

**CITY OF CHANHASSEN
CARVER AND HENNEPIN COUNTIES, MINNESOTA**

AVIENDA

DEVELOPMENT CONTRACT

(Developer Installed Improvements)

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CITY OF CHANHASSEN
DEVELOPMENT CONTRACT
(Developer Installed Improvements)

AVIENDA

SPECIAL PROVISIONS

AGREEMENT (“Contract”) dated **July 12, 2021** by and between the CITY OF CHANHASSEN, a Minnesota municipal corporation (the "City"), and, LEVEL 7 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 AVIENDA (referred to in this Contract as the "plat"). The land is legally described on the attached Exhibit "A".

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 30 days after the City Council approves the plat.

3. Development Plans. The plat shall be developed in accordance with the following plans. The plans shall not be attached to this Contract. With the exception of Plan A, the plans are required to be finalized, subject to City approval, after entering the Contract, but before commencement of any public improvement work in the plat. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A: AVIENDA Final Plat dated June 24, 2021, prepared by Landform.

Plan B: Avienda Final Plat Plans dated June 18, 2021, prepared by Landform.

Plan C: Avienda 60% Road Plans dated May 25, 2018, prepared by Toole Design Group.

Plan D: MSA Utility Plans dated June 18, 2021, prepared by Landform.

4. Improvements. The Developer shall install and pay for the following:

- A. Sanitary Sewer System
- B. Water System
- C. Storm Water Drainage System
- D. Streets
- E. Concrete Curb and Gutter
- F. Street Lights
- G. Site Grading/Restoration
- H. Underground Utilities (e.g. gas, electric, telephone, CATV)
- I. Setting of Lot and Block Monuments
- J. Surveying and Staking
- K. Landscaping
- L. Erosion and Sediment Control BMP's

5. Time of Performance. The Developer shall install all required improvements except for the wear course on public streets by November 15, 2022. The Developer may, however, request an extension of time from the City Engineer. 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.

6. Security. To guarantee compliance with the terms of this Contract and construction of all public improvements, the Developer shall furnish the City with a letter of credit in the form attached hereto, from a bank acceptable to the City, or cash escrow ("security") for **\$ 3,605,360.00**. The amount of the security was calculated as 110% of the following:

Site Grading/ESC	\$ 198,600
Sanitary Sewer	\$ 871,000
Watermain	\$ 858,000
Storm Sewer, Drainage System, including cleaning and maintenance	\$ 1,350,000
Streets (\$1,482,700 deferred)	\$ 0
Landscaping (\$430,000 deferred)	\$ 0
Traffic Signals (34,700 deferred)	\$ 0
TOTAL COST OF PUBLIC IMPROVEMENTS	\$ 3,227,600

SECURITY AMOUNT (110% of \$ 3,227,600)	\$ 3,605,360
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This breakdown is for historical reference; it is not a restriction on the use of the security. The security shall be subject to the approval of the City. The City may draw down the security, without notice, for any violation of the terms of this Contract. 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 draw shall be used to cure the default. With City approval, the security

may be reduced from time to time as financial obligations are paid, but in no case shall the security be reduced to a point less than 10% of the original amount 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.

Notwithstanding the foregoing, the amount of security shall be phased with utilities first and then adding roads, landscaping and improvements as the work progresses. The initial security amount shall be \$3,605,369 (which is 110% of the initial utilities). As work is completed and paid, the amount of security shall be reduced accordingly and the city shall provide notice (but no more frequently than monthly) to the Developer and the Developer's lender as to the then-current amount of required security.

7. Notice. 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 registered mail at the following address:

Level 7 Development, LLC
4600 Kings Point Road
Minnetrista, Minnesota 55344
Attn: Mercedes Rhodes
(612) 203-2494

Kennedy & Graven, Chartered
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402
Attn: Larry Wertheim
(612) 337-9216

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: Chanhassen City Hall, 7700 Market Boulevard, P.O. Box 147, Chanhassen, Minnesota 55317, Telephone (952) 227-1100.

