

## EXCHANGE AGREEMENT

**THIS EXCHANGE AGREEMENT** (this “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by City of Chanhassen, a municipal corporation under Minnesota law, whose address is 7700 Market Blvd., P.O. Box 147, Chanhassen, MN 55317 (“**The City**”); and Riley-Purgatory-Bluff Creek Watershed District, a political subdivision of the State of Minnesota, whose address is 18681 Lake Drive, Chanhassen, MN 55317 (“**The District**”). The City and District are referred to collectively herein as the “**Parties**.”

### RECITALS

A. The City owns the land which is legally described in Exhibit A attached hereto and incorporated herein (the “**City Parcel**”). The City Parcel is depicted on Exhibit A-1 attached hereto and incorporated herein.

B. The District owns the land which is legally described in Exhibit B attached hereto and incorporated herein (the “**District Parcel**”).

C. The City is planning to reconstruct and expand County State Aid Highway 101, between Pioneer Trail and Flying Cloud Drive, adjacent to the District Parcel, in accordance with a construction plan which requires the City to acquire the real estate interests shown in Carver County Right of Way Plat No. 29, including a portion of the District Parcel. The City is in the process of acquiring those interests, including commencement of eminent domain proceedings to acquire all outstanding parcels, except that portion of the District Parcel as defined as the New District Parcel in this Agreement.

D. The District agrees to convey a portion of the District Parcel to the City for the City Project, as depicted on Exhibit B-2 attached hereto (the “**New District Parcel**”) in exchange for the City’s conveyance of the City Parcel to the District, in accordance with this Agreement.

E. The City agrees to convey the City Parcel to the District, in exchange for the District’s conveyance to the City of the New District Parcel, in accordance with this Agreement.

F. The Parties wish to exchange and convey the properties described in this Agreement, subject to the terms and conditions contained in this Agreement.

### AGREEMENT

In consideration for the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. **Recitals.** The recitals stated above constitute and form an integral part of this Agreement and are incorporated herein by reference as if set forth herein in their entirety.

2. **City Conveyance of the City Parcel.** As part of the exchange contemplated by this Agreement, the City will convey the City Parcel to the District by quitclaim deed, free and clear of any mortgages, liens, or encumbrances other than matters created by or acceptable to the District, pursuant to paragraph 4.C, below.

3. **District Conveyance of the New District Parcel and Temporary Construction Easements.** As part of the exchange contemplated by this Agreement, the District will convey the New District Parcel to the City by quitclaim deed, free and clear of any mortgages, liens, or encumbrances other than matters created by or acceptable to the City pursuant to paragraph 4.C, below. The District also agrees to convey to the City at Closing a temporary construction easement over the City Parcel, in a form substantively equivalent to that attached hereto as Exhibit C. The District will also convey to the City at Closing a temporary construction easement over the portion of the District Parcel that the District will retain, in a form substantively equivalent to that attached hereto as Exhibit D.

4. **Contingencies.** The obligations of the Parties to perform their respective obligations hereunder are expressly conditioned upon the following contingencies:

A. The City having obtained all appropriate approvals necessary for the City's use of the New District Parcel, including, but not limited to, subdivision of the District Parcel at the City's cost.

B. Each party having determined that it is satisfied with the result of and matters disclosed by its investigations, surveys, soil tests, engineering inspections, and environmental reviews of the parcel that it is acquiring pursuant to this Agreement, including, but not limited to, the District's satisfaction with the results of the Phase I environmental site assessment (ESA) to be performed by the City with respect to the City Parcel at the expense of the City. The City will ensure that the representations and warranties of the environmental consultant performing the ESA will explicitly run to both the City and the District.

C. Each party having determined that it is satisfied with the title evidence in the title commitment referenced in section 7, below.

Each party will deliver written objections to the form and/or contents of the title commitment or ESA on or before the fifth (5th) business day following that party's receipt of the last of the title commitment and ESA. If a party fails to make objections within such five (5) day period, then it is deemed to have waived its right to make objections.

