

CITY OF ROCKVILLE

P.O. BOX 93

229 Broadway Street East

ROCKVILLE, MN 56369

For Your Information – FYI

Council Action Needed – CA

AGENDA

LAST WEDNESDAY of the MONTH REGULAR COUNCIL MEETING

Wednesday, April 28, 2021
Rockville City Hall
5:30 p.m.

1. **Call to Order** Roll Call- DW.BS.BH.JT.BB
2. **Roll Call** – (Silence Electronic Devices)
3. **Additions/Approval of Agenda**
4. **Review/Consider Purchase Agreement – Brentwood Second Addition**
* If Needed Closed Meeting – Per State Statute 13D.05, subd. 3.
Discuss the potential sale of City Property referred to as Brentwood Second Addition or aka the former ARCON property.
Reconvene
 - a) Summarize Closed Session
 - b) Council Action
5. **Rockville Crossing Second Addition – Developers Agreement**
6. **Resolution 2021-23 Prosecution Services**
7. **New Public Works Building**
8. **Other**
9. **Adjourn**

DEVELOPMENT AGREEMENT
(ROCKVILLE CROSSING 2nd ADDITION)

THIS AGREEMENT is made effective April ____, 2021, between the **CITY OF ROCKVILLE**, a Minnesota municipal corporation (hereinafter called the "City"); and Eichi, Inc., a corporation (domestic) organized under the laws of Minnesota, (hereinafter called the "Developer").

RECITALS:

- A. Developer owns the real property located in the City and legally described on **Exhibit A** attached hereto (the "Development Property").
- B. The City has approved a Preliminary Plat of the Development Property and conditionally approved a Final Plat known as ROCKVILLE CROSSINGS SECOND ADDITION, (the "Plat") contingent upon revisions per the City Engineer memo dated April 21, 2021 and the letter report from MnDOT dated February 16, 2021.
- C. As a condition of its approval of the Plat and as a condition to Developer's installation of municipal improvements to service the Development Property, the City requires that Developer enter into this Agreement.
- D. This Agreement shall govern the development of the **commercial** lot(s) within the Development Property. This Agreement shall be supplemental to and not a replacement of the Developer Agreement recorded as document _____ in the Office of the Stearns County Recorder on _____, 2021.
- E. This Agreement shall be recorded in the Office of the Recorder for Stearns County.
- F. The preliminary and final plat contemplate the construction of a roadway, sanitary sewer, water service, and drainage facilities by the Developer within the Development Property, and with the plans and

Commented [JK1]: Industrial?

specifications as provided herein as Exhibit B, which the Developer has reviewed and agrees to be bound by, which is made a part hereof; and

Commented [JK2]: Plans for road and sanitary sewer not yet submitted. Can we reference them as to be submitted and approved by City Engineer?

G. The Developer desires that after it completes the construction of the public utilities on the Development Property and the adjacent City Property, the City will accept and maintain said streets, and sewer and drainage facilities that serve Plat as shown on the public improvements map herein as Exhibit C; and

H. The City requires certain security hereunder to guaranty the proper construction of said streets, sewer, and drainage facilities and the payment of all costs for labor and materials incurred in connection therewith; and

NOW, THEREFORE, in consideration of the agreements contained herein, the parties agree as follows:

ARTICLE 1 INCORPORATION

1.1 RECITALS INCORPORATED. The Recitals above are incorporated as if fully set forth herein.

ARTICLE 2 MUNICIPAL IMPROVEMENTS

2.1 MUNICIPAL IMPROVEMENTS REQUIRED. As required by the City Code, the City requires that the Developer provide for certain municipal improvements for the development of the Development Property, in accord with the Plans and Specifications approved by the City pursuant to Article 2.4, including, but not limited to, necessary municipal storm water improvements pursuant to Article 5, bituminous streets, street signage, street lighting, sanitary sewer, as shown in the attached public improvements map (hereafter all such improvements are collectively referred to as the "Municipal Improvements"). The Municipal Improvements for the development will include regulatory and warning signs, and erosion control as applicable.

