



To: Mayor Hovland and City Council members

Agenda Item #: VIII. C.

From: Bill Neuendorf, Economic Development Manager

Action

Discussion

Information

Date: August 2, 2013

Subject: LB 71 FRANCE ADDITION (BYERLY'S) DEVELOPMENT CONTRACT

Action Requested:

Approve the Contract and authorize the Mayor and City Manager to execute the documents.

Information / Background:

On June 4, 2013, the City Council approved the redevelopment plans for the Byerly's site at 7171 France Avenue to allow for a new grocery store and three housing/retail buildings. As a follow up to that approval, City staff and City Attorney Knutson have prepared a Development Contract. This contract identifies the specific roles and responsibilities of the developer and city, sets conditions for the subdivision of land and establishes engineering and site development safeguards to ensure public safety and well-being during and after construction. This contract also specifies that an outlot parcel be transferred to the City to construct new storm water detention facilities and water feature per the July 2007 Promenade Plan.

This Contract differs from the City's standard Development Contract because the private redevelopment will occur concurrently with three major public works projects: improvements to France Avenue, Hazelton Road and the Promenade. In order to allow for efficient and coordinated construction, the developer will complete some improvements to the public infrastructure and will be reimbursed by the City for that work. Conversely, the City will complete a few items that would traditionally be the developer's responsibility and will be reimbursed by the developer. City staff has worked in partnership with the developer's staff and general contractor to determine a fair distribution of costs. The developer has agreed to share cost responsibility for several items that benefit their project as well as the general public.

Attachments:

Development Contract – LB 71 France Addition, executed by property owner

(reserved for recording information)

DEVELOPMENT CONTRACT

LB 71 FRANCE ADDITION

CONTRACT dated August 5, 2013, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City"), and **LB EDINA, LLC**, a Minnesota limited liability company (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for LB 71 France Addition (referred to in this Contract as the "plat"). The land is situated in the County of Hennepin, State of Minnesota, and is legally described as: Lot 2, Block 7, Yorktown.

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the plat on condition that the Developer enter into this Contract, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within one (1) year after the City Council approves the final plat.

3. RIGHT TO PROCEED. Unless separate written approval has been given by the City, as evidenced by grading, utility or building permits or other written authorization to proceed, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings until all the following conditions have been satisfied: 1) this agreement has been fully executed by both parties and filed with the City Clerk, 2) the necessary security has been received by the City, 3) the plat has been recorded with the Hennepin County

Recorder's Office, and 4) the City's Community Development Director has issued a letter that all conditions have been satisfied and that the Developer may proceed. In the event that the plat has not been recorded by December 31, 2013, no work beyond any improvements authorized in Articles 6-8 below and/or the construction and completion of the Byerly's store shown on the site plan (Exhibit A) shall commence.

4. CHANGES IN OFFICIAL CONTROLS. For five (5) years from the date of this Contract, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Contract to the contrary, and not in conflict with any portion of the development already completed or under construction, to the full extent permitted by state law, the City may require compliance with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Contract.

5. DEVELOPMENT PLANS. The plat shall be developed in accordance with the following plans. The plans shall not be attached to this Contract. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A – Plat

Plan B - Site plan date stamped April 26, 2013 (included as Exhibit "A")

Plan C - Grading, Drainage, and Erosion Control Plan date stamped April 26, 2013

Plan D - Utility plan date stamped April 26, 2013

Plan E - Building elevations date stamped April 26, 2013

Plan F - Building materials board as presented at the June 4, 2013 City Council meeting

Plan G - Landscape Plan stamped April 26, 2013

Plan H – WSB cost sharing plan dated July 8, 2013 (included as Exhibit "B")

6. IMPROVEMENTS CONSTRUCTED AND PAID FOR BY DEVELOPER. The Developer shall construct and pay 100% of the cost of the following improvements in accordance with the development plans:

- A. Sanitary Sewer
- B. Watermain
- C. Surface Water Facilities (pipe, ponds, rain gardens, etc.)
- D. Grading and Erosion Control
- E. Underground Utilities
- F. Landscaping
- G. Setting of Iron Monuments
- H. Grading changes along France Avenue east of retaining wall
- I. Macy's site improvements, Including reconstruction and repairs to the southernmost row of parking along Gallagher Drive and the new islands near the new internal access drive between Byerly's and Macys
- J. Retaining wall in front of Macys to accommodate the new right in/out and new sidewalk on France Avenue
- K. East-west walkways (including bicycle room access walkway) that connect plat to walking paths on City Property (Promenade), including portions of the walkways located on City Property
- L. Rooftop drainage to Promenade water feature

7. IMPROVEMENTS CONSTRUCTED BY DEVELOPER AND PAID FOR IN WHOLE OR IN PART BY CITY. The Developer shall construct and shall be reimbursed for a percentage of the cost by the City in accordance with Plan H shown in Exhibit "B":

- A. Retaining walls along France Avenue from new right in/out to Hazelton Road
- B. New right in/out on France, including approach and departure lanes, And Center median near 72nd Street
- C. Public sidewalk from Hazelton to Gallagher along France Avenue
- D. Landscaping from curb to edge of sidewalk or retaining wall, including Lawn irrigation)
- E. Macy's site improvements – reconstruction and/or repair to row of parking along France Avenue to accommodate new sidewalk
- F. Environmental remediation of soil located on City Property (Promenade), if any adjacent to contaminated soil undergoing remediation as part of site preparation to Housing A. Any excavation on City Property may be left in rough graded condition.

For purposes of this paragraph "cost" means commercially reasonable and itemized out-of-pocket costs paid to third parties, including pro-rated allocations of contractor overhead & profit, general conditions, and insurance. "Costs" do not include: (1) in-house costs of the Developer including, its employees and equipment, (2) payment to any entity in which the Developer, or anyone who has an ownership interest in the Developer, has an ownership interest.

8. IMPROVEMENTS CONSTRUCTED BY CITY AND PAID IN WHOLE OR PART BY DEVELOPER. The City shall construct and shall be reimbursed for all or a percentage of the cost by the Developer in accordance with Plan H shown in Exhibit "B":

- A. Public sidewalk along the south side of Hazelton Road from France Avenue to the easternmost access driveway
- B. Center lane dividers to remove full access driveway at western Byerly's entrance; extending approximately 100 feet east of the driveway edge

9. IMPROVEMENTS CONSTRUCTED AND PAID FOR BY CITY. The City shall construct and pay for the following improvements:

- A. Except as otherwise provided herein, improvements to France Avenue and Hazelton Road
- B. Landscaping from curb to edge of sidewalk, including lawn irrigation along Hazelton Road from France Avenue to eastern edge of site
- C. Shared access driveway at the easternmost edge of site, from Hazelton Road to the new throat of the shared driveway.
- D. Design and construction of new north/south walking path alignment, water feature(s) and sculpture improvements in Promenade

10. DEVELOPER CONSTRUCTED IMPROVEMENT. Improvements required by this Contract to be constructed by the Developer shall be installed in accordance with plans approved by the City and in accordance with all applicable City ordinances, regulations and policies. The Developer shall submit plans and specifications which have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's

engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance, as stated in Section 12, Engineers Record Drawings. The Developer, its contractors and subcontractors, shall follow all reasonable instructions received from the City's inspectors and engineers. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. The Developer or his engineer shall schedule pre-construction meetings as necessary to coordinate the work and to allow the City to review the program for the construction work.

