

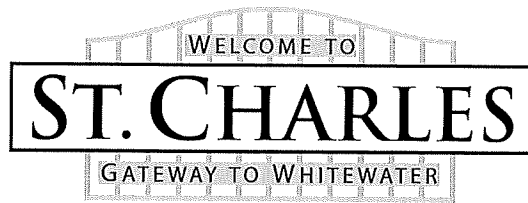


The City Council of the City of St. Charles welcomes you to its  
 Regular Meeting of Tuesday, July 26th, 2022 at 6:00 p.m.  
 at 830 Whitewater Avenue, City Council Chambers, St. Charles, Minnesota.

ITEM	ACTION REQUESTED
1. Call to Order	
2. Pledge of Allegiance	
3. Approval of the Agenda	
4. Notices and Communications –	
5. Review of Financials	
6. Southern Minnesota Initiative Foundation	PRESENTATION
7. Public Hearing – PD Body Camera Adoption (MN Stat. 626.8473)	HOLD
8. PD Body Camera Policy	APPROVE
9. SCPD and LPD Contract for Services	APPROVE
10. Pine Ridge Second Subdivision	APPROVE
11. Contract For Private Development – Tax Abatement (Pearson Prop.)	APPROVE
12. Hewitt Resignation-EMT	APPROVE
13. 2023 Budget Timeline	INFORMATION
14. Resolution #36-2022 Donation to St. Charles Fire & Amb.	APPROVE
15. Administrator Review—Minn. Stat. 13D.05 Subd 3(a)	CLOSED

**UNSCHEDULED PUBLIC APPEARANCES:** Members of the audience may address any item not on the agenda. State Statute prohibits the City Council from discussing an item that is not on the agenda, but the City Council does listen to your concerns and has staff follow up on any questions you raise.

**ADJOURNMENT**



---

**MEMORANDUM for the CITY COUNCIL of St. Charles for**  
**Tuesday, July 26, 2022**

---

**6. Southern Minnesota Initiative Foundation Presentation.** Alissa Oeltjenbruns, the philanthropy officer with SMIF, will attend the meeting to provide a brief update on the programs and services for SMIF and how they are continuing to engage communities in southeast Minnesota.

**7. Public Hearing—PD Body Camera Adoption (MN Stat 626.8473).** A public hearing will be held for consideration of a body camera policy.

**8. PD Body Camera Policy.** Police Chief Jose Pelaez will present the proposed police department body camera policy. Cara Brown of Flaherty & Hood will also be present to help answer any questions related to the policy development in place of Mike Flaherty.

**9. SCPD and Lewiston PD Contract for Service.** Enclosed is a contract for service agreement between the St. Charles PD and Lewiston PD for various POST approved trainings. St. Charles and Lewiston have partnered previously and trained together as St. Charles officers are trained instructors in Use of Force, and Shooting Range instructors. Lewiston proposed the contract to help support the instructional programs and joint effort. Approval is recommended.

**10. Pine Ridge Second Development Agreement.** Enclosed is the proposed development agreement for the Pine Ridge Second subdivision. Mr. Pearson has been provided the document and if any changes/requests are made, they will be presented Tuesday evening.

**11. Contract for Private Development – Tax Abatement (Pearson Prop.).** To coincide with the approved tax abatement plan for Pine Ridge Second, the Contract for Private Development is included for consideration. Mike Bubany from David Drown & Associates has reviewed the document and recommends approval.

**12. Hewitt Resignation—EMT.** A letter of resignation was received from Heather Hewitt indicating her last day would be July 31, 2022. Approval is recommended.

**13. 2023 Budget Timeline.** Included for consideration is the 2023 budget timeline.

**14. Resolution #36-2022 Accepting a Donation for St. Charles Fire and Ambulance.** Please see the enclosed resolution for consideration.

**15. Administrator Review—Minn Stat. 13D.05 Subd. 3(a).** The meeting will be closed pursuant to Minn. Stat. 13D.05 Subd. 3(a) for the annual administrator review.

**St. Charles  
Public Notice  
Notice of Candidate Filing**

Eligibility to Run for Municipal Office:

Per Article VII, Section 6 of the Constitution of the State of Minnesota: Every person who by the provisions of this article is entitled to vote at any election and is twenty-one (21) years of age is eligible for any office elective by the people in the district wherein he has resided thirty days previous to the election, except as otherwise provided in this Constitution and law of the United States.

St. Charles municipal office candidates file at City Hall, located at 830 Whitewater Avenue. Each candidate receives a packet of financial and campaign information at the time of filing.

The following municipal offices will be included on the November 2022 ballot:

- Mayor, two-year term
- Council Member, four-year term
- Council Member, four-year term

Opening date for municipal candidate filing for office: Tuesday, August 2, 2022 at 8 a.m.  
Closing date for municipal candidate filing for office: Tuesday, August 16, 2022 by 5:00 p.m.

Candidates for municipal elective office may withdraw by filing an affidavit of withdrawal with the city clerk before 5:00 p.m. on Thursday, August 18, 2022. The Primary Election shall be held on Tuesday, August 9, 2022 between the hours of 7:00 a.m. and 8:00 p.m. at the St. Charles Community Center. The General Election shall be held on Tuesday, November 8, 2022 between the hours of 7:00 a.m. and 8:00 p.m. at the St. Charles Community Center. Any person at least 18 years of age and has been a resident of St. Charles for 20 days may file with the Deputy City Clerk at 830 Whitewater Avenue, St. Charles, MN.

Candidates must fill out an Affidavit of Candidacy Form and Pay a Filing fee \$2.00.

If you have any questions, please contact City Hall at 507-932-3020.

Nick Koverman, City Administrator  
Date: July 12, 2022  
Cassie Smith  
Deputy City Clerk  
830 Whitewater Avenue  
St. Charles, MN 55972



SOUTHERN MINNESOTA  
INITIATIVE FOUNDATION

525 Florence Avenue • PO Box 695 • Owatonna, MN 55060-0695  
PH 507.455.3215 • FAX 507.455.2098 • [smifoundation.org](http://smifoundation.org)

May 2022

Nick Koverman  
City of Saint Charles  
830 Whitewater Ave  
Saint Charles, MN 55972

Dear Mr. Koverman and City Council,

The needs of a community come in every shape and size. Those who live in the wonderfully diverse communities of southern Minnesota know this better than anyone. Southern Minnesota Initiative Foundation's (SMIF) focus is on economic and early childhood development and community vitality – exactly where our region needs us.

**Small businesses need resources and financial support more than ever.**

Small businesses in Minnesota account for 99.5% of all businesses and employ 46.9% of employees in the state. Job vacancies across the state have increased to 5.2% - nearly double what is considered a healthy number. SMIF's lending and technical assistance has been instrumental in creating dozens of new businesses in our region.

**Child care shortages continue to be a concern.**

48% of parents with kids under 18 who quit a job in 2021 cited child care issues as a reason for leaving. The need for more child care availability is particularly acute in Greater Minnesota where the numbers of child care providers is not keeping pace with the need. SMIF's child care resources are keeping providers in business and addressing the shortage.

**Volunteers to community organizations are experiencing burnout at increasing rates.**

Approximately 63 million Americans, 25% of the adult population, contribute \$193 billion of their time in-kind to our communities. However, the volunteer rate is declining. SMIF's support for community project and community foundations is turning this trend around.

Because of generous supporters like you, communities in our region have seen improvement and growth in countless ways. With your help, together we are investing in the vitality of our region. **See the enclosed fact sheet to see how your contribution is making a difference in your county.**

**Thank you for your gift** of \$1,500.00 on 2/14/2022. Your support is changing lives and addressing the needs of our region. I hope you will consider a gift at the same level in 2023.

Sincerely,

Tim Penny  
President & CEO

cc: Heather Millard, Board Member

Collaborating for Regional Vitality







SOUTHERN MINNESOTA  
INITIATIVE FOUNDATION

Collaborating for Regional Vitality

# Winona County Investments

We envision southern Minnesota as a prosperous and growing region with vibrant communities, innovative and successful economies, and engaged and valued citizens. To achieve this vision, Southern Minnesota Initiative Foundation, a regional development and philanthropic organization, fosters economic and community vitality in 20 counties of southern Minnesota through a culture of collaboration and partnership.

For every donation of  
from Winona County

\$1

=

\$21

is invested back  
into Winona County  
communities.\*

\*Includes grants, loans & programming

## 43 LOANS

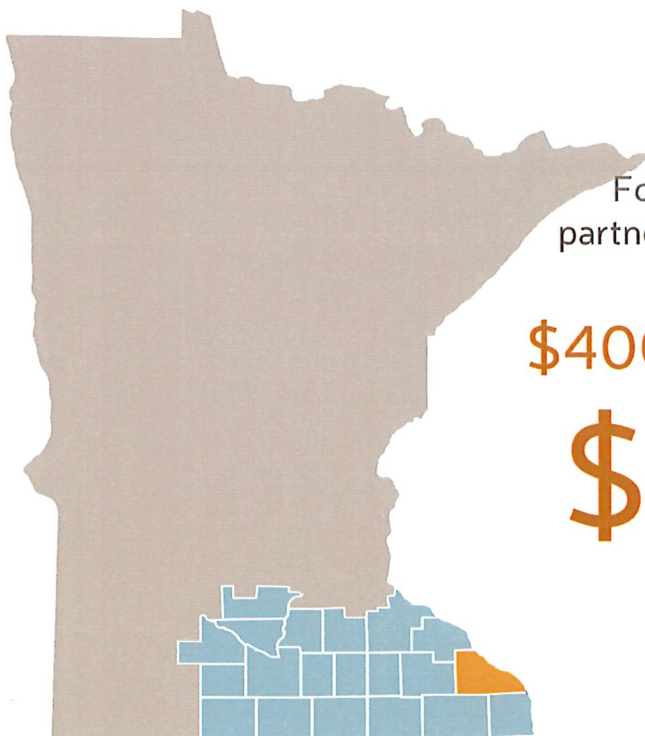
\$2.2 million to Winona County entrepreneurs

\$3.4 million to support community initiatives

## 339 GRANTS

\$2.8 million to support grant-making

***\$5 million invested annually to the 20 counties of  
south central and southeastern Minnesota***



Since 1986, Southern Minnesota Initiative Foundation has leveraged local investments & partnerships to create a stronger **Winona County**:

**\$400,000** in local donations to SMIF

# \$8.4 million

invested by SMIF in Winona County  
through grants, loans, and programming for  
stronger kids, businesses and communities



# Making a Difference

Providing programs for Early Childhood Initiatives



AmeriCorps LEAP (Learning Early Achieves Potential) Initiative members serve in preschool classrooms and nonprofit organizations focused on the social and emotional development of young children in our region. Heidi Toft served as an AmeriCorps LEAP member at the Saint Charles Preschool during the 2020 – 2021 school year. She shared, "I'm really grateful that I could serve our school in this crazy year of COVID. I will never forget those first times that some of the kiddos began to use the tools and language that I've been teaching them. They started to help each other by bringing items from the 'calm down basket' to their friend who was upset. I've seen them share a hug or a 'heart hands' with someone who is crying or frustrated. It feels really good to know they are absorbing the information and putting it use for each other and themselves."

## Early Childhood

- Winona State University Children's Center received a \$10,000 grant to update technology in classrooms by improving contact methods with families.
- Saint Charles Public Schools was awarded 600 books through an Early Literacy Grant to provide activities for a monthly themed Literacy Family Night event.
- 29 local child care professionals participated in free trainings provided by SMIF in 2021, impacting over 310 children, to gain resources and knowledge to increase quality care for young children.

Number of children  
impacted: **310**

Hours of Training  
Provided: **43**

## Economic Development

- 87 Winona County businesses received \$875,000 in DEED Small Business Relief Grants to assist with pandemic-related challenges.
- Engage Winona received a \$15,000 grant to support leadership growth and changemaking projects through the Lived Experience Leaders program.
- Whitewater Garden Farm of the Altura area is part of SMIF's Local Foods Peer Network. This group comes together to

Number of entrepreneurs  
impacted: **89**

Hours of training and  
and events provided: **565**

## Community Vitality

- The St. Charles Area Community Foundation is a fund under SMIF. As the fiscal host, SMIF maintains all filings with the government and administrative work while providing technical assistance to the local board. Volunteers focus on raising dollars and granting them where they see fit in the community.
- The City of Altura received 10 gallons of paint through a Paint the Town grant to restrain the equipment building for Altura youth sports.
- Lewiston-Altura Public Schools received 15 gallons of paint through a Paint the Town grant to paint two storage units behind the high school.



# Your Gift ENABLED US TO RESPOND QUICKLY TO THE COVID-19 CRISIS

**TOTAL IMPACT: MORE THAN \$21.5 MILLION**



## Community Foundation Relief Grants

SMIF provided \$101,218 in matching grants to 21 of our community foundations to support their localized relief efforts. By leveraging this opportunity, they were able to provide a total of \$121,050 to their communities, impacting more than 56,000 people.

## Emergency Child Care Grants

SMIF provided \$254,950 in immediate financial support to licensed child care providers. 491 family providers and 34 centers were awarded with immediate funds, serving approximately 1,800 children in southern Minnesota.



## Grow a Farmer Assistance Grants

SMIF awarded three organizations \$10,000 each through the Grow a Farmer Assistance Fund. They are working collaboratively to support at least 120 farmers in southern Minnesota through grants that help their businesses respond to new challenges.

## Small Town Grants

SMIF awarded 22 organizations a total of \$192,500 to respond and recover from the hardships created by the crisis and the impact on their communities, all of which have populations of less than 10,000.



## Small Business Relief Grants and Loans

SMIF distributed 1,867 MN DEED Small Business Relief Grants to southern Minnesota businesses for a total of \$19,495,000. The grants support businesses that have experienced financial hardship as a result of the crisis. Additionally, SMIF dispersed 50 MN DEED Small Business Emergency Loans for a total of \$1.2 million.

## Early Care and Education Wrap Around Grants

SMIF approved 45 Early Care and Education Wrap Around Grants totaling \$590,818 in partnership with Minnesota Department of Education. This grant helped fund early care and education wrap around services for children birth to age eight from underserved and diverse populations impacted by the pandemic.



## Learn how you can help!

To learn more about our **COVID-19 RESPONSE**, and the many partners and donors who have supported these efforts, visit [smifoundation.org/covidresponse](https://smifoundation.org/covidresponse). Making a gift to SMIF's general endowment supports these response efforts, including expenses related to the administration of these emergency funds and other essential response resources. Visit [smifoundation.org/donate](https://smifoundation.org/donate) to make a gift.



