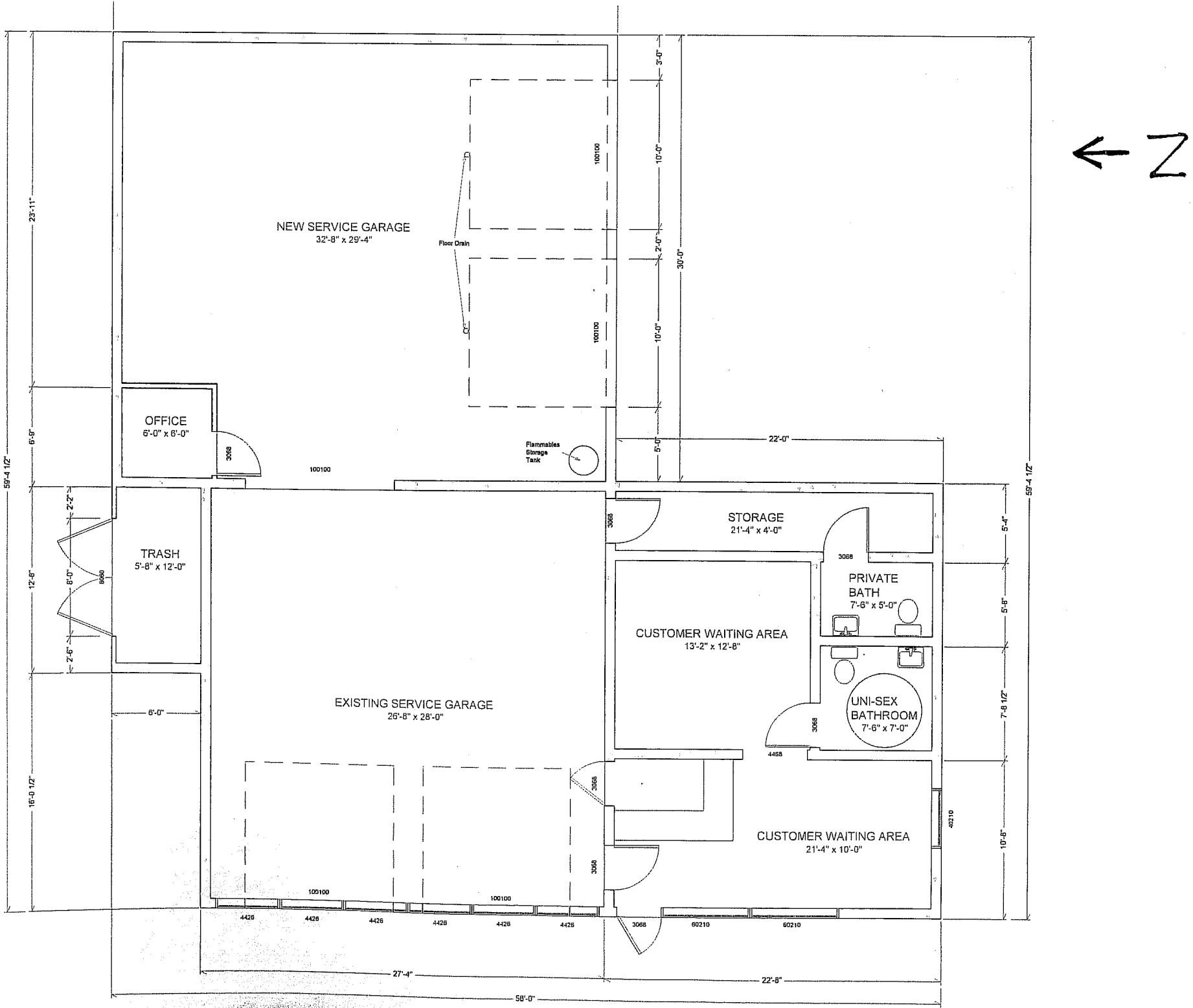
ADDITION



CAHILL AVE

65TH ST

N



Streiff Construction, Inc.
17902 Ames Court
Faribault, MN 55021

AGENDA ITEM _____

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

New Subsurface Treatment System (SSTS) Ordinance (commonly referred to as 'Septic Code').

Meeting Date:	October 11, 2010		**Fiscal/FTE Impact:**
Item Type:	Regular Agenda		None
Contact:	Franklin Martin: 651-450-2549		Amount included in current budget
Prepared by:	Franklin Martin, Building Official		Budget amendment requested
Reviewed by:	Tom Link, Community Development Director Levander, Gillen, & Miller		FTE included in current complement
			New FTE requested – N/A
		X	Other

PURPOSE/ACTION REQUESTED

The City Council is to consider approval of the second reading of the new subsurface treatment system (SSTS) ordinance as amended.

SUMMARY

State law mandates that the City of Inver Grove Heights adopts the Dakota County or equivalent code document within one calendar year of the County's adoption; therefore, the City of Inver Grove Heights has completed the revision of our entire existing Subsurface Sewage Treatment System (SSTS) ordinance to be in compliance with State and County regulations. On November 17, 2009, Dakota County adopted the Minnesota Pollution Control Agency (MPCA) new SSTS code.

- The proposed city code amendment provides for modifying the text of the county ordinance so that it can be set forth fully in a re-codification of Title 8, Chapter 5. This means that for the first time the city code will have a fully integrated set of county and city sewage treatment system standards in one document.
- Provisions unique to Inver Grove Heights that carry over from the City's existing regulations are:
    - Limitations on animal (e.g., slaughter house), commercial and industrial wastes that cannot be adequately treated in a subsurface sewage treatment system.
    - Holding tanks are continued to be allowed for secondary discharge (e.g., hazardous waste containment overflows) and for marina sanitary pump-out facilities, though the 2000 gallon aggregate tank capacity limitation is removed to avoid conflict with state rules.
    - Site evaluation requirement for platting or waiver of platting.
    - Operating permits will remain three years.
    - Use of private inspectors for Point-of-Sale compliance inspections of existing systems.

- Provisions unique to Inver Grove Heights that are new:
    - Provides a performance standard for effluent screens on most new and replacement sewage systems.
    - Evaluates the size of the septic system as part of the compliance inspection and provides for a one year period of time to upgrade undersized systems. **Existing systems sized to previous editions of state standards would not have to be upgraded.** An exception also provides performance criteria that allow postponing indefinitely the upgrade of an undersized system so long as its usage is below a sustained heavy level that could cause it to prematurely fail.
    - Creates an initial date for owners to obtain operating permits for certain types of existing systems (i.e. aerobic tanks and systems with flows from 5,000 to 10,000 gallons per day).
- Most of the other changes are of a minor nature and are added in response to MPCA review comments or to allow current city practices to continue.
- Additionally, there is no impact to the owners of existing systems that are compliant with all current provisions. The impact to existing owners will only occur at the sale of a home that has an undersized septic system as a result of finishing off additional space in the home without required building permits and inspections. The new requirement of verifying the size of the system in relation to the size of the building will provide a minimum level of protection for a buyer that is purchasing a home with a specific number of bedrooms. To allow for the large numbered bedrooms to few occupant ratios that we may see, there is a performance exception that will allow them to keep the undersized system if the new owners can show that their daily flow rate is seventy percent of the daily recommended flow rate.

CONCLUSION

In closing, the complete overhaul of our septic system is to accommodate all new rules and regulations from the State and County code updates. We are also bringing forth some historical amendments that we have always had in addition to creating new performance requirements for effluent screens and certifications. Staff recommends approval of second reading of the ordinance regarding Subsurface Sewage Treatment Systems.

Attachments:

Ordinance amending Title 8, Chapter 5 (Revised 6 October 2010 Draft)

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ORDINANCE NO._____

AN ORDINANCE REGULATING SUBSURFACE SEWAGE TREATMENT SYSTEMS WITHIN THE CITY OF INVER GROVE HEIGHTS, MINNESOTA AND AMENDING INVER GROVE HEIGHTS CITY CODE TITLE 8 CHAPTER 5

The City Council of Inver Grove Heights does hereby ordain:

Section 1. Amendment. Title 5, Chapter 8 of the Inver Grove Heights City Code is hereby amended in its entirety as follows:

~~Chapter 5~~
~~INDIVIDUAL SEWAGE TREATMENT SYSTEMS~~

~~8-5-1: DEFINITIONS:~~

~~The following terms, when used in this chapter, shall have the meanings as set forth in this section:~~

~~AEROBIC TANK: Any sewage tank which utilizes the principle of oxidation in the decomposition of sewage by the introduction of air into the sewage.~~

~~BAFFLE: A device installed in a septic tank for proper operation of the tank and to provide maximum retention of solids, and includes vented sanitary tees and submerged pipes in addition to those devices that are normally called baffles.~~

~~COMMERCIAL AND INDUSTRIAL: Any use of a building or property other than a single-family residential dwelling unit.~~

~~FAILED INDIVIDUAL SEWAGE TREATMENT SYSTEM: A soil treatment system that is allowing sewage, sewage tank effluent, or seepage from the soil treatment system to be discharged to the ground surface, abandoned wells, or bodies of surface water, or into any rock or soil formation of the structure which is not conducive to purification of water by filtration, or into any well or other excavation in the ground. Failed individual sewage treatment system also means an individual sewage treatment system that uses cesspools, leaching pits, or seepage pits, or as defined by Minnesota state rules chapter 7080.~~

~~INDIVIDUAL SEWAGE TREATMENT SYSTEM: A sewage treatment system or part thereof, serving a dwelling or other establishment or group thereof, which uses subsurface soil treatment and disposal, including approved holding tanks.~~

~~MOUND SYSTEM: A system where the soil treatment area is built above the ground to~~

~~overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.~~

~~OWNER: All persons having possession of, control over, or title to an individual sewage treatment system.~~

~~PRIVATE INSPECTOR: A person or company that has been licensed by the state of Minnesota and qualified to inspect existing individual sewage treatment systems.~~

