



**To:** MAYOR AND COUNCIL

**Agenda Item #:** VIII. A.

**From:** Bill Neuendorf  
Economic Development Manager

**Action**   
**Discussion**   
**Information**

**Date:** November 3, 2014

**Subject:**

Authorize Collaborative Development Planning Agreement - Former Public Works Site, 5146 Eden Avenue

**Action Requested:**

Authorize the Mayor and City Manager to execute the collaborative development planning Agreement with Frauenshuh Commercial Real Estate Group and direct City staff to implement the collaborative work plan.

**Information / Background:**

On September 16, 2014, the City Council selected Frauenshuh Commercial Real Estate Group as the preferred team to explore public/private development scenarios for the Former Public Works site at 5146 Eden Avenue. Frauenshuh and the City will work collaboratively to shape a mixed-use project that includes synergistic public and private elements responsive to the needs of the community and successful in the marketplace.

Frauenshuh was one of ten teams of development professionals who responded to the City's Request for Interest (RFI) issued June 2014. The RFI was broadly distributed to professionals in the real estate, planning and consulting fields. Frauenshuh was selected to be the preferred partner based on their submitted materials and interview with the City Council on September 2, 2014.

Proposed Agreement

An Agreement has been prepared to identify terms of the collaborative planning process. The Agreement outlines a work plan to explore and prepare development scenarios for the site that contain different combinations of public and private uses. The work plan identifies responsibilities for both Frauenshuh and the City. Exhibit "B" of the Agreement also contains a summary of the community engagement plan to be implemented.

After the development planning process is completed and potential scenarios are prepared, the City Council will be asked to select a preferred development concept in June 2015.

Development Planning Costs

The Agreement presumes that the collaborative planning process will be successful and will result in a redevelopment concept agreeable to the City Council. Under these conditions, Frauenshuh will be responsible for the \$110,500 cost of the planning process. The City will be responsible for incidental costs of legal, financial and planning reviews ordered on its own behalf independently of the Agreement.

In the event that the collaborative process does not identify a redevelopment concept that is agreeable to the City Council, the City will be responsible for a portion of Frauenshuh's cost as follows:

- If the City chooses none of the collaboratively prepared public/private scenarios, it will reimburse Frauenshuh for direct consultant costs, up to \$53,000.
- If the City chooses to develop a public/private scenario on the site with a partner other than Frauenshuh, within 12 months of the completion of the process, the City will be required to reimburse Frauenshuh for its in-house costs, in addition to its direct consultant costs, up to a total of \$110,500.

In the event that the City Council terminates the process before a conclusion is reached, it will be responsible for Frauenshuh's out-of-pocket consultant costs incurred up to the date of termination.

#### Anticipated Next Steps

After a redevelopment concept is selected for the site in 2015, Frauenshuh will likely be named as the "development partner" responsible for securing financing and approvals for the private component while the City will be responsible for securing the same for the public component. Phased construction would begin after full site approvals are secured, possibly as soon as 2016.

#### Attachments:

Proposed Agreement (13 pages)

# **COLLABORATIVE DEVELOPMENT PLANNING AGREEMENT**

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and **FRAUENSHUH, INC.**, a Minnesota corporation ("Frauenshuh").

**WHEREAS**, the City is the fee owner of real property located at 5146 Eden Avenue in the Grandview District as depicted in Exhibit A ("City Property"), consisting of approximately 3.3 acres, which property was formerly used by the City as the Edina Public Works Site;

**WHEREAS**, the City desires to develop the City Property with a project that includes a combination of public and private uses that work as an integrated whole;

**WHEREAS**, the City intends that the site design for the City Property be consistent with the 2012 Grandview Development Framework and the 7 Guiding Principles for redevelopment in the Grandview District;

**WHEREAS**, The City and Frauenshuh intend to work collaboratively in partnership to create potential redevelopment scenarios for the City Property that include both public and private elements;

**WHEREAS**, upon successful completion of the planning phase and selection of a preferred scenario, Frauenshuh is anticipated to serve as a City development partner to deliver the private uses to the site. If the City selects a preferred scenario following completion of the process contemplated under this Agreement, the parties anticipate negotiating terms for Frauenshuh's redevelopment of the City Property or portion thereof in a separate contract for redevelopment. However, this Agreement is not intended to bind the parties to enter into any future agreements related to the City Property.