# Your Gift MADE AN IMPACT ON THEIR STORIES

“ In February 2020 when we were jumping-up-and-down-ecstatic to receive a Child Care Expansion Grant through SMIF, we didn't fully understand the true impact it would have on our ability to provide a safe, caring environment for children and families during one of the darkest times of our lives. Not only did the grant allow us to open an additional classroom during the pandemic so the children could learn safely in smaller group sizes, we also received critical support from the dedicated professionals at SMIF. Jeff Andrews helped us work through financial management and planning while John Katz went above and beyond to help us solve issues we were having with our online QuickBooks program. In this time of social distancing, it's this encouragement and generosity that helped our staff remain positive and know that their work was making a true difference in the lives of others. We cannot thank the donors and professionals of Southern Minnesota Initiative Foundation enough for your foresight, dedication and support throughout this pandemic.”

**-CHRISTINA VALDEZ, DIRECTOR OF LISTOS PRESCHOOL AND CHILDCARE**



“ I'm so grateful to Southern Minnesota Initiative Foundation for their Grow A Farmer Assistance Grant. We've so far distributed funds to our members for things as diverse as installing internet on their farm, getting drone photography, starting up a tea business, buying COVID safety and health equipment and supplies, setting up an online fiber sale site, and more than that. It's been really interesting to see what the farmers are doing with these funds. We're all really dependent on each other when we're small entrepreneurs like this and the more healthy our local economy is we all do better. We've kind of adopted that model for ourselves, 'We all do better when we all do better.' From everyone in the Cannon River Sustainable Farming Association to Southern Minnesota Initiative Foundation, a big thank you for supporting us in our Cannon Valley Grown Project.”

**-GWEN ANDERSON, BOARD SECRETARY OF CANNON RIVER SUSTAINABLE FARMING ASSOCIATION**



“ In April of 2020, Preston Area Community Foundation (PACF) discussed ways to help the local business community at the onset of the pandemic challenges. PACF reached out to the local EDA to develop a grant and loan program for local businesses to use for normal operating expenses. At this same time, SMIF made available a Community Foundation Relief Fund to be used by community foundations to address pandemic issues in their community. PACF reached out to the F & M Community Bank for support to take advantage of the \$5,000 SMIF matching grant and generously, the bank agreed to underwrite the entire \$5,000 PACF contribution. Thanks to SMIF and F & M Community Bank, the EDA loan and grant program funds increased to \$30,000. To date, over \$21,000 has been provided to local businesses with applications still being accepted. Preston area businesses have been so grateful to receive this support during these challenging times. Our community stepped up this year and we are proud of the work PACF accomplished with the help of local organizations and SMIF.”

**- CHUCK AUG, BOARD MEMBER OF PRESTON AREA COMMUNITY FOUNDATION**



## Use of Body-Worn Cameras (BWCs) Policy

### 423.1 PURPOSE

The primary purpose of using Body-Worn Cameras (BWCs) is to capture evidence arising from police-citizen encounters.

### 423.2 SCOPE

This policy provides guidelines for the use of BCWs by members of this department while in the performance of their duties (Minn. Stat. § 626.8473) and administering the data that result. The Chief of Police or the chief's designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

This policy does not apply to the use of squad-based (dash-camera) recording systems, interviews or interrogations conducted at any St. Charles Police Department facility, undercover operations, wiretaps or eavesdropping (concealed listening devices), nor personal digital voice recording devices, unless captured by a BWC.

### 423.3 POLICY

The St. Charles Police Department may provide members with access to portable recorders for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public. Furthermore, It is the policy of this department to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law.

### 423.4 DEFINITIONS

The following phrases and words have special meaning as used in this policy:

**Body Worn Camera (BWC)-** A device worn by a member that is capable of both video and audio recording of the member's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. § 13.825.

**MGDPA or Data Practices Act-** Refers to the Minnesota Government Data Practices Act. Stat. § 13.01, et seq.

**Records Retention Schedule-** Refers to the General Records Retention Schedule for the City of St. Charles.

**Law enforcement-related information-** means information captured or available for capture by use of BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

**Evidentiary value-** means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.

**General citizen contact-** means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

**Adversarial-** means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

**Unintentionally recorded footage-** is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

**Department-** means the St. Charles Police Department, St. Charles, Minnesota.

**Member-** means a St. Charles Police Department employee, who has been issued a BWC and who has been properly trained in its use, who is acting in a St. Charles Police Department job description which requires that person be licensed by the Minnesota Board of Peace Officer Standards and Training.

**Official duties-** for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

**Redact-** means to blur video or distort audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable.

**CAD-** means Computer Aided Dispatch

**Critical Incident-** means an incident involving: the use of deadly force by a peace officer; the discharge of a firearm by a peace officer in the course of duty, if a notice is required under section 626.553, subdivision 2; an in-custody death; and/or the use of force by a peace officer that resulted or was likely to result in substantial bodily harm, great bodily harm or death.

#### **423.5 COORDINATOR**

The Chief of Police or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):



# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
  - 1. The coordinator should work with the Custodian of Records and the member assigned to coordinate the use, access and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (See the Protected Information and the Records Maintenance and Release policies).
- (b) Establishing procedures for accessing data and recordings.
  - 1. These procedures should include the process to obtain written authorization for access to non-public data by SCPD members and members of other governmental entities and agencies.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging or marking events.
- (e) Establishing an inventory of portable recorders including:
  - 1. Total number of devices owned or maintained by the St. Charles Police Department.
  - 2. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used.
  - 3. Total amount of recorded audio and video data collected by the devices and maintained by the St. Charles Police Department.
- (f) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9.
- (g) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the St. Charles Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.

#### **423.6 MEMBER PRIVACY EXPECTATION**

All recordings made by members on any department-issued device at any time or while acting in an official capacity of this department, regardless of ownership of the device, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **423.7 MEMBER RESPONSIBILITIES**

A. Members may use only Department issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this Department.

B. Members who have been issued BWCs shall operate and use them consistent with this policy. Members will be required to log into the body camera application prior to the beginning of their schedule shift. Members will be required to log into the body camera application using their assigned log in credentials. Members will be required to remain logged into the body camera

# St. Charles Police Department

## Policy Manual

### Use of Body-Worn Cameras (BWCs) Policy

---

application until the end of their scheduled shift. At the end of the officers scheduled shift the members shall log out of the body camera application.

C. Members shall conduct a function test of their issued BWCs at the beginning of each shift to make sure the devices are operating properly. Members will be responsible for making sure the battery for their BWC is fully charged at the beginning of their scheduled shift.

D. Members noting a malfunction during testing or at any other time shall promptly report the malfunction to the member's shift commander or supervisor and shall send an email message to the Chief of Police indicating the issue. Shift commanders or the Chief of Police shall take prompt action to address malfunctions and document the steps taken in writing.

E. Members should wear their issued BWCs at the location on their body and in the manner specified in training.

F. Members must document BWC use, and non-use as follows:

1. Whenever a member makes a recording, the existence of the recording shall be documented in an incident report or in a CAD record if no incident report is written.
2. Whenever a member fails to record an activity that is required to be recorded under this policy or fails to record for the entire duration of the activity, the officer must document the circumstances and reasons for not recording in an incident report. The shift commanders and/or the Chief of Police shall review these reports and initiate any corrective action deemed necessary.

G. The department will maintain the following records and documents relating to BW use, which are classified as public data:

1. The total number of BWCs owned or maintained by the agency.
2. A daily record of the total number of BWCs actually deployed and used by officers and, if applicable, the precincts in which they were used.
3. The total amount of recorded BWC data collected and maintained; and
4. This policy, together with the Records Retention Schedule.

H. Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

#### **423.8 GENERAL GUIDELINES FOR BODY-WORN CAMERA RECORDING**

This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder at any time the member believes it would be appropriate or valuable to record an incident.

# St. Charles Police Department

## Policy Manual

### Use of Body-Worn Cameras (BWCs) Policy

---

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

#### 423.8.1 SURREPTITIOUS RECORDINGS

Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02).

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

#### 423.8.2 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### 423.8.3 ACTIVATION OF THE BWCS

- A. Member shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, Terry stops of motorists or pedestrians, arrests, searches, suspect, victim and witness interviews and interrogations, prisoner transports and during any law enforcement/ citizen contacts that becomes adversarial. The BWC should be activated when arriving at the location of the call or complaint before deputy gets out of the squad car. If a member is handling a call for service by telephone the BWC should be activated prior to making a phone call. The deputy should place the phone on speaker mode to capture both the deputy side of the conversation as well as the person the deputy is speaking to.
- B. However, members need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Members Responsibility section of this policy (423.7) mentioned above.
- C. Members have discretion to record or not record general citizen contacts.
- D. Members have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.

# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

- E. Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, members shall reactivate their cameras as required by this policy to capture information having evidentiary value.
- F. When members are conducting search warrants of people or places the BWC should be activated. If searching places, once all non law enforcement personnel have left the scene or area of the search the BWC may be muted. The BWC may be muted during the search to prevent any operational security breaches of on going investigations. The recording of any evidence that is located during the search should still be video recorded on the BWC and the BWC should not be shut off until the search is complete and members have left the scene of the search.

#### **423.8.4 PROHIBITED USE OF BWCS**

Members are prohibited from using department-issued BWCs for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued BWC. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Notwithstanding any other provision in this policy, members shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

Members shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.

To the extent possible, members shall not use BWCs to record video depicting strip searches, reviews of private sexual images and/or videos, and/or images and videos showing or suspected of showing child sexual exploitation. It does not defeat the purpose of this policy to block the video recording, but maintain audio recording, of strip searches, reviews of private sexual images and/or videos, and/or images and videos showing or suspected of showing child sexual exploitation.

#### **423.9 SPECIAL GUIDELINES FOR RECORDING**

Members may, in the exercise of sound discretion, determine:

# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

- A. To use their BWCs to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value unless such recording is otherwise expressly prohibited.
- B. Officers shall use their BWCs and squad-based audio/video system to record the transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.
- C. The BWC system is equipped with a remote Live Stream feature which allows authorized individuals to remotely start a live stream of an officers BWC. An officers BWC who has been remotely started for live streaming shall always be notified prior to and when the live streaming of the BWC happens. Notification attempts to the member that a live stream will be started will be made by phone by calling or texting the member prior to the live stream starting.
- D. The BWC system has an automatic trigger which activates the system when an officer is traveling at 90 mph or faster.
- E. Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

#### **423.10 DOWNLOADING AND LABELING BWC DATA**

- A. Each member using a BWC is responsible for assuring the data from his or her camera properly transferred to the designated cloud storage. However, if the officer is involved in a critical incident, the Shift Commander or the Chief of Police shall take custody of the officer's BWC and assume responsibility for assuring the transfer of the data from it.
- B. Members shall label the BWC data files at the time of capture or transfer to storage as trained and should consult with a shift commander or the Chief of Police if in doubt as to the appropriate labeling or selecting the appropriate retention.
- C. Members shall use the appropriate tag when categorizing their BWC recordings. Members shall label the recording with the appropriate ICR number. Members shall also set the appropriate retention for the BWC recording by either leaving the recording set to the default 180 days or changing to 7 years or indefinite.
- D. The following are examples of incidents or situations for setting the appropriate retention of BWC videos but is not all inclusive. If a member is in doubt as to what to set the retention for a recording, they should error on the side of setting the retention to 7 years.
  - 1. Incidents or encounters that do not result in arrests or the need for continued investigation, casual encounters with citizens that are not adversarial, traffic

# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

stops that do not result in citations and are not adversarial, incidents deemed by an officer's discretion will not be needed for further evidentiary value. All the BWC recordings can have the retention schedule of 180 days.

2. Incidents or encounters where an individual is arrested or charged with a crime, is likely to be charged with a crime, is given a traffic citation or some other citation. All the BWC recordings aforementioned can have the retention schedule of 7 years
3. Incidents or encounters that results in the use of force or are deemed to be critical incidences as defined in the St. Charles Police Department policy. All the BWC recordings aforementioned can have a retention schedule of indefinite.

#### **423.11 RETENTION OF BWC RECORDINGS**

- A. All BWC data shall be retained for a minimum period of 180 days. There are no exceptions for erroneously recorded or non-evidentiary data
- B. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- C. Certain kinds of BWC data must be retained for seven years:
  1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
  2. Data documenting circumstances that have given rise to a formal complaint against an officer.
- D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- E. Subject to Part F (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 180 days.
- F. Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- G. The department shall maintain an inventory of BWC recordings having evidentiary value.
- H. The department will post this policy together with a link to its Records Retention Schedule, on its website.



# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

#### **423.12 ADMINISTERING ACCESS TO BWC DATA**

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
  - 1. Any person or entity whose image or voice is documented in the data.
  - 2. The officer who collected the data.
  - 3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.
- B. **BWC data is presumptively private.** BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
  - 1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
  - 2. Some BWC data is classified as confidential (see C. below).
  - 3. Some BWC data is classified as public (see D. below).
- C. **Confidential data.** BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the "private" classification listed above and the "public" classifications listed below.
- D. **Public data.** The following BWC data is public:
  - 1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
  - 2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
  - 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover officers must be redacted.
  - 4. Data that documents the final disposition of a disciplinary action against a public employee. However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g. certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.
- E. **Access to BWC data by non-employees.** Members shall refer members of the media or public seeking access to BWC data to the Chief of Police, who shall process the request in accordance with the MGDPA and other governing laws. In particular:
  - 1. An individual shall be provided with access and allowed to review recorded BWC data about him- or herself and other data subjects in the recording, but access shall not be granted:
    - (a) If the data was collected or created as part of an active investigation.

# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

- (b) To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access. Examples could include portions that would reveal identities protected by Minn. Stat. § 13.82,17; Minn. Stat. § 626.557 and/or Minn. Stat. § 260E.35.
- 2. Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:
  - (a) Data on other individuals in the recording who do not consent to the release must be redacted.
  - (b) Data that would identify undercover officers must be redacted.
  - (c) Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.
- F. **Access by peace officers and law enforcement employees.** No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:
  - 1. Members may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance.
  - 2. The Chief of Police is authorized to review relevant recordings any time he is investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.
  - 3. When involved in a critical incident, neither the member nor the officer's attorney will be permitted to view any video(s), including BWC and/or dash camera materials, prior to providing a voluntary interview. However, the member may view the video following the voluntary interview if they request to do so to assist in clarifying any portion of their statement. The viewing of the video will be limited to the incident captured on the member's own dash camera or BWC.
  - 4. Members are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
  - 5. Members seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.
- G. **Other authorized disclosures of data.** Members may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Members should generally limit these displays in order to protect against the incidental disclosure of individual identities that are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition,

# St. Charles Police Department

## Policy Manual

### *Use of Body-Worn Cameras (BWCs) Policy*

---

1. BWC data may be shared with other law enforcement agencies only for legitimate law enforcement, specified purposes that are documented in writing at the time of the disclosure.
2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

#### **423.13 DATA SECURITY SAFEGUARDS**

- A. Personally owned devices, including but not limited to computers and mobile devices, shall not be programed or used to access or view agency BWC data.
- B. Members shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the Chief of Police.
- C. Members shall not change any technical settings to their BWC or the BWC application without prior authorization from the Sheriff or his/her designee.
- D. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

#### **423.14 ACCOUNTABILITY AND COMPLIANCE**

The Chief of Police shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09. Further, any member who accesses or releases recordings without authorization may be subject to discipline (See the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).