All labor and work shall be done and performed in good and workmanlike manner and in strict conformance with the approved plans and specifications. No material deviations from the approved plans and specifications will be permitted unless approved in writing by the City. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by the Contract. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Contract, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

11. City Engineering Administration and Construction Observation. City engineering administration will include construction inspections for work described in Paragraphs 6A and 6B and shall be paid for by the Developer. The Developer's Engineer shall submit a special material testing schedule and construction schedule to the City Engineer for approval.

12. ENGINEERS RECORD DRAWINGS. The Developer's engineer shall prepare a set of reproducible record prints of Drawings and an electronic version that satisfy the City of Edina Record Drawing requirements, attached hereto as Exhibit "C," showing those approved changes made during the construction process, based on the marked up prints, drawings and other data furnished by Contractor(s) to the Developer's Engineer. The Record Drawings shall be submitted prior to the Developer receiving an occupancy permit for any building. Partial Record Drawings are acceptable so long as the infrastructure pertains to the particular building that is being constructed.

13. CONTRACTORS/SUBCONTRACTORS. City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a twenty-five percent (25%) ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in Paragraph 8 above.

14. PERMITS. The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits, including but not limited to:

- A. Hennepin County for County Road Access and Work in County Rights-of-Way
- B. Minnesota Department of Health for Watermains
- C. MPCA NPDES Permit for Construction Activity
- D. MPCA for Hazardous Material Removal and Disposal
- E. City of Edina for Building Permits
- F. MCES for Sanitary Sewer Connections
- G. Nine Mile Creek for Watershed Permit

The City shall provide cooperative assistance in securing permits from other agencies.

15. TIME OF PERFORMANCE. The Developer shall install all required public improvements by December 31, 2015. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer. The City shall make reasonable efforts to complete public improvements on France Avenue, Hazelton Road and Promenade by December 31, 2015. In the event that a longer timeframe is required, the City shall advise Developer of the delay. If a significant delay in the construction of the Promenade improvement occurs, the City shall restore, seed, or otherwise improve the Outlot so as to not be injurious to the leasing and occupancy of Housing A, and shall be responsible for accepting and redirecting the storm water runoff from any housing buildings which has been designated for the water feature in accordance with Paragraph 6L.

16. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the plat to perform all work and inspections deemed appropriate by the City in conjunction with plat development.

17. **GRADING PLAN.** The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan "C". The plan shall conform to City's Design and Construction Manual. Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer that all ponds, swales, and ditches have been constructed on public easements or land owned by the City. The "record" plan shall contain site grades and field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and house pads; d) top and bottom of retaining walls.

18. **EROSION CONTROL.** Prior to initiating site grading, the erosion control plan, Plan C, shall be implemented by the Developer and inspected and approved by the City.

19. **STREET MAINTENANCE DURING CONSTRUCTION.** The Developer shall be responsible for all street maintenance until the public streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event that any building or residential unit is occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to insure that the streets are passable to traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the plat clean of dirt and debris that may spill, track, or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall

contract for street cleaning within and immediately adjacent to the development. At a minimum, scraping and sweeping shall take place on a weekly basis. A copy of this contract shall be approved by the City before grading is started. The contract shall provide that the City may direct the contractor to clean the streets and bill the Developer.

20. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Contract, the improvements lying within public easements shall become City property. Prior to acceptance of the improvements by the City, the Developer must furnish the following affidavits:

- Contractor's Certificate
- Engineer's Certificate
- Land Surveyor's Certificate
- Developer's Certificate

certifying that all construction has been completed in accordance with the terms of this Contract. All necessary forms will be furnished by the City. Upon receipt of affidavits and verification by the City Engineer, the City Engineer will accept the completed public improvements. Within thirty (30) days after the acceptance of the improvements, the Developer shall supply the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in accordance with the City's Design and Construction Manual.

21. PARK DEDICATION AND OUTLOT CONVEYANCE. The Developer shall make cash contribution of \$5,000 per dwelling unit to satisfy the City's park dedication requirements. Payment is due at the time a building permit is issued for a building in which there is one or more dwelling units.

The Developer shall convey Outlot "A" of the plat to the City by warranty deed free and clear of all encumbrances and in full compliance with the requirements of Paragraph 25 B concurrent with the filing of the plat. The Developer shall be given a credit towards payment of the park dedication requirements for the Outlot of \$183,625.00.

22. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. Breach of the terms of this Contract by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, including lots sold to third parties and the halting of all work in the plat.

B. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

23. RESPONSIBILITY FOR COSTS.

A. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the plat, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the plat.

B. The Developer will reimburse the City for work for which the City is entitled to reimbursement pursuant to Paragraph 8 and Plan H. The Work must be completed and accepted by the City and the City must provide the Developer itemized paid invoices before the City will be reimbursed.

C. The City will reimburse the Developer for work for which the Developer is entitled to reimbursement pursuant to Paragraph 7 and Plan H. The Work must be completed, inspected and accepted by the City and the Developer must provide the City itemized paid invoices and lien waivers before the Developer will be reimbursed.

D. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers, employees, and agents

for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

E. The Developer shall reimburse the City for costs incurred in the enforcement of this Contract, including reasonable engineering and attorneys' fees.

F. Each party shall pay in full all bills submitted to it by the other for obligations incurred under this Contract within thirty (30) days after receipt. Bills not paid within thirty (60) days shall accrue interest at the rate of eight percent (8%) per year.

G. In addition to the charges referred to herein, other charges and special assessments may be imposed such as but not limited to sewer availability charges ("SAC"), City water connection charges, City sewer connection charges, and building permit fees.

24. SPECIAL PROVISIONS. The following special provisions shall apply to plat development:

A. Implementation of the comments in the May 17, 2013 memorandum from the Director of Engineering to the Community Development Director.

B. City of Edina Resolution 2013-45

C. A shared parking and access agreement must be established across the plat and recorded with the County Recorder at the time the final plat is recorded.

25. MISCELLANEOUS.

A. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells, assigns, transfers or conveys one or more lots, the entire plat, or any part of it. The Developer shall notify the City when it sells, assigns, conveys or transfers any of its rights, title or interest in the site.

B. In compliance with the Response Action Plan approved by the MPCA for the property, the developer shall remove and properly dispose of any environmental contamination within the plat.

C. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City

Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Contract shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

D. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the City has accepted the public improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$1,000,000 for one person and \$2,000,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City shall be named as an additional insured on the policy on a primary and noncontributory basis, and the Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat.

E. Third parties shall have no recourse against the City under this Contract.

F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Contract is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Contract.

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Contract shall not be a waiver or release.