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

**1. SCOPE OF WORK.**

A. As part of the collaborative process, the City selects Frauenshuh to prepare multiple development scenarios containing public and private uses for the City. Each scenario will be planned and designed to work as an integrated whole and consistent with the 2012 Grandview Development Framework and the 7 Guiding Principles for redevelopment in the Grandview District.

B. The specific work to be performed by Frauenshuh, including deliverables and time frames, is more specifically set forth in Exhibit B ("Work Plan"). The general quality of Frauenshuh's work shall be consistent with industry standards and consistent with Frauenshuh's Letter of Interest dated August 11, 2014 and Supplement dated September 2, 2014 (collectively the "Frauenshuh LOI") provided in response to the City's Request for Interest identified under Paragraph 2.

C. Frauenshuh's responsibility to provide the work in the time frames provided under this Agreement is contingent upon the City fulfilling the communication goals regarding the process as more specifically set forth in Exhibit B ("Work Plan").

D. Each party shall be responsible for additional costs it incurs on its own behalf, that are not included in the Budget as further defined in Section 3.

E. Any change to this Scope of Work that results in an increase to the Budget must be approved in advance by both Parties, in writing.

F. Any delay to the timeline identified in Exhibit B must be approved by written agreement of both parties.

**2. CONTRACT DOCUMENTS.** The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Collaborative Development Planning Agreement
- B. The City Request for Interest dated June 25, 2014
- C. Frauenshuh Letter of Interest

In the event of conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts, with Contract Document "A" having the first priority and Contract Document "C" having the last priority.

**3. PAYMENT.** Frauenshuh provided a budget for the Work Plan as attached in Exhibit C ("Budget") with a total not to exceed amount of \$110,500.00. The City shall pay Frauenshuh and Frauenshuh shall accept payment for Frauenshuh's work as follows:

A. If the City Council selects one of the scenarios presented by Frauenshuh within 120 days after completion of the Scenario Evaluation, the City shall make no payment to Frauenshuh for work provided under the terms of this Agreement.

B. If the City Council elects not to pursue any of the scenarios prepared through this collaborative process, the City shall pay Frauenshuh its actual out of pocket expenses, delineated as items 3-7 of the Budget, not to exceed \$53,000.00. Out-of-pocket expenses shall be inclusive of reimbursables, taxes and all other charges.

C. If the City Council enters into an agreement to develop a public/private scenario with a development partner other than Frauenshuh within one year from completion of the Scenario Evaluation, the City shall reimburse Frauenshuh actual costs to complete the Collaborative Process phase, delineated as items 1-2 of the Budget, in addition to the actual out of pocket expenses (items 3-7 of the Budget) not to exceed a total of \$110,500.00, less any amount paid under 3B.

The payments identified under subparagraph B and C of this Section shall not be adjusted if the estimated hours to perform a task, the number of required meetings, or any other estimate or assumption is exceeded. The City shall make payments on the basis of work performed upon receipt of an invoice

from Frauenshuh following expiration of the specified event or time period identified in subparagraphs B and C.

**4. OWNERSHIP.** All reports, plans, models, software, diagrams, analyses, and information generated in connection with performance of this Agreement shall be the property of the City. The City may use the information for its purposes. The City shall be the copyright owner.

**5. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing work hereunder, both Frauenshuh and the City shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of work to be provided.

**6. STANDARD OF CARE.** Frauenshuh shall exercise the same degree of care, skill, and diligence in the performance of the work as is ordinarily possessed and exercised by a professional consultant under similar circumstances. No other warranty, expressed or implied, is included in this Agreement.

**7. INDEMNIFICATION AND HOLD HARMLESS.** Frauenshuh shall defend, indemnify and hold the City, its officials, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees and costs) or claims for injury or damage arising out of the performance of this Agreement, caused by or resulting from the negligent or intentional acts or omissions of Frauenshuh, its officers, directors, volunteers, agents or employees.

The City shall defend, indemnify and hold Frauenshuh, its officers, directors, employees and agents harmless from any and all liability, loss, expense (including reasonable attorneys' fees and costs) or claims for injury or damage arising out of the City's performance of this Agreement, caused by or resulting from the negligent or intentional acts or omissions of the City, its officials, agents or employees.