~~PUMP OR PUMPED: The removal and sanitary disposal of septage from the septic tank. Removal of septage also includes complete removal of scum and sludge.~~

~~PUMPER: A person or company that has been licensed by the state of Minnesota as qualified to service an existing septic system.~~

~~SECONDARY DISCHARGE: Those solids and liquids discharged intermittently which are not part of the business' commercial and/or industrial process, including, but not limited to, floor drains and overflow from containment areas.~~

~~SEPTAGE: Those solids and liquids removed during periodic maintenance of a septic or aerobic tank or those solids and liquids which are removed from a holding tank.~~

~~SEPTIC TANK: Any watertight, covered receptacle designed and constructed to receive the discharge of sewage from a building sewer, separate solids from liquid, digest organic matter, and store liquids through a period of detention, and allow the clarified liquids to discharge to a soil treatment system.~~

~~SEWAGE: Any water carrying domestic waste, exclusive of footing and roof drainage, from any industrial, agricultural, or commercial establishment, or any dwelling or any other structure. Domestic waste includes liquid waste produced by toilets, bathing, laundry, and culinary operations, and the floor drains associated with these sources, and specifically excludes animal waste and commercial or industrial wastewater.~~

~~SEWAGE TANK: A watertight tank used in the treatment of sewage and includes, but is not limited to, septic tanks and aerobic tanks.~~

~~SOIL TREATMENT SYSTEM: A system where sewage tank effluent is treated and disposed of below the ground surface by filtration and percolation through the soil, and includes those systems commonly known as seepage bed, trench, drain field, disposal field and mounds. (Ord. 911, 1-26-1998)~~

~~8-5-2: COUNTY AND STATE REGULATIONS ADOPTED:~~

~~A. County Regulations: Ordinance 113 of Dakota County regulating individual sewage treatment systems, and any subsequent amendments thereto, are hereby adopted by reference and shall be a part of this chapter as if set forth fully herein. A copy of Dakota County ordinance 113 is on file in the office of the city clerk.~~

~~B. State Regulations: Chapter 7080 of the Minnesota rules of the Minnesota pollution control agency water quality division for individual sewage treatment systems (MPCA rule 7080), and any subsequent amendments thereto, are hereby adopted by reference and shall be a part of this chapter as if set forth fully herein. A copy of MPCA rule 7080 is on file in the office of the city clerk. An individual sewage treatment system shall only be used for the discharge of "sewage" as that term is defined in section 8-5-1 of this chapter. (Ord. 911, 1-26-1998)~~

~~8-5-3: HOLDING TANKS:~~

~~Holding tanks conforming to the requirements of this chapter are limited to the following installations:~~

~~A. Tanks with a total capacity not exceeding two thousand (2,000) gallons may be used for collection of secondary discharge not suitable for on site treatment.~~

~~B. Replacement of failed individual sewage treatment systems on existing uses when no other means of treatment is possible. (Ord. 911, 1-26-1998)~~

~~8-5-4: DESIGN:~~

~~In addition to the requirements contained within MPCA rule 7080, all new, rebuilt or otherwise modified individual sewage treatment systems located in the city shall conform to the following:~~

~~A. Designed by a person licensed as a designer by the state as being qualified to design such systems. Proof of such license shall be provided to the city at the time the design of the individual sewage treatment system is submitted to the city building inspection division for approval.~~

~~B. The design shall be submitted to and approved by the building inspection division prior to issuance of any building permits for the subject site.~~

~~C. The design shall include a site plan indicating primary and alternate treatment areas and the results of two (2) percolation tests for the primary treatment area. (Ord. 911, 1-26-1998)~~

~~8-5-5: LOCATION:~~

~~A. Approval Required: The installation of an individual sewage treatment system shall occur only at the location approved by the city building inspection division. Installation of the system at any other location shall require submission to and approval of revised design and location plans by the city building inspection division.~~

~~B. Testing For Locations: For all lots in unsewered areas that require platting or a waiver of platting, the landowner shall submit to the city a soil boring and analysis report prepared by a licensed designer or professional engineer trained in individual sewage treatment systems~~

~~(ISTS). The analysis shall show the existence of an adequate land area of suitable soils that will accommodate at least two (2) sites for a soil treatment system on each lot, taking into account depth to water table, soil types and conditions, topographic features, flooding potential and mandatory setback requirements, as dictated by city ordinance and any applicable state and federal regulations. The evaluation of the soils and the soil borings as well as the two (2) potential locations of the on site individual sewage treatment system shall be submitted to the city for review and approval prior to any preliminary or final plat approval or waiver of platting being given for the subject property. Failure to provide the information required by this subsection or failure to have at least two (2) potential sites for a soil treatment system on each lot shall be grounds for denial of the plat or grounds for the denial of the waiver of platting. (Ord. 911, 1-26-1998)~~

~~8-5-6: QUALIFIED CONTRACTOR:~~

~~The system shall only be installed by a person or company licensed by the state as qualified to install such a system. (Ord. 911, 1-26-1998)~~

~~8-5-7: INSTALLATION PERMIT:~~

~~No individual sewage treatment system shall be installed, modified or repaired until an installation permit has been issued by the city and the permit fee established by resolution of the city council. (Ord. 911, 1-26-1998)~~

~~8-5-8: MAINTENANCE OR OPERATIONAL PERMIT:~~

~~A. Permit Required Generally: No individual sewage treatment system shall be used unless the owner of the individual sewage treatment system has received a maintenance or operational permit from the city, and the permit is in force and effect. The owners of individual sewage treatment systems shall obtain a maintenance or operational permit as required no later than January 1, 1999.~~

~~B. Individual Residential Maintenance Permit: The owner of every single-family residential sewage tank, septic tank or holding tank is required to have an individual sewage treatment system (ISTS) maintenance permit from the city building inspection division. The permit shall be issued by the building inspection division only after the owner has completed maintenance on the system in accordance with subsection D of this section.~~

~~C. Commercial And Industrial Operational Permit: The owner of every commercial and industrial property serviced by an individual sewage treatment system is required to have an individual sewage treatment system operational permit for each system from the city building inspection division. The permit shall be issued by the building inspection division only if the following requirements are met:~~

~~1. The owner of the individual sewage treatment system has completed maintenance on the system in accordance with subsection D of this section.~~

~~2. Inspection shall be completed by the city building inspection division to verify water use and suitable effluent quality for on site treatment. For an increase in discharge rate due to a change of~~

~~use or building addition, the owner will be responsible to complete an individual sewage treatment system evaluation to determine capacity of existing system. The permit will not be issued unless the system is capable of handling the discharge.~~

~~3. The owner of the individual sewage treatment systems pays the required permit fee as established by resolution of the city council.~~

~~4. A new operational permit is required when a change of ownership, building use or building addition occurs.~~

~~D. System Maintenance: Upon completion of inspection or pumping maintenance, the contractor shall submit a maintenance report to the county within thirty (30) days. The report to be executed by the contractor shall state the following:~~

~~1. That the sewage tank or septic tank has been thoroughly pumped to remove all solids and scum in accordance with the requirements of Minnesota rule chapter 7080. Pumping is not required if a pumper or private inspector determines that accumulated sludge and scum layers do not exceed the levels required for pumping per Minnesota rule chapter 7080.~~

~~2. The date of the pumping and/or inspection.~~

~~3. The license number of the pumper and/or private inspector.~~

~~4. That the baffles and tank have been inspected by the pumper and/or private inspector and are in working condition.~~

~~5. Indicate if there is any evidence of surface discharge from the drain field.~~

~~6. When holding tanks are pumped, indicate the number of tanks and gallons pumped.~~

~~E. Term Of Permit: The duration of the residential maintenance permit and commercial and industrial operational permit shall be for three (3) years and shall be renewed after fulfilling the requirements of subsections B and C of this section. The permit shall be deemed revoked if the system becomes a failed individual sewage treatment system.~~

~~F. Relation To Zoning Regulations: Permits will not be issued if the building or property use is not in conformance with city zoning regulations.~~

~~G. Renewal Of Permit: If an owner has not renewed the permit as required by subsection E of this section within thirty (30) days following expiration of the permit, a late renewal fee as established by resolution of the city council shall be paid before a permit is issued. (Ord. 911, 1-26-1998)~~

~~8-5-9: COMMERCIAL AND INDUSTRIAL DISCHARGES LIMITED:~~

~~A. No animal waste or commercial wastewater or industrial wastewater shall be discharged on the surface or into the subsurface unless the person allowing or causing the discharge first obtains a state disposal system permit from the Minnesota pollution control agency. Such discharges must comply with the terms and requirements of the state disposal system permit in order to continue.~~

~~B. An individual sewage treatment system that, on the effective date hereof, is used for the discharge of animal waste or commercial wastewater or industrial wastewater may continue to be used for such purposes until such system becomes a failed individual sewage treatment system or the Minnesota pollution control agency orders discontinuance, whichever occurs first; then, in such case, the new installed systems must comply with this chapter. (Ord. 911, 1-26-1998)~~

~~8-5-10: FAILED SYSTEMS:~~

~~The owner of a failed individual sewage treatment system shall replace, modify or reconstruct the failed system within ten (10) months of receiving a notice of noncompliance. Any failed system causing an imminent threat to public health or safety, as defined by Minnesota rule 7080.0020, subpart 19a, shall be replaced, modified or reconstructed by the owner within ten (10) months of receiving a notice of noncompliance. (Ord. 911, 1-26-1998)~~

~~8-5-11: CONFLICTING PROVISIONS:~~

~~A. If any provision of this chapter is inconsistent with MPCA rule 7080, or Dakota County ordinance 113, then that provision which is more demanding or provides a greater level of requirements or restrictions or provides an earlier date of compliance shall prevail and be controlling.~~

~~B. If any provision of this chapter is inconsistent with subsection 10-13c-12B8 of this code, that provision which is more demanding or provides a greater level of requirements or restrictions or provides an earlier date of compliance shall prevail and be controlling. (Ord. 911, 1-26-1998)~~

~~8-5-12: MISDEMEANOR VIOLATION:~~

~~Violation of this chapter shall be a misdemeanor. Presentation to the city of any false or intentionally misleading statements, certificates or applications by the owner or by the certified pumpers or certified designers or installers of individual sewage treatment systems shall also be a misdemeanor. (Ord. 911, 1-26-1998)~~

Chapter 5
SUBSURFACE SEWAGE TREATMENT SYSTEMS

8-5-1.00: **SECTION 1.00 PURPOSE, INTENT, AND AUTHORITY:**

8-5-1.01: **PURPOSE:** The purpose of this chapter is to establish minimum requirements for regulation of SSTS for the treatment and dispersal of sewage within the city to protect public health and safety, groundwater quality, and to prevent or eliminate the development of public nuisances. It is intended to serve the best interest of the city's citizens by protecting its health, safety, general welfare, and natural resources.