2.2 PRIVATELY INSTALLED MUNICIPAL IMPROVEMENTS. The Municipal Improvements will be privately installed by Developer. Developer and other end user of the Property will construct and pay all costs of the Municipal Improvements for the development in accord with the Plans and Specifications.

2.3 UNDERGROUND UTILITIES REQUIRED. Developer agrees that all utilities within the Development Property will be installed underground, including without limitations electrical, telephone, cable television and natural gas, as required.

2.4 CITY ENGINEER TO APPROVE PLANS AND SPECIFICATIONS. The Municipal Improvements to the Property and the City's Property must be constructed in accordance with the plans and specifications as approved by the City Engineer (hereafter referred to as the "Plans and Specifications").

2.5 COSTS ATTRIBUTED TO MUNICIPAL IMPROVEMENTS. Developer and the end user will be responsible for all costs of Municipal Improvements within the Development Property, including holding ponds, and other publicly dedicated property, as applicable.

2.6 COMPLETION DATE AND INSPECTION. The work the Developer is to perform under this Agreement must be completed by Developer in a good and workmanlike manner within **twelve (12) months** of the approval by the City of the Plans and Specifications for the final plat. The Municipal Improvements to the Property and the adjacent City's Property will be subject to inspection and approval by the City and the City Engineer. If any material or labor supplied is rejected by the City or the City Engineer, as defective or unsuitable, then such rejected material or labor shall be removed and replaced with approved material or labor, to the satisfaction and approval of the City, entirely at the cost and expense of the Developer. The approval of the City and City Engineer shall not be unreasonably withheld. Developer grants to the City, its agents and employees, a license to enter upon the Development Property to make inspections and for such other purposes reasonably related to the performance of this Agreement.

2.7 OWNERSHIP OF MUNICIPAL IMPROVEMENTS. Upon completion of the work and construction required by this Agreement for the development, and upon acceptance by the City, the Municipal Improvements shall become the property of the City. Prior to and as a condition of its acceptance of the Municipal Improvements, the City may require Developer to furnish an affidavit and/or certification, certifying that all work has been completed in accordance with the terms of this Agreement. The Municipal Improvements will only be accepted after the City's Engineer's review, inspection, and recommendation to the City Council that the Municipal Improvements have been satisfactorily constructed pursuant to the terms and conditions of this Agreement. The City's acceptance will not be effective until the acceptance is in writing signed by the City Engineer and delivered to the Developer.

If the installation of Municipal Improvements requires the permanent dedication of property to the City, Developer shall make such dedication by plat.

Developer shall ensure that the City has appropriate easements and unrestricted access to all Municipal Improvements at all times.

2.8 CONSTRUCTION INFORMATION. Within thirty (30) days of the City's acceptance of the Municipal Improvements, Developer will provide to the City the following:

- A. A complete set of reproducible record plans or "as-builts".
- B. An electronic file of the record plans or "as-builts" in digital format (Autocad .DWG, .DXF, Microstation, or other format as specified by the City).

- C. A GPS locate of all utilities.

2.9 TIME IS OF THE ESSENCE. Time is of the essence for the completion of the Municipal Improvements.

2.11 ENGINEERING SERVICES. The Developer will retain an engineer satisfactory to the City to prepare complete construction Plans and Specifications for the Improvements on the Property and the adjacent City's Property. The Developer shall make his engineer aware of the provisions in this Agreement. The Developer's engineer shall:

- A. Prepare construction plans, specifications, and preliminary engineer's estimate in accordance with the City's Subdivision Ordinance and the Memorandum of the City Engineer dated April 21, 2021.
- B. Secure all necessary permits including, but not limited to those required by the Minnesota Pollution Control Agency, Sauk River Watershed District, the Minnesota Department of Transportation, the Minnesota Department of Health, the Department of Natural Resources, US Army Corps of Engineers, Stearns County, or any other regulatory agency that has jurisdiction.
- C. Submit Soils Analysis, Engineer's Preliminary Estimate, Construction Plans, Construction Specifications/Project Manual, Completed Bid Forms, Contractor's Bond and Insurance, Permits, and Construction Schedule prior to beginning any construction in the development.
- D. Conduct preconstruction conference, with City Engineer present, prior to beginning any construction in the development.
- E. Provide all necessary construction staking and related survey work.
- F. Provide construction administrative services on behalf of the Developer or their designee, including the following: review shop drawings, coordinate construction staking, monitor permit requirements, process applications for payment, prepare change orders, monitor completion dates, coordinate field issues with Contractor and Developer, and participate in final inspection. Prepare operation and maintenance manuals. Submit Shop Drawings and Change Orders in a timely manner during construction.
- G. Prepare record drawings. Submit Item 2.8 to the City Engineer within 30 days of receiving field measurements from the City's on-site representative.
- H. Prepare and submit such other documentation as the City may require.