**8. INSURANCE.** Frauenshuh shall secure and maintain such insurance as will protect Frauenshuh from claims under the Worker's Compensation Acts, and from claims for bodily injury, death, or property damage which may arise from the performance of work under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability	\$1,000,000 each occurrence/aggregate
Professional Liability	\$1,000,000 each claim

Before commencing work Frauenshuh shall provide the City a certificate of insurance evidencing the required insurance coverage in a form acceptable to City.

**9. INDEPENDENT CONTRACTOR.** The City hereby retains Frauenshuh as an independent contractor upon the terms and conditions set forth in this Agreement. Frauenshuh is not an employee of the City and is free to contract with other entities as provided herein. Frauenshuh shall be responsible for selecting the means and methods of performing the work. Frauenshuh shall furnish any and all supplies, equipment, and incidentals necessary for Frauenshuh's performance under this Agreement. City and Frauenshuh agree that Frauenshuh shall not at any time or in any manner represent that Frauenshuh or any of Frauenshuh's agents or employees are in any manner agents or employees of the City. Frauenshuh shall be exclusively responsible under this Agreement for Frauenshuh's own FICA payments,

workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

**10. SUBCONTRACTORS/SUBCONSULTANTS.**

A. Frauenshuh shall be responsible for engaging sub-consultants to provide professional expertise during implementation of the Work Plan, at Frauenshuh's cost. The approved sub-consultants and their fees for the defined scope of work are identified in Exhibit C. Use of additional sub-consultants to deliver the defined Work Plan shall be solely at the expense of the party that engages other sub-consultants.

B. Except as identified in the Frauenshuh LOI and Exhibit C, Frauenshuh shall not enter into subcontracts for work provided under this Agreement without the express written consent of the City. Frauenshuh shall comply with Minnesota Statute §471.425. Frauenshuh must pay subcontractors/sub-consultants for all undisputed work provided by subcontractor/sub-consultant within ten days of Frauenshuh's receipt of payment from City. Frauenshuh must pay interest of 1.5 percent per month or any part of a month to subcontractor/sub-consultant on any undisputed amount not paid on time to subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

**11. CONTROLLING LAW/VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Hennepin County.

**12. MINNESOTA GOVERNMENT DATA PRACTICES ACT.** City, Frauenshuh and sub-consultants must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by Frauenshuh pursuant to this Agreement. Frauenshuh is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event Frauenshuh receives a request to release data, Frauenshuh must immediately notify City. City will give Frauenshuh instructions concerning the release of the data to the requesting party before the data is released. Frauenshuh agrees to defend, indemnify, and hold City, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Frauenshuh's officers', agents', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The City agrees to defend, indemnify, and hold Frauenshuh, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from the City's officers', agents', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

**13. COPYRIGHT.** Each party shall defend the other party from actions or claims charging infringement of any copyright or software license by reason of the use or adoption of any software, designs, drawings or specifications supplied by the party, and shall hold harmless the other party from loss or damage resulting therefrom.

**14. ASSIGNMENT.** Neither party shall assign this Agreement or any interest arising herein, without the written consent of the other party.

**15. WAIVER.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

**16. ENTIRE AGREEMENT.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

**17. TERMINATION.** This Agreement may be terminated by either party for any reason or for convenience upon written notice to the other party. Upon termination by the City, the City shall pay Frauenshuh for out of pocket sub-consultant work completed to date, not to exceed the amount of payment identified in Paragraph 3B. Upon termination by Frauenshuh for the City's failure to meet its obligations under Paragraph 1C, where such failure constitutes a material breach of this Agreement, the City shall pay Frauenshuh for completed sub-consultant work, not to exceed the payment identified in 3B. Except as otherwise provided under this Agreement, no payment shall be made by the City to Frauenshuh upon termination of this Agreement by either party under this Paragraph.

Dated: \_\_\_\_\_, 2014.

**CITY OF EDINA**

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

BY: \_\_\_\_\_  
Scott Neal, City Manager

Dated: \_\_\_\_\_, 2014.