The parties will cooperate to resolve any objections, provided the City bears the cost of doing so, other than the District's administrative costs. If the contingencies above are satisfied in a timely manner, then the parties shall proceed to close the transaction as contemplated herein. If, however, any of the contingencies listed above are not satisfied on or before the Closing, this Agreement shall thereupon be void, and the parties shall execute and deliver to each other a termination of this Agreement.

5. **Closing.** Closing of the transactions contemplated under this Agreement shall occur within thirty (30) days after the contingencies set forth in Section 4 have been satisfied or waived by City

and the District, and, in any event will occur on or before [*insert new date*], 2020, unless: (i) mutually extended for purposes of satisfying a contingency set forth in Section 4, or (ii) the Parties otherwise mutually agree. The Parties agree to promptly execute and deliver any other instruments or documents necessary to carry out the purposes of this Agreement before, at, or following Closing. The following representations and warranties are attendant to closing:

(a) The representations and warranties of the City set forth herein will be true on the date the City completes its obligations herein with the same force and effect as if such representations and warranties were made on and as of such date.

(b) The representations and warranties of the District set forth herein will be true on the date the District completes its obligations herein with the same force and effect as if such representations and warranties were made on and as of such date.

(c) There have been no material changes to the City Parcel between the date of this Agreement and the date of conveyance of the City Parcel to the District.

(d) There have been no material changes to the District Parcel between the date of this Agreement and the date of conveyance of the District Parcel to the City.

#### 6. **Warranty of Title.**

(a) The City represents there are no recorded or unrecorded liens, encumbrances or leases, mortgages, security interests or other exceptions (collectively, the “**Liens**”) to the City’s fee title ownership of the City Parcel. The City warrants that: (i) the City is the fee simple owner of the City Parcel; (ii) the City has the right to enter into this Agreement and to make the promises, covenants, and representations contained in this Agreement; (iii) this Agreement does not violate any mortgage or other interest held by any third party regarding the City Parcel, or any portions of that parcel; (iv) there are no outstanding unpaid bills incurred for labor, materials, or services regarding the City Parcel, or any portions thereof; and (v) as of Closing, there will be no recorded or unrecorded liens, security interests, or any outstanding, pending, or threatened suits, judgments, executions, bankruptcies, or other proceedings pending or of record that would in any manner impact title to the City Parcel, or any portion thereof. The City will not grant, sell, convey, or in any way encumber the City Parcel prior to the Parties’ Closing. The City shall fully cooperate and assist the District in obtaining consents to this Agreement from each party that holds rights (recorded or unrecorded) that might interfere with the District’s or the City’s rights under this Agreement.

(b) The District represents that it has no actual knowledge of liens, encumbrances or leases, mortgages, security interests or other exceptions to the District’s fee title ownership of the New District Parcel not evidenced on the title commitment produced pursuant to section 7, below. The District warrants that the District is the fee simple owner of the New District Parcel; that the District has the right to enter into this Agreement and to make the promises, covenants, and representations contained in this Agreement; and that to its actual knowledge: (a) this Agreement does not violate any mortgage or other interest held by any third party regarding the New District Parcel, or any portions of that parcel; (b) there are

no outstanding unpaid bills incurred for labor, materials, or services regarding the New District Parcel, or any portions thereof; and (c) as of Closing, there will be no recorded or unrecorded liens, security interests, or any outstanding, pending, or threatened suits, judgments, executions, bankruptcies, or other proceedings pending or of record that would in any manner impact title to the New District Parcel, or any portion thereof. The District will not grant, sell, convey, or in any way encumber the New District Parcel prior to the Parties' Closing. The District shall fully cooperate and assist the City in obtaining consent to this Agreement from each party that holds rights (recorded or unrecorded) that might interfere with the District's or the City's rights under this Agreement, provided the City bears the cost of doing so, other than the District's administrative costs.