8-5-1.02: **INTENT:** The purpose of this chapter is to achieve and help ensure:

A. The protection of lakes, rivers and streams, wetlands, and groundwater in the city essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the city in perpetuity.

B. The regulation of proper SSTS construction, reconstruction, repair and maintenance to prevent the entry and migration of contaminants, thereby protecting the degradation of surface water and groundwater quality.

C. The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.

D. The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.

E. The provision of technical assistance and education, plan review, inspections, SSTS surveys and complaint investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.

8-5-1.03: **AUTHORITY:** This chapter is adopted pursuant to Minn. Stat. chs. 115, 145A, 375, or successor statutes, and Minn. R. chs. 7081, 7081, and 7082, or successor rules.

8-5-2.00: **SECTION 2.00 DEFINITIONS:** Unless the context clearly indicates otherwise, the following words and phrases shall have the meanings ascribed to them in this section. Unless specifically defined herein, terms used in this chapter shall have the same definition as provided in Minn. Stat. §115.55 and Minn. R. chs. 7080, 7081, 7082, and 7083 and if not defined there, shall have common usage meaning.

8-5-2.01: "AS BUILTS" means "record drawings" as defined below.

8-5-2.02: "CLASS V INJECTION WELL" means a shallow well used to place a variety of fluids directly below the land surface. This includes SSTS that are designed to receive sewage or nonsewage from a two-family dwelling or greater or receive sewage or nonsewage from another establishment that serves more than 20 persons per day. The US Environmental Protection Agency and delegated state groundwater programs permit these wells to inject wastes below the ground surface provided they meet certain requirements and do not endanger underground sources of drinking water. Class V motor vehicle waste disposal wells and large-capacity cesspools are specifically prohibited (See 40 CFR Parts 144 and 146).

8-5-2.03: "CLUSTER SYSTEM" means a wastewater collection and treatment system under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on an acceptable site near the dwellings or buildings.

8-5-2.04: "CITY" means the City of Inver Grove Heights, Minnesota.

8-5-2.05: "COMMERCIAL AND INDUSTRIAL DISCHARGE" means those wastes that are part of a business's commercial and/or industrial process and excludes secondary discharge as defined by subsection 2.17 and excludes sewage as defined by Minnesota Rules, part 7080.1100 subpart 74.

8-5-2.06: "DEPARTMENT" means the Inspections Division of the City of Inver Grove Heights Community Development Department, its staff and any designated agents.

8-5-2.07: "DESIGN FLOW" means the daily volume of wastewater for which an onsite/cluster system is designed to treat and discharge.

8-5-2.08: "FAILURE TO PROTECT GROUNDWATER" means a SSTS that does not protect groundwater such as a seepage pit, cesspool, drywell, leaching pit, or other pit; a SSTS with less than the required vertical separation distance described in Minn. R. 7080.1500, subps. 4(D) and 4(E); and a system not abandoned in accordance with Minn. R. 7080.2500. It also means a MSTS that is not in compliance with Minn. R. 7081.0080 subp. 4. The determination of the threat to groundwater for other conditions must be made by a qualified employee or a licensed inspection business.

8-5-2.09: "IMMINENT THREAT TO PUBLIC HEALTH AND SAFETY" means a SSTS with a discharge of sewage or sewage effluent to the ground surface, drainage systems, ditches, or storm water drains or directly to surface water; SSTS that cause a reoccurring sewage backup into a dwelling or other establishment; SSTS with electrical hazards; sewage tanks with unsecured, damaged, or weak maintenance access covers; or any other situation with the potential to immediately and adversely affect or threaten public health or safety. The determination of protectiveness for other conditions must be made by a qualified employee inspector or a licensed inspection business.

8-5-2.10: "ISTS" means an individual sewage treatment system as defined in Minn. R. 7080.1100, subp. 41.

8-5-2.11: "MINOR REPAIR" means the repair or replacement of an existing damaged or faulty component/part of an SSTS that will return the SSTS to its operable condition. The repair shall not alter the original area, dimensions, design, specifications or concepts of the SSTS.

8-5-2.12: "MPCA" means the Minnesota Pollution Control Agency.

8-5-2.13: "MSTS" means a midsized subsurface sewage treatment system as defined in Minn. R. 7081.0020, subp. 4.

8-5-2.14: "PERSON" means any human being, any municipality or other governmental or political subdivision, or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.

8-5-2.15: "RECORD DRAWINGS" means a set of drawings which reasonably document the final in-place location, size, and type of all SSTS components including the results of any materials testing performed and a description of conditions during construction of the system. Record drawings were previously known as “as builts.”

8-5-2.16: "SSTS" means a subsurface sewage treatment system as defined in Minn. R. 7080.1100, subp. 82.

8-5-2.17: "SECONDARY DISCHARGE" means those solids and liquids discharged intermittently which are not part of the business’s commercial and/or industrial process, including, but not limited to, floor drains and overflow from containment areas.

8-5-2.18: "SHORELAND/FLOODPLAIN AREA" means those shoreland areas governed by city code title 10, chapter 13B and the floodplain areas governed by city code title 10, chapter 13D.

8-5-2.19: "STATE" means the State of Minnesota.

8-5-2.20: "TREATMENT LEVEL" means treatment system performance levels as defined in Minn. R. 7083.4030, Table III for testing of proprietary treatment products.

8-5-2.21: "TYPE I SYSTEM" means an ISTS designed according to Minn. R. 7080.2200 through Minn. R. 7080.2240, as may be amended from time to time.

8-5-2.22: "TYPE II SYSTEM" means an ISTS designed according to Minn. R. parts 7080.2250 to 7080.2290, as may be amended from time to time.

8-5-2.23: "TYPE III SYSTEM" means an ISTS designed according to Minn. R. 7080.2300, as may be amended from time to time.

8-5-2.24: "TYPE IV SYSTEM" means an ISTS designed according to Minn. R. 7080.2350, as may be amended from time to time.

8-5-2.25: "TYPE V SYSTEM" means an ISTS an ISTS designed according to Minn. R. 7080.2400, as may be amended from time to time.

8-5-3.00: **SECTION 3.00 GENERAL PROVISIONS:**

8-5-3.01: **SCOPE:** This chapter regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the City of Inver Grove Heights including but not limited to individual SSTS and cluster or community SSTS, privy vaults, and other non-water carried SSTS. All sewage generated in unsewered areas of the city shall be treated and dispersed by an approved SSTS that is sited, designed, installed, operated, and maintained in accordance with the provisions of this chapter or by a system that has been permitted by the MPCA. [Minn. R. 7082.0100, Subp. 3(Q)]

8-5-3.02 **JURISDICTION:** This chapter applies to all land within the city.

8-5-4.00: **SECTION 4.00 ADMINISTRATION:**

8-5-4.01: **CITY:** The department shall administer the SSTS program and all provisions of this chapter. At appropriate times, the city shall review,

revise, and update this chapter as necessary. The city shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program. [Minn. R. 7082.0040]

8-5-4.02: **STATE OF MINNESOTA:** When a single SSTS or group of SSTS under single ownership within one-half mile of each other have a design

flow greater than 10,000 gallons per day, the owner or owners shall make application for and obtain a state disposal system permit from the MPCA in accordance with Minn. R. ch. 7001. If the measured daily flows for a consecutive seven-day period exceed 10,000 gallons per day, a state disposal system permit is required. [Minn. R. 7081.0040, Subp. 1(B)]

A state disposal system permit is also required for any SSTS or group of SSTS that the commissioner determines has the potential or an increased potential to cause adverse public health or environmental impacts if not regulated under a state permit. Conditions for these permits include systems in environmentally sensitive areas, unsubstantiated or unexpected flow volumes, and systems requiring exceptional operation, monitoring, and management. [Minn. R. 7081.0040, Subp. 1(C)]

8-5-5.00: **SECTION 5.00 GENERAL REQUIREMENTS:**

8-5-5.01: **RETROACTIVITY:**

A. ALL SSTS. Except as provided in section 5.01(B), all provisions of this chapter shall apply to any SSTS regardless of the date it was originally permitted.

B. EXISTING PERMITS. Unexpired permits, which were issued prior to the effective date of this chapter, shall remain valid under the terms and conditions of the original permit until the original expiration date or until a change in system ownership.