**FRAUENSHUH, INC.**

BY: \_\_\_\_\_  
Its \_\_\_\_\_

## EXHIBIT A

### SITE PLAN OF CITY PROPERTY

Parcel A – 2811721310016 (2.92 ac. Approx.)

Parcel B - 2811721310015 (0.21 ac. Approx.)

Parcel C – 2811721310014 (0.21 ac. approx.)



**EXHIBIT B**  
**WORK PLAN**

**Frauenshuh Responsibilities in Work Plan**

**Stage 2 “Process Refinement”**

<b>Deliverable</b>	<b>Date</b>
Work collaboratively with City to create site planning process with established sub-milestones and production schedule. The process shall include a robust community engagement plan	November 3, 2014
Engage sub-consultants to prepare budget and scope of work	November 3, 2014
Schedule and conduct preliminary outreach meetings with neighboring property owners and other key stakeholders	December 3, 2014

**Stage 3 “Development of Alternative Scenarios”**

<b>Deliverable</b>	<b>Date</b>
Conduct outreach meetings to neighboring property owners	November- December 2014
Prepare materials for Discovery Session A	November 26, 2014
Conduct Discovery Session A (information gathering)	December 4, 2014
Prepare summary of Discovery Session that summarizes themes and outcomes	December 17, 2014
Conduct kick-off meeting with sub-consultants and City staff to begin development of alternatives based on information gathered to date; development of alternatives will include multiple iterations of potential scenarios and will consider possible phasing options. All scenarios will include economic modeling and preliminary financial pro forma to gauge viability.	January 5, 2015
Prepare written progress update for City Council	January 28, 2015
Present progress update to City Council	February 3, 2015
Prepare materials for Discovery Session B	March 4, 2015
Conduct Discovery Session B (considerations for public uses)	March 11, 2015
Prepare preliminary market and use assessment for potential private uses	March 31, 2015
Prepare preliminary Economic/Cost Feasibility Assessment of potential scenarios	March 31, 2015
Prepare written report of preliminary Development Alternatives to City Council (2-4 alternatives anticipated)	March 31, 2015

**Stage 4 “Public Evaluation of Alternatives”**

<b>Deliverable</b>	<b>Due Date</b>
Deliver report of preliminary Development Alternatives to City Council	April 7, 2015
Prepare materials for Open House	April 14, 2015
Present preliminary Development Alternatives at Open House	April 22, 2015
Debrief and share comments expressed at Open House	April 30, 2015
Attend City Council Work Session to present Development Alternatives and refinements based on public input	May 19, 2015
Prepare written materials, as needed to respond to City Council concerns about preliminary Development Alternatives	May 27, 2015

**Stage 5 “Selection of Preferred Scenario”**

<b>Deliverable</b>	<b>Due Date</b>
Present summary of final Development Alternatives at City Council meeting and be prepared to respond to questions and concerns	June 2, 2015

**City Contribution to Work Plan**

**Stage 2 “Process Refinement”**

<b>City Obligation</b>	<b>Due Date</b>
Work collaboratively with Frauenshuh to create site planning process with established sub-milestones and production schedule. The process shall include a robust community engagement plan	November 3, 2014
Share public information previously collected as part of the Grandview Development Framework	November 3, 2014

**Stage 3 “Development of Alternative Scenarios”**

<b>City Obligation</b>	<b>Due Date</b>
Outreach to Boards and Commissions in advance of Discovery Session A	December 3, 2014
Publicity and announcement to promote attendance at Discovery Session A (information gathering)	December 3, 2014
Create online discussion board to discuss site planning and re-use	December 2014 to March 2015
Work collaboratively with Frauenshuh to debrief Discovery Session A	December 17, 2014
Convene representatives from City departments involved with redevelopment to participate in kick-off of alternative development scenarios. This team of City staff and Frauenshuh will meet on a regular basis throughout the development of alternative scenarios.	December 2014 to March 2015
Share public information previously collected as part of the site preparation, including environmental remediation reports	February 1, 2015
Outreach to Boards and Commissions in advance of Discovery Session A	February/March 2015
Publicity and announcement to promote attendance at Discovery Session B (consideration of public uses)	March 11, 2015
Prepare preliminary market and use assessment for public uses	March 31, 2015

