



To: MAYOR AND COUNCIL

Agenda Item #: IV. H.

From: Chad A. Millner, PE, Director of Engineering

Action

Discussion

Date: March 4, 2014

Information

Subject: Waiver of Trespass/Right of Entry Agreement for 7101 France Ave., Rue de France

Action Requested:

Authorize City Manager to sign attached Waiver of Trespass/Right of Entry Agreement.

Information / Background:

The Hazelton Road Improvement Project (Project) was ordered by City Council on June 4, 2013. With the delay of the France Avenue Intersection Enhancements Project until 2014 due to higher than expected bids in 2013, we did not go out for bids during 2013 for the Project. We are scheduled to open bids in early April with an anticipated award at the April 22 City Council meeting.

The feasibility study showed a schematic of a standard 4 access point roundabout. This design required the Rue de France and Guitar Center properties to agree on a cross-access easement. This would allow patrons of each business to cross the other's property to enter and exit the properties. They were unable to come to an agreement on a cross-access easement. Staff developed an alternate roundabout design with 5 access points that would provide a separate access point for each of the properties. In this design Rue de France and Guitar Center would lose 2 and 3 parking spaces, respectively. The original design had each losing 1 and 8 spaces, for a total of 9 parking spaces.

As stated in the feasibility report, "permanent right-of-way and temporary easements will be needed from the Rue de France, Guitar Center, Szechaun Star, and Byerly's. It is anticipated all right-of-way needed will be donated by the adjacent properties". Please note that the Szechaun Star property will soon be the Think Bank location. As part of the feasibility study, staff looked at two options, a traffic light and a roundabout. In either case, easements were necessary.

Byerly's has donated the permanent easements and the documentation is complete. Think Bank is required to provide the easements by Item 6 of Section 3 of approved Resolution 2013-118. We continue negotiations with the Guitar Center property owners. The Guitar Center property changed ownership last fall. The previous property owner did not discuss the project with the new owners at the time of the

purchase. Preliminary discussions with them have yielded a verbal agreement to the layout but no closure to the easement discussion.

Rue de France is not willing to donate the permanent easements needed to construct these improvements. By signing this agreement, the City is granted the right to enter onto the easement area for purposes of construction activities from May 1 to November 30, 2014. This will ensure the project is not delayed due to negotiations with Rue de France concerning the easements.

The City is required to determine the fair market value of the property and make an offer to the owner to purchase the easement areas. If a direct purchase cannot be reached between the parties, condemnation proceedings will be initiated on May 1, 2014. It is the city attorney's opinion that we cannot assess the cost of these easements back to the property owner.

Staff recommends City Council authorize the City Manager to sign attached Waiver of Trespass/Right of Entry Agreement.

Attachments:

Waiver of Trespass/Right of Entry Agreement

Revised Roundabout Design Graphics

WAIVER OF TRESPASS/RIGHT OF ENTRY AGREEMENT
(RUE DE FRANCE)

THE UNDERSIGNED, Sun Life Assurance Company of Canada (“Owner”), owner of certain land in the City of Edina, located at 7101 France Avenue South and legally described as Lot 5, Block 1, Yorktown (“Subject Property”), who is the sole entity with a right to grant entry to the affected property, does hereby consent and grant unto the City of Edina (“City”), its agents and contractors, the right to enter upon and commence construction and all activities required in connection therewith, of the Hazelton Road Improvement Project (ENG 13-22 and BA 417) over, on, across and through only that part of the property legally described on attached Exhibit A and depicted on attached Exhibit B as the Easement Area.

This Right of Entry does not grant to the City or its agents or assigns any easement rights, but is intended to grant to the City and its agents and contractors only the right to enter onto the Easement Area for the purposes described herein.

This Right of Entry shall be for a time period commencing May 1, 2014 and terminating on November 30, 2014.

It is further understood that this Agreement does not constitute a waiver on behalf of the owner or persons of interest in the Subject Property to any claim for compensation or damages for the acquisition by the City of a temporary and permanent easement over the described property for the purposes of the public improvements herein described.

