



To: MAYOR AND COUNCIL

Agenda Item #: IV. F.

From: Wayne D. Houle, PE, Director of Engineering

Action

Date: July 16, 2013

Discussion

Information

Subject: Encroachment Agreement – 5225 Grandview Square

Action Requested:

Authorize Mayor and Manager to sign attached encroachment agreement for 5225 Grandview Square.

Information / Background:

The retaining wall adjacent to a City maintained pond located at 5225 Grandview Square (Grandview Square Condominium Building) has failed. The only access to repair the retaining wall is through the pond area. The owners of 5225 Grandview Square have contracted with Morcon Construction Company to repair the retaining wall. Our City Attorney has requested that the Contractor enter into an encroachment agreement with the City to utilize this route to repair the retaining wall. This agreement is made part of the required building permit for this retaining wall repair.

Attachments:

Encroachment Agreement

AGREEMENT

This Access Agreement ("Agreement") is made on this 5th day of July, 2013 by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and **MORCON CONSTRUCTION COMPANY, INC.**, a Minnesota corporation ("Permittee").

Recitals

- A. Permittee has entered into a contract with the Grandview Square Association for the repair of a pond retaining wall ("Project").
- B. The City owns and maintains a storm water pond adjacent to the Project ("City Property").
- C. In conjunction with the Project, Permittee has requested permission from the City to take the City's pond out of service and to occupy the City Property.

NOW THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

- 1. In conjunction with the Project, City hereby grants to Permittee, its agents and subcontractors, permission to take the City's pond out of service and to occupy the City Property. The City's permission is subject to further restrictions and limitations as determined necessary by the City, in its sole discretion. This Agreement shall expire when the Project has been completed or 8-9-, 2013, whichever first occurs. The City may, however, terminate this Agreement immediately for violations of the terms of this Agreement.
- 2. Permittee shall pay to the City a fee of Three Hundred (\$300.00) Dollars.
- 3. Permittee must furnish the City a cash escrow of Two Thousand Five Hundred (\$2,500.00) Dollars. If the City draws on the cash escrow, upon the City's demand Permittee must deposit in escrow additional funds to restore the escrowed amount to Two Thousand Five Hundred (\$2,500.00) Dollars. The cash escrow must remain in place during the term of this Agreement and until all repair and restoration work, if any, has been satisfactorily completed. This escrow is in addition to any required escrow for a demolition permit or building permit.
- 4. Permittee must comply with all City ordinances, including obtaining a demolition permit and building permit for the Project. This Access Agreement does not constitute Project approval.
- 5. Permittee may not damage City Property, including the City's pond, and may not remove or damage trees, shrubs, plants or grass on the City Property. If any damage occurs, Permittee will promptly restore the pond and City Property to its original condition to the City's

satisfaction. If the damage is not fixed to the City's satisfaction, the City may draw down the escrowed funds and restore the property.

6. Permittee agrees to indemnify, defend and hold harmless the City and its officers, employees, and agents ("Indemnified Parties") from and against all cost, loss, claim, damage or expense arising out of (i) any injury, property loss or damage whatsoever that results or arises from the undertakings of Permittee on the City Property, except to the extent such injury, loss or damage arises solely from the negligence of the Indemnified Parties, and (ii) any project work performed by a person or entity not a party to this Agreement, including, without limitation, all costs related to defense against or removal of any lien or encumbrance, except to the extent such claim arises from a party directly engaged by the Indemnified Parties.

7. Permittee shall not cause or allow to be filed any liens or encumbrances on any portion of the City Property.

CITY OF EDINA

By: _____
James Hovland, Mayor

By: _____
Scott Neal, City Manager

MORCON CONSTRUCTION COMPANY, INC

By: Stanley P. [Signature]
Its V.P.