8. Other Special Conditions.

A. FEES

1. Prior to release of the plat for recording and prior to scheduling a pre-construction meeting for installation of public improvements, Developer shall submit to the City \$ 79,025.00 for the following City fees:

Administration fee (based on estimated construction cost of \$ 4,325,000, 2.5% for the first \$1,000,000 + 1.5% of the remainder)	\$ 74,875
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GIS fee: 5 parcels @ \$30/parcel + \$100 for the plat	\$ 250
Street light operating fee: 13 lights @ \$300/light	\$ 3,900
Total	\$ 79,025

B. CONDITIONS OF APPROVAL

1. Bluff Creek oversizing credit of \$900,000 shall be paid to the Developer as follows: If a TEDI grant is received by the City, Developer would receive the \$900,000 incrementally as the work is completed. If there is no TEDI grant, the city will pay to the Developer \$450,000 as the work is completed and the remaining \$450,000 would be payable in equal annual installments over five (5) years without interest. See Exhibit "C" fee schedule.
2. Developer shall implement and adhere to all recommendations listed in the Carver County letter dated May 21, 2020 addressing access controls on to county roads.
3. Developer shall adhere and comply with all recommendations listed in MnDOT's letter dated May 20, 2020 regarding compliance with Noise and Water Resources (drainage requirement).
4. Developer shall implement the Recommendations and Conditions listed in the Staff Report for Case #2017-10, By: KA, EH, CC Date July 13, 2020.
- 9. General Conditions.** The general conditions of this Contract are attached as Exhibit "B" and incorporated herein.
- 10. Fee Ownership.** Developer is the fee owner of the real property described on Exhibit "A", free and clear of all liens and encumbrances except for a mortgage held by Tradition Capital Bank.
- 11. Fee Schedule.** Attached here to as Exhibit "C" and made a part of this Development Contract is the Fee Schedule. In the event of any conflict with any other provisions of this Development Contract, the provisions of such Fee Schedule shall control.

Signature pages follow.

CITY OF CHANHASSEN

BY: _____
Elise Ryan, Mayor

(SEAL)

AND: _____
Laurie Hokkanen, City Manager

STATE OF MINNESOTA)
(ss.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Elise Ryan, Mayor, and by Laurie Hokkanen, City Manager, of the City of Chanhassen, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

LEVEL 7 DEVELOPMENT, LLC:

BY: _____
Bahram Akradi, Its President

STATE OF MINNESOTA)
(ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Bahram Akradi, the President of Level 7 Development, LLC, a Minnesota limited liability company, on behalf of the company.

NOTARY PUBLIC

DRAFTED BY:
City of Chanhassen
7700 Market Boulevard
P.O. Box 147
Chanhassen, MN 55317
(952) 227-1100

EXHIBIT "A"
TO
DEVELOPMENT CONTRACT

LEGAL DESCRIPTION OF SUBJECT PROPERTY:

PARCEL 1:

The South Half of the Southwest Quarter of Section 23, Township 116, Range 23, Carver County, Minnesota, EXCEPT the two (2) tracts described as follows:

Tract 1: Commencing at the southwest corner of Section 23, Township 116, Range 23; thence running North on the section line 30 feet; thence running in a straight line to a point on the south section line of said section, 30 feet East of the southwest corner thereof; thence running west 30 feet to said southwest corner of said Section and the place of beginning, being a three (3) cornered piece in the southwest corner of said Section 23, Township 116, Range 23, Carver County, Minnesota.

Tract 2: That part of the Southeast Quarter of the Southwest Quarter and the East Half of the Southwest Quarter of the Southwest Quarter, both in Section 23, Township 116, Range 23, Carver County, Minnesota which lies easterly of Line 2 described below.

Line 2: Beginning at the south quarter corner of said Section 23; thence run west on an azimuth of 271 degrees 56 minutes 13 seconds along the south line of said Section 23 for 1634.23 feet to a point; thence on an azimuth of 00 degrees 43 minutes 24 seconds for 500.11 feet to a point; thence on an azimuth of 91 degrees 56 minutes 13 seconds for 1173.46 feet to a point; thence on an azimuth of 29 degrees 19 minutes 18 seconds for 152.11 feet to a point; thence on an azimuth of 352 degrees 57 minutes 23 seconds for 709.36 feet to a point on the north line of said Southeast Quarter of the Southwest Quarter; thence on an azimuth of 91 degrees 23 minutes 02 seconds along the north line of said Southeast Quarter of the Southwest Quarter for 475.37 feet to the northeast corner of said Southeast Quarter of the Southwest Quarter and there terminating.