2.12 The City Engineer Shall:

- A. Provide such City project standards, including special details, insurance requirements and specifications, as the City may require.
- B. Review and approve Plans and Specifications.
- C. Provide a City Representative for construction observation of municipal improvements throughout the construction period.
- D. Provide field information to the Developer for use in preparing record drawings.
- E. Conduct a final inspection and review final construction documentation.
- F. Review Bond / Letter of Credit reduction requests by the Developer.
- G. Update City GIS map with all record drawing information.
- H. Recommend acceptance of Improvements to the City.

ARTICLE 3 SECURITY

3.1 BOND/LETTER OF CREDIT. To guarantee compliance with the terms of this Agreement, payment of costs incurred by the City, payment of costs of all Municipal Improvements, and the construction of all Municipal Improvements, Developer shall furnish to the City an irrevocable letter of credit or such other security as is acceptable to the City. The security shall be in an amount equal to one and one-quarter (1 ¼) times the Opinion of Probable Construction Cost prepared by Developer and approved by the City Engineer for the Municipal Improvements, based on the approved Plans and Specifications. In the event an approved contractor provides a payment and performance bond for the full cost of the Municipal Improvements in favor of the City, Developer may only be required to provide an unconditional irrevocable letter of credit or other acceptable security in an amount equal to 25% of the cost of the Municipal Improvements.

Based upon the Opinion of Probable Construction Cost prepared by Developer and reviewed by the City's Engineer, initial security is required in an amount of \$_____. This amount may be adjusted as revised estimates of construction costs become available.

In addition, Developer has deposited \$25,000.00 in cash with the City to secure payment of the City costs as outlined in Section 6.2 below. The City may draw down this deposit at any time if invoices for City costs are not timely paid. The City may require Developer to replenish this cash deposit and may withhold permits or other approvals under this Agreement until such deposit has been made.

3.2 DURATION OF SECURITY. The security shall be posted and in effect prior to the commencement of any construction activities on the Development Property. The security shall remain in effect until: 1) all Municipal Improvements have been completed; 2) iron monuments for lot corners have been installed; 3) all financial obligations to the City have been satisfied; 4) the construction information in Section 2.8 has been received by the City; 5) a warranty security is provided; and 6) the Municipal Improvements are accepted by the City.

3.3 REDUCTION IN SECURITY. After 50% of the Municipal Improvements have been installed/completed and accepted by the City, Developer may make a request to the City Engineer for a reduction in the letter of credit based on the percentage of the project so installed, completed, or accepted. Upon receipt of a request from Developer, the City Engineer shall make a determination as to the completeness of the Municipal Improvements and make a recommendation to the City Administrator as to the amount of any possible reduction. The City reserves the right in its sole discretion to determine whether to allow a reduction and, if so, by what amount. The City's determination shall be final, and the City Administrator has the authority to release the payment on behalf of the City to the Developer.

ARTICLE 4 WARRANTY

4.1 DEVELOPER WARRANTY. The Developer warrants all Municipal Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. To ensure this warranty, Developer shall submit either: 1) a warranty/maintenance bond for fifty percent (50%) of the cost of the Municipal Improvements, or 2) a letter of credit for twenty-five percent (25%) of the cost of the Municipal Improvements. The bond or letter of credit must remain in effect during the warranty periods provided for in this Article 4.

4.2 STREETS. The required warranty period for street construction, materials and equipment shall be two (2) years from the date of final written acceptance by the City. The Developer shall only be responsible for the portion of the street constructed by the Developer under this Agreement.