Additional terms and conditions:

- (1) Subject to the statutory liability limits in Minn. Stat. Ch. 466, the City agrees to indemnify and hold Owner harmless from any and all harms or damage to persons or property arising out of the use of the Easement Area by the City or its employees, contractors, agents and representatives.
- (2) There will be access to the Subject Property at all times from at least one entry point. City will make its best effort to minimize the temporary closure of any entry points.
- (3) City will obtain an appraisal of the fair market value of the property rights it seeks to acquire from Owner, provide Owner with a copy of the appraisal, make an offer to Owner to purchase the property, and place the property into condemnation proceedings in the event that a direct purchase cannot be reached between the parties.
- (4) If condemnation proceedings are initiated, the date of take will be May 1, 2014.
- (5) The use of the Easement Area shall be subject to the following restrictions:

- a) the City will not allow the Easement Area to be used as a “staging” area for the overall project;
- b) large construction vehicles will be present on the Easement Area, if at all, for the shortest duration possible and only while construction is taking place in the Easement Area; and
- c) the Easement Area will not be used for general parking purposes by any persons involved in the Project or for any other general use during the course of the Project.

Dated this _____ day of _____, 2014.

PROPERTY OWNER:

**SUN LIFE ASSURANCE COMPANY
OF CANADA**

By: _____

Its: _____

By: _____

Its: _____

CITY:

CITY OF EDINA

By: _____

James B. Hovland, Mayor

By: _____

Scott H. Neal, City Manager

EXHIBIT "A"

PARCEL 18
(SUN LIFE)

A permanent easement for roadway, sidewalk, drainage and utility purposes over, under and across that part of Lot 5, Block 1, Yorktown as is on file and of record in the Office of the County Recorder, Hennepin County Minnesota, described as follows:

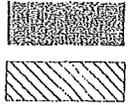
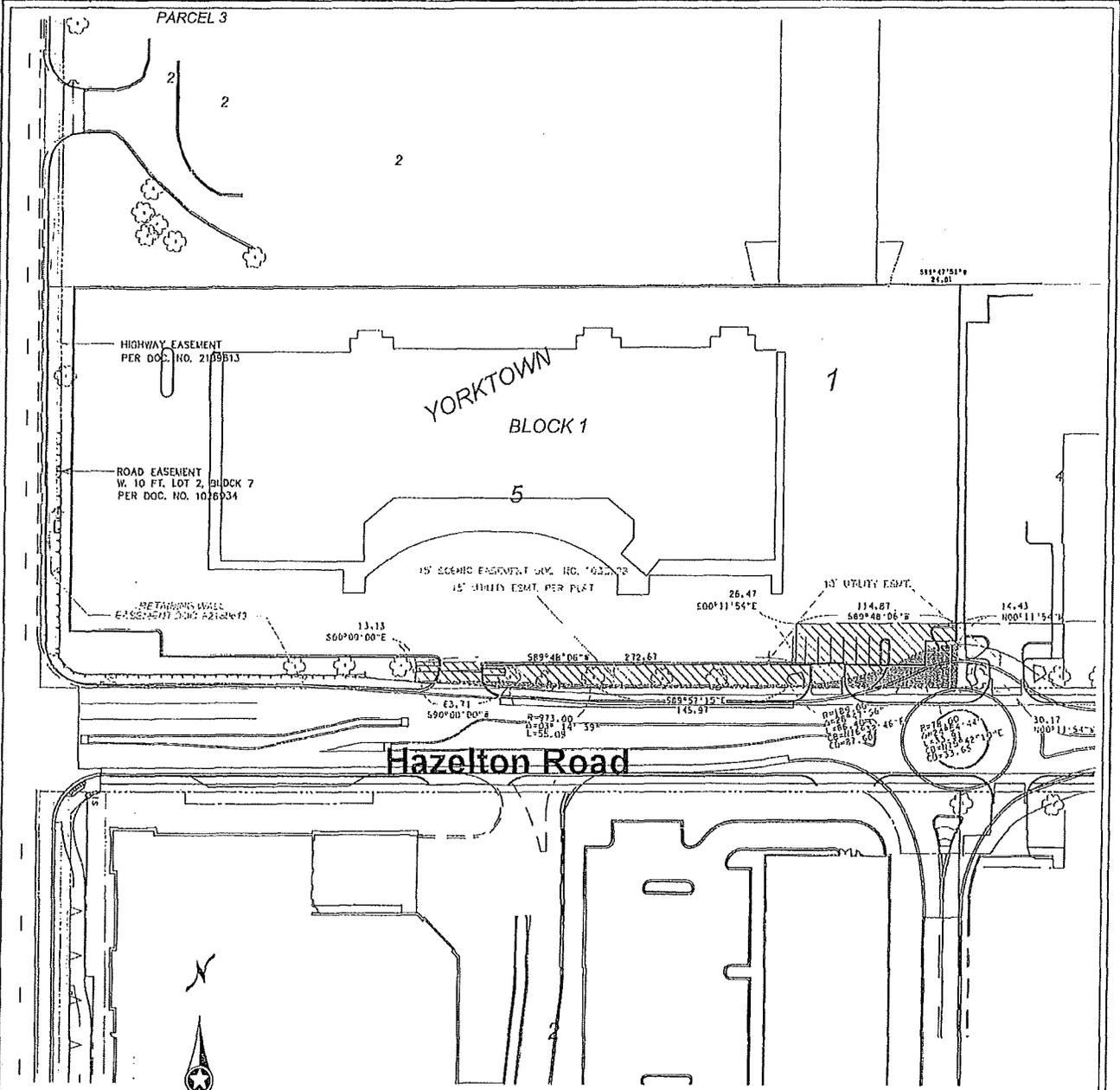
Beginning at the southeast corner of said Lot 5, thence South 89 degrees 47 minutes 37 seconds West, assumed bearing along the south line thereof, 311.77 feet to the highway easement line as described in Document Number 2189613; thence North 86 degrees 23 minutes 32 seconds West, along said highway easement line, 71.05 feet; thence North 90 degrees 00 minutes 00 seconds East, 63.71 feet; thence easterly along a tangential curve, concave to the north, 55.09 feet, having a radius of 973.00 feet and a central angle of 03 degrees 14 minutes 39 seconds; thence South 89 degrees 57 minutes 15 seconds East, tangent to last describe curve, 145.97 feet; thence northeasterly along a tangential curve, concave the northwest, 88.40 feet, having a radius of 189.00 feet and a central angle of 26 degrees 47 minutes 56 seconds to a point of reverse curve; thence northeasterly along said reverse curve, 33.91 feet, having a radius of 78.00 feet and a central angle of 24 degrees 54 minutes 44 seconds to the east line of said Lot 5; thence South 00 degrees 11 minutes 54 seconds East, along said east line, 30.17 feet to the point of beginning.