PARCEL 2:

Tract 1: The North 420.00 feet of the East 414.86 feet of the Northwest Quarter of the Southwest Quarter of Section 23, Township 116, Range 23, Carver County, Minnesota.

Tract 2: The Northwest Quarter of the Southwest Quarter of Section 23, Township 116, Range 23, Carver County, Minnesota, EXCEPT the South 658.24 feet thereof, AND ALSO EXCEPT the North 420.00 feet of the East 414.86 feet thereof.

Tract 3: The South 658.24 feet of the Northwest Quarter of the Southwest Quarter of Section 23, Township 116, Range 23, Carver County, Minnesota.

PARCEL 3:

The Northeast Quarter of the Southwest Quarter of Section 23, Township 116, Range 23, Carver County, Minnesota; EXCEPT the part thereof described as Parcel 64 on Minnesota Department of Transportation Right of Way Plat No. 10-19 recorded as Document No. 399300 and described as Parcel 64 in the Final Certificate recorded as Document No. 503436 in the office of the County Recorder, Carver County, Minnesota.

All Abstract Property.

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Chanhassen
7700 Market Boulevard, Box 147
Chanhassen, Minnesota 55317

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 Chanhassen.
- c) Be presented for payment at _____ (Address of Bank) _____, on or before 4:00 p.m. on November 30, 2 _____.

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 Chanhassen 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: Chanhassen City Manager, Chanhassen City Hall, 7700 Market Boulevard, P.O. Box 147, Chanhassen, MN 55317, 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 _____

CITY OF CHANHASSEN

**DEVELOPMENT CONTRACT
(Developer Installed Improvements)**

EXHIBIT "B"

GENERAL CONDITIONS

1. Right to Proceed. Within the plat or land to be platted, the Developer may not construct sewer lines, water lines, streets, utilities, public or private improvements until all the following conditions have been satisfied: 1) this Contract has been fully executed by both parties and filed with the City Clerk, 2) the necessary security and fees have been received by the City, 3) the plat has been recorded with the County Recorder's Office or Registrar of Title's Office of the County where the plat is located, 4) Final construction plans and specifications have been approved by the City, 5) Construction plans for Bluff Creek Boulevard have been approved by MnDOT Municipal State Aid, and 6) the City Engineer has issued a letter that the foregoing conditions have been satisfied and then the Developer may proceed.

2. Phased Development. If the plat is a phase of a multiphased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Contract and the breach has not been remedied. Development of subsequent phases may not proceed until Development Contracts for such phases are approved by the City. Park charges, SWMP charges, and charges for sewer and water referred to in this Contract are being deferred, and shall be imposed on subsequent platting of outlots. Such charges will be calculated and imposed when outlots are final platted into lots and blocks.

3. Preliminary Plat Status. If the plat is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, within two (2) years after preliminary plat approval.

4. Changes in Official Controls. For two (2) years from the date of this Contract, no amendments to the City's Comprehensive Plan, except an amendment placing the plat in the current urban service area, or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved 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, 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. Improvements. The improvements specified in the Special Provisions of this Contract shall be installed in accordance with City standards, ordinances, and plans and specifications which have been prepared and signed by a competent registered professional engineer furnished to the City and approved by the City Engineer. The Developer shall obtain all necessary permits from

pertinent agencies and abide by Section 23.S herein before proceeding with construction. The City will, at the Developer's expense, have one or more construction inspectors inspect the public improvement work, including SWPPP compliance, on a full or part-time basis. The Developer shall also provide a qualified inspector to perform site inspections on a daily basis. Inspector qualifications shall be submitted in writing to the City Engineer. The Developer shall instruct its project engineer/inspector to respond to questions from the City Inspector(s) and to make periodic site visits to satisfy that the construction is being performed to an acceptable level of quality in accordance with the engineer's design. The Developer or his engineer shall schedule a preconstruction meeting at a mutually agreeable time with all parties concerned, including the City staff, to review the program for the construction work.