# **ST. CHARLES AND LEWISTON TRAINING AGREEMENT**

This agreement is made and entered into by and between the City of St Charles, St. Charles Police Department 830 Whitewater Avenue, St. Charles, MN 55972 (hereafter “St Charles”) acting on behalf of the St Charles Police Department and the City of Lewiston, 75 Rice Street, Lewiston, Minnesota 55952, (hereafter “Lewiston”), acting on behalf of the Lewiston Police Department.

WHEREAS, St Charles has use of an outdoor firing range located on property in Saratoga Township, Winona County, Minnesota; and

WHEREAS, St. Charles has personnel trained in Use of Force, TASER, Handgun, Shotgun, Rifle, and Less Lethal munitions; and

WHEREAS, Lewiston wants to have its Lewiston Police Department Officers use this outdoor firing range and attend Peace Officer Standards and Training (POST) approved classes in Use of Force, TASER, Handgun, Shotgun, Rifle, and Less Lethal munitions, conducted by St Charles Police Department; and

WHEREAS, St Charles is willing to allow the use of the outdoor firing range and attendance by Lewiston Police Department Officers in POST approved classes sponsored by the St Charles Police Department under the terms and conditions outlined below; and

NOW, THEREFORE, in consideration of the mutual undertakings and agreements herein set forth, St Charles and Lewiston agree as follows:

## **I. TERM OF THE AGREEMENT**

A. The term of this agreement shall be for six (6) years, beginning January 1, 2023, and ending December 31, 2029, unless terminated earlier pursuant to Paragraph IV.

## **II. USE OF THE OUTDOOR FIRING RANGE**

A. St Charles Police Department or designee shall oversee the outdoor firing range and shall establish written policies and rules governing its use, which are incorporated herein by reference as part of this agreement. A copy of these policies and rules, and any additions or revisions shall be delivered to Lewiston following approval by St Charles.

B. The outdoor firing range shall be available for use only by duly licensed law enforcement officers employed by Lewiston, with hours of operation determined by St Charles.

C. The terms of this agreement shall also cover weapons qualification shoots, or any other training exercise, conducted jointly by the St Charles and Lewiston.

## **II. PAYMENT**

A. As consideration for use of the outdoor firing range, Lewiston shall pay to St Charles the annual fee of Five Hundred Dollars (\$500.00) due and payable January 1<sup>st</sup> of each year. The fee shall be used for the maintenance and upkeep of the outdoor firing range, use of facilities and equipment owned by St Charles for training in the Use of Force, TASER, Handgun, Shotgun, Rifle, and Less Lethal munitions.

### **III. INDEMNIFICATION AND INSURANCE**

A. Each Party will maintain workers compensation insurance or self-insurance coverage at all times for their own employees while they are training and taking part in exercises on the range or other facilities. Each Party waives the right to sue any other agency for workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries were caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers.

B. Each Party shall be liable for the actions of their own employees to the extent provided by law. Each Party shall defend, indemnify, and hold harmless the other Party, its employees, and its agents from all third party claims, demands, actions or causes of action, including reasonable attorney fees and expenses arising from any act or omission of the indemnifying Party and their agents, employees, or partners arising from the performance of this contract. Nothing in this agreement shall require a Party to defend, indemnify, or hold harmless the other Party for the other Party's own acts or omissions.

C. Both Parties shall at all times during the term of this Agreement keep in effect their own liability insurance in the government liability amounts established by applicable Minnesota statutes. Nothing in this agreement shall constitute a waiver of the statutory limits of liability under Minnesota Statutes Chapter 466, or a waiver of any available immunities or defenses. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(a).



#### **IV. EARLY TERMINATION**

A. This agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) days written notice delivered by mail or in person to the other party. Notice to St Charles shall be delivered to the St Charles City Administrator and notice to Lewiston shall be delivered to the Lewiston City Administrator.

#### **V. GENERAL PROVISIONS**

A. Entire Agreement: This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.

B. Amendments: Any modification or amendment to this Agreement shall require a written agreement signed by both parties.

C. Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Winona County, Minnesota.

D. Government Data/Privacy: Each Party, its employees, officials and agents, agree to abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended.

E. Waiver: The waiver by either Party of any breach or failure to comply with any provision of this Agreement by the other Party shall not be construed as, or

constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provisions of this Agreement.

F. Notices: All notices and other communications pursuant to this Agreement must be in writing and must be given by registered or certified mail, postage prepaid or delivered by hand to:

Notice to Lewiston: Lewiston City Hall

Notice to St Charles: St Charles City Hall

G. Savings Clause: If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.

H. Counterparts: This agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.

I. Effective Date: This Agreement is effective on the date last executed by the Parties below.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year written below.

CITY OF ST CHARLES

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Administrator

CITY OF LEWISTON

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Administrator

*(reserved for recording information)*

## **DEVELOPMENT AGREEMENT**

*(Developer Installed Improvements)*

### **PINE RIDGE SECOND**

**AGREEMENT** (the “Agreement”) dated \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF ST. CHARLES**, a municipal corporation under the laws of the State of Minnesota, with its principal office located at 830 Whitewater Avenue, St. Charles, MN 55972-1129 (the “City”); and **PEARSON PROPERTIES, INC.**, a corporation under the laws of the State of Minnesota, with its principal office located at 137 15<sup>th</sup> Street East, St. Charles, MN 55972 (the “Developer”); (collectively the “parties”).

#### **RECITALS**

**WHEREAS**, the Developer is the fee owner of a parcel of real property located in the City of St. Charles, Winona County, Minnesota, with Parcel Identification (PID) No. 29.001.0007, which is legally described in Exhibit A, which is attached hereto and incorporated herein by reference, (the “Development Property”); and

**WHEREAS**, the Developer has requested and received approval by the City of a Final Plat for Pine Ridge Second (referred to herein as the “plat”); and

**WHEREAS**, the Developer proposes a project consisting of the creation of 12 residential lots with single-family homes on each lot and associated public improvements on the Development Property, including but not limited to street improvements, sanitary sewer, water main, stormwater management facilities, sidewalk, grading and erosion control facilities and other improvements (the “Project”); and

**WHEREAS**, the Developer and the City, desire to enter into this Agreement in satisfaction of applicable City requirements and to set out the undertakings and obligations of each party from this point forward with respect to the Project and with respect to the City Approval Process, all as required by the City’s Code of Ordinances (the “Code”).

**NOW, THEREFORE**, in consideration of the promises and the mutual obligations of the parties hereto, each does hereby covenant and agree with the other as follows:

1. **REQUEST FOR PLAT APPROVAL.** The Developer has sought and received Final Plat approval for Pine Ridge Second (referred to in this Agreement as the “plat”). The platted land is situated in the County of Winona, State of Minnesota. The Developer is seeking to develop the plat, the Development Property, for the purpose stated above.
2. **CONDITIONS OF PLAT APPROVAL.** The City has approved the plat on the condition that the Developer enter into this Agreement, furnishes the Security required by it, records the plat with the County Recorder or Registrar of Titles within 60 days after the City Council approves the Final Plat, and submits evidence of recording the plat to the City within 60 days after the date of recording.
3. **RIGHT TO PROCEED/CONDITIONS PRECEDENT.** Unless separate written approval has been given by the City, within the Development Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings within the Development Property until all of the following conditions have been satisfied:
  - a. This Agreement has been fully executed by both parties and filed with the City Administrator.  
This Agreement shall be recorded by the Developer within 60 days following execution hereof;

- b. The Developer shall have executed that certain Agreement of Assessment and Waiver of Appeal, ("Assessment Agreement"), attached hereto and incorporated herein by reference as Exhibit F. The necessary securities have been received by the City;
  - c. The plat has been recorded with the County Recorder's Office;
  - d. The site plan for the project on the Development Property and the plans and specifications for the Improvements related thereto have been approved and signed by the City Engineer with such conditions as required by the City Code;
  - e. The construction plans and other such plans as required by the City have been approved and signed by the City Engineer;
  - f. A certificate of public liability and property damage insurance as described in this Agreement has been filed with the City Administrator; and
  - g. The City Engineer has issued a letter that all conditions have been satisfied and that the Developer may proceed.
4. **FURTHER SUBDIVISION.** The City may refuse to approve further subdivision within the plat if the Developer has breached this Agreement and the breach has not been remedied. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases may not proceed until Development Agreements for such phases are approved by the City and executed by the parties. Sanitary sewer and water area charges referred to in this Agreement are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.
5. **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 five (5) years after preliminary plat approval.



6. **CHANGES IN OFFICIAL CONTROLS.** For two (2) years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require that any future development of the Development Property comply with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.
7. **DEVELOPMENT PLANS.** The plat shall be developed in accordance with the following plans where applicable. The plans shall not be attached to this Agreement. If the plans vary from the written terms of this Agreement, the written terms shall control. The plans are:
- a. Plan A - Plat
  - b. Plan B - Final Grading, Drainage and Erosion Control Plan
  - c. Plan C - Final Construction Plans and Specifications for Public Improvements
  - d. Plan D - Traffic Signing and Control Plan (for construction and final development)
  - e. Plan E - Stormwater Pollution Prevention Plan
  - f. Plan F - Wetland mitigation plan (if applicable)
  - g. Plan G - Landscape Plan (if applicable)
  - h. Plan H - Utility Plan

The foregoing plans and specifications shall be prepared by a competent registered professional engineer engaged by the Developer and shall be subject to the City's review and approval. The required Improvements below shall be installed in accordance with the City approved plans for such improvements and the policies, rules, regulations, standards and ordinances of the City. No work shall commence on the Project or the required Improvements until the Developer obtains a building permit for the Project and the Improvements and pays all costs and fees required in connection with the procurement of the building permit.

## 8. IMPROVEMENTS.

- a. The Developer shall construct and install, at its sole cost and expense and subject to the terms and conditions contained herein, the following public or private improvements (the “public improvements” or “Improvements”) in compliance with City approved plans and specifications prepared in accordance with all policies, rules, regulations, standards, specifications and ordinances of the City and as shown on the final construction plans and summarized below:
  - i. Streets
  - ii. Sanitary Sewer
  - iii. Watermain
  - iv. Surface Water Facilities (pipe, drainage structures and similar improvements)
  - v. Grading, Drainage and Erosion Control
  - vi. Sidewalks/Trails
  - vii. Street Lighting
  - viii. Utilities (gas, electric, cable, telephone, etc.)
  - ix. Wetland Mitigation and Buffers (if applicable)
  - x. Surveying and Monuments Required by Minnesota Statutes
  - xi. Miscellaneous Facilities or other elements defined by the guiding documents.
- b. The Improvements shall be constructed and installed in accordance with the latest versions in place at the time of this Agreement of the City Code, zoning ordinance and subdivision regulations, City standard specifications for utilities and street construction, and the City’s engineering guidelines and standard detail plates, as applicable. The Developer shall submit plans and specifications that have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The City will provide field inspection and soil testing personnel, at the Developers expense, to assure an acceptable level of quality control for the construction of all public improvements and

certify that the construction work meets the City's requirements, specifications, standards and approved plans. In addition, the Developer's engineer will be required to certify that the construction work meets the approved City requirements, specifications, and standards as a condition of City acceptance and provide record drawings for all Improvements. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors and City Engineer to the extent applicable to comply with the approved plans and specifications, or applicable City Code or statutes for which the City inspectors have jurisdiction. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. As required by the City, the Developer or its engineer shall schedule a pre-construction meeting at a mutually agreeable time at City Hall, or another location acceptable to the City, with all parties concerned, including the City staff, to review the program for the construction work.

- c. All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer, which approval shall not be unreasonably withheld. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by this Agreement. If applicable, the contractor(s) shall have experience in the installation of municipal water and sanitary sewer mains; shall demonstrate the successful completion of at least three such installations and municipal acceptance thereof; and shall be able to obtain the requisite performance and payment bonds for the purchase and installation of the minimum Improvements required hereby. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Agreement, for which reimbursement is expected

from the City, unless such work is first ordered in writing by the City Engineer as provided in the plans and specifications.

- d. The Developer shall replace or repair any damage or destruction to any property or improvements located on County or City land or in County or City streets, boulevards and rights-of-way, or adjacent private property not owned by Developer, caused by Developer, or its contractors and subcontractors, during the construction of the required Improvements and the Project. Any contaminated soils encountered during the construction of the Improvements and development on the Development Property shall be addressed as set forth in a Response Action Plan to be approved by the Minnesota Pollution Control Agency (MPCA) or other applicable agency having jurisdiction.
- e. The Developer shall be solely responsible for the costs of constructing the required Improvements pursuant to this Agreement. The costs of constructing the Improvements shall include the actual construction costs, the actual engineering, administration and any legal costs related thereto, and all other costs relating to the construction of the Improvements. The engineering, administration and legal costs shall include the actual outside construction engineering assistance costs and the legal costs.
- f. If this Agreement is terminated for any reason the City shall have no obligation to construct the Project or Improvements.

**9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION.**

The Developer shall pay a fee for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and the Developer's engineer on status or problems regarding the Project, coordination for final inspection and acceptance, Project monitoring during the warranty period, and processing of requests for reduction in security. Fees for administration services shall be as stated in Ordinance #629 Subdivision Inspection Fees (2021) of \$4,500.00 (up to 15 lots). The Developer shall also deposit an amount to be determined by the city engineer as a good faith estimate for time and

materials for construction observation and geotechnical testing performed by the City's in-house engineering staff or consulting engineer. This deposit is estimated to be \$15,000. If the City's costs exceed the deposit, the Developer agrees to reimburse the City within 30 days of billing. Should the costs be less than the amount of the deposit, upon completion of the Improvement's, the amount of the remaining deposit shall be returned to the Developer. The Developer shall deposit the full construction observation fees with the City prior to the final plat being recorded. No construction of public improvements will be authorized until the construction observation fees have been paid to the City.

10. **CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in this Agreement.

11. **PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary and required permits for the Project from the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDOH), and all other agencies and governmental authorities with jurisdiction over the Project and the Improvements before proceeding with construction of the Project and the Improvements. Copies of these permits shall be provided to the City Engineer, and may include but are not limited to the following:

- Minnesota Department of Health for Watermains
- MN/DOT for State Highway Access
- County Road Access and Work in County Road Right-of-Way
- NPDES Permit for Stormwater Management
- MPCA for Sanitary Sewer Extensions/Connections and Hazardous Material Removal and Disposal
- Wetlands permits as applicable
- DNR for Dewatering
- City of St. Charles for Building Permits

The Developer or its engineer shall schedule a pre-construction meeting for the required Improvements with all the parties concerned, including City staff, to review the program for the construction work.