C. SSTS ON LOTS CREATED AFTER JANUARY 23, 1996. All lots created after January 23, 1996, must have a minimum of two soil treatment and dispersal areas that can support systems as described in Minn. R. parts 7080.2200 through 7080.2230 or 7080.2260 or site conditions described in Minn. R. 7081.0270, subparts 3 through 7. [Minn. R. 7082.0100, Subp. 3(F)]

8-5-5.02: **UPGRADE, REPAIR, REPLACEMENT, AND ABANDONMENT:**

A. FAILURE TO PROTECT GROUNDWATER. An SSTS that is determined to not be protective of groundwater in accordance with Minn. R. 7080.1500, subp. 4(B) or Minn. R. 7081.0080, subparts 3 or 4 shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this chapter within 10 months of receipt of notice of noncompliance from the department. [Minn. R. 7082.0100, Subp. 1(A)]

B. IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY. An SSTS that is determined to be an imminent threat to public health or safety shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this chapter within 30 days of receipt of notice of noncompliance from the department. [Minn. R. 7082.0100, Subp. 1(B)]

C. ABANDONMENT. Any SSTS, or any component thereof, which is no longer intended to be used, must be abandoned in accordance with section 8.00 of this chapter and Minn. R. 7080.2500. [Minn. R. 7082.0100, Subp. 3(B)]

D. INSUFFICIENT CAPACITY. An SSTS, or any component thereof, that is determined to be undersized, shall be upgraded, repaired, replaced, or abandoned by the owner in accordance with the provisions of this chapter within 12 months of receipt of notice of noncompliance from the department.

8-5-5.03: **SSTS IN FLOODPLAINS:** SSTS shall not be located in a floodway and wherever possible, location within any part of a floodplain should

be avoided. If no option exists to locate a SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements of Minn. R. 7080.2270 and all relevant local requirements are met. [Minn. R. 7082.0100, Subp. 3(I)]

8-5-5.04: **CLASS V INJECTION WELLS:** All owners of new or replacement SSTS that are considered to be Class V injection wells as defined in the

Code of Federal Regulations, title 40, part 144, are required to submit SSTS inventory information to the United States Environmental Protection Agency and the MPCA. Owners are also required to identify all Class V injection wells in any property transfer disclosures. [Minn. R. 7082.0100, Subp. 3(M)]

8-5-5.05: **SSTS LICENSE REQUIRED:** [Minn. R. 7082.0100, Subp. 3(A)]

A. All design, installation, alteration, repair, maintenance, operation, pumping, and inspection activities for SSTS located in the city must be completed by a business licensed by the state under Minn. R. ch. 7083, an appropriately certified qualified employee, or a person exempted under Minn. R. 7083.0700, subps. 1(A), (C), (D), (F), (G), (H) and (I). Individuals exempt from a state SSTS license under Minn. R. 7083.0700, subps. 1(A), (C), (D), (F), (G), (H) and (I) must follow all applicable local, state, and federal requirements. Property owners that employ a business to perform this work must hire a business that is licensed in accordance with Minn. R. ch. 7083.

B. No person shall engage in site evaluation, inspection, design, installation, construction, alteration, extension, repair, maintenance, or pumping of SSTS without an appropriate and valid license issued by the MPCA in accordance with Minn. R. ch. 7083

C. EXCEPTIONS. A license is not required for:

1. An individual who is a qualified employee performing work as directed by a state or local government employer;

2. An individual who performs supervised labor or services as an employee of a licensed SSTS business;

3. A farmer who pumps septage from an ISTS that serves dwellings or other establishments that are owned or leased by the farmer and applies septage on land that is owned or leased by the farmer;

4. An individual or business who abandons an SSTS;

5. An individual who maintains a toilet waste treatment device for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual;

6. An individual who performs tasks identified in the system's management plan that do not require a maintainer or service provider license for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual; or

7. The owner or designee of a campground or other similar facility who removes and transports sewage wastes from recreational vehicles into a holding or treatment system located on the same property as the facility.

8-5-5.06: **PROHIBITIONS:**

A. OCCUPANCY OR USE OF BUILDING WITHOUT A COMPLIANT SSTS. It is unlawful for any person to maintain, occupy, or use any building intended for habitation to dispose of wastewater in a manner that does not comply with the provisions of this chapter.

B. SEWAGE DISCHARGE TO GROUND SURFACE OR SURFACE WATER. It is unlawful for any person to construct, maintain, or use any wastewater treatment system regulated under this chapter that results in raw or partially treated wastewater seeping to the ground surface or flowing into any surface water. Any surface discharging system must be permitted by the MPCA under the National Pollutant Discharge Elimination System program. [Minn. R. 7082.0100, Subp. 3(H)]

C. SEWAGE DISCHARGE TO A WELL OR BORING. It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minn. R. 4725.2050, or any other excavation in the ground that is not in compliance with this chapter.

D. DISCHARGE OF HAZARDOUS OR DELETERIOUS MATERIALS. It is unlawful for any person to discharge into any treatment system regulated under this chapter any hazardous or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality.

E. LIMITS ON COMMERCIAL AND INDUSTRIAL DISCHARGE. No animal waste or commercial water waste or industrial waste water shall be discharged on the surface or into the sub-surface unless the person allowing or causing the discharge first obtains a State Disposal System Permit from the Minnesota Pollution Control Agency. Such discharges must comply with the terms and requirements of the State Disposal System Permit in order to continue. A subsurface sewage treatment system that on March 31, 1996, was used for the discharge of animal waste or commercial waste water or industrial waste water may continue to be used for such purposes until such system becomes a failed subsurface sewage treatment system or the Minnesota Pollution Control Agency orders discontinuance, whichever occurs first; then, in such case the new installed systems must comply with city code title 8, chapter 5.

F. CLASS V INJECTION WELLS. Class V motor vehicle waste disposal wells and large capacity cesspools are specifically prohibited (*See* 40 CFR Parts 144 and 146).

8-5-5.07: **REQUIRED SUBMISSION OF MAINTENANCE REPORTS:**

Licensed SSTS maintenance businesses must abide by the requirements described in Minn. R. 7083.0770, subp. 2. Pursuant to the Amended and Restated Joint Powers Agreement between the County of Dakota and City of Inver Grove Heights for Administrative Services Related to Municipal ISTS Pump Maintenance Programs, all written reports required by Minn. R. 7083.0770, subp. 2 must be provided to the system owner and Dakota County within 30 days after any maintenance work is performed on the SSTS. In the event the joint powers agreement expires or is terminated, it is the obligation of the licensed SSTS maintenance business to provide all written reports required by Minn. R. 7083.0770, subp. 2 to the system owner and the department within 30 days after any maintenance work is performed on the SSTS

8-5-6.00: **SECTION 6.00 SSTS STANDARDS:**

8-5-6.01: **STANDARDS ADOPTED BY REFERENCE:** Minn. Stat. § 115.55 and Minn. R. chs. 7080 and 7081 and all other referenced laws and rules, as may be amended from time to time, are adopted by reference and made a part of this chapter as if fully set forth herein. [Minn. R. 7082.0100, Subp. 3(C)]

8-5-6.02: **AMENDMENTS TO THE ADOPTED STANDARDS:**

A. DETERMINATION OF HYDRAULIC LOADING RATE AND SSTS SIZING. Table IX from Minn. R. 7080.2150, subp. 3(E) entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions" and Table IXa from Minn. R. ch. 7080.2150, subp. 3(E) entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests" are hereby adopted by reference as if fully set forth herein and shall both be used to size SSTS infiltration areas using the larger sizing factor of the two for SSTS design.

B. HOLDING TANKS. Holding tanks may be used for the following applications only after it can be shown conclusively by the property owner that a SSTS permitted under this chapter cannot be feasibly installed:

1. As a replacement for an existing failing SSTS;

2. For an SSTS that poses an imminent threat to public health or safety;

3. For use with buildings with limited water use;

4. For collection of secondary discharge not suitable for on-site treatment; or

5. For use with marina sanitary pump out facilities installed pursuant to city code subsection 10-13C-12B-8b.

C. EFFLUENT SCREENS. When provided pursuant to Minnesota Rules, part 7080.1930, subparts 2 or 3, effluent screens must be sized and utilized in accordance with the screen manufacturer's recommendations. The effluent screens must be of the non-bypass type and have certified documentation that shows at least three years successful field-testing and operation or that the screen meets the design standard for effluent screens in ANSI/NSF Standard 46. The documentation must show the effluent screen has continuously lowered the total suspended solids by a minimum of 30 percent and that under normal use the screen is capable of obtaining a minimum of 3 years between maintenance intervals.

The effluent screens must be placed within or following the last sewage tank or sewage tank compartment before distribution to the drainfield and be installed in accordance with the screen manufacturer's installation instructions. Effluent screens shall be properly cleaned, at the time of each tank pump out, by washing the screen waste into the septic tank or, if rinse water is not available, exchanged with a clean effluent screen.

8-5-6.03: **COMPLIANCE CRITERIA FOR EXISTING SSTS:**

A. SSTS built before April 1, 1996, outside of areas designated as shoreland areas, wellhead protection areas, or SSTS providing sewage treatment for food, beverage, or lodging establishments must have at least two feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. The vertical separation measurement shall be made outside the area of system influence in an area of similar soil. [Minn. R. 7082.0100, Subp. 1(D)].

B. SSTS built after March 31, 1996, or SSTS located in a shoreland area, wellhead protection area, or serving a food, beverage, or lodging establishment as defined under Minn. R. 7080.1100, supb. 84 must have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Unless otherwise determined by the department, existing systems that have no more than a 15 percent reduction to the minimum required 36 inch separation distance are considered compliant. (i.e., a separation distance no less than 30.6 inches). This reduction is to account for settling of sand or soil, normal variation of separation distance measurements and interpretation of limiting layer characteristics. The vertical separation measurement shall be made outside the area of system influence in an area of similar soil.

C. Existing SSTS must be sized to have sufficient capacity for the pretreatment and final dispersal components employing design flows determined by Minn. R. 7080.1850 to 7080.1885 and 7081.0120 to 7081.0140.

The minimum required septic tank capacity for dwellings shall be determined by Minn. Rules 7080.1930 and for other establishments and MSTS by Minn. R. 7081.0240 subp.2. Unless otherwise determined by the department, if no septic tank is otherwise required under this chapter to be upgraded or replaced, then a total aggregate tank capacity of at least 66 percent of the minimum required shall be considered compliant provided the tank(s) are regularly maintained so that volume of accumulated solids never exceed 25 percent of any individual tank's capacity.