6. Iron Monuments. Before the security for the completion of utilities is released, all monuments must be correctly placed in the ground in accordance with Minn. Stat. § 505.02, Subd. 1. The Developer's surveyor shall submit a written notice to the City certifying that the monuments have been installed.

7. 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.

8. Site Erosion and Sediment Control. Before the site is rough graded, and before any utility construction is commenced, applicable provisions of the SWPPP and the erosion and sediment control plan shall be implemented, inspected, and approved by the City. The City may impose additional erosion and sediment control requirements if necessary based on actual field conditions. The parties recognize that time is of the essence in controlling erosion and sediment transport. If the Developer does not comply with the SWPPP and erosion and sediment control plan and schedule of supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion and sediment transport at the Developer's expense. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. Installation of public improvements may not begin until the plat is in full compliance with the SWPPP and erosion and sediment control requirements. Erosion and sediment control needs to be maintained until vegetative cover has been restored, even if construction has been completed and accepted. After the site has been stabilized to where, in the opinion of the City, there is no longer a need for temporary erosion and sediment control measures, the City will authorize the removal of the temporary erosion and sediment control BMP's. The Developer shall remove and dispose of the temporary erosion and sediment control measures.

8a. *Intentionally deleted.*

9. Clean up. The Developer shall maintain a neat and orderly work site and shall daily clean, on and off site, dirt and debris, including blowables, from streets and the surrounding area that has resulted from construction work by the Developer, its agents or assigns.

10. Acceptance and Ownership of Improvements. Upon completion and acceptance by the City of the work and construction required by this Contract, the improvements lying within public right-of-way and easements shall become City property. After completion of the improvements, a representative of the contractor, and a representative of the Developer's engineer will make a final inspection of the work with the City Engineer. Before the City accepts the improvements, the City Engineer shall be satisfied that all work is satisfactorily completed in accordance with the approved plans and specifications and the Developer and his engineer shall submit a written statement to the City Engineer certifying that the project has been completed in accordance with the approved plans and specifications. The appropriate contractor waivers shall also be provided. Final acceptance of the public improvements shall be by City Council resolution.

11. Claims. In the event that the City receives claims from laborers, materialmen, or others that work required by this Contract has been performed, the sums due them have not been paid, and the laborers, materialmen, or others are seeking payment out of the financial guarantees posted with the City, and if the claims are not resolved at least ninety (90) days before the security required by this Contract will expire, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the letters of credit in an amount up to 125% of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees.

12. Park Dedication. Park dedication fees are deferred until subsequent outlot platting. The park dedication fees shall be the current amount in force at the time of final platting of outlots pursuant to Chanhassen City Ordinances and City Council resolutions. These credits will be applied against the first outlot development of this plat. If the credit amount is sufficient to cover the park dedication for said outlot, the balance will be held for subsequent outlot development of this plat.

- i) A \$200,000 park dedication credit will be given to the future development of Outlot D.
- ii) A \$100,000 park dedication credit will be given for the dedication of Outlot B to the City.
- iii) A \$185,000 park dedication credit will be given for the dedication of Outlot E to the City.

Any of the three credits may be used for the first lots platted and are not restricted to platting of specific outlots. See Exhibit "C".

13. Landscaping. Landscaping shall be installed in accordance with approved plans and specifications. Unless otherwise approved by the City, trees not listed in the City's approved tree list are prohibited. The minimum tree size shall be two and one-half (2½) inches caliper, either bare root in season, or balled and burlapped. Unless specifically shown otherwise, the trees may not be planted in the boulevard (area between curb and property line). The City may also use escrowed funds for

maintenance of restoration pursuant to City Code Section 7-22 or to satisfy any other requirements of this Contract or of City ordinances. These requirements supplement, but do not replace, specific landscaping conditions that may have been required by the City Council for project approval.