12. **TIME OF PERFORMANCE.** Except as otherwise provided in this Agreement, the Developer shall install all required improvements and other work required by this Agreement by December 31, 2022, with the exception of the final wear course of asphalt on streets. The final wear course on streets shall be installed between May 15<sup>th</sup> and October 1<sup>st</sup> the first summer after the base layer of asphalt has been in place one freeze thaw cycle. Any deficiencies in the base, asphalt, curb, or other improvements in the judgment of the City Engineer must be repaired by the Developer at its own cost prior to final paving. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.
13. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with this Agreement, the Project and Improvements and plat development, as applicable. The license shall expire upon the acceptance by the City of the Improvements. The City shall thereafter have the right to enter the Property to perform inspections as authorized by City Code.
14. **CONSTRUCTION ACCESS.** Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Brownell or Roberts Street. No construction traffic is permitted on the adjacent local streets other than identified herein.
15. **GRADING PLAN.** The Development Property shall be graded in accordance with the approved grading development and erosion control plan. The plan shall conform to City of St. Charles requirements and specifications, City Code and applicable law. The plan shall include field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow

areas/stockpiles; c) lot corner elevations and building/house pads. Final lot grades shall be shown on the plan. Final grading shall substantially comply with the approved grading plan.

16. **EROSION AND SEDIMENT CONTROL.** Prior to initiating site grading, the erosion and sediment control plan shall be implemented by the Developer and inspected and approved by the City Engineer. The Erosion Control Plan and Storm Water Pollution Prevention Plan (SWPPP) shall be implemented by the Developer and inspected and approved by the City Engineer. Erosion and sediment control practices must comply with the Minnesota Pollution Control Agency's (MPCA) Best Management Practices and applicable MPCA NPDES permit requirements for construction activities and the Developer's SWPPP. The City may impose additional erosion and sediment control requirements if they would be beneficial in the City's judgment. All areas disturbed by the excavation and backfilling operations shall be reseeded within 48 hours after the completion of the work or in an area that is inactive for more than fourteen (14) days unless authorized and approved by the City Engineer. Except as otherwise provided in the erosion and sediment control plan, seed shall be in accordance with the City's current seeding specifications, if any, which may include certified oat seed to provide a temporary ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored, and watered as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City Engineer, the City may take such action as it deems appropriate to control erosion. 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. If the Developer does not reimburse the City for any cost the City incurred for such work, the City may draw down the letter of credit or any other security required herein to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat and Project plans for the Development Property, as applicable, are in full compliance with the approved erosion control plan.

**17. AGREEMENT FOR OPERATION AND MAINTENANCE OF STORMWATER FACILITIES.**

- a. In order to provide stormwater management and control, to meet the City's stormwater permitting requirements, City Code and state law and regulations, as applicable, and to promote the water quality and volume control to the City's stormwater system and water bodies, the Developer and the City agree that it is reasonable for the City to require the Developer to construct, inspect, operate, repair, maintain, improve, and replace, at the Developer's cost and expense, City required stormwater facilities.
- b. The Developer agrees that the stormwater pond facility located within Pine Ridge Outlot A (Parcel 29.071.0160 Sect-20, Twp-106, Range-010), previously deeded to the City of St. Charles, as depicted on the plat thereof, shall serve the Project and shall remain dedicated to the City as part of the original recorded plat.
- c. The Developer shall ensure that the stormwater facilities for the Project are installed, improved and constructed according to the City Engineer approved plans and specifications, and are subsequently operated and maintained for the duration of the construction phase of the Project, at the Developer's cost and expense, to meet the current standards in law and City Code.
- d. At the completion of the construction phase of the approved and recorded final plat with all lots in the final plat having been built out, the Developer, in compliance with the City's stormwater permitting requirements, City Code and state law and regulations, as applicable, will repair and clean the stormwater pond facilities serving the approved final plat. The cost of repairing and cleaning the stormwater pond facilities shall be equally shared by the Developer and the City. The Developer shall provide a cost estimate for repairing and cleaning the stormwater pond to be approved by the City prior to the commencement of work. The Developer shall invoice the City the City's share of the cost following the completion of the work.



- e. To the extent Developer fails to operate and maintain the stormwater facilities in compliance with applicable standards or as directed by the City Engineer, the City shall have the right, but no obligation, to enter upon the property and complete all work necessary to bring the stormwater facilities into compliance. The Developer shall reimburse the City within thirty (30) days after receipt of an invoice from the City for any and all costs incurred by the City in connection with all work completed by the City to bring the stormwater facilities back into compliance.
- f. If the Developer does not timely reimburse the City, the City may recover its costs by levying a special assessment against the Developer's property certifying the same to the Winona County Auditor for collection in the same manner as property taxes upon the Developer's property. The Developer, on behalf of itself and its successors and assigns, hereby acknowledges the benefit of such inspection/maintenance/repair/replacement of the stormwater facilities to the Developer's property and hereby expressly waives any rights to hearings, notice of hearings, objections or appeal relating to the levying of any City assessments, the right to contest the City levied assessments under Minnesota Statutes § 429.081 or the certification of such levied assessments to the Winona County Auditor for collection with property taxes upon the Property.
- g. At the completion of the above-mentioned development after stormwater facilities serving the finally platted development has been installed and constructed by the Developer, in compliance with the City's stormwater permitting requirements, City Code and state law and regulations, as applicable, the Developer will repair and clean the stormwater pond facilities dedicated to the City to the standard applicable at that time. Upon completion, the City Engineer will inspect the stormwater facilities to ensure that the same meet all required standards and once approved, the City will assume responsibility for future operation and maintenance of such dedicated stormwater pond facilities, at the City's future cost and expense. The cost of repairing and cleaning the stormwater pond facilities shall

be equally shared by the Developer and the City. The Developer shall provide a cost estimate for repairing and cleaning the stormwater pond to be approved by the City prior to the commencement of work. The Developer shall invoice the City the City's share of the cost following the completion of the work.

- 18. STREET MAINTENANCE DURING CONSTRUCTION AND SIDEWALKS.** The Developer shall be responsible for all street maintenance until the streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage. The Developer shall be responsible for keeping streets within and without the subdivision swept clean of dirt and debris that may spill or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning as necessary to sweep within and immediately adjacent to the development. The streets shall include Rimrock Road, or as determined by the City Engineer. A copy of this contract shall be approved by the City before grading is started, and shall remain in full force and effect until all construction within the Project is completed. When directed to do so by the City, the Developer shall have all streets cleaned of accumulated debris, dirt, and mud. Concrete sidewalks shall be constructed along the north side of Rimrock Road after the concrete curb and gutter and bituminous base course have been placed. Type III Barricades shall be placed at the end of the sidewalks at the intersection of Rimrock Road. Any sidewalk damaged (severely cracked, broken or spalled) shall be replaced by the Developer at no cost to the City. City staff shall identify those sections of sidewalk to be replaced.

19. **OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Agreement and acceptance of Improvements by the City, the Improvements lying within public easements and public rights-of-way shall become City property without further notice or action upon completion and City acceptance thereof. Prior to acceptance of the Improvements by the City, the Developer must furnish the following affidavit a Developer's Certificate; certifying that all construction has been completed in accordance with the terms of this Agreement. The requisite form will be furnished by the City of St. Charles and is attached hereto as Exhibit B. Upon receipt of the required affidavit, the City Engineer will accept the completed public improvements.

20. **PARK DEDICATION.** The Developer shall pay a cash contribution of \$650/residential lot (Ordinance #489) in satisfaction of the City's park dedication requirements. The total amount due is based 12 lots X \$650.00/lot for a total cost of \$7,800.00.

21. **SANITARY SEWER AND WATER TRUNK UTILITY CHARGES.** The Developer is subject to sanitary sewer and water access/availability area charges for the Development Property. The sanitary sewer and water access/availability area charges are as follows:

- a. Sanitary Sewer Availability Charge: The developer shall pay a sanitary sewer availability charge of \$10,675.00. The area charge is based on the number of units in the final plat and is calculated as follows: 4.27 acres x \$2,500.00/acre = \$10,675.00.
- b. Water Availability Charge: The Developer shall pay a watermain availability charge of \$5,764.50. The access charge is based on the number of units in the final plat and is calculated as follows: 4.27 acres x \$1,350.00/acre = \$5,764.50.

The Sanitary Sewer Availability Charge and Water Availability Charge will be specially assessed against the Development Property in accordance with the Assessment Agreement, Exhibit F.

22. **SANITARY SEWER, STORM SEWER AND WATERMAIN.** The Developer shall install or contract for the installation of all public improvements in the Project related to sanitary sewer, storm sewer and watermain, as required by the City in accordance with those plans approved by the City Engineer.

23. **TRAFFIC CONTROL AND STREET NAME SIGNS.** Any street name signs, stop signs, or other directional and safety signs required by the City shall be purchased and installed by the City.

24. **WETLAND MITIGATION.** No wetland mitigation is planned for the site. The Developer is responsible for any undisclosed mitigation on the land, and will be required to submit any necessary security should subsequent wetlands be identified.

25. **BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**

a. Grading, curb and gutter, sidewalk and one lift of asphalt shall be installed on all public and private streets and drives prior to issuance of any building permits, adjacent to these lots. No Certificate of Occupancy will be issued until the grading, curbing, sidewalk and one lift of asphalt is installed in accordance with approved plans on all public streets and private drives. In addition, no Certificates of Occupancy shall be issued for any buildings until the sewer and water has been installed and tested to the satisfaction of the City Engineer, which shall not constitute final acceptance of the sewer and water utilities.

i. In lieu of the foregoing provision, if the proposed public improvements are under construction but not yet completed and accepted by the City, the Developer shall provide a cross section depicting the entire right-of-way of Brownell Street extending through the first floor elevation of the building for which a building permit is requested. This first floor elevation shall be considered official for building construction purposes. Any deviation from this elevation shall first be reviewed and approved by the Building Official and the City Engineer prior to commencing construction of applied building permit.

b. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City within 30 days of the date of an invoice from the City to the Developer, shall be grounds for denial of building permits, including lots sold to third parties, and the halting of all work in the plat or on the Development Property.

- c. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties. No certificates of occupancy and no sewer and water connection permits may be issued and no one may occupy a building for which a building permit is issued on either a temporary or permanent basis until the streets and sidewalks needed for access have been paved with a bituminous surface and the utilities are accepted by the City Engineer.

**26. UNDERGROUND UTILITIES – PRIVATE.** This section covers those smaller private utilities such as gas, electric, phone, cable, etc.

- a. The Developer is responsible for the cost of installing all private utilities of any nature or kind whatsoever.
- b. The Developer shall contact the utility companies to coordinate the installation of the utilities. Private utilities shall not be installed until the curb and gutter are completed and backfilled, as applicable. All utilities shall be installed underground or as otherwise approved in writing by the City Engineer.
- c. The City Engineer must approve of the final location for all private utilities. Joint trenching of the utilities is mandatory where possible. All utilities must be located in public rights-of-way or within drainage and utility easements.
- d. If any conditions set forth in this Agreement conflict with the City's utility franchise agreements, the franchise agreements shall in all cases prevail.

**27. RESPONSIBILITY FOR COSTS.**

- a. Except as otherwise specified herein, the Developer shall pay all costs incurred by it and the City in conjunction with this Agreement, the approval of the Plat, the grading and development of the Development Property and the construction of the Improvements required by this Agreement, including but not limited to, all costs of persons and entities

doing work or furnishing skills, tools, machinery, equipment and materials; insurance premiums; legal, planning and engineering fees; the preparation and recording of this Agreement and all easements and other documents relating to the Plat and the Development Property, as applicable; all Response Action Plans, traffic studies, environmental assessments and/or engineering and other studies and reports; all permits and approvals; and all City's costs incurred pertaining to the inspection and monitoring of the work performed in connection with approval and acceptance of the plat, the Project and the construction of the Improvements and the other work done and improvements constructed on the Development Property or otherwise related to the Project.

- b. The City shall not be obligated to pay Developer or any of its agents or contractors for any costs incurred in connection with the construction of the Improvements or the development of the Development Property. Developer agrees to defend, indemnify, and hold the City and its mayor, council members, employees, agents and contractors harmless from any and all claims of whatever kind or nature and for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, which may arise as a result of Plat approval, the Project, this Agreement, the construction of the Improvements (except for the negligence or intentional misconduct of the City with respect to the construction of the Improvements), the development of the Development Property or the acts of Developer, and its employees, agents, contractors or subcontractors, in relationship thereto.
- c. The Developer hereby covenants and agrees that Developer will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any property that is the subject of the Project or this Agreement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Developer shall take all steps necessary to see that it is removed within thirty (30) business days of its being filed; provided, however, that the Developer may contest

any such lien provided the Developer first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.

- d. The Developer shall reimburse the City for reasonable costs incurred in the enforcement of this Agreement, including engineering and attorneys' fees.
- e. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.
- f. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days of the date of the City's invoice to Developer. If Developer fails to pay a required bill, then after providing the Developer with at least fifteen (15) days prior written notice, the City may draw on the Security or alternatively declare the same an event of default, and the City may thereafter assess and certify such unpaid charges to the County Auditor for collection in like manner with property taxes on the Development Property, or the City may take any other actions as may be available under this Agreement, at law, or in equity. Bills not paid within sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.
- g. In addition to the charges and special assessments referred to herein, other charges and special assessments may be imposed such as but not limited to sewer availability charges ("SAC"), City water connection ("WAC") charges, City sewer connection charges, City storm water connection charges, building permit fees and plat review fees, which shall be paid by Developer.

**28. SPECIAL PROVISIONS.** The following special provisions shall apply:

- a. Implementation of any other recommendations listed by the City Council or City Engineer as follows:

- i. The Developer shall have all required MPCA stormwater permits, sanitary sewer and watermain permits approved prior to beginning any installation of public improvements.
- b. The Developer shall provide the City with a \$2,400.00 iron monument placement deposit for the final placement of interior subdivision iron monuments at property corners. The iron monument placement deposit was calculated as follows: 12 lots at \$200.00 per lot. The iron monument placement deposit is separate from the security described in Section 32. The deposit will be held by the City until the Developer's land surveyor certifies that all irons have been set following site grading and utility and street construction. In addition, the certificate of survey must also include a certification that all irons for a specific lot have either been found or set prior to the issuance of a building permit for that lot.
- c. The Developer shall be responsible for the cost of street light installation consistent with a street lighting plan approved by the City Engineer. Notwithstanding the foregoing, the City will provide the LED street heads at its own cost to the Developer. The Developer will provide the Street Light pole from the City Utility at Developer's cost. The Developer will provide the joint-use trench and sand if applicable for the installation of the street light utility. The estimated amount for the required street light installation is \$616.18/pole and consists of an estimated three (3) poles for a total cost of \$1,848.54.
- d. Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan and is subject to review and approval of the City Engineer.
- e. Utility hook-ups are subject to review and approval by the City Engineer.
- f. The Developer must obtain approval of a Site Plan as provided by current City Code and complete the required plan review and approval thereof, as applicable.

