



**To:** MAYOR AND COUNCIL

**Agenda Item #:** VIII. D.

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

**Action**

**Discussion**

**Date:** September 16, 2014

**Information**

**Subject:** Approve Development Contract with City Homes Development, LLC for the Acres DuBois Development

**Action Requested:**

Approve Development Contract with City Homes Development, LLC for the Acres DuBois Development

**Information / Background:**

On February 18, 2014, the City Council approved the Final Plat, Development Contract and Preservation Easement for the Acres DuBois Development with M-K Holdings. M-K Holdings has sold the development to City Homes Development, LLC (City Homes). This action will transfer the requirements of the development as detailed at the February 18 City Council meeting to City Homes.

As an update, the Final Plat has been filed with Hennepin County, park dedication fees have been paid to the City and City Homes is currently finalizing construction plans to gather permits from the City, Minnehaha Creek Watershed District, and other regulatory agencies. All other requirements and/or submittals detailed in the final plat materials, development contract, preservation easement, or council meeting minutes will be met prior to construction. If all conditions are met, construction may begin this fall

Staff recommends approval of the Development Contract with City Homes Development, LLC.

**Attachments:**

Development Contract

City Council Minutes February 18, 2013

G:\PWCENTRAL SVCS\ENG DIV\PROJECTS\CONTRACTS\PRIVATE\IP2012\IP012-1 Acres Dubois\Item VIII. D. City Homes Development Contract.docx

*(reserved for recording information)*

**DEVELOPMENT CONTRACT**  
**ACRES DUBOIS ADDITION**

**CONTRACT** dated \_\_\_\_\_, 2014, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City"), and **CITY HOMES DEVELOPMENT, LLC**, a Minnesota limited liability company (the "Developer").

**1. REQUEST FOR PLAT APPROVAL.** The Developer has asked the City to approve a plat for the Acres DuBois 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 on Exhibit A attached hereto.

**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 at the time of application for the initial grading permit, 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.

**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 – Final Plat

Plan B – Acres DuBois Preliminary Plan Set

Plan C – Final Construction Plans and Specifications

**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 System
- B. Water System
- C. Storm Sewer System
- D. Streets
- E. Concrete Curb and Gutter

- F. Landscaping
- G. Street Lights
- H. Underground Utilities
- I. Surveying and Staking
- J. Site Grading, Stormwater Treatment/Infiltration Basins, and Erosion Control
- K. Sidewalks
- L. Setting of Iron Monuments

**7. 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 9, 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.

In accordance with Minnesota Statutes 505.02, the final placement of iron monuments for all lot corners must be completed before the applicable security is released. The Developer's surveyor shall also submit a written notice to the City certifying that the monuments have been installed following site grading, utility and street construction.

**8. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION/ CONSTRUCTION COSTS.** The Developer shall pay a fee for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and its engineer on status or problems regarding the project, coordination for final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in security. The Developer shall pay for construction observation performed by the City's in-house engineering staff or consulting engineer. Construction observation shall include part or full time inspection of proposed public utilities and street construction and will be billed on hourly rates. The Developer improvements cost breakdown is:

○ Street Construction	\$171,005
○ Site Grading	\$162,000
○ Storm Sewer	\$125,200
○ Sanitary Sewer	\$ 81,225
○ Watermain	<u>\$ 42,980</u>
Estimated Construction Cost	<u>\$582,510</u>
Estimated City Engineering Fees (6%)	<u>\$ 34,951</u>
Total Estimated Construction Cost	<u>\$610,461</u>

**9. 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 "A," 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

**10. 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 6 above.

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

- A. Minnesota Department of Health for Watermains
- B. MPCA NPDES Permit for Construction Activity
- C. MPCA for Hazardous Material Removal and Disposal
- D. City of Edina for Building Permits
- E. MCES for Sanitary Sewer Connections
- F. Minnehaha Creek for Watershed Permit

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

**12. TIME OF PERFORMANCE.** The Developer shall install all required public improvements and other work required by this Development Contract by October 31, 2016. 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.

**13. 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.

**14. GRADING PLAN.** The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan B". 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.