H. This Contract shall run with the land and may be recorded against the title to the property. In the event this Contract is recorded, the City covenants to provide a recordable Certificate of Completion promptly upon the completion of the work required herein. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the property being final platted and/or has obtained consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property being final platted (other than the lease

between LB Edina, Inc. and Byerly's for the existing grocery store); and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

26. DEVELOPER'S DEFAULT. In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given notice of the work in default, not less than forty-eight (48) hours in advance. This Contract is a license for the City to act, and it shall not be necessary for the City to seek a Court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part.

27. CITY'S DEFAULT. In the event of default by the City as to work identified in Paragraphs 8A, 8B, 9B, 9C and 9D, the Developer, after providing written notice of the work in default and adequate time to resolve, may take whatever action at law or equity may be deemed necessary to the Developer to enforce performance of this Development Contract.

28. WARRANTY. The Developer warrants all public improvements required to be constructed by it pursuant to Paragraphs 6A-6C, 6E, 6H-6L and 7A-7E of this Contract against poor material and faulty workmanship. The Developer shall submit either a warranty/maintenance bond for 100% of the cost of the improvements, or a letter of credit for twenty-five percent (25%) of the amount of the original cost of these improvements.

A. The required warranty period for materials and workmanship for the utility contractor installing public sewer and water mains shall be two (2) years from the date of final written City acceptance of the work.

B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, retaining walls, materials and equipment shall be subject to one (1) year from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the subdivider shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two (2) years from the date of final written City acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is two growing seasons following installation.

29. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Contract by the Developer, payment of the costs of all public improvements to be constructed and paid for by Developer, construction of all public improvements to be constructed by the City and reimbursed by the Developer in whole or part, the Developer shall furnish the City with a letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for \$400,000. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval the security may be reduced from time to time but not more than once every ninety days by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the amounts certified by the Developer's engineer shall be retained as security until: (1) all improvements have been completed, (2) iron monuments for lot corners have been

LB EDINA, LLC

BY: Von P. Martin
Its, Vice President

STATE OF MINNESOTA)
COUNTY OF Hennepin (ss.)

The foregoing instrument was acknowledged before me this 1st day of August, 2013, by Von P. Martin the Vice President of LB Edina, LLC, a Minnesota limited liability company, on behalf of the company.

Jennifer L. Kent
NOTARY PUBLIC



DRAFTED BY:
CAMPBELL, KNUTSON
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, MN 55121
Telephone: (651) 452-5000
RNK

**MORTGAGE CONSENT
TO
DEVELOPMENT CONTRACT**

American United Life Insurance Company, which holds a mortgage on the subject property, the development of which is governed by the foregoing Development Contract, agrees that the Development Contract shall remain in full force and effect even if it forecloses on its mortgage.

Dated this ____ day of _____, 2013.

AMERICAN UNITED LIFE INSURANCE COMPANY

BY: _____
Its _____

STATE OF _____)
) (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of American United Life Insurance Company, an Indiana corporation, on behalf of the corporation.

NOTARY PUBLIC

DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
(651) 452-5000
RNK

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Edina

Dear Sir or Madam:

We hereby issue, for the account of _____ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$_____, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2_____, of (Name of Bank) _____";

b) Be signed by the Mayor or City Manager of the City of Edina.

c) Be presented for payment at _____ (Address of Bank) _____, on or before 4:00 p.m. on December 31, 2015.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Edina City Manager that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Manager, Edina City Hall, 4801 West 50th Street. Edina Minnesota 55424 and is actually received by the City Manager at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

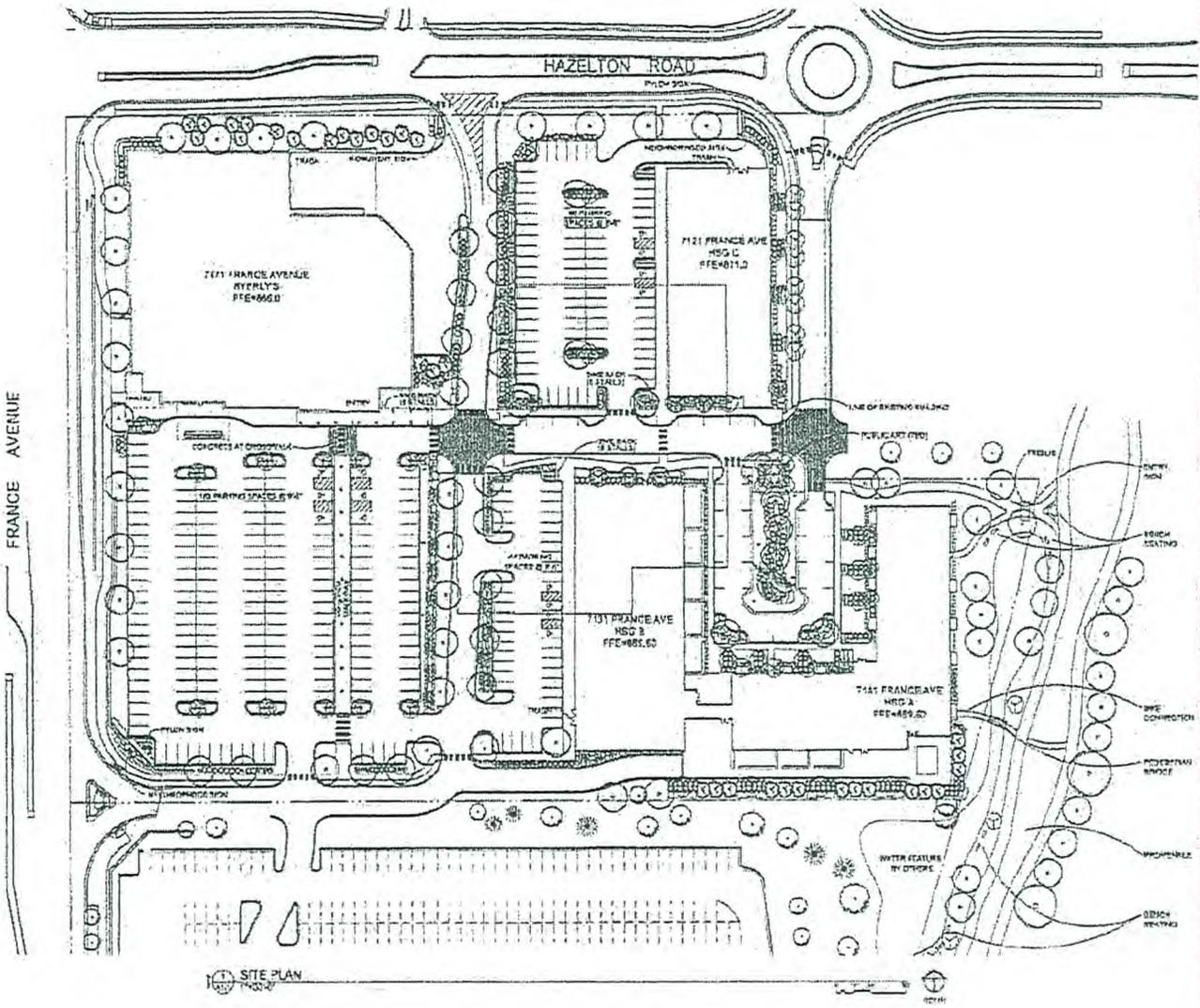
This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____