## **29. MISCELLANEOUS.**



- a. The Developer may not assign this Agreement 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 the Development Property.
- b. As applicable, in compliance with the Response Action Plan approved by the MPCA for the Development Property, the Developer shall remove and properly dispose of any environmental contamination within the Development Property.
- c. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.
- d. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the Project is completed and the City has accepted the public improvements, liability and property damage insurance covering bodily 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 \$1,500,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City authorizing the commencement of work on the public and private improvements specified in this Agreement.

The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.

- e. Third parties shall have no recourse against the City or Developer under this Agreement.
- f. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- g. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. 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 Agreement shall not be a waiver or release.
- h. This Agreement shall run with the land and shall be binding upon Developer and its successors and assigns.
- i. This Agreement will be recorded against the title to the Development Property within 60 days following execution hereof.
- j. The Developer covenants with the City, its successors and assigns, that the Developer is well seized in fee title of the Development Property and/or has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Development Property; that there are no unrecorded interests in the Development Property; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.
- k. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

- l. The Developer agrees to comply with all local, state and federal laws, ordinances and regulations applicable to the development of the Development Property and Improvements.
- m. The City's approval of the final plat or this Agreement does not include approval of building permits for any structures to be constructed within the Development Property. The Developer must submit and the City approve building plans prior to the issuance of building permits for structures within the Development Property.

30. **DEVELOPER'S DEFAULT.** In the event of default by the Developer as to any of the work to be performed by it hereunder or the failure to comply with all terms and conditions of this Agreement, the City may, at its option, take one or more of the following actions:

- a. Perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given notice of the work in default, not less than forty-eight (48) hours in advance. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part for collection with the property taxes on the Development Property;
- b. Obtain an order from a court of competent jurisdiction requiring Developer to perform its obligations pursuant to the terms and provisions of this Agreement;
- c. Obtain an order from a court of competent jurisdiction enjoining the continuation of an event of default;
- d. Halt all development work and construction of improvements until such time as the event of default is cured;
- e. Withhold the issuance of a building permit or permits or certificates of occupancy and/or prohibit the occupancy of any structure(s) for which permits have been issued until the event of default has been cured;

- f. Draw upon and utilize the Security to cover the City's costs to correct the default, the costs to complete any unfinished Project Improvements and/or the costs to enforce this Agreement; or
- g. Exercise any other remedies which may be available to it at law or in equity.

In addition to the remedies and amounts payable set forth or permitted above, upon the occurrence of an event of default by Developer, the Developer shall pay to the City all fees and expenses, including reasonable attorney's fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

31. **WARRANTY.** The Developer warrants all Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for streets and utilities is two (2) years and shall commence following substantial completion (following completion of the first lift of bituminous pavement) and written acceptance of the work by the City Engineer. The required warranty period for sod, trees, and landscaping is two growing seasons following installation. The Developer shall post a security in the form of either a) a warranty/maintenance bond for 100% of the cost of the Improvements, or b) a letter of credit or cash escrow for 25% of the amount of the original cost of the improvements as warranty for the Improvements prior to the City authorizing the commencement of work on the public and private Improvements specified in this Agreement. The retainage from the Project securities identified in this Agreement may also be used to pay for warranty work. The City standard specifications for utilities and street construction identify the procedures for final acceptance of streets and utilities.

32. **SUMMARY OF SECURITY REQUIREMENTS.**

- a. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City, at the time of final plat approval or approval of this Development Agreement, as applicable, with either a letter of credit or cash escrow or a combination of cash escrow and a letter of credit of credit, as determined by the

City, for 5% of the estimated Improvement costs, in the form attached hereto as Exhibits C and D, as applicable, or a City approved alternate form, from a bank (the "Security") for \$22,003.57. The amount of the Security was calculated as provided in Exhibit E, which is attached hereto and incorporated herein by reference.

- b. This breakdown is for historical reference; it is not a restriction on the use of the Security. The bank shall be subject to the approval of the City Administrator. The Security may be in the form of annually renewable letters of credit. Individual Security instruments may be for shorter terms provided they are replaced at least thirty (30) days prior to their expiration.
- c. The City may draw down the Security, with written notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term by presenting the bank/escrow agent with a written demand or an affidavit signed by the City Administrator or the City Administrator's designee attesting to the City's right to draw down and receive funds under the Security. If the required Improvements are not completed at least thirty (30) days prior to the expiration of the Security, the City may also draw the Security down.
- d. If the Security is drawn down, the proceeds shall be used to cure the default.
- e. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval, the Security may be reduced from time to time by up to ninety percent (90%) of the Security obligation stated in subparagraph a. Ten percent (10%) of the Security shall be retained as Security until: a) all Improvements have been completed, b) iron monuments for lot corners have been installed, c) all financial obligations to the City have been satisfied, d) the required "record" plans have been received by the City, e) a warranty security is provided as specified in Section 31, f) the public improvements are accepted by the City Engineer, and g) if required by the City Administrator or Code, a title insurance policy indicating that the improvements are free and clear of any and all liens and encumbrances.

- f. The City standard specifications for utilities and street construction outline procedures for Security reductions, and reductions in the Letter of Credit, cash escrow or a combination thereof, shall be considered only after underground utilities are tested and found to be satisfactory and again after the base bituminous layer has been placed.

33. **SUMMARY OF CASH REQUIREMENTS.** Except as otherwise provided herein, the following is a summary of the cash requirements under this Agreement which must be furnished at the time of final plat approval or approval of this Agreement, as applicable. The Developer shall not proceed with any Improvements until these cash requirements have been paid to the City:

Parkland Dedication	\$7,800.00
Street Light	\$1,848.54
Monument Pin Placement Deposit	\$2,400.00
City Engineering Construction Observation	\$15,000.00
City Engineering Administration (up to 15 lots)	\$4,500.00
Sanitary Sewer Availability Charge	\$10,675.00*
Water Availability Charge	\$5,694.50*

<b>TOTAL CASH REQUIREMENTS</b>	<b><u>\$31,584.54</u></b>
--------------------------------	---------------------------

\*Sanitary Sewer Availability Charge, and Water Availability Charge will be specially assessed against the Development Property pursuant to that certain Assessment Agreement, attached hereto and incorporated herein by reference as Exhibit F.

34. **NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 137 15<sup>th</sup> Street E, St. Charles, MN 55972. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: St. Charles City Hall, 830 Whitewater Avenue, St. Charles, MN 55972-1129.

35. **CONSTRUCTION MANAGEMENT.** During construction of the Improvements and the Project, the Developer and its contractors and subcontractors shall minimize impacts from construction on the surrounding neighborhood, as follows:

- a. Definition of Construction Area. The limits of the Project Area shall be as shown in the City approved Grading, Drainage and Erosion Control Plan and shall be demarcated with

construction fencing approved by the City Engineer. Any grading, construction or other work outside this area requires approval by the City Engineer and the affected property owner.

- b. **Parking and Storage of Materials.** Adequate on-site parking for construction vehicles and workers must be provided or provisions must be made to have workers park off site and be shuttled to the Project Area. No fill, excavating material or construction materials shall be stored in the public right-of-way.
- c. **Hours of Construction.** Hours of construction, including moving of equipment shall be limited to the hours between 7 a.m. and 10 p.m. on weekdays and 8 a.m. and 10 p.m. on weekends or as otherwise provided in City Code.
- d. **Site Maintenance.** Developer shall ensure that its contractor maintains a clean work site. Measures shall be taken to prevent debris, refuse or other materials from leaving the site. Construction debris and other refuse generated from the Project shall be removed from the site in a timely fashion and/or upon the request by the City Engineer. After Developer has received at least forty-eight (48) hour verbal notice, the City may complete or contract to complete the site maintenance work at Developer's expense.
- e. **Project Identification Signage.** Project identification signs shall comply with City Code.

36. **EXPIRATION OF AGREEMENT.** This Agreement shall remain in effect until such time as the Developer shall have fully performed all of its duties and obligations under this Agreement. Upon the written request of the Developer and upon the adoption of a resolution by the City Council finding that the Developer has fully complied with all the terms of this Agreement and finding that the Developer has completed performance of all Developer's duties mandated by this Agreement, the City shall issue to the Developer on behalf of the City an appropriate Certificate of Compliance/Completion. Upon issuance of the Certificate of Compliance/Completion by the City, this Agreement shall terminate.

37. **TERMINATION; CONDITIONS PRECEDENT.**

- a. If Developer fails to: a) acquire fee simple title to all of the Development Property, and b) record this Agreement and the Plat in the office of the Winona County Recorder, as applicable and as provided herein, within one (1) year after approval of the Final Plat or this Agreement, as applicable, by the City Council, this Agreement shall terminate and the approval of the Plat shall be null and void, subject to the following:
- i. All costs, fees and other amounts previously paid to the City in connection with the Plat, the Project Improvements, this Agreement and the Project shall belong to and be retained by the City;
  - ii. The obligations of the Developer for costs incurred shall survive such termination and continue with respect to unpaid costs, fees and expenses incurred prior to such termination;
  - iii. The indemnifications of Developer shall survive and continue after such termination; and
  - iv. The parties shall be released from all other obligations and liabilities under this Agreement not specified above.
- b. The City shall have no obligation to construct the Improvements and Developer shall have no right to construct the Improvements or construct the Project on the Development Property unless the Developer acquires fee simple title to the Development Property and records this Agreement and the Plat in the office of the Winona County Recorder as required herein within one (1) year after approval of the final Plat by the City Council.
- c. In the event of the termination of this Agreement, the parties agree, if requested by the other party, to execute and deliver to the other party a written termination acknowledgment in a form reasonably satisfactory to both parties.
- d. Developer's right to construct the Improvements is contingent upon its (i) obtaining a building permit from the City following submission of a complete and valid application for same. Nothing contained in this Agreement shall be construed to contain a covenant, either



express or implied, for Developer to close on its purchase of the Development Property, commence the development of the Development Property as set forth herein, or sell or lease homes constructed and located on the Development Property.

38. **ADOPTED BY REFERENCE.** The provisions of the City's Code, Chapters 152 and 153 are hereby adopted by reference in their entirety, unless specifically excepted, modified, or varied by the terms of this Agreement, or by the final plat as approved by the City, as applicable. In the event that a provision of this Agreement is inconsistent with or in conflict with the City's Code, the City Code shall govern.

*[Remainder of page left intentionally blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**DEVELOPER:**

PEARSON PROPERTIES, INC.

BY: \_\_\_\_\_  
Daniel J. Pearson, Its CEO

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Daniel J. Pearson, the “Developer” of PEARSON PROPERTIES, INC., a corporation under the laws of the State of Minnesota, on behalf of the corporation and pursuant to the authority granted by its board of directors.

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

**CITY OF ST. CHARLES**

(SEAL)

BY: \_\_\_\_\_  
John Schaber, Its Mayor

AND \_\_\_\_\_  
Nick Koverman, Its City Administrator

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF WINONA     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by John Schaber and by Nick Koverman, the Mayor and City Administrator of the City of St. Charles, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

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

THIS INSTRUMENT WAS DRAFTED BY:

City of St. Charles  
Community Development Department  
St. Charles City Hall  
830 Whitewater Avenue  
St. Charles, MN 55972-1129  
507-932-3020

**MORTGAGEE CONSENT  
TO  
DEVELOPMENT AGREEMENT**

\_\_\_\_\_, which holds a mortgage on the subject Development Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2\_\_\_\_\_, by \_\_\_\_\_.

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

THIS INSTRUMENT WAS DRAFTED BY:

City of St. Charles  
Community Development Department  
St. Charles City Hall  
830 Whitewater Avenue  
St. Charles, MN 55972-1129  
507-932-3020

**EXHIBIT A  
TO  
DEVELOPMENT AGREEMENT**

**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY BEING FINAL  
PLATTED AS PINE RIDGE SECOND**

Commencing at the southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 20; thence on an assumed bearing of North 89 degrees 38 minutes 04 seconds West along the south line of said Northeast Quarter of the Northeast Quarter, said south line also being the south line of PINE RIDGE, according to the plat thereof on file at the County Recorder's Office, said Winona County, a distance of 494.51 feet to the southwest corner of said PINE RIDGE and the point of beginning; thence continue North 89 degrees 38 minutes 04 seconds West along said south line of the Northeast Quarter of the Northeast Quarter a distance of 456.18 feet; thence North 00 degrees 21 minutes 56 seconds East 368.34 feet to the southerly line of Block 2, WHISPERING HILLS SIXTH ADDITION, according to the plat thereof on file at said County Recorder's Office; thence North 89 degrees 42 minutes 10 seconds East along said southerly line a distance of 69.36 feet; thence North 01 degree 09 minutes 26 seconds West along said southerly line a distance of 130.91 feet; thence North 01 degree 09 minutes 26 seconds West along said southerly line a distance of 130.91 feet; thence South 89 degrees 38 minutes 04 seconds East along said southerly line a distance of 370.33 feet to the northwest corner of said PINE RIDGE; thence South 01 degree 10 minutes 23 seconds East along the westerly line of said PINE RIDGE a distance of 390.14 feet; thence South 89 degrees 38 minutes 04 seconds East along said westerly line a distance of 9.49 feet; thence South 00 degrees 21 minutes 56 seconds West along said westerly line a distance of 110.00 feet to the point of beginning. Has caused the same to be surveyed and platted as PINE RIDGE SECOND SUBDIVISION and does hereby dedicate to the public for public use the public ways and the utility easements as created by this plat.

**EXHIBIT B  
TO  
DEVELOPMENT AGREEMENT**

**AFFADAVITS**

Pursuant to the Development Agreement, prior to acceptance of the improvements by the City, the Developer must complete and furnish the following affidavit:

- Developer's Certificate;

in substantially the form provided herein, certifying that all construction has been completed in accordance with the terms of the Development Agreement.



## DEVELOPER'S CERTIFICATE OF COMPLIANCE

Project: Pine Ridge Second

I/we, the undersigned, certify that the construction of those certain improvements (the “Project”) required to be made by Dan Pearson (the “Developer”) pursuant to that certain Development Agreement (the “Agreement”) dated \_\_\_\_\_, 20\_\_\_\_, by and between the City of St. Charles (the “City”) and the Developer, are complete and have been completed all in accordance with the provisions of the Agreement, that the Developer has complied to date with all requirements set forth in the Agreement, and that the work under the above named Project including all appurtenances thereto has been completed in accordance with the City Code, Chapter 152 and 153, City standard specifications for utilities and street construction, and the City’s engineering standard specifications.

I/we further certify that all charges or bills for labor or services performed or materials furnished, and other charges by the subcontractors for the required Project improvements have been paid in full and in accordance with the terms of that/those contract(s).

I/we further certify that the required Project improvements are free and clear of any and all liens and encumbrances; that no notice of intention to claim liens is outstanding, and that no suits are pending by reason of the Project.