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

**16. 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.

**17. 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.

**18. PARK DEDICATION.** The property within the Plat has already paid park dedication for 6 lots. The Developer shall make cash contribution of \$10,000 to satisfy the City's park dedication requirements, calculated at the rate of \$5,000.00/unit x 2 units. Payment is due at the time prior to City execution of the final plat.

**19. 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, material men, 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.

**20. RESPONSIBILITY FOR COSTS.**

A. Beginning after final approval has been granted by the City and except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City including but not limited to legal, engineering and inspection expenses in connection with the ongoing development of the plat, the enforcement of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting the development of the plat. The City's costs and expenses must be agreed to in writing by the developer before the City starts any work.

B. 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.

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

D. 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 sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.

E. 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") charges and building permit fees. REC fees will not be required due to the developer installing the watermain and sanitary sewer system.

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

A. Implementation of the comments in the March 22, 2013, (Revised 3-27-2013) memorandum from the Director of Engineering to the Community Development Director.

B. City of Edina Resolution 2013-39

C. Developer must provide a tree and slope preservation easement to the City to preserve the steep slopes on the site and the 10 mature trees identified in the Preliminary Tree Preservation plan simultaneous with the recording of the final plat.

D. Approval by the Minnehaha Creek Watershed District and compliance with the District's requirements.

E. The Developer shall construct a 4 or 5 foot wide sidewalk either within the right-of-way on the west side of the public street or such other location approved by the City Engineer. If the sidewalk is not constructed within the right-of-way the Developer shall, prior to construction of the sidewalk, convey to the City an easement over the area where the sidewalk is constructed. The easement must be in a form approved by the City Attorney.

F. Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan and is subject to review and approval of the City Engineer.

G. Developer shall provide a construction management plan to the City for the overall development of the site at the time of application for the initial grading permit and for each individual home construction prior to issuance of a building permit.

H. Utility hook-ups are subject to review and approval by the City Engineer

I. Outlot A shall be deeded to the adjacent parcel at 4408 Morningside Road simultaneous with the recording of the final plat.

J. Developer must rebuild the driveway at 4408 Morningside Road to access off the new street within the Plat and eliminate the curb cut on Morningside Road. The configuration is subject to approval of the City engineer. (Letter of Credit)

K. Developer must install a stop sign on the new street within the Plat approaching Morningside Road at a location approved by the City Engineer. Clear site lines shall be maintained from the intersection.

L. Developer shall grade Lot 8, Block 3, Crocker & Crowell's 1st Addition in accordance with the approved grading plan. Upon completion of grading the Developer shall reestablish turf on the graded property in accordance with the Minnesota Department of Transportation Specifications for Highway Construction, 2014 edition. Turf shall be warranted to be alive, of good quality, and disease free for twelve (12) months after planting. Any replacement turf shall be warranted for twelve (12) months from the time of planting.

M. The new roadway within the Plat shall be built to City standards, which is 28-ft back of curb to back of curb.

N. Developer must install signage stating "No Parking Fire Lane" along one side of the new road within the Plat the entire length of the road, subject to review and approval of the Fire Marshall.

O. Developer shall install fire hydrant(s) near the end of the cul-de-sac and possibly at the intersection of Morningside, subject to review and approval of the Fire Marshall.

P. Developer must remove the existing home on the south side of the property within the Plat and all accessory buildings located within the Plat.

Q. Developer shall maintain the storm water features located within the Platted area for a period of three years following final acceptance after construction. After the period of three years it will be the responsibility of the City for maintenance.

## **22. 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 at the time of application for the initial grading permit.

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 Lots 1-7 of the plat and may be recorded against Lots 1-7. 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 Lots 1-7 of the plat; that there are no

unrecorded interests in Lots 1-7; 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.

**23. 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.

**24. WARRANTY.** The Developer warrants all public improvements required to be constructed by it pursuant to Section 6 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.

**25. 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 \$610,461.00. 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 installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans have been received by the City, (5) a warranty security is provided, and (6) the public improvements are accepted by the City.

**26. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: City Homes Development, LLC, 3260 West Lake Street, Minneapolis, Minnesota 55416. Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by certified mail in care of the City Manager at the following address: Edina City Hall, 4801 West 50<sup>th</sup> Street Edina, Minnesota 55424-1330.