7. **Title Examination.** (a) Within 14 days following both parties' execution of this Agreement, the City will procure a title commitment for the City Parcel. If the title to the City Parcel, or any portion thereof, is unmarketable, the City will cooperate with the District to clear any title defects and to render title of the City Parcel to be marketable to allow the transactions contemplated herein to proceed in accordance with the terms and conditions of this Agreement.

(b) Within 14 days following the District's execution of this Agreement, the City will procure a title commitment for the New District Parcel. If the title to the New District Parcel, or any portion thereof, is unmarketable, the District will cooperate with the City to clear any title defects and to render title of the New District Parcel to be marketable, provided the City bears the cost of doing so, to allow the transactions contemplated herein to proceed in accordance with the terms and conditions of this Agreement.

8. **Taxes**

(a) All real estate taxes and special assessments or assessments for special improvements due, levied or assessed against the City Parcel for years prior to the year of Closing shall be paid by the City prior to Closing. Real estate taxes due and payable in the year of Closing will be prorated as of the Closing date.

(b) All real estate taxes and special assessments or assessments for special improvements due, levied or assessed against the New District Parcel for years prior to the year of Closing shall be paid by the District prior to Closing. Real estate taxes due and payable in the year of Closing will be prorated as of the Closing date.

9. **Closing Costs.**

The City will pay: (i) the costs of title commitment preparation and updating regarding the City Parcel; (ii) the costs of title commitment preparation and updating and the title insurance policy regarding the New District Parcel; (iii) title examination fees with respect to the City Parcel; (iv) title examination fees with respect to the District Parcel; (v) fees for the preparation of the deeds relating to both the City Parcel and the District Parcel; (vi) fees for the preparation of this Agreement; (vii) fees for the preparation and expenses of any survey, (viii) the costs of preparing and recording all releases, satisfactions, and title corrective documents with respect to the City or New District Parcel, and (ix) the cost of

performing a Phase I environmental site assessment on the City Parcel. The City will pay all other customary closing costs and attorney costs of the District related to closing. Each party will bear its own administrative costs.

10. **Forbearance or Waiver.** The failure or delay of either party to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

11. **Survival.** The terms of this Agreement will survive Closing.

12. **Assignment.** The City will not transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the District. The District will not transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the City.

13. **Governing Law.** This Agreement will be construed and enforced in accordance with Minnesota law. The Parties agree that any litigation arising out of this Agreement will be venued in State District Court in Carver County, Minnesota, and the Parties waive any objection to venue or personal jurisdiction.

14. **Severability.** If any court of competent jurisdiction finds any provision or part of this Agreement to be invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; however, the Parties will reconvene negotiations and will reform or replace any invalid, illegal, or unenforceable provision or portion of this Agreement with an alternative provision that is enforceable and bears as close resemblance as possible to any provision determined invalid, illegal, or unenforceable.

15. **Entire Agreement.** This Agreement supersedes any previous oral or written agreements between the Parties.

16. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by both Parties to this Agreement.

17. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the Parties' successors and assigns.