I/we finally certify that the required improvements are free from all defects in material and workmanship from the date of acceptance thereof by the City, that the Developer agrees to remedy all defects arising within the warranty period at the Developer's expense, and that the Developer is now and will remain in compliance with the Warranty/Maintenance Guarantee required by St. Charles City Code, Chapter 152 and 153, for the required periods stated therein.

This affidavit is made for the purpose of inducing City of St. Charles to accept the Project improvements made as part of the Project for public ownership thereof in accordance with the Agreement.

DEVELOPER:

---

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Minnesota \_\_\_\_\_, on behalf of \_\_\_\_\_.

Notary Public

**EXHIBIT C**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**IRREVOCABLE LETTER OF CREDIT**

No. \_\_\_\_\_  
Date: \_\_\_\_\_

TO: City of St. Charles  
830 Whitewater Avenue  
St. Charles, MN 55972-1129

Dear Sir or Madam:

We hereby issue, for the account of PEARSON PROPERTIES, INC. 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 Administrator of the City of St. Charles.
- 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 St. Charles City Administrator 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: St. Charles City Administrator, St. Charles City Hall, 830 Whitewater Avenue, St. Charles, MN 55972-1129, and is actually received by the City Administrator 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 \_\_\_\_\_

**EXHIBIT D  
TO  
DEVELOPMENT AGREEMENT**

**ESCROW AGREEMENT**

This Escrow Agreement ("Escrow Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF ST. CHARLES, a Minnesota municipal corporation (the "City"), whose address is 830 Whitewater Avenue, St. Charles, MN 55972-1129; PEARSON PROPERTIES, INC., a corporation under the laws of the State of Minnesota (the "Developer"), whose address is 137 15<sup>th</sup> Street E, St. Charles, MN 55972-1129; and \_\_\_\_\_ [Insert Name of the Bank] (the "Bank" or "Escrow Agent"), as Escrow Agent in connection with the development of 12 residential lots known as Pine Ridge Second (the "Project") located at \_\_\_\_\_ containing 4.27 acres, St. Charles, Winona County, Minnesota.

RECITALS

WHEREAS, the Developer has received final plat approval from the City for the development of the Project as set forth on the final plat entitled "Pine Ridge Second", dated \_\_\_\_\_, 20\_\_\_\_, (the "Final Plat"); and

WHEREAS, as a condition of Final Plat approval, the Developer and City have also entered into that certain Development Agreement, dated \_\_\_\_\_, 20\_\_\_\_, (the "Development Agreement"); and

WHEREAS, the Developer pursuant to St. Charles City Code, the Development Agreement, Final Plat and other City approvals, at its own expense, is required to complete the construction of certain public improvements (the "Improvements" or "work") as part of the Project; and

WHEREAS the Parties to this Escrow Agreement wish to establish a mechanism to secure the obligations of the Developer for the work as set forth above and to provide the City a financial guarantee to assure the satisfactory completion of the required Improvements; and

WHEREAS, pursuant to St. Charles City Code and the Development Agreement, the Developer must provide security for construction of the required Improvements and an Escrow Account is a permissible form of security; and

WHEREAS, the Developer desires to provide the required Improvements and has established an Escrow Account with the Bank for such purpose; and

WHEREAS, the Bank executes this Escrow Agreement solely in the capacity of Escrow Agent.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties contained herein, each does hereby covenant and agree with the others as follows:

1. Incorporation of Recitals and Documents. The recitals set forth above are acknowledged by the Parties to be true and correct and are hereby incorporated herein by reference. The following documents referred to in this Escrow Agreement are hereby made a part hereof by reference:
  - a. Development Agreement;
  - b. Final Plat; and
  - c. St. Charles City Code, Chapters 152 and 153.
2. Escrow Account/Funds Amount. To guarantee compliance with the terms of the Development Agreement, the Developer has established an Escrow Account with the Bank and agrees to deposit cash escrow funds in U.S. Dollars into the established Escrow Account with the Bank in that amount required by the Development Agreement, which is \$ \_\_\_\_\_ (the "security"). The security shall be deposited into the established Escrow Account prior to or at the time of Final Plat approval. The Developer shall obtain a letter from the Bank addressed to the City

acknowledging Developer's creation of the required Escrow Account in the name of the City as surety deposit for the Project and verifying that the Developer has deposited the cash escrow funds in the amount of the security required in the Development Agreement. The Developer shall submit the Bank's letter to the City prior to or at the time of Final Plat Approval.

3. Disbursements from Escrow Account.

- a. The City agrees that the Escrow Account funds on deposit with the Bank shall be deposited in an interest bearing account and shall only be disbursed and used as payment for the required Improvements pursuant to the process and requirements contained in the Development Agreement and this Escrow Agreement. All interest shall accrue to the Developer at such times as the Bank pays interest, but shall remain in Trust with the Bank.
- b. The deposit of the Escrow Account funds by the Developer will be made to ensure that Developer funds are available to the City for withdrawal by the City in the event it becomes necessary for the City, in the City's judgment, to withdraw the funds in order to complete satisfactory construction of the required Improvements in accordance with the Development Agreement.
- c. The Escrow Account funds shall not be used or pledged by the Developer for any other purpose during the period the Escrow Account is in effect. Upon satisfactory completion of the required public Improvements, as shall be determined by the City Engineer or his designee in writing, money in the Escrow Account, plus any accrued interest, shall be released to the Developer in accordance with the requirements contained in the Development Agreement taking into consideration the required warranty period.
- d. In the judgment of the City, in the event the Developer defaults as the same is defined in the Development Agreement, or otherwise fails to comply with the terms of the Development Agreement, or otherwise fails to complete the required public Improvements to the satisfaction of the City Engineer in accordance with the terms of the Development Agreement and City approved plans and specifications, upon notice by the City to the Bank, the Escrow Account Funds shall be immediately, without further action, paid over to the City, in the amount requisitioned by the City, for use by the City in completion of the required public Improvements and/or to reimburse the City for any costs or expenses incurred by the City therefore.
- e. The City will also promptly submit to the Developer a copy of such notice as it files with the Bank. The consent of the Developer to payments by the Bank to the City shall not be required or solicited. The Bank shall incur no liability to the Developer on account of making such payment to the City, nor shall the Bank be required to inquire into the propriety of any claim by the City of default on the part of the Developer or into the use of such funds by the City in completing such Improvements. The Bank shall not refuse or delay to make such payments to the City when requested by the City by an appropriate notice, and the Developer will not interfere with, object to or otherwise hinder such payments by the Bank to the City.
- f. Any work to be performed by the City pursuant hereto shall be let on a contractual basis as required by governing law, or on a time and material basis or shall be performed by the City with its own personnel and equipment or shall be accomplished in such a manner as in the judgment of the City shall accomplish the work expeditiously and economically.
- g. The City shall be the sole beneficiary of the Escrow Account and shall have sole power to draw upon funds from the Escrow Account in accordance with the terms of the Development Agreement and this Escrow Agreement.
- h. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed

the above-stated cost. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the amount retained in the Escrow Account, after the time of completion.

- i. All disbursements under this Escrow Agreement from the Escrow Account shall be made by and through the Escrow Agent in accordance with the terms of the Development Agreement and this Escrow Agreement.
- j. If monies are released by the Bank to the City pursuant to this Escrow Agreement and it shall later develop that a portion of the released monies are surplus to the City's needs, any such surplus shall be returned by the City to the Bank to be held and distributed by the Bank pursuant to the terms of the Development Agreement and this Escrow Agreement.
- k. In the event that the Developer furnishes the City with an Irrevocable Letter of Credit, in a form and substance satisfactory to the City, as replacement security for the funds escrowed hereunder, and the City concludes that it is beneficial to the City to do so, the City may release all or a portion of the funds escrowed by this Escrow Agreement and accept the Irrevocable Letter of Credit, provided the Bank reconfirms, in writing its commitment to the terms and conditions contained herein.

4. Bank as Escrow Agent.

- a. As Escrow Agent hereunder, the Bank, acting in such capacity, shall have no duties or responsibilities except for those expressly set forth herein.
- b. The Parties agree that the Escrow Agent shall be a financial institution or title company licensed and registered to operate in the State of Minnesota and shall be acceptable to the City.
- c. The Developer shall indemnify and hold harmless the Bank against any loss, damage or liability, including, without limitation, attorney's fees which may be incurred by the Bank in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the Bank. It is further understood by the Developer that if, as the result of any disagreement between it and any other party or adverse demands and claims being made by it or anyone else upon the Bank, or if the Bank otherwise shall become involved in litigation with respect to this Escrow Agreement, the Developer agrees that it shall reimburse the Bank on demand for all costs and expenses, including, without limitation, attorney's fees, the Bank shall incur or be compelled to pay by reason of such dispute or litigation, including reasonable compensation for time expended in connection with any such dispute or litigation.
- d. The Developer shall indemnify and hold harmless the City against any claim, loss, damage or liability, including, without limitation, attorney's fees, which may be incurred by or brought against the City in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the City.
- e. All indemnification obligations shall survive termination, expiration or cancellation of this Escrow Agreement.
- f. The Bank, acting as such, shall not be liable to anyone by reason of an error or judgment, a mistake of law or fact, or for any act done or step taken or omitted in good faith, and this provision shall survive the termination of this Escrow Agreement.
- g. At the time the last of the escrowed funds are released and disbursed by the Bank in accordance with this Escrow

Agreement, the Bank shall be discharged from any obligation under this Escrow Agreement.

- h. In accordance with the provisions above, the Bank may rely upon and shall be protected in acting upon any statement, instrument, opinion, notice, request, order, approval or document believed by the Bank to be genuine and to have been signed or presented by the proper party or parties.
  - i. The Escrow Agent shall keep records of all requests and transactions made from the Escrow Account, which records may be inspected by the Developer and the City Engineer, respectively, immediately upon request by either Party to the Escrow Agent.
  - j. The Developer is responsible for all costs and fees payable to the Escrow Agent for service rendered by the Bank in accordance with this Escrow Agreement.
5. Substitution or Resignation of Bank. The Bank reserves the right to withdraw from this Escrow Agreement and cease serving as Escrow Agent hereunder at any time by giving thirty (30) days written notice thereof to the Developer and City. Upon notice of resignation by the Bank, the Developer agrees to find within ten (10) days of such notice a replacement Escrow Agent acceptable to the City. The Bank agrees to deliver the escrowed funds then held by the Bank to such replacement escrow holder and notify all parties hereto. The Bank shall thereupon be released from any and all responsibility or liability to the Parties hereto. If the Developer fails to appoint a replacement escrow agent within such ten (10) day period, the Bank shall petition any court having jurisdiction for the appointment of a successor escrow agent or for instructions as to the disposition of the documents and moneys held by it under this Escrow Agreement. In any event such court appoints a successor escrow agent, the Bank shall deliver the escrowed funds then held pursuant to this Escrow Agreement, and all records and other documents held by it under this Escrow Agreement, upon payment of all fees and expense reimbursements due to the Bank, to such successor escrow agent and the Bank shall thereby be released from any and all responsibility or liability to the Parties hereto. Pending such appointment or instructions, the Bank shall continue to be bound by the terms of this Escrow Agreement.
6. Notices. Any notice provided for or permitted under this Escrow Agreement, unless otherwise provided herein, will be treated as having been received (a) when delivered personally, (b) when sent by confirmed facsimile or (c) three (3) days following when sent by certified mail, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this paragraph (except that the Escrow Agent shall not be bound by or required to act upon any notice unless and until actually received by it).

- a. If to the Developer, at:

Pearson Properties, INC.  
Daniel J. Pearson, Its CEO  
137 15<sup>th</sup> Street East  
St. Charles, MN 55972

- b. If to the City, at:

St. Charles City Administrator  
St. Charles City Hall  
830 Whitewater Avenue  
St. Charles, MN 55972-1129

- c. If to the Escrow Agent, at:

\_\_\_\_\_  
\_\_\_\_\_

---

Such notice will be treated as having been received upon actual receipt if actual receipt occurs earlier than as provided in clauses (a) through (c) hereof. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless delivered to an officer of the Escrow Agent having responsibility under this Agreement.

7. Termination. This Escrow Agreement shall terminate and be of no force or effect upon the completion of the terms and conditions contained herein and completion of the retained security requirements (retainage) contained in the Development Agreement; provided however, that the security requirements for the warranty period required in the Development Agreement are otherwise provided for in a manner acceptable to the City and in accordance with the Development Agreement. Subject to the retainage requirements contained in the Development Agreement, in the event that the security requirements for the warranty period required in the Development Agreement are not otherwise provided for in an alternate manner acceptable to the City, this Escrow Agreement shall not terminate until the expiration of the required warranty period, except that the amount of the security remaining in the Escrow Account for the warranty period shall be as provided in the Development Agreement.
8. General Terms.
- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Escrow Agreement and understand fully the contents thereof; that in executing this Escrow Agreement they voluntarily accept all terms described in this Escrow Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
  - b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Escrow Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Escrow Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
  - c. Successors and Assigns. This Escrow Agreement may not be assigned by the Developer or Bank without the prior written consent of the City. This Escrow Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No other person has any rights, interest, or claims hereunder or is entitled to any benefits under or on account of this Escrow Agreement as a third-party beneficiary or otherwise.
  - d. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.
  - e. Governing Law. This Escrow Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Escrow Agreement without regard to its choice of law or conflict of laws principles.
  - f. Data Practices. The parties acknowledge that this Escrow Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
  - g. No Waiver. Nothing in this Escrow Agreement shall be construed to waive any immunities or limitations to which the City is entitled under Minn. Stat. Chapter 466 or otherwise. No waiver by any party to this Escrow Agreement of any condition or of any breach of any provision of this Escrow Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained in this Escrow Agreement.
  - h. Entire Agreement. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Escrow Agreement.

- i. Headings and Captions. Headings and captions contained in this Escrow Agreement are for convenience only and are not intended to alter any of the provisions of this agreement and shall not be used for the interpretation of the validity of the agreement or any provision hereof.
- j. Cooperation. The parties hereto agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Escrow Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Escrow Agreement.
- k. No joint venture or partnership. The parties hereto agree that they will be independent contractors in performing their respective obligations under this Escrow Agreement. This Escrow Agreement is not intended to create nor does it create, a relationship of partners or joint ventures between the parties hereto.
- l. Severability. The invalidity or unenforceability of any provision of this Escrow Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Escrow Agreement shall be construed and enforced as if the agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- m. Force Majeure. Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment, or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.
- n. Compliance with Laws. The parties hereto shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to the subject matter hereof.
- o. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
- p. Execution. This Escrow Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart, facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

*(Remainder of page left intentionally blank.)*



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**DEVELOPER: PEARSON PROPERTIES, INC.**

By: Daniel J. Pearson, Its: CEO

**CITY: CITY OF ST. CHARLES**

By: \_\_\_\_\_  
John Schaber, Its: Mayor

By: \_\_\_\_\_  
Nick Koverman, Its: City Administrator

BANK/ESCROW AGENT: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, It \_\_\_\_\_

## ACKNOWLEDGMENT OF DEVELOPER

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, a corporation under the laws of the State of Minnesota, on behalf of the corporation and pursuant to the authority granted by its board of directors.