**Stage 4 “Public Evaluation of Alternatives”**

<b>City Obligation</b>	<b>Due Date</b>
Outreach to Boards and Commissions in advance of Open House	April 2015
Publicity and announcement to promote attendance at Open House	April 22, 2015
Work collaboratively with Frauenshuh to debrief Open House	April 31, 2015
Collect public feedback regarding Alternatives	May 11, 2015
Present summary of public input to City Council at Work Session	May 19, 2015

**Stage 5 “Selection of Preferred Scenario”**

<b>City Obligation</b>	<b>Due Date</b>
Prepare agenda item for City Council consideration regarding selection of preferred scenario	June 2, 2015

## Overview of Community Engagement Plan

1) Preliminary Outreach (November 2014)

The City's communication resources will be used to outline the process and encourage participation. Those resources include the City's website, City Extra, posters, NextDoor, Edition Edina and press releases. In addition, Frauenshuh will meet individually with area property owners to collect ideas and encourage participation. Similarly, City staff will attend Board and Commission meetings to review the process and encourage participation.

Additional outreach activities will occur throughout the duration of the project.

2) Discovery Session A "information gathering" (December 4, 2014)

This session is intended to reconvene interested parties so that the City and Frauenshuh can gather additional information about redevelopment of the site. This session is open to the public and will involve a coordinated series of interactive activities lead by Confluence to assist and include all meeting participants in exploring and discussing a wide range of issues, challenges, and opportunities for the site. Target attendance is 80-100 people.

3) Online Discussion (December 2014 to March 2015)

Discover Session A will be followed with a guided discussion on Speak Up, Edina for additional information sharing and suggestions from the general public.

4) Discovery Session B "consideration of public uses" (March 11, 2015)

This session involves a review of the themes and information discovered in Discovery Session A. An introduction of the development progress of preliminary alternative scenarios (concepts, preliminary mix, fit and massing studies) that incorporate the public input themes from Discovery Session A and community outreach endeavors will be provided. Reynolds Urban Design will lead an interactive review of the preliminary alternative scenarios and a dot-preference exercise to engage participants in sharing their thoughts and preferences on the potential scenarios. Target attendance is 80-100 people.

5) Open House (April 22, 2015)

This session provides an opportunity for the community and stakeholders to view alternative development scenarios prior to delivery of final alternative development scenarios and corresponding preliminary feasibility assessments to the City Council on May 19<sup>th</sup>, 2015. This session would begin with an introduction of the scenarios by the City and Frauenshuh, a brief question and answer session about the scenarios and time for general discussion and interaction with team, stakeholders and community members.

6) Comment Period (April 8 to May 8, 2015)

The alternative development scenarios will be on display at City Hall along with comment cards to collect additional input.