18. **Cooperation.** The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

19. **Representation.** The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

20. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

**City of Chanhasen**

By \_\_\_\_\_  
Elise Ryan  
Its: Mayor

By \_\_\_\_\_  
Todd Gerhardt  
Its: City Manager

**Riley-Purgatory-Bluff Creek Watershed District**

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

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

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

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

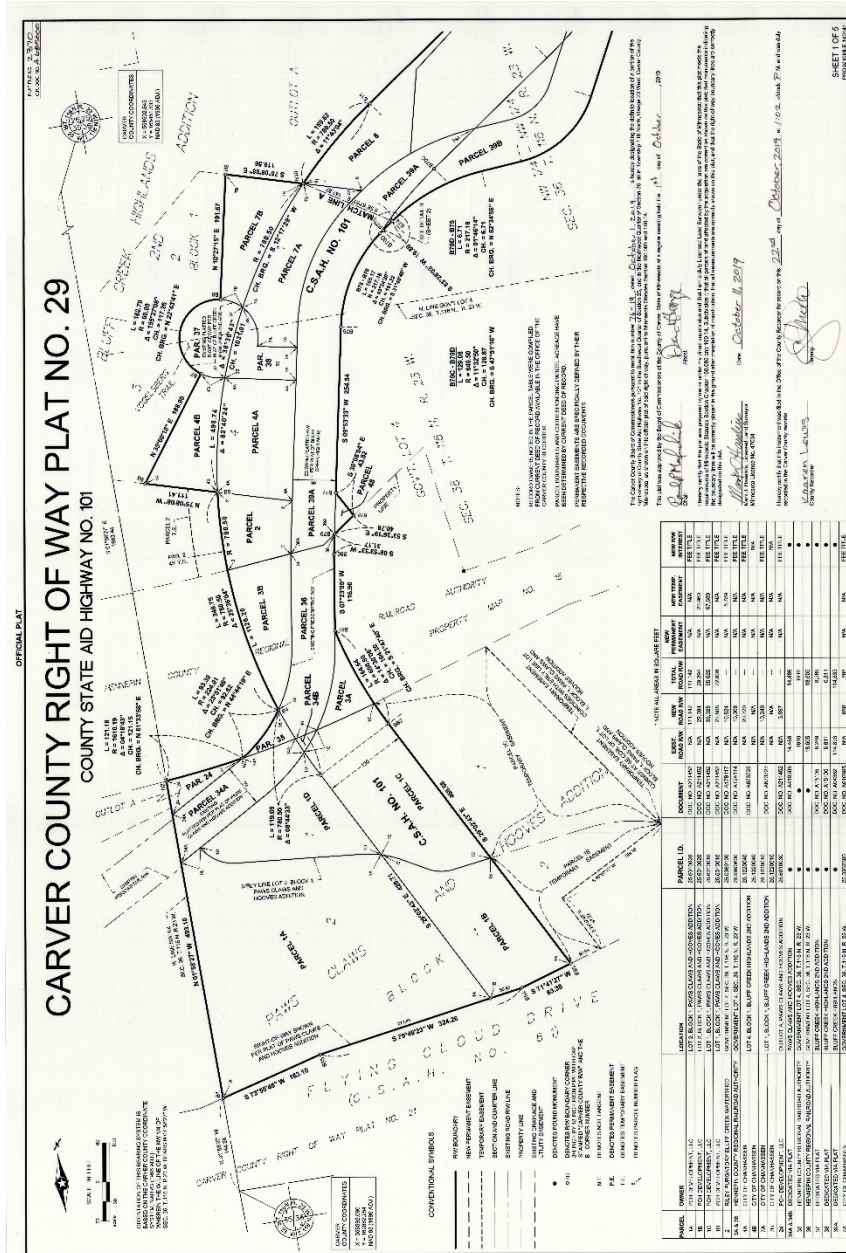
**EXHIBIT A**

**LEGAL DESCRIPTION OF CITY PARCEL**

Parcel 4B, as shown on CARVER COUNTY RIGHT OF WAY PLAT No. 29, on file and of record in the office of the County Recorder, Carver County, Minnesota

**EXHIBIT A-1**

**CARVER COUNTY RIGHT OF WAY PLAT NO. 29 (showing CITY PARCEL, as Parcel 4B)**











**EXHIBIT B**

**LEGAL DESCRIPTION OF DISTRICT PARCEL**

Parcel 2, as shown on CARVER COUNTY RIGHT OF WAY PLAT No. 29, on file and of record in the office of the County Recorder, Carver County, Minnesota