4.3 OTHER. Other Municipal Improvements, including, but not limited to, sanitary sewer required pursuant to Article 5 shall be warranted by Developer for a period of two (2) years after final written acceptance by the City.

ARTICLE 5 STORM WATER IMPROVEMENTS/ASSESSMENT

5.1 DEVELOPER TO CONSTRUCT STORM WATER IMPROVEMENTS. As part of the Municipal Improvements Developer will, at Developer's sole cost and expense and in accord with the Plans and Specifications and approved drainage plan for the Development Property, construct all drainage ways, storm sewer systems,

sedimentation ponds, holding ponds and out-fall devices (hereinafter referred to as the "Storm Water Improvements").

ARTICLE 6 RESPONSIBILITY FOR CITY COSTS

6.1 INTERPLEADER. In the event the City receives claims from laborers, materialmen, or others that work required by this Agreement has been performed, the sums due them have not been paid, and the laborers, materialmen, or others are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22 of the Minnesota Rules of Civil Procedure, to draw upon the security posted pursuant to Article 3 above in an amount up to one- hundred and twenty-five percent (125%) of the claim(s) and deposit the funds in compliance with the Rule; and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the security, except that the District Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

6.2 CITY COSTS. The Developer shall pay all reasonable costs incurred by it or the City, including, but not limited to, legal, planning, administrative, engineering, and inspection expenses, in connection with the development, approval, and acceptance of the Preliminary Plat and/or any Final Plat of the Development Property, review of construction plans and documents, the preparation of this Agreement, as well as other required agreements, and all costs and expenses incurred by the City in monitoring and inspecting the construction of the Municipal Improvements. City and Developer shall meet and confer in the event that the City and Developer cannot reach a mutually satisfactory agreement related to any and all City costs incurred.

6.3 COSTS OF ENFORCEMENT. If the City must bring and incur costs in an enforcement action upon the default of the Developer, and the City prevails in the enforcement action, then Developer shall reimburse the City for costs incurred in the enforcement action, including reasonable engineering and reasonable attorneys' fees.

6.4 TIME OF PAYMENT. Developer shall pay in full all bills submitted by the City for obligations incurred under this Agreement within sixty (60) days of submission to Developer. Bills not paid within sixty (60) days shall accrue interest and/or penalty consistent with City policy. Failure to remit payment within sixty (60) days shall constitute a default of this Agreement.

ARTICLE 7 INSURANCE

7.1 INSURANCE REQUIRED. Developer shall take out and maintain, or cause to be taken out and maintained, until six (6) months after the City has accepted the Municipal Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's design and work, or the work of its subcontractors, or by one directly or indirectly employed by any of them. The minimum limits shall be not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

7.2 CITY AS ADDITIONAL INSURED. The City and the City Engineer shall be named as additional insureds on the insurance required to be provided pursuant to Section 7.1 above.

7.3 WORKERS COMPENSATION. Developer shall provide Workers' Compensation insurance for all of its employees and, in case any work is subcontracted, Developer will require the subcontractor to provide Workers' Compensation insurance.

7.4 EVIDENCE OF INSURANCE. Evidence of the required insurance shall be submitted to and approved by the City prior to and as a condition of the City's authorization to proceed with any construction activity on the Development Property.

7.5 NO WAIVER BY CITY. Nothing contained herein shall be construed on the part of the City as a waiver of common law and statutory immunities, or limits on liability pursuant to Minnesota Statutes Chapter 466.

7.6 NOTICE. All insurance contracts for the provision of insurance under this Article shall provide for written notice to the City thirty (30) days prior to cancellation, termination, non-renewal, or material change in coverage.

ARTICLE 8 DEVELOPER'S REPRESENTATIONS

8.1 REPRESENTATIONS OF DEVELOPER. Developer represents and warrants to the City:

- 8.1.1 That Developer owns the Development Property and has authority to enter into this Agreement;
- 8.1.2 That Developer has disclosed to the City all lienholders or other parties in interest who should be joined in this Agreement and that no other person or entity shall have an interest in the Development Property prior and superior to this Agreement.
- 8.1.3 Developer has submitted and received approval of its Preliminary Plat from the County Surveyor, and any other governmental entity or agency required by law or this Agreement to review the Preliminary Plat prior to approval of any final plat for the Development Property;
- 8.1.4 That the final plat complies with all City, County, State and Federal laws and regulations, including, but not limited to, City subdivision ordinances and zoning ordinances and that all future final plats must comply with those regulations applicable at the time of such final plat;
- 8.1.5 That the Developer will meet all requirements for recording and will record, with Stearns County, the final plat of any property upon which Municipal

Improvements are to be constructed prior to the initiation of construction of the Municipal Improvements on the Development Property.