Its _____



POPE
ARCHITECTS

POPE ARCHITECTS
10000 104th Street, Suite 100
Edmonton, Alberta T6E 4E1
403.463.8888

BYERLY'S
FRANCE AVENUE
RE-DEVELOPMENT

Schafer
Richardson

ANDERSON
COMPANIES

cresa

FINAL
DEVELOPMENT
PLAN 4-24-13

SITE PLAN

Project No.	13-101
Date	12-12-13
Revision	
Scale	AS SHOWN
Author	AL
Checker	AL
Drawn	AL
Reviewed	AL
Approved	AL

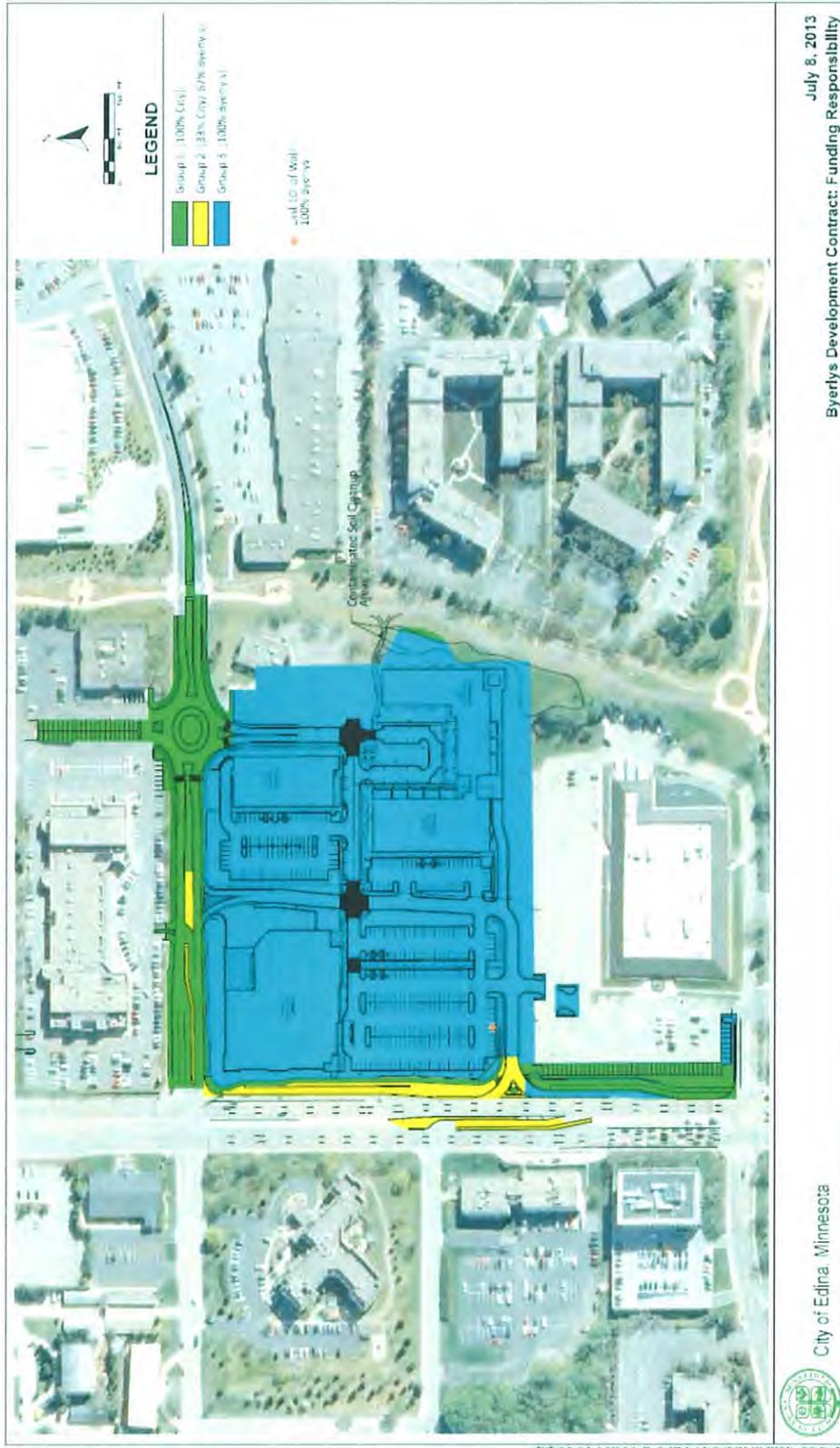
Scale: 1" = 10'-0"

ALL

EXHIBIT "A"
Plan B - Site Plan

EXHIBIT "B"

Plan H – Cost Sharing Plan



July 8, 2013
Byerlys Development Contract: Funding Responsibility

City of Edina, Minnesota



EXHIBIT "C"

City of Edina Record Drawings

1. All plan sheets must be provided in Record Drawing format. Refer to attached exhibit #1-3 for examples. All data shall be placed on a "**Record Drawing**" layer in base files.
 - (B) - General Contractor, General Contractors mailing address, a list of Sub Contractors, the year constructed/completed, name of inspector onsite. (All sheets)
 - (C) - Record Drawing Note: *"This drawing is our record knowledge of the project as constructed. Information is furnished without warranty as to accuracy. Users should field verify locations and elevations prior to use."* (All sheets)
 - (D) - Complete revision block (All sheets)
 - (E) - Strike out existing information and add field verified data such as rim and invert elevations.
 - (F, G, H, & I) - Stationing of clean outs, wyes, services, etc as detailed in line items below:
2. Record Drawing data collection must be completed in Hennepin County coordinate system.
3. Shoot all X,Y,Z, coordinates on all sanitary/storm structures, inverts, sump drain services, clean out locations, gate valve boxes, curb stops, hydrants, lighting units and hand holes, etc., that are found within the project limits once the wear course has been placed.
4. All X,Y,Z, coordinates must be within 0.05 foot tolerance for horizontal and vertical measurements.
5. All distances, elevations and ties are based on field measurements or verified shots taken after construction.
6. Survey shots must be taken at the following locations:
 - Center of all castings and inlets.
 - Center of each gate valve box
 - Center of curb stops
 - Top nut on hydrant
 - Center of isolation gate valve box at hydrant
 - Center of cleanouts on sump drain and sanitary sewer
 - Center of sump drain service stub
 - Center of hand hole
 - Adjacent to lighting unit
 - Center of Lift Station
7. Below is an approved list of the following point code naming conventions used by the City. These point code naming conventions must be used for all record information gathered upon completion of the project.
 - **ASAN** sanitary manhole
 - **ASCO** sanitary clean out
 - **ALIFT** sanitary lift station
 - **AAIRMH** air release manhole
 - **ACB** catch basin manhole
 - **ADMH** storm sewer manhole
 - **AIN** storm sewer inlet FES
 - **AOUT** storm sewer outlet FES