14. Warranty. The Developer warrants all improvements required to be constructed by it pursuant to this Contract against poor material and faulty workmanship. The Developer shall submit either 1) a warranty/maintenance bond for 100% of the cost of the improvement, or 2) a letter of credit for twenty-five percent (25%) of the amount of the original cost of the 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, materials and equipment shall be subject to two (2) years from the date of final written acceptance.

C. The required warranty period for turf establishment (topsoil, seed and sod), trees, and landscaping is one full growing season following acceptance by the City.

15. *Intentionally deleted.*

16. Existing Assessments. Any existing assessments against the plat will be re-spread against the plat in accordance with City standards.

17. Sanitary Sewer/Water Charges. All sanitary sewer and water fees including SAC, WAC, and Hook-Up fees shall be deferred until subsequent outlot development. Such charges will be calculated and imposed when outlots are final platted into lots and blocks and/or due with building permits.

18. Public Street Lighting. The Developer shall have installed and pay for public street lights in accordance with City standards. The public street lights shall be accepted for City ownership and maintenance at the same time that the public street is accepted for ownership and maintenance. A plan shall be submitted for the City Engineer's approval prior to the installation. Before the City signs the final plat, the Developer shall pay the City a fee of \$300.00 for each street light installed in the plat. The fee shall be used by the City for furnishing electricity and maintaining each public street light for twenty (20) months. Thereafter the city shall be responsible for lighting costs.

19. Signage. All street signs, traffic signs, and wetland monumentation required by the City as a part of the plat shall be furnished and installed by the City at the sole expense of the Developer.

20. *Intentionally deleted.*

21. Responsibility for Costs.

A. The Developer shall pay an administrative fee in conjunction with the installation of the plat improvements. This fee is to cover the cost of City Staff time and overhead for items such as review of construction documents, preparation of the Development Contract, monitoring construction progress, processing pay requests, processing security reductions, and final acceptance of improvements. This fee does not cover the City's cost for construction inspections. The fee shall be calculated as follows:

- i) if the cost of the construction of public improvements is less than \$500,000, three percent (3%) of construction costs;
- ii) if the cost of the construction of public improvements is between \$500,000 and \$1,000,000, three percent (3%) of construction costs for the first \$500,000 and two percent (2%) of construction costs over \$500,000;
- iii) if the cost of the construction of public improvements is over \$1,000,000, two and one-half percent (2½%) of construction costs for the first \$1,000,000 and one and one-half percent (1½%) of construction costs over \$1,000,000.

Before the City signs the final plat, the Developer shall deposit with the City a fee based upon construction estimates. The cost of public improvements is defined in paragraph 6 of the Special Provisions.

B. *Intentionally deleted.*

C. The Developer shall hold the City and its officers and employees 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 and employees for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

D. In addition to the administrative fee, the Developer shall reimburse the City for costs incurred in the enforcement of this Contract, including engineering, inspection, recording and attorneys' fees.

E. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Contract within thirty (30) days after receipt. If the bills are not paid on time, the City may halt all plat development work and construction, including but not limited to the issuance of building permits for lots which the Developer may or may not have sold, until the bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of 8% per year.

F. *Intentionally deleted.*

G. Private Utilities. As Developer shall determine based upon considerations of expense, the Developer shall have installed and pay for the installation of electrical, natural gas, telephone, and cable television service in conjunction with the overall development improvements. These services shall be provided in accordance with each of the respective franchise agreements held with the City.

H. The Developer shall pay the City a fee (GIS Fee), to reimburse the City for the cost of updating the City's base maps, GIS data base files, and converting the plat and record drawings into an electronic format. All digital information submitted to the City shall be in the Carver County Coordinate system.

22. 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 is first given notice of the work in default, not less than four (4) days 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.

23. Miscellaneous.

A. Construction Trailers. Placement of on-site construction trailers and temporary job site offices shall be approved by the City Engineer as a part of the pre-construction meeting for installation of public improvements. Trailers shall be removed from the subject property within thirty (30) days following the acceptance of the public improvements unless otherwise approved by the City Engineer.

B. Postal Service. The Developer shall provide for the maintenance of postal service in accordance with the local Postmaster's request.