**EXHIBIT C**

**FORM OF TEMPORARY CONSTRUCTION EASEMENT OVER CITY PARCEL**

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(3" Top Margin for Recording)

**TEMPORARY CONSTRUCTION EASEMENT (PARCEL 4B)**

**County Highway 101 Reconstruction-Parcel 4B**

**PID Number:** \_\_\_\_\_

**Riley-Purgatory-Bluff Creek Watershed District, a political subdivision of the State of Minnesota, "Grantor,"** being the owner, in fee simple, of the real estate hereinafter described, grants to the **City of Chanhassen, a Minnesota municipal corporation, "Grantee,"** its successors and assigns, the hereinafter described temporary construction easement.

**Legal Description of Property**

1. Grantor is the owner in fee simple of the following described real estate located in Carver County, Minnesota (the "Property"):

**Parcel 4B, as shown on CARVER COUNTY RIGHT OF WAY PLAT No. 29, on file and of record in the office of the County Recorder, Carver County, Minnesota**

**Grant of Easement**

2. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor, Grantor bargains, sells, grants, and conveys to Grantee, its successors and assigns, a temporary construction easement over, under, across and upon that portion of the Property delineated on Attachment A hereto ("Easement Area").

**Rights Within Easement Area**

3. Said temporary construction easement shall include, but not be limited to, the right of the Grantee,

its contractors, employees, agents and invitees to enter upon the Easement Area for the purpose of constructing highway, utility and drainage improvements, and all purposes in furtherance thereof, or related thereto, including inspecting, surveying, grading, sloping, excavating, restoring, depositing earthen materials, moving and storing equipment, supplies, and materials, and removing pavement, sidewalks, bushes, trees, undergrowth and other buildings, improvements and obstructions as, in the judgment of Grantee, may interfere with Grantee's construction of such highway, utility and drainage improvements in accordance with its plans for its public project. Further, it is understood and agreed that the aforesaid consideration includes payment of damages for and permits removal or destruction of the trees, grass or other herbage; fences and other structures or other appurtenances within the Easement Area. Grantor agrees that all earth and other material necessarily excavated and removed from the Easement Area shall become the property of Grantee, and shall be used in the construction of Grantee's project, or be hauled away and disposed as Grantee may deem fit. Grantee agrees to replace topsoil and reestablish grass cover on exposed soil areas within the Easement Area where excavation and embankment construction takes place, and where clay or other poor soil is exposed.

4. Grantor and Grantee agree that the plan for said County Highway 101 Reconstruction Project which is on file in the office of the City Engineer for the City of Chanhassen, Minnesota, is, by reference, hereby made a part of this easement. In the event disputes arise, said plans shall control.

5. Notwithstanding any term of paragraphs 3 and 4, above, all of Grantee's activity under this temporary easement will conform to the following:

a. Grantee will not place any permanent improvement within the Easement Area. Grantee may alter grades and contours within the Easement Area in conformance with approved plans incorporated into Permit 2019-042 issued by Grantor. All Grantee work within the Easement Area will conform to Permit 2019-042.

b. Within the Easement Area, Grantee may not store hazardous or petroleum substances, and may not conduct refueling or vehicle/equipment maintenance or repair that involves the transfer or open storage of any hazardous substance or petroleum.

c. Grantor makes no representation or warranty as to the existence, location or nature of subsurface structures. Grantee is responsible for Gopher One compliance, for exercising care with respect to potential subsurface structures, and for any damage caused thereto by its activity.

d. Grantee accepts the condition of the Easement Area as-is, with no warranty or representation of Grantor as to its condition or the existence of any hazard, obvious or non-obvious, known or unknown. On behalf of itself, its employees, officials, contractors, subcontractors and agents, Grantee releases Grantor from any liability arising from the condition of the Easement Area.