- **AGV** gate all valve box locations – including isolation GV's at Hydrants
 - **AHYD** hydrant locations
 - **APIV** Post Indicator Valve
 - **AWMH** gate valve manholes
 - **AWSO** curb stop shut off boxes
 - **ACO** sump drain cleanout locations
 - **ASR** sump drain service locations
 - **ALP** city-owned light poles
 - **AHH** hand holes
8. All gate valve boxes found within the project limits shall be tied off with a minimum of 2 ties. These ties will be recorded on gate valve tie sheets (provided by the City of Edina). Ties are to be recorded to the nearest 0.5' and are to be taken in the following order:
- Tie to top nut on hydrants
 - Center of sanitary sewer or storm sewer manhole castings
 - Center @ back of curb on catch basin inlets.
 - Back of curb
 - NOTE: Do not tie gate valves to other gate valves, light poles, or house corners. Ties are not to exceed 200'. Isolation gate valves in front of hydrants are exempt of this requirement.
9. A bench loop is required to provide benchmark elevations for all fire hydrants in the project limits. The level of precision shall be a minimum of Second Order, Class 1. GPS or Robot elevations for this task are not acceptable. Work must be done using a level and traverse the jobsite recording TNH's accordingly. These notes are to be given to the Edina Survey Department for their record use.
10. Wye service locations for **SANITARY SEWER** are stationed off of the downstream **SANITARY** manhole. Stations are to be recorded to the nearest foot. All X,Y,Z, coordinates are required for all new sanitary sewer mainline service connections. *(no ties required – stationing only) (example: S0+00)*
11. Wye service locations for **SUMP DRAIN** services and **SUMP DRAIN CLEANOUT** locations are stationed off the downstream **SANITARY** manhole. Stations shall be recorded to the nearest foot. *(no ties required – stationing only) (example: SERV=0+00 or CO=0+00)*
12. Water service **CORPORTATIONS** and **CURB BOX STOP** locations are stationed off the downstream **SANITARY** manhole. Stations shall be recorded to the nearest foot. Corporation stations only need to be recorded if large deviations in alignment exceeding 5 feet, or are not perpendicular to the water main. *(no ties required – stationing only) (example: W0+00 or CORP0+00)*
13. All X,Y,Z, coordinates for buried utility items such as **BENDS, REDUCERS, SLEEVES, TEES, CROSSES** and **PLUGS** are required and stationed off the downstream **SANITARY** manhole. Stations shall be recorded to the nearest foot. *(no ties required – stationing only) (example: BEND0+00, REDUCER0+00, SLEEVE0+00, TEE0+00, CROSS0+00, PLUG0+00)*
14. Update record plan sheets to reflect updated elevations, inverts, structure builds and locations. Strike out proposed plan information and add the new information to reflect field changes in bold text.
15. Submit one 11 x 17 set of preliminary record plans and CAD drawing to the City of Edina for review and comments.
16. Upon approval of the preliminary record plans and CAD drawing, the City requires the following information on CD/DVD:
- 1 hard copy set of 11 x 17 record plans.

- 1 complete record set of 11 x 17 record plan sheets in PDF format.
- Individual record plan sheets using the following naming convention example for a contract. (year/contract number/page number – see below)

Example: For Highlands Reconstruction Project (ENG 08-8) would look like this:

20080801 = PAGE 1 OF PLANSET
 20080802 = PAGE 2 OF PLANSET
 20080803 = PAGE 3 OF PLANSET

- Electronic AutoCAD drawing containing field gathered record data.
- Spreadsheet file of field gathered data and coordinates in Microsoft Excel format.

Please note the following information: At this time, the City of Edina does not require consultants to redraw line work in the base files as long as record X, Y, Z coordinates have been shot to reflect exact field locations of structures onsite **AND** consultants have used the appropriate naming conventions of field gathered points. The City of Edina does require new line work if major deviations from the original construction plans are added or found.

Sanitary Sewer Manholes

Request Facility ID maps from City Staff. Use maps to gather new record data.

Update and redline existing “**Sanitary Sewer Manhole Inspection Reports**” with applicable information. (see attached)

Shoot all X, Y, Z coordinates for each newly constructed or adjusted manholes and castings on site. All coordinates must be within 0.05 foot tolerance for horizontal and vertical measurements.

All shots must be taken in the center of the casting lid at finished grade.

Comments required for any information not addressed in the report.

Storm Sewer: Catch Basins, Manholes, Inlets, & Outlets

Request Facility ID maps from City Staff. Use maps to gather new record data.

Update and redline existing “**Storm Sewer Manhole Inspection Reports**” with applicable information. (see attached)

Shoot all X, Y, Z coordinates for each newly constructed, or adjusted, catch basin, or manhole and casting on site. All coordinates must be within 0.05 foot tolerance for horizontal and vertical measurements.

All shots must be taken in the center of the casting on the structure at finished grade. In the case of inlets and outlets - a shot will be taken at the end of the apron structure. In the absence of an apron, an invert will be taken at the end of pipe.

Comments required for any information not addressed in the report.

Watermain: Gate Valves & Hydrants

Request Facility ID maps from City Staff. Use maps to gather new record data.

Shoot all X, Y, Z coordinates for each new hydrant and gate valve on site. All coordinates must be within 0.5 foot tolerance for horizontal and vertical measurements.

All shots must be taken on the top nut of the new fire hydrant, or in the center of the gate valve box cover.

All gate valves, including isolation gate valves at hydrants will require X,Y,Z coordinates.

Gate valve manholes will also require an inspection and a shot on the center of the casting lit at finished grade.

Roadway Lighting

Shoot all X, Y, Z coordinates for each new lighting standard and hand hole on site.

All coordinates must be within 0.5 foot tolerance for horizontal and vertical measurements.

All shots must be taken adjacent to the new lighting unit or at the center of a hand hole cover at finished grade.

Signs

Shoot all X, Y, Z coordinates for each new and existing sign on site.

All coordinates must be within 0.5 foot tolerance for horizontal and vertical measurements. All shots must be taken adjacent to the sign.