C. Third Parties. Third parties shall have no recourse against the City under this Contract. The City is not a guarantor of the Developer's obligations under this Contract. The City shall have no responsibility or liability to lot purchasers or others for the City's failure to enforce this Contract or for allowing deviations from it.

D. Breach of Contract. Breach of the terms of this Contract by the Developer shall be grounds for denial of building permits, including lots sold to third parties. The City may also issue a stop work order halting all plat development until the breach has been cured and the City has received satisfactory assurance that the breach will not reoccur.

E. Severability. 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.

F. Building Permits. Building permits will not be issued in the plat or subsequent outlot plats until sanitary sewer, watermain, and storm sewer needed have been installed, tested, and accepted by the City, and the streets needed for access have been paved with a bituminous surface and the site graded and revegetated in accordance with Plan B of the development plans or the subsequent outlot plat plans.

G. Waivers/Amendments. 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. Release. This Contract shall run with the land and may be recorded against the title to the property. After the Developer has completed the work required of it under this Contract, at the Developer's request the City Manager will issue a Certificate of Compliance, which Certificate of Compliance shall provide that, except as provided in such Certificate of Compliance, the subject property shall be deemed released from the provisions of this Development Agreement. Prior to the issuance of such a certificate, individual lot owners may make as written request for a certificate applicable to an individual lot allowing a minimum of ten (10) days for processing, which certificate shall provide that such individual lot is deemed released from the provisions of this Development Agreement.

I. Insurance. Developer shall take out and maintain 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 \$500,000 for one person and \$1,000,000 for each occurrence; limits for property damage shall be not less than \$500,000 for each occurrence; or a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given ten (10) days advance written notice of the cancellation of the insurance. The certificate may not contain any disclaimer for failure to give the required notice.

J. Remedies. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, expressed 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.

K. Assignability. The Developer may not assign this Contract without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.

L. Construction Hours. Construction hours, including pick-up and deliveries of material and equipment and the operation of any internal combustion engine, may only occur from 7:00 a.m. to 6:00 p.m. on weekdays, from 9:00 a.m. to 5:00 p.m. on Saturdays with no such activity allowed on Sundays or on legal holidays. Contractors must require their subcontractors, agents and supplies to comply with these requirements and the Contractor is responsible for their failure to do so. Under emergency conditions, this limitation may be waived by the written consent of the City Engineer. If construction occurs outside of the permitted construction hours, the Contractor shall pay the following administrative penalties:

First violation	\$	500.00
Second violation	\$	1,000.00
Third & subsequent violations		All site development and construction must cease for seven (7) calendar days

M. Noise Amplification. The use of outdoor loudspeakers, bullhorns, intercoms, and similar devices is prohibited in conjunction with the construction of homes, buildings, and the improvements required under this contract. The administrative penalty for violation of construction hours shall also apply to violation of the provisions in this paragraph.

N. Access. All access to the plat prior to the City accepting the roadway improvements shall be the responsibility of the Developer regardless if the City has issued building permits or occupancy permits for lots within the plat.

O. Street Maintenance. The Developer shall be responsible for all street maintenance until streets within the plat are accepted by the City. Warning signs shall be placed by the Developer when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If streets become impassable, the City may order that such streets shall be barricaded and closed. The Developer shall maintain a smooth roadway surface and provide proper surface drainage. The Developer may request, in writing, that the City plow snow on the streets prior to final acceptance of the streets. The City shall have complete discretion to approve or reject the request. The City shall not be responsible for reshaping or damage to the street base or utilities because of snow plowing operations. The provision of City snow plowing service does not constitute final acceptance of the streets by the City.

P. Storm Sewer Maintenance. The Developer shall be responsible for cleaning and maintenance of the storm sewer system (including ponds, pipes, catch basins, culverts and swales) within the plat and the adjacent off-site storm sewer system that receives storm water from the plat. The Developer shall follow all instructions it receives from the City concerning the cleaning and maintenance of the storm sewer system. The Developer's obligations under this paragraph shall end two (2) years after the public street and storm drainage improvements in the plat have been accepted by the City. Twenty percent (20%) of the storm sewer costs, shown under section 6 of the special provisions of this contract, will be held by the City for the duration of the 2-year maintenance period. Notwithstanding the foregoing, the security provided by the Developer under Section 6 of the Development Contract shall satisfy the foregoing requirement.