NOTARY PUBLIC

**ACKNOWLEDGMENT OF CITY**

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF WINONA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by John Schaber and by Nick Koverman, the Mayor and City Administrator of the City of St. Charles, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

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

**ACKNOWLEDGMENT OF BANK**

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, an incorporated company under the laws of the State of Minnesota, on behalf of the \_\_\_\_\_ and pursuant to the authority granted by its \_\_\_\_\_.

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

**EXHIBIT E  
TO  
DEVELOPMENT AGREEMENT  
ESTIMATED IMPROVEMENT COSTS**

**EXHIBIT F  
TO  
DEVELOPMENT AGREEMENT**

**AGREEMENT OF ASSESSMENT AND WAIVER OF APPEAL**

THIS AGREEMENT (the "Agreement") is made by Pearson Properties, Inc., a corporation under the laws of the State of Minnesota, with its principal office located at 137 15th Street East, St. Charles, MN 55972 (the "Developer"), and the City of St. Charles, a municipal corporation under the laws of the State of Minnesota (the "City"); (collectively the "parties").

The parties represent and affirm that:

WHEREAS, the Developer is the owner of certain real property located in the City, County of Winona, State of Minnesota, described as follows:

Pine Ridge Second Addition, City of St. Charles, Minnesota  
(the "Property"); and

WHEREAS, the Developer has requested that the City assess certain costs related to the Developer's residential development project (the "Project") upon the Property, which services and costs directly benefit the Property; and

WHEREAS, the City is willing to assess the below costs upon the Property provided that the Property bear the total cost in an amount as specially assessed by the City against the Property and the Developer waives any objections or appeals related thereto.

NOW THEREFORE, the Parties agree as follows:

1. The total cost to be assessed against the Property is \$16,369.50 and shall be assessed against each platted lot in the approved final plat thereof recorded upon the Property in the amount of \$1,364.13 per lot. The Developer agrees that each lot within the approved final plat thereof recorded upon the Property is accordingly benefitted by the assessed amount.
2. The Developer agrees to pay the amount specially assessed by the City against the Property as described herein.
3. The City agrees that the amount hereby assessed shall be deferred upon each platted lot of record within the Property for a period not to exceed four (4) years from the date of the last signatory hereto. Notwithstanding the foregoing, a respective assessment on a lot of record shall be due and payable to the City of St. Charles on such lot of record at the time of the closing on the sale of such respective lot commensurate with closing on the sale of such lot of record. For the period of deferral, no interest shall accrue on the respective assessments.
4. At the conclusion of the deferral period, the remaining unsold lots and remaining balance due on the respective assessments on such lots shall be payable in equal annual installments extending over a period of four (4) years, the first of the installments to be payable on or before the first Monday in January 2026, and shall bear interest at the rate of eight (8%) percent per annum from such date. To each subsequent installment, when due, shall be added interest for one year on all unpaid installments. Notwithstanding the foregoing, the remaining balance upon a respective assessment on a lot of record shall be due and payable to the City of St. Charles on such lot of record at the time of the closing on the sale of such respective lot commensurate with closing on the sale of such lot of record. Following the period of deferral, interest shall accrue on the respective assessments as provided in this paragraph to the date of closing on the sale of such respective lot. In the event that any lot of record is unsold after the period of deferral, the Developer shall pay the respective installments when the same are due and payable to the same extent as any owner of property subject to a special assessment.
5. The Developer, at any time prior to certification of the assessment to the county auditor, may pay the whole of the assessment on any or all lots of record within the Property, with interest accrued as provided herein, to the City.

6. The Developer hereby acknowledges and agrees that the special benefit to the Property and each lot within the approved final plat thereof recorded upon the Property equals or exceeds the amount specially assessed by the City against the Property and each respective lot thereof, thereby spreading the cost to the benefitted Property and corresponding lots over time through a special assessment upon the Property and each respective lot thereof as determined and adopted by the City pursuant to Minnesota Statutes, Chapter 429.
7. **The Developer, as the owner of the Property and each respective platted lot thereof, hereby expressly waives any objections or rights of appeal with respect to any such special assessment adopted by the City upon the Property, and each respective platted lot thereof, whether the same be based upon procedural irregularities or error under Minnesota Statutes, Chapter 429, or other law, ordinance or regulation, or whether based upon a claim that the amount of the assessment is excessive, or upon any other alleged defect or claim.**
8. The Developer agrees that the obligation to pay the City for the adopted special assessments on the Property, and each respective platted lot thereof, and the waiver of objections and appeal rights hereunder shall continue until such special assessments in the total amount specified herein and with respect to each platted lot are paid in full.
9. Notwithstanding this Agreement, the Developer acknowledges and agrees that the decision of the City Council of the City of St. Charles to approve and authorize execution of this Agreement remains in the sole judgment and discretion of the City Council.
10. This Agreement shall only be effective upon approval of the same by the City Council and authorization by the Mayor and City Administrator of the City to execute the same on behalf of the City.
11. This Agreement shall inure to the benefit of and be binding upon the successors in interest of both the City and Developer. The Developer shall notify any successor to their respective interest in the Property of the existence and terms of this Agreement.
12. **VOLUNTARY AND KNOWING ACTION.** The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents hereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
13. **AUTHORIZED SIGNATORIES.** The Parties each represent and warrant to the other that the persons signing this Agreement are authorized signatories for the entities or persons represented; each party indemnifies and holds the other harmless against any breach of the foregoing.
14. **MODIFICATIONS/AMENDMENT.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives of the Parties.
15. **GOVERNING LAW.** This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Agreement without regard to its choice of law or conflict of laws principles.
16. **DATA PRACTICES.** The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
17. **NO WAIVER.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
18. **SURVIVABILITY.** All covenants, indemnities, guarantees, releases, waivers, representations and warranties by any Party, and any undischarged obligations of a Party arising prior to the expiration of this Agreement (whether by

completion or earlier termination), shall survive such expiration.

19. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute a single, integrated contract.

(Remainder of page intentionally left blank - signature pages to follow)

IN WITNESS WHEREOF, the City and Developer have each executed this Agreement in their names effective the date of the last signatory hereto.

**DEVELOPER:**

**Pearson Properties, Inc.**

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_, Its \_\_\_\_\_  
(Print name) (Title)

STATE OF MINNESOTA       )  
  ) -ss-  
COUNTY OF WINONA       )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public within and for said County, personally appeared as \_\_\_\_\_ of Pearson Properties, Inc., to me known to be the person described in and who executed the foregoing Agreement and acknowledged that they executed the same as their free act and deed on behalf of Pearson Properties, Inc.

\_\_\_\_\_  
Notary Public

**CITY OF ST. CHARLES:**

By: \_\_\_\_\_  
John Schaber, Its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Nick Koverman, Its City Administrator

Date: \_\_\_\_\_

STATE OF MINNESOTA       )  
  ) -ss-  
COUNTY OF WINONA       )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public within and for said County, personally appeared John Schaber and Nick Koverman, respectively Mayor and City Administrator of the City of St. Charles, to me known to be the persons described in and who executed the foregoing Agreement and acknowledged that they executed the same as their free act and deed on behalf of the City of St. Charles.

\_\_\_\_\_  
Notary Public

**CONTRACT FOR PRIVATE DEVELOPMENT**

**BY AND BETWEEN**

**CITY OF ST. CHARLES, MINNESOTA**

**AND**

**PEARSON PROPERTIES, INC.**



## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS .....	2
Section 1.1 Definitions.....	2
ARTICLE II REPRESENTATIONS AND WARRANTIES .....	3
Section 2.1 Representations and Warranties of the City.....	3
Section 2.2 Representations and Warranties of the Developer.....	3
ARTICLE III UNDERTAKINGS BY DEVELOPER AND CITY .....	4
Section 3.1 Construction of Project and Reimbursement of Cost .....	4
Section 3.2 Limitations on Undertaking of the City. ....	4
Section 3.3 Commencement and Completion of Construction.....	4
Section 3.4 Damage and Destruction.....	5
Section 3.5 No Change in Use of Project. ....	5
Section 3.6 Assignment of Agreement. ....	5
Section 3.7 Real Property Taxes.....	5
Section 3.8 Tax Abatement Program. ....	5
ARTICLE IV EVENTS OF DEFAULT .....	6
Section 4.1 Events of Default Defined. ....	6
Section 4.2 Remedies on Default.....	6
Section 4.3 No Remedy Exclusive.....	7
Section 4.4 No Implied Waiver. ....	7
Section 4.5 Agreement to Pay Attorneys' Fees and Expenses. ....	7
Section 4.6 Release and Indemnification Covenants.....	7
ARTICLE V ADDITIONAL PROVISIONS .....	8
Section 5.1 Conflicts of Interest/No Personal Liability.....	8
Section 5.2. Non-Discrimination. ....	9
Section 5.3. No Merger.....	9
Section 5.4. Responsibility for Costs.....	9
Section 5.5 Notices and Demands. ....	9
Section 5.6 Counterparts.....	9

Section 5.7 Duration. ....	9
Section 5.8 Provisions Surviving Rescission or Expiration.....	10
Section 5.9 Data Practices.....	10
Section 5.10 Rules of Interpretation. ....	10

## CONTRACT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and among the City of St. Charles, Minnesota, a municipal corporation and political subdivision (the "City"), and Pearson Properties, Inc., a Minnesota corporation (the "Developer").

WITNESSETH:

WHEREAS, the Developer owns property located in the City, as legally described on the attached Exhibit A (collectively, the "Development Property"), and Developer plans to subdivide the Development Property to create Pine Ridge Second Subdivision, a single-family residential development (the "Project") pursuant to that certain Development Agreement (Developer Installed Improvements) by and between the City and Developer dated July 26, 2022 (the "Development Agreement"); and

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, the City has established a Tax Abatement Program pursuant to which the City is authorized to grant an abatement of ad valorem property taxes imposed by the City under certain conditions; and

WHEREAS, the Developer has requested that the City provide financial assistance of up to \$120,000 to reimburse Developer for public infrastructure costs to be paid for by the Tax Abatement (defined below); and

WHEREAS, the City believes that the development and construction of the Project and fulfillment of this Agreement are vital and are in the best interests of the City, will increase the tax base in the City, and are in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, following notice and a public hearing the City adopted Resolution #22-2022, dated June 14, 2022 (the "Abatement Resolution"), agreeing to provide, in accordance with the referenced Abatement Resolution, State law and this Agreement, abatement of City property taxes on the Development Property subject to the terms and conditions contained in the above-referenced Abatement Resolution and this Agreement (the "Tax Abatement"); and

WHEREAS, the City believes that the Project will meet the conditions of the Tax Abatement Act and Tax Abatement Program in that: (a) the City expects the benefits to the City from this Agreement to equal or exceed the costs to the City of this Agreement; and (b) the City finds that granting the Tax Abatement is in the public interest because it will increase or preserve the tax base of the City, and finance or provide public infrastructure; and

WHEREAS, the City has determined that the Project: (a) will promote and carry out the objectives for which development in the City has been undertaken; (b) will be in the vital best interests of the City and the health, safety, morals and welfare of its residents; and (c) is in accord with the public purposes and provisions of the applicable state and local laws, including requirements of the City's Code, under which the Project will be undertaken and is being assisted; and

WHEREAS, the Developer and the City desire to enter into this Agreement in satisfaction of applicable requirements of the City, and to set out the undertakings and obligations of each party from this point forward with respect to the Project.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## ARTICLE I DEFINITIONS

**Section 1.1 Definitions.** All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

“*Agreement*” means this Agreement, as the same may be from time to time modified, amended or supplemented;

“*Business Day*” means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

“*City*” means the City of St. Charles, Minnesota;

“*Code*” means the City’s Code of Ordinances;

“*Completion Date*” means the date used in Section 3.3.

“*County*” means Winona County, Minnesota;

“*Developer*” means Pearson Properties, Inc. and its successors and assigns;

“*Development Agreement*” means that certain Development Agreement (Developer Installed Improvements) by and between the City and Developer dated July 26, 2022;

“*Development Property*” means the real property described on **Exhibit A**, attached hereto;

“*Event of Default*” means any of the events described in Section 4.1;

“*Project*” means the subdivision of the Development Property to create Pine Ridge Second Subdivision, a single-family residential development, pursuant to City specifications as provided in the Project Plans (as the same may be modified with City approval from time to time) and this Agreement;

“*Project Plans*” means all submissions required by the City Ordinances, or this Agreement with respect to the Project and all plans, drawings, plats and related documents for the construction of the Project, approved by the City and Developer, irrespective of whether the Developer’s and/or the City’s final approval of any such documents occurs before or after the execution and delivery of this Agreement;

“*State*” means the State of Minnesota;

“*Tax Abatement Act*” means Minnesota Statutes, Sections 469.1812 through 469.1815;

*“Tax Abatement Program”* means the action by the City pursuant to Minnesota Statutes, Section 469.1812 through 469.1815, as amended, and undertaken in support of the Project;

*“Tax Abatement”* means the City’s reimbursement to the Developer for a portion of public infrastructure pursuant to the specific provisions of Section 3.8.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1 Representations and Warranties of the City.** The City makes the following representations and warranties:

(1) The City is a municipal corporation and political subdivision organized under the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Abatement Program was created, adopted and approved in accordance with the terms of the Tax Abatement Act.

(3) To finance the costs of the Project to be undertaken by the Developer, the City proposes, subject to the further provisions of this Agreement, to reimburse the Developer for Project costs as further provided in this Agreement.

(4) The City has made the findings required by the Tax Abatement Act for the Tax Abatement Program.

(5) This Agreement has been duly approved by the City Council of the City and the execution and delivery of this Agreement has been authorized by such City Council.

**Section 2.2 Representations and Warranties of the Developer.** The Developer makes the following representations and warranties:

(1) The Developer is a corporation duly organized, in good standing, and validly existing under the laws of the State and is registered and in good standing with the Office of the Secretary of State of Minnesota, with full authority to transact business in this State, has the power to enter into the Agreement and to perform its obligations hereunder, and is not in violation of its charter, articles of incorporation, operating agreement or any local, state or federal laws.

(2) The Developer will cause the Project to be constructed in accordance with the terms of the Development Agreement, this Agreement, the Project Plans, and all applicable local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations, City Policy and Code).

(3) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. Without in any way limiting the foregoing, the Developer will request and seek to obtain from the City, if

necessary, such approvals, variances, conditional use permits, zoning changes and other required City approvals as may be applicable.

(4) The Project will, as of the date it is completed and subject to the issuance of City approvals as herein contemplated, contain only uses permitted under the Code.

(5) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(6) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(7) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project, but only to the extent that the City and the Developer are not adverse parties to the litigation.