CITY OF EDINA, MINNESOTA

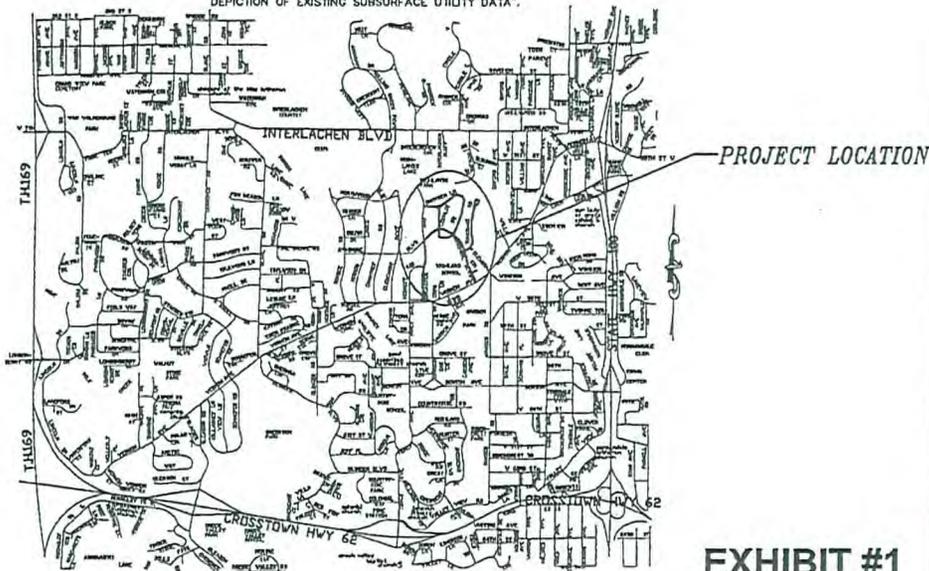
HIGHLANDS NEIGHBORHOOD RECONSTRUCTION & DONCASTER WAY SIDEWALK

CONSTRUCTION PLAN FOR: ROADWAY, SIDEWALK AND UTILITY RECONSTRUCTION

LOCATED ON: AYRSHIRE BLVD., CROYDEN LN., DUNCRAIG RD., GLENBRAE CIR., LOCHLOY DR. & DONCASTER WAY

- ⊙ CATCH BASIN
- ⊙ BEE HIVE CATCH BASIN
- ⊙ STORM MH, DRAINAGE
- ⊙ SANITARY MH
- ⊙ SANITARY CLEAN OUT
- ⊙ HYDRANT
- ⊙ WATER VALVE
- ⊙ WATER VALVE MH
- ⊙ STOP BOX
- ⊙ POST INDICATOR VALVE
- ⊙ ELECTRIC MH
- ⊙ UTILITY POLE
- ⊙ LIGHT POLE
- ⊙ UTILITY POLE W/LIGHT
- ⊙ GUY WIRE
- ⊙ GUY POLE
- ⊙ GROUND LIGHT
- ⊙ TRAFFIC SIGNAL
- ⊙ HAND HOLE
- ⊙ TELEPHONE PEDESTAL
- ⊙ TELEPHONE MH
- ⊙ TELEVISION PEDESTAL
- ⊙ GAS VALVE
- ⊙ MAIL BOX
- ⊙ RETAINING WALL
- ⊙ CHAIN LINK FENCE
- ⊙ WOOD FENCE
- ⊙ SILT FENCE
- ⊙ SAWCUT
- >— STORM SEWER
- >— SUMP DRAIN
- I — WATER LINE
- > — SANITARY SEWER
- G — GAS LINE
- T — TELEPHONE UG LINE
- P — ELECTRIC UG LINE
- OH — OVERHEAD
- **—** — PROPOSED=BOLD\SOLID

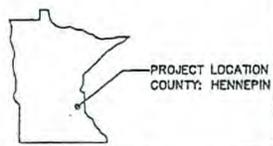
THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF C/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".



(B)

(C)

EXHIBIT #1



PLAN REVISIONS		
DATE	SHEET NO.	APPROVED BY
1/1/09	RECORD PLAN REVISION	AK

RECORD DRAWING
 GENERAL CONTRACTOR: NORTHWEST ASPHALT, INC.
 ADDRESS: 1451 STAGECOACH RD., SHAKOPEE, MN 55378
 CONSTRUCTED SUMMER 2008
 PROJECT MANAGER: JACK SULLIVAN, PE., CITY OF EDINA
 PROJECT OBSERVER: AARON KUZNIA, CITY OF EDINA

RECORD DRAWING NOTE:
 THIS DRAWING IS OUR RECORD KNOWLEDGE OF THE PROJECT AS CONSTRUCTED. INFORMATION IS FURNISHED WITHOUT WARRANTY AS TO ACCURACY. USERS SHOULD FIELD VERIFY LOCATIONS AND ELEVATIONS.

GOVERNING SPECIFICATIONS

THE 2005 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" AND THE SPECIFICATIONS FOR CONSTRUCTION BY THE CITY OF EDINA SHALL GOVERN THIS PROJECT

NOTE: ALL TRAFFIC CONTROL DEVICES SHALL CONFORM AND BE INSTALLED IN ACCORDANCE TO THE "MINNESOTA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" (MN MUTCD) AND PART V, "FIELD MANUAL FOR TEMPORARY TRAFFIC CONTROL ZONE LAYOUTS."

SHEET NO.	INDEX DESCRIPTION
1	TITLE SHEET
2	STATEMENT OF ESTIMATED QUANTITIES & STANDARD PLATES
3	CONSTRUCTION/SOILS NOTES & TYPICAL SECTIONS
4	PLAN AND PROFILE-AYRSHIRE BLVD.
5-8	RANDOM CURB AND GUTTER AND DRIVEWAY REPLACEMENT
9	STORMWATER POLLUTION PREVENTION PLAN
10-11	STORM SEWER PLANS
12-17	UTILITY PLAN
18-20	RAW WATER MAIN
21-25	DONCASTER WAY SIDEWALK AND HIGHLANDS SCHOOL ENTRANCE

THIS PLAN CONTAINS 25 SHEETS

LOCAL AGENCY SIGNATURES

DESIGN ENGINEER: I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

DATE: _____ LICENSE NO. 42375

SIGNATURE: _____ NAME: JACK D. SULLIVAN

APPROVED: CITY ENGINEER _____ DATE: _____

EDINA CONTRACT NO. ENG 08-8

EDINA IMP. NO. BA-342, SS-438
 WM-476, STS-343, S-092

SHEET
1 OF 25

(B)
RECORD DRAWING

GENERAL CONTRACTOR: NORTHWEST ASPHALT, INC.
 ADDRESS: 1451 STADECOACH RD., SHAKOPEE, MN 55378
 CONSTRUCTED SUMMER 2005
 PROJECT MANAGER: JACK SULLIVAN, PE, CITY OF EDINA
 PROJECT OBSERVER: AARON KUZNIA, CITY OF EDINA

(C)
RECORD DRAWING NOTE:

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GENERAL NOTES:

ALL WATERMAIN SHALL BE A MINIMUM OF 10 FOOT HORIZONTAL OR 18 INCHES VERTICALLY FROM ALL SANITARY AND STORM SEWER PIPE AND APPARATUSSES.

LIMITS OF CONSTRUCTION SHALL BE AS DETERMINED AND MARKED IN THE FIELD BY THE ENGINEER.

THE EXACT LOCATION OF THE UNDERGROUND UTILITIES ARE UNKNOWN. THE CONTRACTOR SHALL CONTACT THE APPROPRIATE UTILITY COMPANY BEFORE COMMENCING UNDERGROUND EXCAVATION AND VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.

EROSION CONTROL NOTES:

INLET PROTECTION SHALL BE USED ON ALL CB'S, MH'S AND D'S FOR THE DURATION OF THE PROJECT BEFORE THE ROAD IS PAVED IN ACCORDANCE WITH MNDOT SPEC. 2573.