Q. *Intentionally deleted.*

R. Variances. By approving the plat, the Developer represents that all lots in the plat are buildable without the need for variances from the City's ordinances.

S. Compliance with Laws, Ordinances, and Regulations. In the development of the plat the Developer shall comply with all laws, ordinances, and regulations of the following authorities:

1. City of Chanhassen;
2. State of Minnesota, its agencies, departments and commissions;
3. United States Army Corps of Engineers;
4. Watershed District(s);
5. Metropolitan Government, its agencies, departments and commissions.

T. Proof of Title. Upon request, the Developer shall furnish the City with evidence satisfactory to the City that it has the authority of the fee owners and contract for deed purchasers to enter into this Development Contract.

U. Soil Conditions. The Developer acknowledges that the City makes no representations or warranties as to the condition of the soils on the property or its fitness for construction of the improvements or any other purpose for which the Developer may make use of such property. The Developer further agrees that it will indemnify, defend, and hold harmless the City, its governing body members, officers, and employees from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the property, unless hazardous wastes or pollutants were caused to be there by the City.

V. Soil Correction. The Developer shall be responsible for soil correction work on the property. The City makes no representation to the Developer concerning the nature of suitability of soils nor the cost of correcting any unsuitable soil conditions which may exist. On lots which have no fill material a soils report from a qualified soils engineer is not required unless the City's building inspection department determines from observation that there may be a soils problem. On lots with fill material that have been mass graded as part of a multi-lot grading project, a satisfactory soils report from a qualified soils engineer shall be provided before the City issues a building permit for the lot. On lots with fill material that have been custom graded, a satisfactory soils report from a qualified soils engineer shall be provided before the City inspects the foundation for a building on the lot.

W. Haul Routes. The Developer, the Developer's contractors or subcontractors must submit proposed haul routes for the import or export of soil, construction material, construction equipment or construction debris, or any other purpose. All haul routes must be approved by the City Engineer

X. Development Signs. The Developer shall post a six foot by eight foot development sign in accordance with City Detail Plate No. 5313 at each entrance to the project. The sign shall

be in place before construction of the required improvements commences and shall be removed when the required improvements are completed, except for the final lift of asphalt on streets. The signs shall contain the following information: project name, name of developer, developer's telephone number and designated contact person, allowed construction hours.

Y. Final Plat and Construction Plan As-Builts. Within four months after the completion of the utility improvements and base course pavement and before the security is released, the Developer shall supply the City with the following: (1) a complete set of reproducible Mylar as-built plans, (2) two complete sets of utility tie sheets, including location stationing and swing ties of all utility stubs including draintile cleanouts, (3) bench mark network, (4) digital file of as-built plans in both .dwg & .pdf format (the .dwg file must be tied to the current county coordinate system and must include all xref's), The Developer is required to submit the final plat in electronic format.

Z. *Intentionally deleted.*

CITY OF CHANHASSEN
DEVELOPMENT CONTRACT
(Developer Installed Improvements)
EXHIBIT "C"
FEE SCHEDULE

AVIENDA CITY DEVELOPMENT FEE PROPOSAL				
City Fee Schedule ¹	City Calculation	Due with Phase I Plat (ROW and Outlots only)	Due with each platted lot	Due with building permit
City Administration Fee - First \$1m Valuation	2.5% on first \$1M valuation (based on public improvements value) \$25,000	X		
City Administration Fee - Remaining >\$1m Valuation	1.5% on valuation ² after the first \$1M (based on public improvements value) \$49,875	X		
Construction Inspection (pass through)	\$20,000 per month (estimated) of construction. No mark-up from city – developer pays exact cost.			
³ Security - Initial	110% of value of public improvements (utilities), returned upon successful completion and acceptance of public improvements \$3,605,360	X	X	
Security ⁴ - based on progress	110% of value of public improvements (streets, landscaping, traffic signals), returned upon successful completion and acceptance of public improvements \$2,142,140	X	X	
Wetland Monumentation	\$20/each		X	
GIS Fees	\$100/plat + \$30/parcel (updated in 2021) \$250	X	X	

¹ Any city fee credit/deduction will be applied to amounts owed. The city will not make any cash payments. (Excluding Bluff Creek Blvd. contribution, see footnote 8.) The city will provide a pass-through or credit if fees are received from a third-party.