### **ARTICLE III UNDERTAKINGS BY DEVELOPER AND CITY**

#### **Section 3.1 Construction of Project and Reimbursement of Cost.**

(1) The Developer will construct or cause the Project to be constructed in a good and workmanlike manner in accordance with the Project Plans and at all times prior to the termination of this Agreement will operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

(2) The City shall partially reimburse the Developer for the costs of the Project paid by the Developer pursuant to the Abatement Program as provided in Section 3.8, and shall have no other financial obligation to the Developer with respect to the Project.

**Section 3.2 Limitations on Undertaking of the City.** Notwithstanding the provisions of Section 3.1, the City shall have no obligation to reimburse the Developer for the costs of the Project, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not cured.

**Section 3.3 Commencement and Completion of Construction.** The Developer shall commence the Project by September 1, 2022 and complete the Project by December 31, 2023 (the "Completion Date"), unless extended to a date mutually agreeable to the City and Developer, in writing, which shall not be unreasonably denied. All work with respect to the Project to be constructed or provided by the Developer shall be in conformity with the Project Plans as submitted by the Developer and approved by the City.

Nothing in this Agreement shall be deemed to impair or limit any of the City's rights or responsibilities under its zoning laws or construction permit processes.

**Section 3.4 Damage and Destruction.** In the event of damage or destruction of the Project the Developer shall repair or rebuild the Project.

**Section 3.5 No Change in Use of Project.** The City's obligations pursuant to this Agreement shall be subject to the continued operation of the Project by the Developer.

**Section 3.6 Assignment of Agreement.** Developer may not assign its rights or obligations under this Agreement, or any portion of them, to a third party without the written consent of the City which consent the City may grant or withhold in its sole and absolute discretion. An assignment of the Developer's rights or obligations under this Agreement, shall not relieve the Developer of liability to the City for the performance of the Developer's obligations under this Agreement unless the City expressly agrees, in writing and in its sole and absolute discretion, to so release the Developer.

**Section 3.7 Real Property Taxes.** The Developer acknowledges that it is obligated under law to pay all real property taxes payable with respect to any part of the Development Property while owned by Developer.

**Section 3.8 Tax Abatement Program.**

(1) The Tax Abatement paid to the Developer shall be in accordance with and subject to the terms and conditions of this Agreement and the Tax Abatement Act.

(2) The Tax Abatement shall be for a duration of not to exceed ten years and shall apply to the increased portion of the City's share of ad valorem property taxes imposed on the Development Property derived from the value of the Project, in a total amount not to exceed \$120,000.00, beginning with taxes payable in 2025 and continuing through taxes payable in 2034, as follows: For the years 2024 through 2034, 60 percent of the increased portion of the City's share of ad valorem property taxes on the Development Property resulting from the Project.

(3) On or before February 1 and August 1 each year commencing February 1, 2026 to and including February 1, 2035 the City shall pay the Developer the amount of the Tax Abatement received by the City in the previous six-month period

(4) In order to be entitled to the Tax Abatement provided for in this Agreement, the Developer shall not be in default within the City of any of its payment obligations respecting any taxes, assessments, utility charges or other governmental impositions. Notwithstanding the other provisions of this Article, the City shall not have any obligation to the Developer with respect to the Abatement of taxes hereunder if the City, at the time or times such obligation is required, is entitled to exercise any of the remedies set forth in this Agreement as a result of an Event of Default, which has not been cured.

## ARTICLE IV EVENTS OF DEFAULT

**Section 4.1 Events of Default Defined.** The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay when due the payments required to be paid or secured under any provision of this Agreement or which are otherwise required, including the payment of any ad valorem real property taxes, special assessments, utility charges or other governmental impositions with respect to the Development Property, the Project or any portion thereof owned by the Developer.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of the Development Agreement and this Agreement.

(3) Failure by the Developer to observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under the Development Agreement or this Agreement.

(4) If Developer admits in writing of its inability to pay its debts generally as they become due, or shall file or be involuntarily named as a debtor in a petition in bankruptcy, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Development Property.

(5) If the Developer, on a petition in bankruptcy filed against it, be adjudicated bankrupt, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Developer, a receiver of the Developer or of the whole or substantially all of its property, or approve a petition filed against the Developer seeking reorganization or rearrangement of the Developer under the federal bankruptcy laws, and such adjudication, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

(6) If the Developer is in default under any mortgage and has not entered into a workout agreement with the Mortgagee within sixty (60) days after such default.

**Section 4.2 Remedies on Default.** Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, in addition to any other remedies or rights given the City under this Agreement, after the giving of thirty (30) days’ written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has thirty (30) days within which to cure said Event of Default, and provided Developer does not cure such Event of Default within such time period, may take any one or more of the following actions:

(1) The City may suspend its performance under this Agreement, including the payment of any Tax Abatement, until it receives assurances from the Developer, deemed



adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may cancel and rescind the Agreement.

(3) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement; provided that any exercise by the City of its rights or remedies hereunder shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way the lien of any mortgage authorized by this Agreement; and provided further that should any mortgagee succeed by foreclosure of the mortgage or deed in lieu thereof in respect to the Developer's interest in the Development Property, the mortgagee shall, notwithstanding the foregoing, be obligated to perform the obligations of the Developer to complete construction of the Project described and in the manner required hereunder, but only to the extent that the same have not theretofore been performed by the Developer.

(4) The City may withhold any certificate or permit required hereunder.

The notice of an Event of Default required in this Section shall be effective on the date mailed or hand delivered to the Developer.

**Section 4.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Except as expressly set forth herein, it shall not be necessary to give notice to exercise a remedy, other than such notice as may be required in this Article.

**Section 4.4 No Implied Waiver.** In the event any obligation contained in this Agreement should be breached by either party hereto and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**Section 4.5 Agreement to Pay Attorneys' Fees and Expenses.** Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefore, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

#### **Section 4.6 Release and Indemnification Covenants.**

(1) The Developer expressly releases from and covenants and agrees to indemnify and hold the City and its officers, agents, servants, employees and all members of the City Council,

City planning commission and other City board or commission harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity to the extent in connection with, or an account of the Project, the Development Property, or the performance of work at the development site and elsewhere pursuant to this Agreement, and further releases such officers employees, agents and members from any personal liability in connection with handling funds pursuant to the terms of this Agreement. The indemnification provided hereunder shall not apply to intentional acts or gross misconduct of the individual or entity so indemnified.

(2) Except for any material misrepresentation or any willful or wanton or gross misconduct of the following named parties, the Developer agree to protect and defend the City and its officers, agents, servants and employees and all members of the City Council, City planning commission and other City board or commission, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, action or other proceeding whatsoever by any person or entity whatsoever to the extent arising or purportedly arising from a breach of the obligations of the Developer under (i) this Agreement, or (ii) the transactions contemplated hereby, or (iii) the acquisition, construction, installation, ownership, maintenance and operation of the Project.

(3) The City and its officers, agents, employees and all members of the City Council, City planning commission and other City board or commission shall not be liable for any damages or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project due to any act of negligence of any person other than their own.

(4) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any officer, agent, servant, employee or any members of the City Council, planning commission and other board or commission of the City in the individual capacity thereof.

(5) The Developer is not an agent of the City and this Agreement shall not be construed as creating a joint venture, partnership or other joint arrangement between the Developer and the City relating to the Project.

## ARTICLE V ADDITIONAL PROVISIONS

**Section 5.1 Conflicts of Interest/No Personal Liability.** No member of the governing body or other official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount that may become due to the Developer for any obligations under the terms of this Agreement.

**Section 5.2. Non-Discrimination.** Developer shall not violate any law applicable to it with respect to civil rights and non-discrimination including, without limitation, Minnesota Statutes, Section 181.59.

**Section 5.3. No Merger.** None of the provisions of this Agreement are intended to be or shall be merged by reason of any deed transferring any interest in any part of the Development Property and any such deed shall not be deemed to affect or impair the provisions of this Agreement.

**Section 5.4. Responsibility for Costs.** Developer shall be responsible for the following costs incurred with respect to this Agreement, which costs shall be paid as set forth below:

(1) The Developer shall reimburse the City for reasonable, administrative and out-of-pocket costs, expenses and disbursements incurred in the enforcement of this Agreement, including engineering and attorney's fees.

(2) The Developer shall pay in full all bills submitted to it by the City within thirty (30) days after receipt. If the bills are not paid on time, the City may without further notice to Developer exercise any one or more of the remedies provided to the City by Article 5 hereunder.

**Section 5.5 Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(1) in the case of the Developer is addressed to or delivered personally to:

Pearson Properties, Inc.  
Attn: Daniel J. Pearson, CEO  
137 15<sup>th</sup> Street East  
St. Charles, MN 55972

(2) in the case of the City is addressed to or delivered personally to:

City of St. Charles  
Attn: City Administrator  
830 Whitewater Avenue  
St. Charles, MN 55972

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

**Section 5.6 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

**Section 5.7 Duration.** This Agreement shall remain in effect through February 1, 2032, unless earlier terminated or rescinded in accordance with its terms.

**Section 5.8 Provisions Surviving Rescission or Expiration.** Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

**Section 5.9 Data Practices.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

**Section 5.10 Rules of Interpretation.**

(1) *Governing Law.* This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota,

(2) *Includes Entire Agreement.* The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(3) *Original Sections.* References herein to any particular article, section or paragraph hereof are to the section or subdivision of this Agreement as originally executed.

(4) *Headings.* Any headings, captions, or titles of the several parts, articles, sections, and paragraphs of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provision.

(5) *Conflict Between Agreements.* In the event of any conflict between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of any other instrument, the terms, conditions and provisions of this Agreement shall control and take precedence.

(6) *Entire Agreement.* This Agreement including any Schedules and Exhibits hereto contain the entire agreement of the parties relating to the subject matter herein, and no other prior or contemporary agreements, oral or written, shall be binding upon the parties hereto.

(7) *Binding Effect.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as provided and as conditioned in this Agreement.

*(Remainder of this page left blank intentionally.)*

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf, and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

CITY OF ST. CHARLES, MINNESOTA

By \_\_\_\_\_  
John Schaber, Its Mayor

By \_\_\_\_\_  
Nick Koverman, Its City Administrator

PEARSON PROPERTIES, INC.

By \_\_\_\_\_  
Daniel J. Pearson, Its CEO

## **Exhibit A**

### **Legal Description of Development Property**

Commencing at the southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 20; thence on an assumed bearing of North 89 degrees 38 minutes 04 seconds West along the south line of said Northeast Quarter of the Northeast Quarter, said south line also being the south line of PINE RIDGE, according to the plat thereof on file at the County Recorder's Office, said Winona County, a distance of 494.51 feet to the southwest corner of said PINE RIDGE and the point of beginning; thence continue North 89 degrees 38 minutes 04 seconds West along said south line of the Northeast Quarter of the Northeast Quarter a distance of 456.18 feet; thence North 00 degrees 21 minutes 56 seconds East 368.34 feet to the southerly line of Block 2, WHISPERING HILLS SIXTH ADDITION, according to the plat thereof on file at said County Recorder's Office; thence North 89 degrees 42 minutes 10 seconds East along said southerly line a distance of 69.36 feet; thence North 01 degree 09 minutes 26 seconds West along said southerly line a distance of 130.91 feet; thence North 01 degree 09 minutes 26 seconds West along said southerly line a distance of 130.91 feet; thence South 89 degrees 38 minutes 04 seconds East along said southerly line a distance of 370.33 feet to the northwest corner of said PINE RIDGE; thence South 01 degree 10 minutes 23 seconds East along the westerly line of said PINE RIDGE a distance of 390.14 feet; thence South 89 degrees 38 minutes 04 seconds East along said westerly line a distance of 9.49 feet; thence South 00 degrees 21 minutes 56 seconds West along said westerly line a distance of 110.00 feet to the point of beginning. Has caused the same to be surveyed and platted as PINE RIDGE SECOND SUBDIVISION and does hereby dedicate to the public for public use the public ways and the utility easements as created by this plat.



# 2023 Budget Timeline and Process

The City of St. Charles budget timeline and process fosters collaboration and partnership to help better achieve the City's goals and directives, while maintaining fiscal responsibility utilizing historical trend analysis and prioritizing the needs and desires of the community and Council. A two-step process that divides the budget into two focal points is utilized.

First, all funds associated with the governmental administration of the City of St. Charles as it relates directly to the certified levy and taxation of the City's residents is completed. The following funds are reviewed as part of that process: administration, park, recreation, street, library, fire, swimming pool, police, bond issuance payments, TIF and Economic Development.

In the second part of the budget process, all funds associated with the City of St. Charles as Enterprise Funds, which include electric, water, sewer, garbage, stormwater and ambulance are all reviewed. In addition, Mike Bubany of David Drown & Associates provides additional analysis of the Capital Improvement Plan and an analysis of utility rates as they relate to current and future spending needs as identified by department heads and administration.





# 2023 Budget Timeline and Process

## Timeline

### **Governmental Funds**

August 1, 2020 – August 19, 2022  
August 23, 2022  
September 13, 2022  
September 27, 2022

### **Enterprise Funds**

October 11, 2022  
October 25, 2022  
November 9, 2022  
December 13, 2022

Can utilize special meeting date of Tuesday, December 27, 2022 if needed.

## Process

City administrator/accountant to meet with department heads  
Copy of preliminary budget and proposed Capital Improvement Plan  
Discuss Governmental Levy Budget  
Certify Preliminary Governmental Levy to Winona County

Preliminary Enterprise Fund Budgets  
Discuss Enterprise Budget Changes, CIP (Mike Bubany)  
Finalize Enterprise Budget  
Truth In Taxation. Allows public input. Finalize and approve 2019 budget

**City of St. Charles**  
**Resolution #36-2022**

**RESOLUTION ACKNOWLEDGING THE DONATIONS TO THE ST. CHARLES VOLUNTEER  
FIRE AND AMBULANCE FROM LINDA AND KIVDEN CORNELIUS**

**WHEREAS**, the City of St. Charles is generally authorized to accept contributions of real and personal property pursuant to Minnesota Statute 465.03 for the benefit of its citizens; and

**WHEREAS**, the St. Charles Volunteer Ambulance and St. Charles Fire Department has received a donation in the amount of \$1,000.00 from Kivden and Linda Cornelius to be used by the St. Charles Volunteer Ambulance Association (\$500.00) and the St. Charles Fire Department (\$500.00).

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ST. CHARLES, MINNESOTA THAT:** the City Council of the City of St. Charles acknowledges and accepts the \$1,000.00 donation from Kivden and Linda Cornelius.

**BE IT FURTHER RESOLVED THAT:** the City Council of the City of St. Charles expresses its thanks and appreciation for the donation.

Adopted this 26<sup>th</sup> day of July, 2022 by the City Council of the City of St. Charles.

CITY OF ST. CHARLES

\_\_\_\_\_  
**John Schaber, Mayor**

ATTEST:

\_\_\_\_\_  
**Nick Koverman, City Administrator**