### **Term of Temporary Easement**

6. The temporary easement granted herein shall commence on **March 1, 2020** and shall terminate

on **December 31, 2021.**

### **Transfer of Title**

7. Grantor agrees to notify the City Engineer of the City of Chanhassen of any conveyance of its ownership interest in the Property. This notification shall be in writing to the address listed below at least 30 days in advance of the conveyance.

### **Environmental Matters**

8. Grantee shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and attorneys' fees, costs, disbursements, or losses resulting from any claims, actions, suits or proceedings relating to a release or threatened release of any hazardous substances, pollutants, or contaminants existing on the Property prior to the date of this instrument, except to the extent the actions of Grantee cause or contribute to a release of any such material within the meaning of applicable law.

### **Restoration of Property**

9. Prior to the expiration of the temporary easement term, Grantee shall restore disturbed surfaces within the Easement Area in accordance with Grantee's restoration plan.

### **Indemnification.**

10. Grantee will indemnify, defend and hold harmless Grantor from and against any liens, claims, losses, liability, or damage resulting from: (a) any liens which may be attached to the Property for labor or materials provided by or at the request of Grantee; (b) injury or death to persons arising out of Grantee acts or omissions pursuant to this easement; (c) property damage to third parties arising out of Grantee acts or omissions pursuant to this easement. "Grantee acts or omissions" in this paragraph means acts or omissions of Grantee, its employees, officials, contractors, subcontractors and agents.

### **Binding Effect**

11. The terms and conditions of this instrument shall run with the land and be binding on the Grantor and the successors and assigns of Grantor.

**IN WITNESS WHEREOF**, said Grantor has caused this instrument to be executed the day and year first above written.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

Grantor:  
**Riley-Purgatory-Bluff Creek Watershed**

**District**

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

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

**ACKNOWLEDGMENT**

STATE OF MINNESOTA }

ss

COUNTY OF \_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as the \_\_\_\_\_ of the Riley-Purgatory-Bluff Creek Watershed District, a political subdivision of the State of Minnesota, on its behalf.

\_\_\_\_\_  
Notary Public  
My Commission expires \_\_\_\_\_

This Instrument Was Drafted By:

Kennedy & Graven, Chartered (SJS)  
470 U.S. Bank Plaza  
200 South 6<sup>th</sup> Street  
Minneapolis, MN 55402

And by (with return to):  
City of Chanhassen  
Attn. City Engineer  
P. O. Box 147  
Chanhassen, MN 55317-0147



**EXHIBIT D**

**FORM OF TEMPORARY CONSTRUCTION EASEMENT OVER PORTION OF  
DISTRICT PARCEL TO BE RETAINED BY THE DISTRICT**

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(3" Top Margin for Recording)

**TEMPORARY CONSTRUCTION EASEMENT**

**County Highway 101 Reconstruction-Parcel 2 T.E.**

**PID Number:** \_\_\_\_\_

**Riley-Purgatory-Bluff Creek Watershed District, a political subdivision of the State of Minnesota, "Grantor,"** being the owner, in fee simple, of the real estate hereinafter described, grants to the **City of Chanhassen, a Minnesota municipal corporation, "Grantee,"** its successors and assigns, the hereinafter described temporary construction easement.

**Legal Description of Property**

1. Grantor is the owner in fee simple of the following described real estate located in Carver County, Minnesota (the "Property"):

**Parcel 2 T.E., as shown on Carver County Right of Way Plat No. 29, on file and of record in the office of the Carver County Recorder, Carver County, Minnesota.**

**Grant of Easement**

2. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor, Grantor bargains, sells, grants, and conveys to Grantee, its successors and assigns, a temporary construction easement over, under, across and upon the Property (hereinafter, "Easement Area"), which constitutes a portion of Parcel 2 as shown on Attachment A hereto.