² Administration fees calculations excludes the \$900,000 city contribution for Bluff Creek Blvd.

³ The city would prefer cash but will accept letter of credit. Bond not accepted. The city will process reductions in the LOC as often as monthly upon developer's complete and timely request.

⁴ LOC due prior to work beginning. Requirement will be all or mostly negated if road becomes a city project.

AVIENDA CITY DEVELOPMENT FEE PROPOSAL				
City Fee Schedule ¹	City Calculation	Due with Phase I Plat (ROW and Outlots only)	Due with each platted lot	Due with building permit
³ 2005 AUAR	\$0 (value of \$80,000) Condition #38 in July 18, 2017 letter			
Park Dedication (multi-family/apartment)	\$3,800/unit		X	
Park Dedication (duplex)	\$5,000/unit		X	
Park Dedication (Single Family)	\$5,800/unit		X	
Park Dedication (Commercial)	\$12,500/acre		X	
⁶ Park Dedication (Credit) – Bluff/Outlot A	(\$100,000)		X	
⁷ Park Dedication (Credit) - NE parcel/Outlot E	(\$185,000)		X	
⁸ Park Dedication Credit – Regional Commercial	(\$200,000)		X	
Surface Water Management Fee - Townhouse, Apartments, High Density Residential	\$15,560/acre x 50%		X	
Surface Water Management Fee – Medium Density Residential	\$10,390/acre x 50%		X	
Surface Water Management Fee - Single Family Residential	\$8,660/acre x 50%		X	
Surface Water Management Fee - Commercial	\$32,800/acre x 50%		X	
⁹ Water Quality Improvement Projects (wetland alteration permit conditions)	\$300,000	N/A – collected with grading permit		

⁵ The applicant paid \$94,570 for the entire cost of the AUAR update and will not be required to pay for any 2005 AUAR costs.

⁶ The city does not want any improvements installed. City will give credit if parcel is deeded to city or will accept conservation easement with no credit.

⁷ Valuation based on assessed value of parcel from Carver County. Value is now set at this fixed rate and will not fluctuate with assessed value (either up or down) without further negotiation. Refer also to footnote 1.

⁸ Credit follows land with final plat applicant. Refer to footnote 1.

⁹ This is a reimbursement of cost incurred by city and will be collected with the grading permit.

Prepared by City Manager Laurie Hokkanen
Fee proposal date July 2021
Staff proposal – must be approved by City Council
Subject to re-negotiation if final plat not executed in 2021

AVIENDA CITY DEVELOPMENT FEE PROPOSAL				
City Fee Schedule ¹	City Calculation	Due with Phase I Plat (ROW and Outlots only)	Due with each platted lot	Due with building permit
¹⁰ Bluff Creek Blvd – oversizing credit.	(\$900,000)	N/A		
SAC	\$2,302/unit			x
MCES SAC	\$2,485/unit			x
MCES City Surcharge	\$75/unit			x
WAC	\$8,253/unit			x
Public Street Light Operating fee	\$300/unit (13 units) \$3,900	x		
¹¹ Escrow Funds for Traffic signals (condition #40 of 7/18/17 letter)	\$250,000.00	N/A		

¹⁰ City will contribute from PMP fund. City is seeking TEDI grant fund to offset city share. If not received, city will pay \$450,000 when the work is completed and in installments of \$90,000 over five years on February 1, 2023-2027 at 0% interest.

¹¹ The traffic signal and any fee or escrow requirement is directly with Carver County and does not include the City of Chanhassen. Fees from other agencies are not represented on this sheet and the developer should work with each entity separately as needed.

Prepared by City Manager Laurie Hokkanen
 Fee proposal date July 2021
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