The minimum required size of a system's absorption area shall be determined by subsection 8-5-6.02(A). Unless otherwise determined by the department, a final dispersal system not otherwise required under this chapter to be upgraded or replaced, shall be considered conforming if the measured average daily flow over a period of 30 days is not greater than 70 percent of the daily design flow based on the hydraulic loading rate and size of the existing soil absorption area.

The compliance of any reduced capacity system components shall be contingent on the system owner following a management plan, duly filed with and approved by the department, that takes into account the reductions in capacity and includes the items listed in Minn. R. 7082.0600 Subpart 1B.

Notwithstanding the above exceptions, existing MSTS must meet the requirements as described in Minn. R. 7081.0080 Subpart 1 in order to be considered conforming.

8-5-6.04: **HIGHEST STANDARDS PREVAIL:** Where the conditions imposed by a provision of this chapter are either more restrictive or less restrictive than comparable conditions imposed by a provision of this chapter or any other applicable law, ordinance, rule, or regulation, the provision that establishes the more restrictive standard for the promotion and protection of the public health, safety, and general welfare shall prevail.

8-5-7.00: **SECTION 7.00 SSTS PERMITTING:** [Minn. R. 7082.0100, Subp. 3(E)]

8-5-7.01: **PERMITS REQUIRED:**

A. PERMIT REQUIRED. It is unlawful for any person to construct, install, modify, or replace a SSTS in the city without the appropriate permit from the department. [Minn. R. 7082.0100, Subp. 3(Q)]

B. PERMITTING NOT EXCLUSIVE. The obtaining of a city permit shall not be deemed to exclude the necessity of obtaining other appropriate permits or approvals from other agencies or departments. Compliance with the provisions of this chapter shall not relieve any person of the need to comply with any and all other applicable rules, regulations, and laws.

8-5-7.02: **CONSTRUCTION PERMIT:**

A. ACTIVITIES REQUIRING A CONSTRUCTION PERMIT. A construction permit is required for installation of a new SSTS, for replacement of an existing SSTS, or for any repair or replacement of components that will alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function. [Minn. R. 7082.0100, Subp. 3(O)]

B. ACTIVITIES NOT REQUIRING A CONSTRUCTION PERMIT. A construction permit is not required for minor repairs or replacements of system components that do not alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function. [Minn. R. 7082.0100, Subp. 3(O)]

C. APPLICATION FOR PERMIT. Permit applications shall be submitted to the department on forms provided by the department. Applicants shall provide all information as required for the administration of this chapter.

D. CONTENTS OF PERMIT APPLICATION. The permit application shall include the following:

1. The names, addresses, and telephone numbers of the applicant and permittee;

2. The property identification number and address or other description of the real property on which the system will be located;

3. A site evaluation report as described in Minn. R. 7080.1730 or Minn. R. 7081.0200 and for MSTS a groundwater report as described in Minn. R. 7081.0210 subp.6.;

4. A design report as described in Minn. R. 7080.2430 or 7081.0270 subp. 11;

5. The infield verification as described in Minn. R. 7082.0500, subp. 3(A);

6. A management plan as described in Minn. R. 7082.0600 and section 7.03 of this chapter; and

7. Copies of any required municipal, county, state, or federal permits or approvals.

E. APPLICATION FEE. The application fee as set forth in the City Fee Schedule shall accompany the permit application.

F. APPLICATION REVIEW. The department shall review a permit application and supporting documents to determine whether the application is complete. Upon satisfaction that the proposed work will conform to the provisions of this chapter, the department shall issue a written permit authorizing construction of the SSTS as designed. If the applicant changes the proposed work to be conducted under an approved permit application, the applicant must file an amended application with the department detailing the changed conditions prior to initiating or continuing construction, modification, or operation. The department shall review the amended application and either approve or deny the application.

G. APPROVAL OF PERMIT REQUIRED. The department must review and approve the permit application and management plan before issuing a permit. Construction must not be initiated until the department grants a construction permit.

H. PERMIT EXPIRATION. The construction permit is valid for a period of no more than one year from its date of issue, unless it is extended in accordance with this section or construction has been completed satisfactorily, whichever is shorter. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in substantial conformance to the approved design documents by a qualified employee of the department or a licensed inspection business, which is authorized by the department and independent of the owner and the SSTS installer.

I. EXTENSIONS AND RENEWALS. The department may grant an extension of the construction permit if the construction has commenced prior to the original expiration date of the permit. The permit may be extended for a period of no more than six months.

J. PERMIT NOT TRANSFERABLE. A construction permit shall not be transferable to a new owner. The new owner must apply for a new construction permit in accordance with this section.

K. POSTING. The construction permit shall be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.

L. CONFLICT OF INTEREST.

1. A licensed inspection business that inspects an existing SSTS is allowed to subsequently design and install a new SSTS for that property provided the inspection business is also licensed to design and install SSTS.

2. A licensed inspection business working on behalf of the department must not design or install systems that the business will be responsible for permitting or inspecting as part of its contract with the city. [Minn. R. 7082.0700, Subp. 2(B)]

M. SUSPENSION OR REVOCATION. The department may suspend or revoke a construction permit issued under this section for any false statements, misrepresentations of facts on which the construction permit was issued, or violation of this chapter, or unauthorized changes to the system design that alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the permit holder pursuant to Section 8-5-11.07. If suspended or revoked, installation or modification of a treatment system may not commence or continue until a valid construction permit is obtained or reinstated.

N. DISPUTE RESOLUTION. If a documented discrepancy arises on the depth of the periodically saturated soil for SSTS design purposes between licensed businesses or between a licensed business and the department, all disputing parties must follow the dispute resolution procedure described in Minn. R. 7082.0700, subp. 5 [Minn. R. 7082.01000, subp. 5(N)]

8-5-7.03: **MANAGEMENT PLAN:** [Minn. R. 7082.0100, Subp. 3(J)]

A. PURPOSE. The purpose of management plans is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required. The plan is to be provided by the certified designer to the system owner when the treatment system is commissioned.

B. SSTS REQUIRING MANAGEMENT PLANS. Management plans are required for all new or replacement SSTS. The management plan shall be submitted to the department with the construction permit application for review and approval. The department shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification.

C. REQUIRED CONTENTS. Management plans shall include:

1. Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;

2. Monitoring requirements;

3. Maintenance requirements including maintenance procedures and a schedule for routine maintenance;

4. Statement that the owner is required to notify the department when the management plan requirements are not being met;

5. Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence; and

6. Other requirements as determined by the department.

8-5-7.04: **OPERATING PERMIT:** [Minn. R. 7082.0100, Subp. 3(K)]

A. PERMIT REQUIRED. An operating permit is required for all treatment systems installed under Minn. R. 7080.2290 (holding tanks), Minn. R. 7080.2350 (Type IV System), Minn. R. 7080.2400 (Type V System) and Minn. R. ch. 7081 (MSTS). Sewage shall not be discharged to a treatment system requiring an operating permit until the department certifies that the treatment system was installed in substantial conformance with the approved plans, receives the final records drawings of the treatment system, and a valid operating permit is issued to the owner.

B. APPLICATION FOR PERMIT. Permit applications shall be submitted to the department on forms provided by the department. Applicants shall provide all information as required for the administration of this chapter.

C. CONTENTS OF PERMIT APPLICATION. The permit application shall include the following:

1. The names, addresses, and telephone numbers of the applicant and permittee;

2. The construction permit reference number and date of issue;

3. The final record drawings of the treatment system; and

4. Owners of holding tanks must submit a copy of a valid executed monitoring and disposal contract with a licensed maintenance business.

D. APPLICATION FEE. The application fee, as set forth in the City Fee Schedule shall accompany the permit application.

E. MONITORING AND DISPOSAL CONTRACT. Owners of holding tanks shall provide to the department a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business that guarantees the removal of the holding tank contents in a timely manner that prevents an illegal discharge in accordance with Minn. R. 7082.0100, subp. 3(G). The owner must hold a valid contract with a licensed

maintenance business at all times until such time the holding tank is abandoned or the property sold. This contract requirement is waived if the owner is a farmer who is exempt from licensing under Minn. Stat. §115.56, subd. 2(b)(3), provided a written statement is first filed by the exempt owner with the department certifying an awareness of the state requirements for land application of septage and that said guidelines will be followed.

F. APPLICATION REVIEW. The department shall review the application, the record drawings, operation and maintenance manual, management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the department. If the submitted application and documents fulfill the requirements, the department shall issue an operating permit within 10 working days of receipt of the permit application.

G. PERMIT TERMS AND CONDITIONS. The operating permit shall include the following:

1. System performance requirements;

2. System operating requirements;

3. Monitoring locations, procedures and recording requirements;

4. Maintenance requirements and schedules;

5. Compliance limits and boundaries;

6. Reporting requirements;

7. Department notification requirements for noncompliant conditions;

8. Valid contract between the owner and a licensed maintenance business;

9. Disclosure, location, and condition of acceptable soil treatment and dispersal system site; and

10. Descriptions of acceptable and prohibited discharges. [Minn. R. 7082.0600, Subp. 2(B)]

H. PERMIT EXPIRATION AND RENEWAL.

1. The duration of the operating permit shall be for three years. The permit shall be deemed revoked if the system becomes a failed subsurface sewage treatment system.

2. An operating permit must be renewed prior to its expiration. If not renewed, the department may require the system to be removed from service or operated as a holding tank until which time the permit is renewed. If not renewed within 60 calendar days of the expiration date, the department may require that the system be abandoned.

3. The department shall notify the holder of an operating permit of the permit renewal requirement at least 90 calendar days prior to expiration of the permit. The owner must apply for renewal at least 30 calendar days before the permit expiration date.