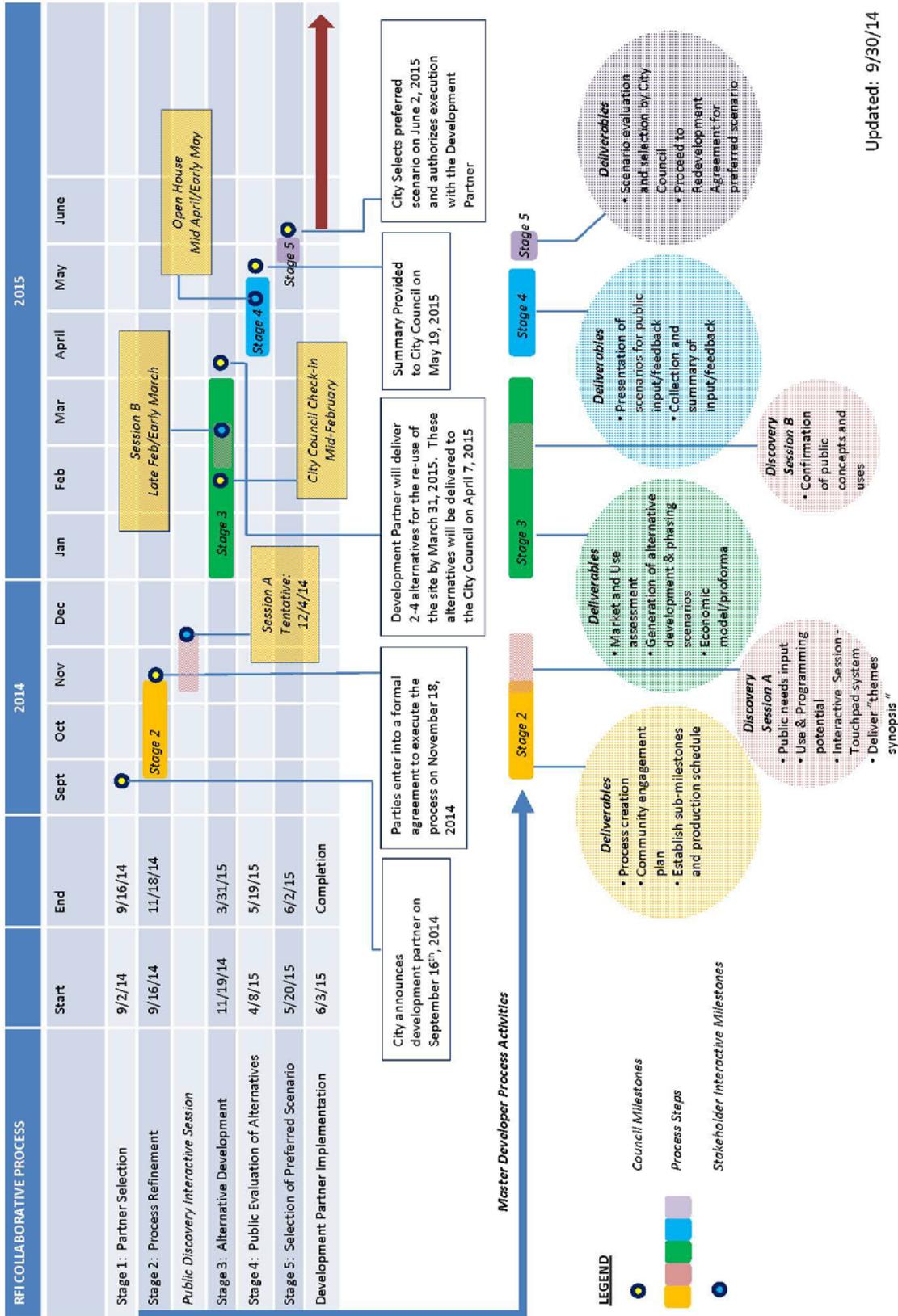
The scenarios will also be posted on Speak Up, Edina for online comments.

### **Summary of Critical Dates**

November 3, 2014	City Council consideration of Collaborative Development Planning Agreement
December 4, 2014	Discovery Session A (Information Gathering)
February 3, 2015	Update status report delivered to City Council (regular meeting)
March 11, 2015	Discovery Session B (Consideration of Public Uses)
April 7, 2015	Deliver progress report of preliminary Development Alternatives to City Council (regular meeting)
April 22, 2015	Public Open House to review alternatives
May 19, 2015	Deliver summary of Development Alternatives and refinements based on public input to City Council (work session)
June 2, 2015	City Council to select preferred scenario and provide direction to proceed (regular meeting)

# Graphic Summary of Work Plan

## Preliminary Work Plan: Grandview Phase 1 Collaborative Development Process



Updated: 9/30/14

**EXHIBIT C**

**BUDGET**

<b>Consultant and Approved Sub-Contractors</b>	<b>Scope of Work</b>	<b>Maximum Contract Amount</b>
1) Frauenshuh, Inc.	Master developer, project coordination and execution of team deliverables	\$50,000.00
2) Opus	Project and construction cost estimating, schedule and feasibility reviews	\$7,500.00
3) Opus A/E	Engineering concept plans, feasibility analysis and design support	\$5,000.00
4) Reynolds Urban Design	Master planning studies, alternative development scenarios, massing/modeling	\$30,000.00
5) Confluence	Public engagement workshops facilitation and public use visioning and definition	\$10,000.00
6) DJR Architects	Architectural consulting, adjacency analysis, team process and input during development of alternative scenarios	\$5,000.00
7) Project Expenses	Routine expenses for travel, workshop supplies, reproductions, etc.	\$3,000.00
<b>Total =</b>		<b>\$110,500.00</b>