*[The remainder of this page has been intentionally left blank.  
Signature pages follow.]*

**CITY OF EDINA**

BY: \_\_\_\_\_  
James Hovland, Mayor

(SEAL)

AND \_\_\_\_\_  
Scott Neal, City Manager

STATE OF MINNESOTA            )  
  )ss.  
COUNTY OF HENNEPIN         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by James Hovland and Scott Neal, respectively the Mayor and City Manager of the City of Edina, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC

**DEVELOPER  
CITY HOMES DEVELOPMENT, LLC**

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

Its Chief Manager

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ the Chief Manager of City Homes Development, LLC, a Minnesota limited liability company, on behalf of said company.

\_\_\_\_\_  
NOTARY PUBLIC

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

**EXHIBIT A**

Lots 1 through 8, Block 1, and Outlot A, Acres Dubois, Hennepin County, Minnesota,

The torrens portion of which is described as:

That part of Lot 4, Block 1, Acres Dubois embraced within Lot 17, Block 3, Crocker & Crowell's First Addition, Hennepin County, Minnesota.

AND

That part of Lot 5, Block 1, Acres Dubois embraced within Lots 17 and 18, Block 3, Crocker & Crowell's First Addition, Hennepin County, Minnesota.

AND

That part of Lot 6, Block 1, Acres Dubois embraced within Lots 17 and 18, Block 3, Crocker & Crowell's First Addition, Hennepin County, Minnesota.

*(Abstract and Torrens Property)*

**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 50<sup>th</sup> 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 \_\_\_\_\_

Michael Mergens and Michael Meents, two of owners of Red's Savoy, introduced themselves, described their pizza offerings, and invited all to enjoy their lunch buffet.

**VIII.C. SPORTS DOME, OUTDOOR RINK AND ARENA IMPROVEMENTS BUDGET ESTIMATE UPDATE AND BID AUTHORIZATION – APPROVED**

Parks & Recreation Director Kattreh displayed renderings of the site and described the location of proposed buildings and drive aisles and access points. She presented the construction budget estimates dated October, 2013 and February 2014, noting the estimates were close with the exception of the East Arena Ice Equipment (\$1,120,000 to \$1,770,293) and site work (+\$1,746,507). Overall the net project difference of \$2,066,817 was based on the design/development process being complete and 60% of the design documents being complete. Ms. Kattreh stated this estimate does include \$500,000 proposed as an alternate for a Kevlar dome covering, dome insulation, and new soccer fields at the Arena site.

The Council considered options to mitigate the \$2 million overrun that resulted from site conditions. Ms. Kattreh stated the Pamela Park project appeared to be about \$500,000 under the projected budget. This savings would be gained by creating a high quality grass field rather than a sand/peat field and to slightly expand the width (20-25 feet) of the artificial turf field. The Council raised the option of deferring Capital Improvement Projects (CIP). Ms. Kattreh stated that was an option for the Edinborough locker room project and would save approximately \$500,000. She explained that while not a contractual obligation, the Edina Swim Club was expecting that work to be completed this year. Another option was to eliminate the outdoor refrigerated rink to save approximately \$1.5 million.

In response to the Council's questions, Ms. Kattreh stated this project was not in the CIP at this time and bonds had not been sold or a levy established to pay for these improvements. The Council expressed a reluctance to delaying locker room improvements and asked Ms. Kattreh to provide a recommendation on other options for cost savings. **Member Sprague made a motion, seconded by Member Swenson, authorizing advertisement of bid package one for Sports Dome, outdoor rink, and arena project.**

Ayes: Brindle, Sprague, Swenson, Hovland

Nays: Bennett

Motion carried.

Member Swenson was excused from the meeting at 10:40 p.m.

**VIII.D. FINAL PLAT, DEVELOPMENT AGREEMENTS AND PRESERVATION EASEMENTS – ACRES DUBOIS, FRANK SIDELL, PROPERTY LOCATED BETWEEN LITTEL STREET AND MORNINGSIDE ROAD, RESOLUTION NO. 2014-20 – ADOPTED**

Community Development Director Teague presented the final plat, development contract, and preservation easements (tree and slope preservation easement) for Acres Dubois. He advised the final plat was consistent with the approved preliminary plat and drainage and utility easements had been expanded to accommodate an updated stormwater management system that would include an underground infiltration system that could infiltrate all storms up to the 100-year event.