AND

A temporary construction easement over, under and across that part of said Lot 5 described as follows:

Commencing at the southeast corner of said Lot 5, thence South 89 degrees 47 minutes 37 seconds West, assumed bearing along the south line thereof, 311.77 feet to the highway easement line as described in Document Number 2189613; thence North 86 degrees 23 minutes 32 seconds West, along said highway easement line, 71.05 feet to the point of beginning of the tract to be hereinafter described; thence North 90 degrees 00 minutes 00 seconds East, 63.71 feet; thence easterly along a tangential curve, concave to the north, 55.09 feet, having a radius of 973.00 feet and a central angle of 03 degrees 14 minutes 39 seconds; thence South 89 degrees 57 minutes 15 seconds East, tangent to last describe curve, 145.97 feet; thence northeasterly along a tangential curve, concave the northwest, 88.40 feet, having a radius of 189.00 feet and a central angle of 26 degrees 47 minutes 56 seconds to a point of reverse curve; thence northeasterly along said reverse curve, 33.91 feet, having a radius of 78.00 feet and a central angle of 24 degrees 54 minutes 44 seconds to the east line of said Lot 5; thence North 00 degrees 11 minutes 54 seconds West, along said east line, 14.43 feet; thence South 89 degrees 48 minutes 06 seconds West, 114.87 feet; thence South 00 degrees 11 minutes 54 seconds East, 26.47 feet; thence South 89 degrees 48 minutes 06 seconds West, 272.67 feet; thence South 00 degrees 00 minutes 00 seconds East, 13.13 feet to said highway easement line, thence South 86 degrees 23 minutes 32 seconds East, along said line, 4.92 feet to the point of beginning.

EXHIBIT "B"