ALL AREAS DISTURBED BY CONSTRUCTION SHALL RECEIVE 5" OF TOPSOIL AND BE SODDED WITHIN 14 DAYS OF COMPLETING THE WORK NECESSARY TO PROCEED WITH FINISH GRADING

CB - TYPE "BB" (SEE STD. PLATE #220)

CBMH - TYPE "CC" (SEE STD. PLATE #230)

TS - TREATMENT STRUCTURE (SEE SPECIAL CONDITIONS--STM)

① 50' - 4" DRAINTILE WITH SOCK

② REMOVE SEWER PIPE (STORM)

③ FIELD VERIFY PRIOR TO INSTALLATION TOP OF EX SAN SEWER. BLOCK SUPPORT STORM SEWER ON BOTH SIDES OF EX SAN SEWER. INSULATE AREA BETWEEN.

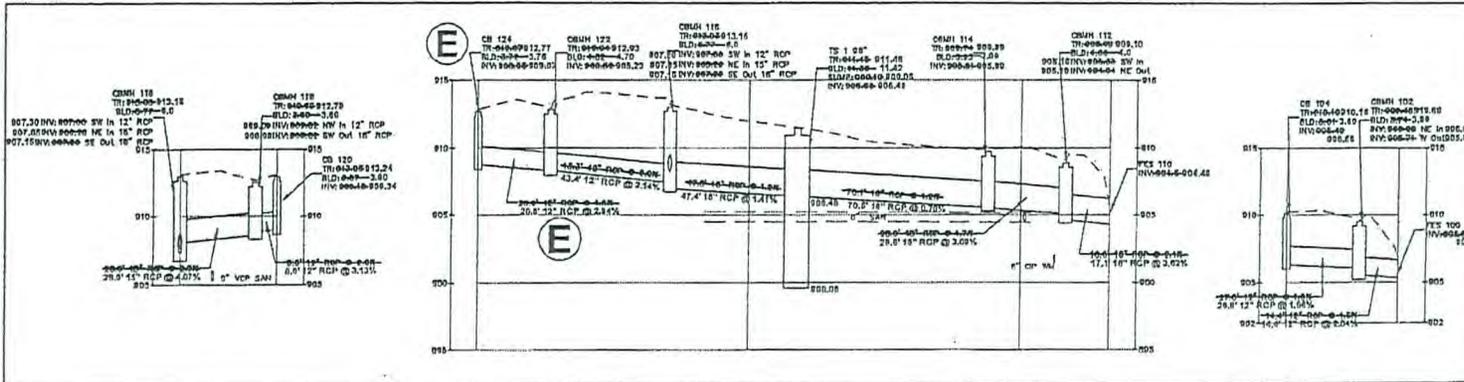
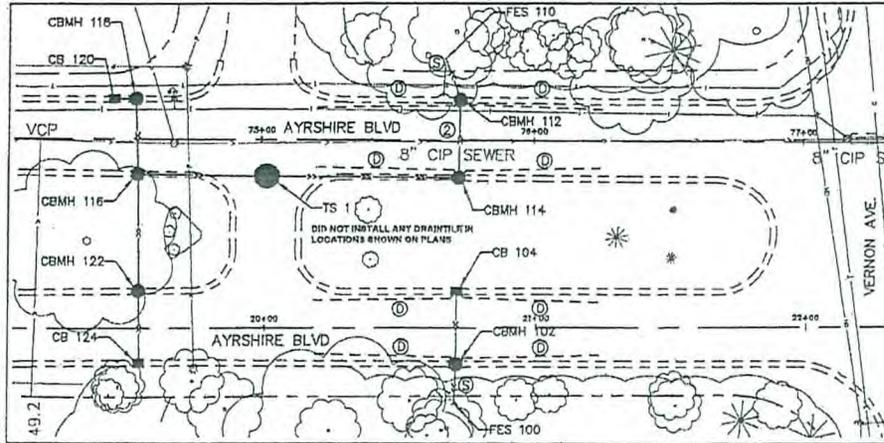


EXHIBIT #2

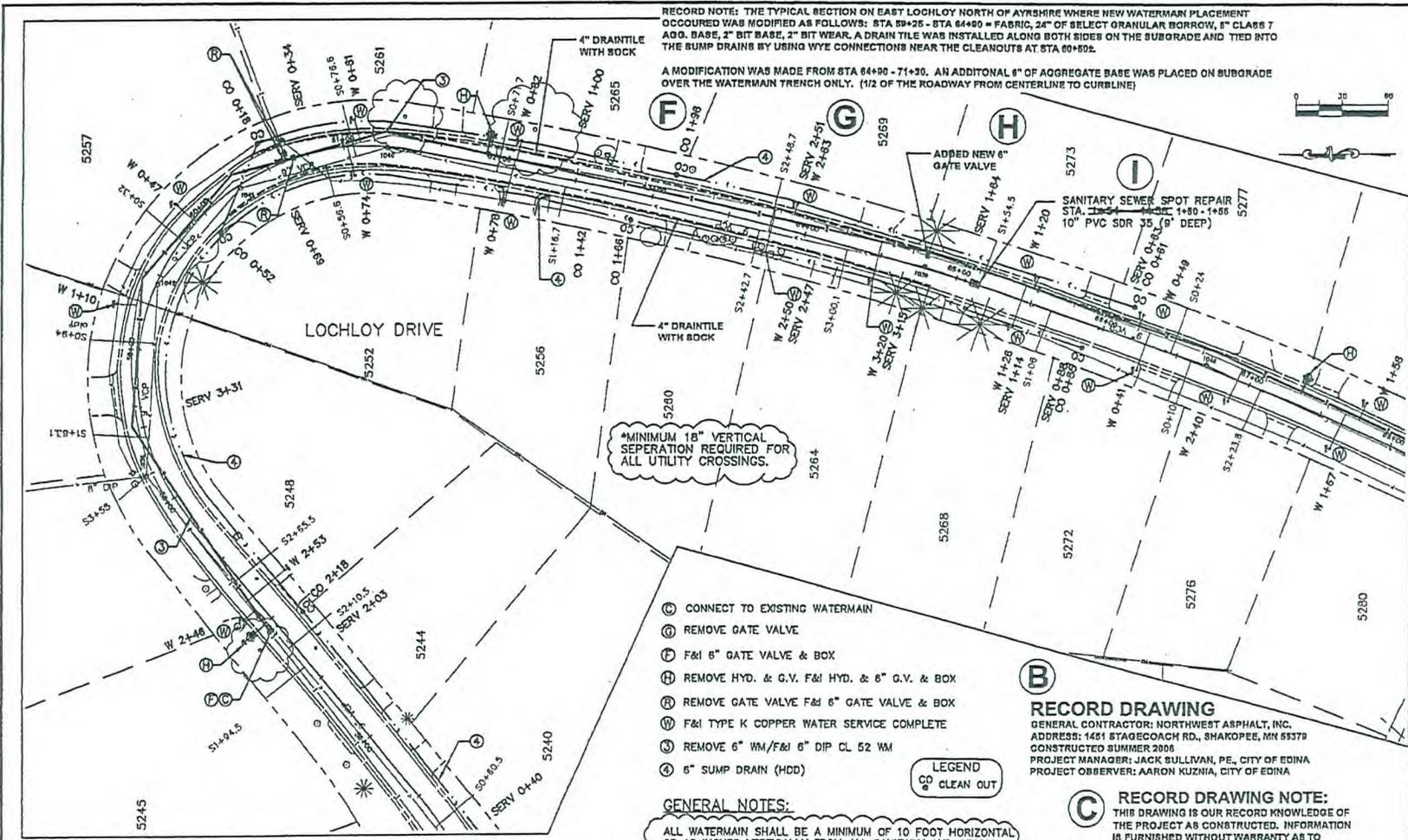
1	DATE	BY	REVISION
1	05/14/08	JCB	RECORD PLANNING
2	05/14/08	JDS	UTILITY RECORDS
3	05/14/08	JDS	REVISED
4	05/14/08	JDS	REVISED

(D)
STORM SEWER
AYRSHIRE BLVD.