4. Application for permit renewal shall be made on a form provided by the department including:

   a. The names, addresses, and telephone numbers of the applicant and permittee;

   b. Reference number of previous operating permit;

   c. Any outstanding compliance monitoring reports as required by the operating permit;

   d. Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor, or operator at the discretion of the department;

   e. Any revisions made to the operation and maintenance manual; and

   f. Any applicable fees as set forth in the City Fee Schedule.

I. PERMIT NOT TRANSFERABLE. The operating permit may not be transferred. A new owner shall apply for an operating permit in accordance with section 7.04 of this chapter. The department shall not terminate the current permit until 60 calendar days after the date of sale unless an imminent threat to public health and safety exists. To consider the new owner's application, the department may require a performance inspection of the treatment system certified by a licensed inspector or qualified employee.

J. COMPLIANCE MONITORING.

1. Performance monitoring of a SSTS shall be performed by a licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit.

2. A monitoring report shall be prepared and certified by the licensed service provider. The report shall be submitted to the department on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of the maintenance and servicing activities performed since the last compliance monitoring report as described below:

   a. Owner name and address;

   b. Operating permit number;

   c. Average daily flow since last compliance monitoring report;

   d. Description of type of maintenance and date performed;

   e. Description of sample taken (if required), analytical laboratory used, and results of analyses;

   f. Problems noted with the system and actions proposed or taken to correct them; and

   g. Name, signature, license and license number of the licensed professional who performed the work.

K. INITIAL PERMITS FOR EXISTING SYSTEMS. An operating permit is required for all existing holding tanks, and existing performance based treatment systems, including but not limited to systems having aerobic treatment tanks, and existing treatment systems with flows from 5,000 to 10,000 gallons per day. Owners of such systems shall obtain initial operating permits no later than January 1, 2012; except that if an owner holds a valid operational permit for such a system that was issued prior to the adoption of this chapter, then the expiration date of the operational permit shall be the deadline for obtaining an initial operating permit.

L. SUSPENSION OR REVOCATION. The department may suspend or revoke any operating permit issued under this section for any false statements, misrepresentations of facts on which the operating permit was issued, or violation of this chapter, or non-compliance with permit conditions, or system that is found to be an imminent threat to the environment or to the public health, safety or welfare. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the owner pursuant to Section 8-5-11.07. If suspended or revoked, the department may require that the treatment system be removed from service, operated as a holding tank, or abandoned in accordance with section 8.00. At the department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.

8-5-7.05: **DUTY TO COMPLY WITH PERMIT CONDITIONS:** The permittee shall comply with all conditions stated in any permit issued by the department under this chapter. Failure of the permittee to do so is a violation of this chapter and is subject to the penalties provided herein.

8-5-7.06: **SYSTEMS NOT OPERATED UNDER MANAGEMENT PLAN:** Owners of SSTS that are not operated under a management plan or

operating permit must inspect treatment tanks and remove solids if needed every three (3) years. Solids must be removed when their accumulation meets the limit described in Minn. R. 7080.2450. [Minn. R. 7082.0100, Subp. 3(L)]

8-5-8.00: **SECTION 8.00 ABANDONMENT CERTIFICATION:** [Minn. R. 7082.0100, Subp. 3(B)]

8-5-8.01: **PURPOSE:** The purpose of the system abandonment certification is to ensure that a treatment system no longer in service is abandoned

following decommissioning and in a manner that protects public health, safety, and water quality. The certification also terminates all permits associated with the SSTS.

8-5-8.02: **ABANDONMENT REQUIREMENTS:**

A. Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building served by the system, further use of the system or any system component for any purpose is prohibited.

B. Abandonment shall be completed in accordance with Minn. R. 7080.2500.

C. An abandonment certificate shall be filed with the department on the "SSTS Abandonment Reporting Form" provided by the MPCA. The report shall include:

1. Owner's name and contact information;

2. Property address;

3. System construction permit and operating permit;

4. The reason(s) for abandonment; and

5. A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals.

8-5-9.00: **SECTION 9.00 COMPLIANCE MANAGEMENT:**

8-5-9.01: **[RESERVED]**

8-5-9.02: **COMPLIANCE INSPECTION PROGRAM:** [Minn. R. 7082.0700]

A. DEPARTMENT RESPONSIBILITY. It is the responsibility of the department, or its agent, to perform various SSTS compliance inspections periodically to assure that the requirements of this chapter are met.

1. SSTS compliance inspections must be performed:

   a. To ensure compliance with applicable requirements;

   b. For all new SSTS construction or replacement; and

   c. For an evaluation, investigation, inspection, recommendation, or other process used to prepare a disclosure statement if conducted by a party who is not the SSTS owner. Such an inspection constitutes a compliance inspection and shall be conducted in accordance with Minn. R. 7082.0700 using the SSTS inspection report forms provided by the MPCA.

2. All compliance inspections must be performed and signed by licensed inspection businesses or qualified employees certified as inspectors.

3. The department shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system. As used in this paragraph, "property" does not include a residence or private building.

4. No person shall hinder or otherwise interfere with the department's employees or agents in the performance of their duties and responsibilities pursuant to this chapter. Refusal to allow reasonable access to the property by the department or its agent shall be deemed a violation of this chapter.

B. NEW CONSTRUCTION OR REPLACEMENT.

1. Compliance inspections must be performed on new or replacement SSTS to determine compliance with Minn. R. chs. 7080 or 7081. SSTS found to be noncompliant with other applicable requirements must be repaired or replaced according to the department's requirements.

2. It is the duty of the permit holder or agent of the permit holder to notify the department at least one working day prior to any required inspection of work authorized by the construction permit. The work shall remain accessible and exposed until inspected and approved by the department. Inspections are required:

   a. After ground surface preparation for a mound system, but prior to placing sand fill;

   b. After all tanks, distribution media, piping, equipment and devices are in place, but prior to backfill;

   c. For building sewer inspection and testing in accordance with Minnesota Rules, parts 4715.2800 and 4715.2820;

   d. Final inspection after all work is complete including final grading and erosion protection; and

   e. As may otherwise be required by the department to ascertain compliance with the provisions of this chapter and other laws enforced by the department.

3. A certificate of compliance for new SSTS construction or replacement shall be issued by the department if the department has reasonable assurance that the SSTS was built in accordance with the applicable requirements as specified in the construction permit.

4. The department, upon notification, shall make the requested inspections and shall either indicate the portion of the work that is satisfactory as completed, or notify the permit holder or the agent of the permit holder wherein the same fails to comply with this chapter.

5. No SSTS maybe placed into operation until a valid certificate of compliance has been issued.

6. Certificates of compliance for new construction or replacement shall remain valid for five years from the date of issue unless the department finds evidence of an imminent threat to public health or safety requiring removal and abatement under Minn. Stat. §145A.04, subd. 8.

C. EXISTING SYSTEMS.

1. Compliance inspections shall be required when any of the following conditions occur:

   a. When a construction permit is required to repair, modify, or upgrade an existing system;

   b. Anytime there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;

   c. Anytime there is a change in the use of the property being served by an existing SSTS which may impact the performance of the system;

   d. When an operating permit is to be renewed;

   e. Prior to the sale or transfer of real property served by an existing SSTS if required by section 9.02(D)(1)(a) below;

   f. During systematic shoreland or area-wide SSTS surveys by the department; and

   g. At anytime as required by this chapter or the department deems appropriate such as upon receipt of a complaint or other notice of system malfunction.

   h. Prior to the issuance of a building permit or variance for a bedroom addition on property served by an existing system; unless temporarily waived by the

department for a bedroom addition permit for which the application is filed during the period from November 1 to April 30, provided a compliance inspection is performed by the following June 1 and the applicant submits a certificate of compliance by the following September 30.

2. Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by the MPCA. An inspection for existing SSTS must verify the conditions in subitems (a) to (d).

   a. Sewage tanks must be assessed for leakage below the operating depth. A leakage report must be completed that includes the method(s) used to make the assessment. The assessment must be made by a licensed SSTS business (except a design business) hired by the system owner. A passing report is valid for three years unless the certified individual has reason to believe that a new inspection is to be conducted and the tank is found not to be watertight.

   b. The vertical separation distance from the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock. This verification must be achieved by either conducting soil borings or by prior verifications by two independent parties. The soil borings used for system design or previous inspections qualifies as a verification. A vertical separation distance report must be completed that includes the method(s) used to make the assessment and includes any previous soil borings. The assessment must be made by a licensed SSTS business hired by the system owner. If the verification separation report consists of verifications by two independent parties, a subsequent verification is not required unless the inspector has reason to believe a noncompliant condition exists.

      If a documented discrepancy arises on the depth of the periodically saturated soil between licensed businesses or between a licensed business and the department for SSTS compliance purposes, all disputing parties must follow the dispute resolution procedure described in Minn. R. 7082.0700, subp. 5. [Minn. R. 7082.0100, Subp. 3(N)]

   c. Sewage backup, surface seeping or surface discharge from the system must be determined. A hydraulic function report must be completed that includes the method(s) used to make the assessment. The assessment must be made by a licensed inspection business hired by the system owner. A passing report is valid until a new inspection is requested or if the hydraulic performance is believed to have changed.

   d. The capacity of both the pretreatment components such as sewage tank(s) and the final dispersal system must be verified and evaluated for compliance. The

verification and evaluation must be made by a licensed SSTS inspection or design business hired by the system owner. The system capacity shall be considered in compliance if it meets or exceeds the compliance criteria of subsection 8-5-6.03(C). The findings shall be reported in a format approved by the department along with the applicable inspections reports on the MPCA provided forms for the preceding subitems (a) to (c).";

3. A certificate of compliance shall be based on the results of the verifications in section 9.02(C)(2). The certificate of compliance must include a certified statement by a licensed inspection business whether the SSTS is in compliance with the chapter requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must include a statement specifying those chapter provisions with which the SSTS does not comply. A construction permit application must be submitted to the department if the required corrective action is not a minor repair.