The Council noted that Lots 5, 6, 7 and part of 8 were part of the Slope and Tree Preservation Easement and the number of trees to be preserved was reduced from 86 to 10. Mr. Teague indicated that was correct. With regard to the Morningside sidewalk, he explained it would be subject to the same construction rules and if damaged, would have to be replaced by the new property owner. City Engineer Millner suggested adding that requirement to the Development Agreement.

Peter Knaeble, Terra Engineering, Inc., stated the grading plan remained the same as when approved and was subject to the final house plan. Mr. Teague explained the general grading plan would be done as part of the road construction and the Engineering Department would review grading for individual sites. Mr.

Knaeble stated the easement would be recorded against the property so grading was not allowed within that easement. If the lot was not encumbered by the slope easement, grading would be allowed.

Frank Sidell, property owner, explained that after inspection, the number of trees to be preserved was lowered based on the relative health of the tree stock. The focus was to protect trees on the slope and an aggressive replacement strategy was included in case a tree had to be removed. Mr. Sidell stated his intent to involve the City Forester to select a tree species should a tree be replaced. At the request of the Council, he described the stormwater management system that included an infiltration tank under the newly constructed road to contain all drainage on site. **Member Bennett introduced and moved adoption of Resolution No. 2014-20, Approving a Final Plat for Acres Dubois, subject to the following conditions:**

1. **Park dedication fee of \$10,000 must be paid prior to release of the final plat.**
2. **Prior to issuance of building permits, the following items must be submitted:**
  - a. **Submit evidence of Minnehaha Creek Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.**
  - b. **Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan subject to review and approval of the City Engineer.**
  - c. **A construction management plan will be required for the overall development of the site, and for each individual home construction.**
  - d. **Utility hook-ups are subject to review of the City Engineer.**
  - e. **Outlot A shall be deeded to the adjacent parcel at 4408 Morningside Road.**
  - f. **The applicant must rebuild the driveway at 4408 Morningside Road to access off the new street, and eliminate the curb cut on Morningside Road. The configuration shall be subject to approval of the Director of Engineering.**
  - g. **Use of Lot 7 for the overall grading of the development will require compensation to the City of Edina. A restoration plan shall be submitted by the applicant subject to review and approval by the City Council.**

**And to also approve the Development Contract and Tree and Slope Preservation Easement. Member Sprague seconded the motion.**

Ayes: Bennett, Brindle, Sprague, Hovland

Motion carried.

~~**VIII.E. SOUTHDAL MEDICAL BUILDING, 6525 FRANCE AVENUE – AMEND CONDITIONS OF APPROVAL TO BUILD THE PROOF-OF-PARKING PLAN, RESOLUTION NO. 2014-21 – ADOPTED**~~

~~Mr. Teague presented an amendment to the approved plans for the addition to the Southdale Medical Office Building to build the proof of parking plan (fifth level) and not build the underground parking level; and, to extend the second, third, and fourth levels of the office building over the loading dock area. If approved, the footprint of the ramp would remain the same, the number of proof-of-parking stalls would still exceed City Code, the square footage of the building would remain the same, and building materials would be repositioned but remain the same.~~

~~James O'Shea Collaborative Design Group representing Southdale Medical, provided a slide presentation depicting the exterior building façade as previously approved and the requested revision that resulted in creating a plaza between the two buildings. He stated the finishes had not changed and the building remained well within setbacks. Mr. O'Shea reviewed parking statistics, noting there would be 17 more parking spaces than required.~~

~~The Council stated support for the proposed revision that would bring the building into scale but indicated there was need for additional screening or decorative skin on the parking ramp facing Drew Avenue. Mr. O'Shea stated impact was added to the 66<sup>th</sup> Avenue side based on Council comment and to make a pedestrian connection at the point of entry. In addition, the glass element at the corner of the parking lot reflected the glass corner of the office building. Mr. O'Shea stated if treatment was added along Drew~~