CITY OF EDINA
 4500 West 50th Street
 Edina, MN 55424-1994
 Fax: 952-834-0389

HIGHLANDS AREA
RECONSTRUCTION

DATE: 5-14-08
 DRAWN: JCB
 CHECKED: JDS
 APPROVED: JDS
 SHEET: 11 of 25



RECORD NOTE: THE TYPICAL SECTION ON EAST LOCHLOY NORTH OF AYRSHIRE WHERE NEW WATERMAIN PLACEMENT OCCURRED WAS MODIFIED AS FOLLOWS: STA 64+25 - STA 64+50 = FABRIC 24" OF SELECT GRANULAR BORROW, 8" CLASS 5 T AGG. BASE, 2" BIT BASE, 2" BIT WEAR. A DRAIN TILE WAS INSTALLED ALONG BOTH SIDES ON THE SUBGRADE AND TIED INTO THE BUMP DRAINS BY USING WYE CONNECTIONS NEAR THE CLEANOUTS AT STA 60+00.02.

A MODIFICATION WAS MADE FROM STA 64+50 - 71+30. AN ADDITIONAL 8" OF AGGREGATE BASE WAS PLACED ON SUBGRADE OVER THE WATERMAIN TRENCH ONLY. (1/2 OF THE ROADWAY FROM CENTERLINE TO CURBLINE)

EROSION CONTROL NOTES:
 INLET PROTECTION SHALL BE USED ON ALL CB'S, MH'S AND DI'S FOR THE DURATION OF THE PROJECT BEFORE THE ROAD IS PAVED IN ACCORDANCE WITH MnDOT SPEC. 2573
 ALL AREAS DISTURBED BY CONSTRUCTION SHALL RECEIVE 6" OF TOPSOIL AND BE SODDED WITH IN 14 DAYS OF COMPLETING THE WORK NECESSARY TO PROCEED WITH FINISH GRADING

GENERAL NOTES:
 ALL WATERMAIN SHALL BE A MINIMUM OF 10 FOOT HORIZONTAL OR 18 INCHES VERTICALLY FROM ALL SANITARY AND STORM SEWER PIPE AND APPARATUSSES.

LIMITS OF CONSTRUCTION SHALL BE AS DETERMINED AND MARKED IN THE FIELD BY THE ENGINEER.

THE EXACT LOCATION OF THE UNDERGROUND UTILITIES ARE UNKNOWN. THE CONTRACTOR SHALL CONTACT THE APPROPRIATE UTILITY COMPANY BEFORE COMMENCING UNDERGROUND EXCAVATION AND VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.

ALL CURB BOXES SHALL BE LOCATED AND ADJUSTED AS RECOMMENDED BY THE ENGINEER IN THE FIELD. CURB BOX LOCATION MARKERS SHALL BE MAINTAINED AT ALL TIMES THROUGHOUT THE PROJECT.

- (C) CONNECT TO EXISTING WATERMAIN
- (D) REMOVE GATE VALVE
- (F) F&I 6" GATE VALVE & BOX
- (H) REMOVE HYD. & G.V. F&I HYD. & 6" G.V. & BOX
- (K) REMOVE GATE VALVE F&I 6" GATE VALVE & BOX
- (V) F&I TYPE K COPPER WATER SERVICE COMPLETE
- (S) REMOVE 6" WM/F&I 6" DIP CL 52 WM
- (A) 6" SUMP DRAIN (HDD)

RECORD DRAWING
 GENERAL CONTRACTOR: NORTHWEST ASPHALT, INC.
 ADDRESS: 1451 STAGECOACH RD., SHAKOPEE, MN 55379
 CONSTRUCTED SUMMER 2006
 PROJECT MANAGER: JACK SULLIVAN, PE., CITY OF EDINA
 PROJECT OBSERVER: AARON KUZNIA, CITY OF EDINA

RECORD DRAWING NOTE:
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1	2/24/06	JTC	UTILITY REVISION
2	3/26/06	AK	REVISION PLUM REVISION
			REVISED BY
			DATE

UTILITY PLANS

D

CITY OF EDINA
 4801 WEST 52ND STREET
 EDINA, MN 55424-1274
 PH 952-835-8071
 FAX 952-835-8393

HIGHLANDS AREA RECONSTRUCTION

RECORD DRAWING

LEGEND
 CO CLEAN OUT

RECORD DRAWING NOTE:
 I HEREBY CERTIFY THAT THIS DRAWING WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

DATE: 5-14-09
 DRAWN: AFK
 CHECKED: JUS
 APPROVED: JUS
 TITLE: 34-24-25
 CONTROL SHEET: 02-B
 SHEET: 16 OF 25

EXHIBIT #3

Archival process for City of Edina Record Drawings:

Create all Record Drawings in CAD using City of Edina Standards. Plot to Cute PDF. Create a new Record Drawing folder in the Contract Folder for the project.

Name the PDF sheets in the plan set. Use the following naming convention when placing them in the Contract Folder for the project:

(Year/contract #/sheet # = (description of sheet not needed)

Example: For Highlands Reconstruction Project (ENG 08-8) would look like this

20080800 = SIGNED TITLE SHEET
20080801 = TITLE
20080802 = SEQ
20080803 = PLAN

By using this format, when the PDF's are created and transferred to the Archive folder and placed in the appropriate archive year, they will populate according to the year, contract number and page number accordingly. This will keep them all in an easy to understand, continuous order.

In the Archive folder, locate the appropriate year Record Archive folder. Copy and paste your Record Drawings from your Contract Folder into this Record Archive folder. They will populate according to the naming convention with the year, contract number and page number accordingly.

In the appropriate Archive Folder, find the utility appropriate excel spreadsheet. Begin adding information and filling out information in the appropriate columns to the bottom of the existing list. Only add and hyperlink the sheets that are specific to the appropriate utility folder.

I created a Contract # drop down on top of the excel spreadsheet so you can search the spread sheet and sort the sheets by contract number if need be.

By transferring all Record Drawing plan sheets to the Archive Folder, it will be easier to reconstruct a complete set of Record Drawings from this location in the future.