4. The certificate of compliance or notice of noncompliance must be submitted to the department and the property owner or owner's agent no later than 15 calendar days after the date the inspection was performed. The department shall deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within 15 calendar days of receipt from the licensed inspection business.

5. Certificates of compliance for existing SSTS shall remain valid for three years from the date of issue unless the department finds evidence of an imminent threat to public safety requiring removal and abatement under Minn. Stat. § 145A.04, subd. 8.

6. The department may waive a compliance inspection required by section 9.02(C)(1) if:

   a. The owner of the real property served by an existing SSTS acknowledges in writing to the department that the existing SSTS is failing and shall be upgraded, repaired, replaced or abandoned in accordance with this chapter within 10 months; or

   b. The owner of the real property served by an existing SSTS acknowledges in writing to the department that the existing SSTS is an imminent threat to public health or safety and shall be upgraded, repaired, replaced or abandoned in accordance with this chapter within 30 days.

D. PROPERTY TRANSFER/SALE REQUIREMENTS.

1. No owner or other person acting with legal authority on behalf of an owner of real property served by an existing SSTS may sell or transfer to another party said real property unless the following requirements are met:

    a. A compliance inspection has been performed and a certificate of compliance has been issued for the SSTS within three years if the SSTS is older than five years or within five years if the SSTS is less than five years old prior to the intended date of sale or transfer of the real property, unless evidence is found identifying an imminent threat to public health and safety. If this requirement cannot be met, a compliance inspection must be conducted in accordance with section 9.02(C) above.

    b. The compliance inspection must have been performed following the procedures described in section 9.02(C) by the licensed inspection business hired by the system owner.

    c. The seller/transferor of the real property must provide the disclosure required by Minn. Stat. § 115.55, subd. 6.

    d. If the seller/transferor fails to provide a certificate of compliance, the seller/transferor shall provide the buyer/transferee sufficient security in the form of an escrow agreement to assure the installation of a complying SSTS. The security shall be placed in an escrow with a licensed real estate closer, licensed attorney, or federal or state chartered financial institution. The amount escrowed shall be equal to 125% of a written estimate to install a complying SSTS provided by a licensed and certified installer, or the amount escrowed shall be equal to 110% of the written contract price for the installation of a complying SSTS provided by a licensed and certified installer. After a complying SSTS has been installed and a certificate of compliance issued, the seller/transferor or the buyer/transferee shall provide the escrow agent a copy of the certificate of compliance.

2. The compliance portion of the certificate of compliance need not be completed if the sale or transfer involves the following circumstances:

    a. The affected real property is without buildings or contains no dwellings or other buildings with plumbing fixtures.

    b. The transfer is a tax forfeiture.

c. The sale or transfer completes a contract for deed or purchase agreement entered into prior to the effective date of this chapter. This subsection applies only to the original vendor and vendee on such contract.

3. All real property sales or transfers subject to this chapter occurring during the period between November 15th and April 15th when SSTS compliance cannot be determined due to frozen soil conditions shall require a winter agreement, which includes an application for an SSTS permit and an agreement to complete a compliance inspection by the following June 1st by a licensed inspection business. If upon inspection the SSTS is found to be in compliance, the permit fee will be refunded. If upon inspection the system is found to be noncompliant, an escrow agreement must be established in accordance with section 9.02(D)(1)(d) above and the system upgraded.

4. The responsibility for filing the completed compliance portion of the certificate of compliance under section 9.02(D)(1) above or for upgrading a system found to be noncompliant shall be determined by the seller/transferor and the buyer/transferee. The seller/transferor and the buyer/transferee shall provide the department with a signed statement indicating responsibility for completing the compliance portion of the certificate of compliance and for upgrading a system found to be noncompliant.

5. The issuance of permits, certificates of compliance or notices of noncompliance as requested or issued shall not be construed to represent a guarantee or warranty of the system's operation or effectiveness. Such certificates signify that the system in question is or has been designed and installed in compliance or noncompliance with the provisions of this chapter.

E. CONFLICT OF INTEREST. A licensed inspection business that inspects an existing SSTS is allowed to subsequently design and install a new SSTS for that property provided the inspection business is also licensed to design and install. A licensed inspection business working on behalf of a municipality must not design or install a system if there is likelihood that the inspector or business will be responsible for permitting or inspecting the system or system site. A person working for or on behalf of a municipality shall not use the person's position to solicit for private business gain. [Minn. R. 7082.0700, Subp. 2(B)]

8-5-10.00: **SECTION 10.00 VARIANCES:**

8-5-10.01: **VARIANCES ALLOWED:** [Minn. R. 7082.0100, Subp. 3(D)]

With the exception of section 10.02 below, in any case where it appears by the reason of exceptional circumstances the strict enforcement of any provision of the standards would cause unnecessary hardship or that strict conformity with the standards would be unreasonable, impractical or not feasible under the circumstances in order to promote the effective and

reasonable application and enforcement of the provisions of this chapter, the city council may permit a variance upon such conditions as it may prescribe consistent with the general purposes of this chapter and the intent of this and all other applicable state and local regulations.

8-5-10.02: **PROHIBITED VARIANCES:** The city council may not grant variances from the following standards:

A. Minn. R. 7080.2150, subp. 2.

B. Minn. R. 7081.0080, subps. 2 to 5, however, variances may be granted to Minn. R. 7081.0080, subp. 4(D)(1) for the replacement of MSTS serving existing dwellings or other establishments.

C. Flow determinations under Minn. R. 7081.0110 if the deviation reduces the average daily flow from more than 10,000 gallons to 10,000 gallons per day or less.

8-5-10.03: **PROCEDURE FOR REQUESTING VARIANCE:**

A. APPLICATION FOR VARIANCE. A variance application shall be submitted by the property owner to the department on forms provided by the department. Applicants shall provide all information as required for the administration of this chapter.

B. CONTENTS OF VARIANCE APPLICATION. The variance application shall include development plans and specifications and such other information as may be required by other sections of this chapter or by the department. The application shall also include:

1. The legal description of the real property on which the system will be located;

2. The names, addresses and telephone numbers of the owners of the property or any person having a legal interest therein;

3. A site plan showing all pertinent dimensions, buildings, structures and significant natural features having an influence on the variance;

4. Copies of any required municipal, county, state, or federal permits or approvals;

5. A statement identifying the specific provision(s) in the chapter from which the variance is requested;

6. The reasons why compliance with the provision(s) is difficult or inappropriate;

7. The alternative measures that will be taken to ensure a comparable degree of compliance with the intention of the applicable provision(s);

8. The length of time for which the variance is requested;

9. Cost considerations; and

10. Other relevant information requested by the department as necessary to properly evaluate the variance request.

C. APPLICATION FEE. The application fee, as set forth in the City Fee Schedule, shall accompany the initial application for a variance request.

D. SITE INVESTIGATION. Upon receipt of the variance application, the department shall decide if a site investigation conducted by the department is necessary. After the necessary information has been gathered, the department shall make a written recommendation to approve or deny the variance to the city council.

E. NOTIFICATION. The city shall give written notice of the variance application which shall be published in the designated official newspaper for the city at least 10 days but not more than 30 days prior to the date of the meeting at which the variance application will be considered by the city council. An identical notice shall be mailed to the property owners and each of the property owners within 350 feet of the affected property at least 10 days before the meeting. The city council shall either approve or deny the variance request within the time limit established by Minnesota Statute 15.99.

F. FACTORS REQUIRED FOR APPROVAL. The variance may be granted provided that:

1. The conditions causing the demonstrated hardship are unique to the property and were not caused by the action of the applicant;

2. The granting of the variance will not be contrary to the public interest or damaging to the rights of other person or to property values in the vicinity;

3. The property owner would have no reasonable use of the land without the variance;

4. The granting of the variance would not allow a prohibited use; and

5. The granting of the variance would be in accordance with Minn. R. chs. 7080, 7081, and 7082.

G. CONDITIONS. The city council may impose conditions in granting the variance to ensure compliance and to protect the public health, safety, or welfare. Each violation of any condition set forth in the variance shall be a separate violation of this chapter subject to enforcement and shall be sufficient grounds for terminating the variance.

H. DENIAL OF VARIANCE. No application for a variance which has been denied wholly or in part shall be resubmitted for a period of six months from the date of said denial,

except on the grounds of relevant new evidence or proof of a significant change of conditions.

I. APPEAL. Any person aggrieved by the decision of the city council may appeal the decision to any court with appropriate jurisdiction.

8-5-11.00: **SECTION 11.00 VIOLATIONS:**

For violations of this chapter, the city may take the following actions:

A. issuance of a warning notice;
B. issuance of a notice of violation;
C. issuance of a citation or complaint;
D. issuance of a cease and desist or stop work order;
E. abatement;
F. suspension or revocation of a permit issued under this chapter;
G. execution of a stipulation agreement;
H. issuance of a correction notice; and/or
I. commencement of other civil proceedings.

8-5-11.01: **WARNING NOTICE:** The department may issue a warning notice to any person alleged to have committed a violation of this chapter. A warning notice shall serve to place the person on notice that compliance with specified chapter requirements must occur to avoid additional enforcement actions. Service of the warning notice shall be made by first class mail or by personal service. The warning notice shall contain:

A. A list of violations, including the chapter section(s), rule(s), or statute(s) violated, the factual basis for the violations and the date(s) of the violations.

B. The specific action(s) required to be taken by the person to correct the violations and the timeframes within which the corrections are required to be made.

C. A general description of the additional administrative and judicial enforcement actions that could be pursued by the department if the alleged violations are not satisfactorily corrected.