PROPOSED PERMANENT ROADWAY, SIDEWALK AND DRAINAGE AND UTILITY EASEMENT AREA = 2,272 sq ft

PROPOSED TEMPORARY CONSTRUCTION EASEMENT AREA = 7,614 sq ft

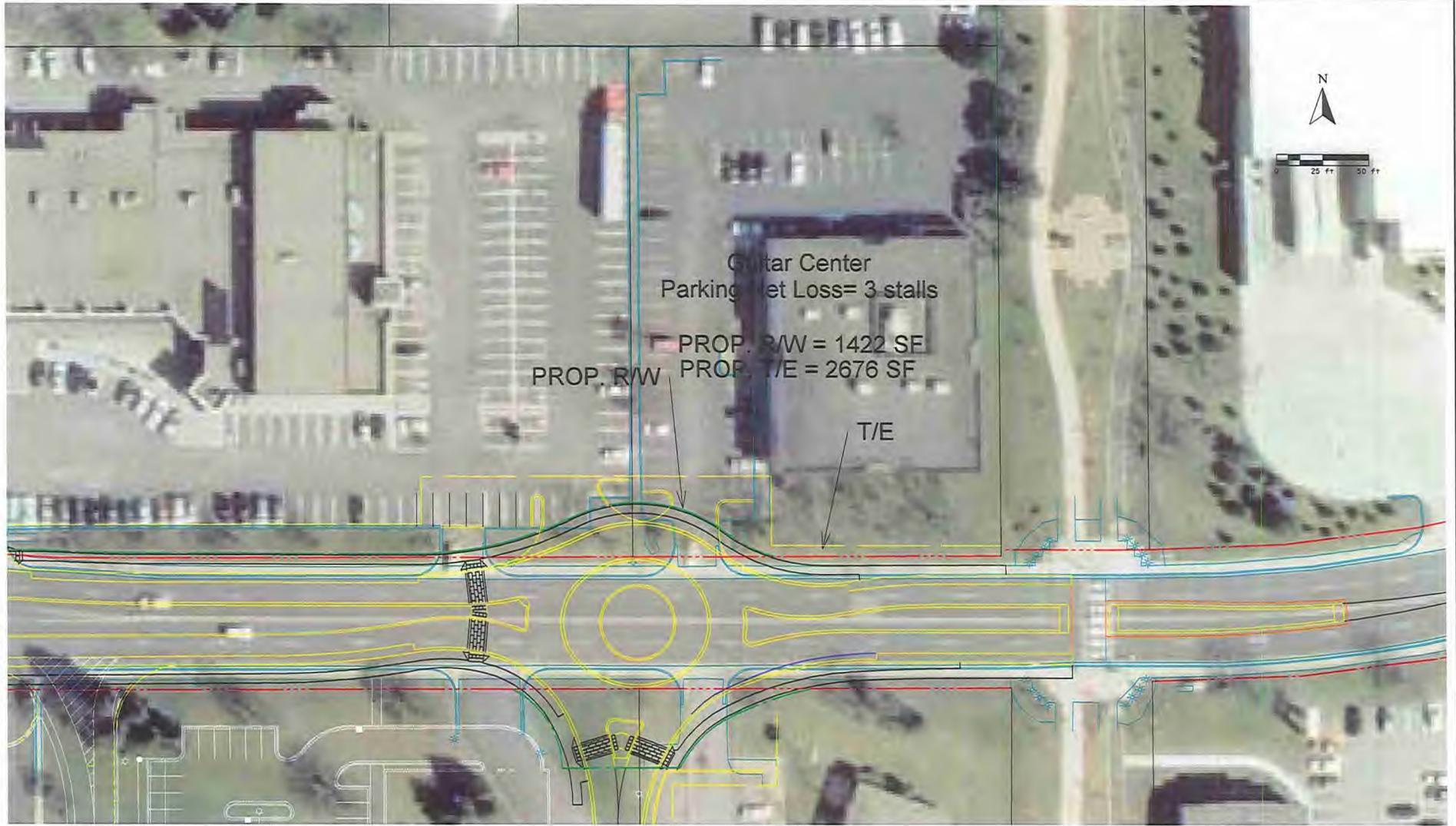
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WSB
 & Associates, Inc.
 701 Xenia Avenue South, Suite 300
 Minneapolis, MN 55416
 www.wsbang.com
 763-541-4300 Fax 763-541-1100
 INFRASTRUCTURE • ENGINEERING • PLANNING • CONSTRUCTION

France Avenue Improvements
 Easement Parcel Sketch
 City of Edina, Minnesota



WSB Project No. 1688-400
 REVISED DATE: 2/7/2014
 Parcel No. 18
 Exhibit B



DATE: 11/17/2017
USER: jhansen
PROJECT: 450V ECA/Edina/Hazleton Layout2.dgn



Hazleton Road
City of Edina, Minnesota

Guitar Center Exhibit



Rue De France
Parking Net Loss= 2 stalls

T/E

PROP. R/W

PROP. R/W = 2272 SF
PROP. T/E = 7614 SF



Dates Printed: 1/23/2014
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Hazelton Road
City of Edina, Minnesota

Rue De France Exhibit