**Rights Within Easement Area**

3. Said temporary construction easement shall include, but not be limited to, the right of the Grantee, its contractors, employees, agents and invitees to enter upon said Easement Area for the purpose of

constructing highway, utility and drainage improvements, and all purposes in furtherance thereof, or related thereto, including inspecting, surveying, grading, sloping, excavating, restoring, depositing earthen materials, moving and storing equipment, supplies, and materials, and removing pavement, sidewalks, bushes, trees, undergrowth and other buildings, improvements and obstructions as, in the judgment of Grantee, may interfere with Grantee's construction of such highway, utility and drainage improvements in accordance with its plans for its public project. Further, it is understood and agreed that the aforesaid consideration includes payment of damages for and permits removal or destruction of the trees, grass or other herbage; fences and other structures or other appurtenances within the Easement Area. Grantor agrees that all earth and other material necessarily excavated and removed from the Easement Area shall become the property of Grantee, and shall be used in the construction of Grantee's project, or be hauled away and disposed as Grantee may deem fit. Grantee agrees to replace topsoil and reestablish grass cover on exposed soil areas within the Easement Area where excavation and embankment construction takes place, and where clay or other poor soil is exposed.

4. Grantor and Grantee agree that the plan for said County Highway 101 Reconstruction Project which is on file in the office of the City Engineer for the City of Chanhassen, Minnesota, is, by reference, hereby made a part of this easement. In the event disputes arise, said plans shall control.

5. Notwithstanding any term of paragraphs 3 and 4, above, all of Grantee's activity under this temporary easement will conform to the following:

a. Grantee will not place any permanent improvement within the Easement Area. Grantee may alter grades and contours within the Easement Area in conformance with approved plans incorporated into Permit 2019-042 issued by Grantor. All Grantee work within the Easement Area will conform to Permit 2019-042.

b. Within the Easement Area, Grantee may not store hazardous or petroleum substances, and may not conduct refueling or vehicle/equipment maintenance or repair that involves the transfer or open storage of any hazardous substance or petroleum.

c. Grantor makes no representation or warranty as to the existence, location or nature of subsurface structures. Grantee is responsible for Gopher One compliance, for exercising care with respect to potential subsurface structures, and for any damage caused thereto by its activity.

d. Grantee accepts the condition of the Easement Area as-is, with no warranty or representation of Grantor as to its condition or the existence of any hazard, obvious or non-obvious, known or unknown. On behalf of itself, its employees, officials, contractors, subcontractors and agents, Grantee releases Grantor from any liability arising from the condition of the Easement Area.

### **Term of Temporary Easement**

6. The temporary easement granted herein shall commence on **March 1, 2020** and shall terminate on **December 31, 2021**

### **Transfer of Title**

7. Grantor agrees to notify the City Engineer of the City of Chanhassen of any conveyance of its ownership interest in the Property. This notification shall be in writing to the address listed below at least 30 days in advance of the conveyance.

### **Environmental Matters**

8. Grantee shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and attorneys' fees, costs, disbursements, or losses resulting from any claims, actions, suits or proceedings relating to a release or threatened release of any hazardous substances, pollutants, or contaminants existing on the Easement Area prior to the date of this instrument, except to the extent the actions of Grantee cause or contribute to a release of any such material within the meaning of applicable law.

### **Restoration of Property**

9. Prior to the expiration of the temporary easement term, Grantee shall restore disturbed surfaces within the Easement Area in accordance with Grantee's restoration plan.

### **Indemnification**

10. Grantee will indemnify, defend and hold harmless Grantor from and against any liens, claims, losses, liability, or damage resulting from: (a) any liens which may be attached to the Property for labor or materials provided by or at the request of Grantee; (b) injury or death to persons arising out of Grantee acts or omissions pursuant to this easement; (c) property damage to third parties arising out of Grantee acts or omissions pursuant to this easement. "Grantee acts or omissions" in this paragraph means acts or omissions of Grantee, its employees, officials, contractors, subcontractors and agents.

### **Binding Effect**

11. The terms and conditions of this instrument shall run with the land and be binding on the Grantor and the successors and assigns of Grantor.