8-5-11.02: **NOTICE OF VIOLATION (NOV):** The department may issue a notice of violation (NOV) to any person alleged to have committed a violation of this chapter. A NOV shall serve to place the person on notice that compliance with specified chapter requirements must occur to avoid additional enforcement actions. Service of the NOV shall be made by certified mail or by personal service. The notice of violation shall contain:

A. Findings of fact with corresponding conclusions of law, which describe the alleged violations and the corresponding chapter section(s), statute(s), and/or rule(s) which are allegedly violated.

B. Orders for corrective actions, which describe specifically how each alleged violation must be corrected and the timeframes within which the corrections are required to be made.

C. Notice of further action, which describes in general terms, the additional administrative and judicial enforcement actions that could be pursued by the department if the alleged violations are not satisfactorily corrected.

8-5-11.03: **CITATIONS:** Any person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof

shall be punished as provided by law. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

An authorized representative of the department shall have the power to issue citations for violations of this chapter, but shall not be permitted to physically arrest or take into custody any violator.

A formal complaint may be issued in lieu of a citation as determined by the city attorney.

8-5-11.04: **ABATEMENT:** If a SSTS constitutes a public health nuisance, the department may enter the property and abate the nuisance and recover the costs of the same from the property owner through the following procedures:

A. ABATEMENT NOTICE. The department shall serve an abatement notice on the property owner or occupant.

1. Contents of Abatement Notice. An abatement notice shall include the following:

   a. Notice that there is a SSTS located on the property and that it constitutes a public health nuisance.

   b. Notice that the property owner must abate the public health nuisance within a specified time period not to exceed 10 calendar days in order to avoid any liability for the costs of inspection and abatement that the city may incur.

   c. Notice that if the property owner fails to abate the public health nuisance within the specified timeframe, the department or its agent intends to enter the property and commence abatement of the public health nuisance and assess the costs of inspection and abatement against the real property on which the nuisance is located.

2. Service. The abatement notice must be served on a property owner by certified mail or personal service. Service by certified mail shall be deemed complete upon mailing. If the property owner is unknown or absent and has no known representative upon whom notice can be served, the department shall post a written or printed notice in a conspicuous place on the property stating that, unless the public health nuisance is abated within a period not longer than 10 days, the department will have the nuisance abated at the expense of the owner.

B. ABATEMENT BY THE CITY. In the event a property owner does not abate the public health nuisance, the department may expend funds necessary to abate the nuisance as set forth in this chapter.

C. ASSESSMENT OF ABATEMENT COSTS.

1. The costs of an enforcement action under this section may be assessed and charged against the real property on which the public health nuisance was located.

2. Failure to Abate; Abatement by City; Costs: The property owner's failure to abate the nuisance within the time limit stated in section 8-5-11.04-A shall authorize the department to the nuisance abated. The City may then charge all costs of abatement to the property owner and bill the property owner directly for such costs. If the owner does not pay the bill the costs due may be assessed. Failure by the property owner to abate the nuisance with the time period specified in 8-5-11.04-A is a violation of this chapter and shall be punishable as a misdemeanor.

3. Record of Costs: The department shall keep a record of the costs of abatements done under this chapter and shall report monthly to the finance department and clerk all work done for which billings and assessments are to be made stating and certifying the description of the land, lots, and parcels involved and the amount chargeable to each.

4. Assessment of Costs: On or before September 1 of each year, the clerk and finance department shall list the total unpaid charges for each abatement against each separate lot or parcel to which the charges are attributable under this chapter. The city council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota statutes section 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

8-5-11.05: **CEASE AND DESIST ORDERS:** Cease and desist orders (including "stop work orders") may be issued when the department has probable cause that an activity regulated by this chapter or any other provision of the city code is being or has been conducted without a permit or in violation of a permit. When work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

8-5-11.06: **STIPULATION AGREEMENT:** The department and a person alleged to have violated provisions of this chapter may voluntarily enter into a stipulation agreement whereby the parties to the agreement: identify conditions on the property that require corrective action; agree on the corrective actions that must be performed by the person; and agree on the timeframes in which the corrective actions must be completed. If the person fails to fulfill the requirements of the agreement, the city may seek compliance with the terms of the agreement through a court of competent jurisdiction or pursue other enforcement action allowed by this chapter.

8-5-11.07: **SUSPENSION, REVOCATION OR DENIAL OF PERMIT:** For the grounds set forth in this chapter including, but not limited to sections 8-5-7.02(M) and 8-5-7.04(L), the department may suspend, revoke or deny a permit issued under this chapter for violations of this chapter. In the case of the suspension, revocation or denial of an operating permit, the department shall give notice of the suspension, revocation or denial to the property owner. In the case of the suspension, revocation, or denial of a construction permit, the department shall give notice of the suspension, revocation or denial to the permit holder or permit holder's agent.

The property owner, permit holder or permit holder's agent, whichever the case may be, shall be granted a public hearing upon at least ten (10) days' notice before suspension, revocation or denial is ordered by the department.

For purposes of the subsection, "notice" shall mean, in the case of a property owner, written notice served upon the property owner personally or by leaving the same at the property owner's usual place or abode with someone of suitable age and discretion and in the case of a permit holder or permit holder's agent, by leaving the same at the permit holder or permit holder's business with the person in charge thereof.

The notice shall state the time and location of the hearing and shall state the grounds for suspension, revocation or denial. No suspension, revocation or denial shall take place until the property owner or permit holder or permit holder's agent, whichever the case may be, has been afforded an opportunity for a hearing with an opportunity to be heard and present evidence. The matter shall be heard by the city's community development director, who shall issue written findings supporting the suspension, revocation or denial within thirty (30) days.

Any property owner or permit holder or permit holder's agent, whichever the case may be, aggrieved by the decision of the city's community development director may appeal that decision to any court with appropriate jurisdiction within fifteen (15) days of the date of city community development director's findings.

8-5-11.08: **COMMENCEMENT OF CIVIL COURT ACTION:** In the event of a violation or threat of violation of this chapter, the city council may institute appropriate civil actions or proceedings in any court of competent jurisdiction requesting injunctive relief to prevent, restrain, correct or abate such violations or

threatened violations. The city may recover all costs, including reasonable attorney's fees, incurred for enforcement of this chapter.

8-5-11.09: **CORRECTION NOTICE:** When an inspection of the work authorized by a construction permit finds that the work fails to comply with the standards adopted by this chapter, the department may issue a written correction notice to the permit holder or the permit holder's agent. The notice shall describe the deficiencies or violations that must be corrected or completed before the inspection may be approved.

8-5-12.00: [Reserved]

8-5-13.00: [Reserved]

8-5-14.00: **SECTION 14.00 RECORD KEEPING AND ANNUAL REPORT:**

8-5-14.01: **RECORD KEEPING:** The department shall maintain a current record of all permitted systems. The record shall contain all permit applications, issued permits, fees assessed, variance requests, certificates of compliance, notices of noncompliance, enforcement proceedings, site evaluation reports, design reports, record drawings, management plans, maintenance reports, an annual list of all sewage tanks installed in the department's jurisdiction sorted by licensed installation businesses, and other records relevant to each system. [Minn. R. 7082.0300, Subp. 4]

8-5-14.02: **ANNUAL REPORT:** The department shall provide an annual report of SSTS permitting activities to the MPCA in accordance with the requirements set forth in Minn. R. 7082.0040, subp. 5, as may be amended from time to time. [Minn. R. 7082.0040, Subp. 5]

8-5-15.00: **SECTION 15.00 SEVERABILITY:** If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of law, the remainder of this chapter shall not be affected and shall remain in full force.

8-5-16.00: **SECTION 16.00 REMEDIES CUMULATIVE:** No remedy set forth in this chapter is intended to be exclusive but each such remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay in the exercise of any remedy for violation of this chapter shall later impair or waive any such right or power of the city.

8-5-17.00: **SITE EVALUATION FOR PLATTING OR WAIVER OF PLATTING:** For all lots in unsewered areas that require platting or a waiver of platting, the landowner shall submit to the city a soil boring and analysis report prepared by a

licensed designer or professional engineer trained in subsurface sewage treatment systems. The analysis shall show the existence of an adequate land area of suitable soils that will accommodate at least two sites for a soil treatment system on each lot, taking in account depth to water table, soil types and conditions, topographic features, flooding potential and mandatory setback requirements, as dictated by city code and any applicable state and federal regulations. The evaluation of the soils and the soil borings as well as the two potential locations of the on-site subsurface sewage treatment system shall be submitted to the department for review and approval prior to any preliminary or final plat approval or waiver of platting being given for the subject property. Failure to provide the information required by this section or failure to have at least two potential sites for a soil treatment system on each lot shall be grounds for denial of the plat or grounds for denial of the waiver of platting.

8-5-18.00: **CONFLICTING PROVISIONS:**

A. If any provision of this chapter is inconsistent with Minnesota Rules, chapters 7080, 7081, 7082, 7083, or Dakota County Ordinance No. 113, then that provision which is more demanding or provides a greater level of requirements or restrictions or provides an earlier date of compliance shall prevail and be controlling.

B. If any provision of this chapter is inconsistent with subsection 10-13B-8A or 10-13B-16B or 10-13C-12B8 or 10-13D-10 of this code, then that provision which is more demanding or provides a greater level of requirements or restrictions or provides an earlier date of compliance shall prevail and be controlling.

8-5-19.00: **MISDEMEANOR VIOLATION:** Any person violating this chapter is guilty of a misdemeanor and subject to the penalties set forth in City Code Section 1-4-1. Moreover, presentation to the city of any false or intentionally misleading statements, certificates, or applications by the owner or by the licensed designers or licensed installers or licensed inspectors or licensed maintainers or licensed service providers of subsurface sewage treatment systems shall also be a misdemeanor.

Section 2. **<u>Effective Date.</u>** This chapter shall be in full force and effect from and after its passage and publication according to law.

Passed this ____ day of November 2010

_____

George Tourville, Mayor

Attest

_____

Melissa Rheaume, Deputy City Clerk