ARTICLE 9
BUILDING/OCCUPANCY PERMITS

9.1 ISSUANCE OF BUILDING PERMITS. The City wants to ensure that measures are taken to protect roads during their construction and to ensure that the property is accessible by emergency vehicles during construction. Therefore, building permits will not be issued for construction on any property with a final plat except as follows:

- A. The road leading to the affected parcel(s) has been completed with the aggregate base to the satisfaction of the City Engineer and Fire Chief; or
- B. Developer receives written permission from the City.

ARTICLE 10
DAMAGE TO MUNICIPAL IMPROVEMENTS

10.1 DAMAGE DURING CONSTRUCTION. Developer understands and acknowledges that it is responsible for all damage to all Municipal Improvements, whether now existing or constructed hereunder, including but not limited to streets and storm sewers that occurs either: 1) during construction of the improvements; or 2) results from Development Activity on the Development Property after their dedication and acceptance by the City. "Development Activity" includes the installation of the improvements required under this Agreement.

In the event the City determines, in its sole discretion, that repairs must be made, the Developer or builder will be given ten (10) days written notice. If the Developer or builder fails to make the repairs within the ten (10) day time period, the City may: 1) withhold all approvals related to the Development Property; 2) withhold all approvals related to the affected area of the Development Property; 3) make the necessary repairs, the cost of which Developer agrees to reimburse to the City; or 4) draw upon Developer's security posted with the City to affect the repairs in the manner it deems expedient.

Upon transfer of any lot within the Development Property, Developer shall be released from the obligations contained in this Section 10.1 to the extent the damage was not caused by the acts of Developer, its agents, or subcontractors; and the transferee shall thereafter be primarily responsible for damage to improvements on or appurtenant to the transferred lot. In the event the City is unable to determine whether responsibility lies with Developer or the lot transferee, Developer shall be responsible to the City for repair but retain its ability to recover from the lot transferee.

ARTICLE 11
STREET MAINTENANCE DURING CONSTRUCTION

11.1 DEVELOPER RESPONSIBLE PRIOR TO ACCEPTANCE BY THE CITY. The Developer shall be responsible for all street maintenance for the development, including snow plowing, until the street(s) are accepted by the City.

11.2 WARNING SIGNS. Warning signs shall be placed in streets when hazards develop to prevent the public from traveling under or near dangerous or unsafe conditions, and direct attention to detours when appropriate. If and when streets become impassable, such streets must be barricaded and closed by Developer.

11.3 OCCUPANTS ALONG UNFINISHED STREETS. In the event designated and intended users of the property utilize and access the Property prior to the completion of and acceptance by the City of the streets, Developer shall maintain a smooth surface and provide proper surface drainage to ensure that the streets are passable at all times to traffic and emergency vehicles.

11.4 DIRT AND DEBRIS. Developer shall be responsible for keeping streets within and without each final plat clean of dirt and debris that may spill, track, or wash onto the street from construction activity within the Development Property. Developer shall provide for periodic street cleaning in and immediately adjacent to the Development Property. At a minimum, scraping and sweeping shall take place on a regular basis. Developer shall provide the City, for its approval, a plan for cleaning the streets, identifying how it will be accomplished, and the frequency of the cleaning. The cleaning plan must be approved by the City prior to the commencement of any construction activity. Nevertheless, the City reserves the right to unilaterally determine that cleaning is needed to a degree and at a time other than specified in the approved cleaning plan. Upon receipt of a written notice from the City, Developer will immediately undertake the cleaning as directed.

11.5 SNOW PLOWING. Prior to final acceptance of the Municipal Improvements, Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets. The City has sole discretion as to whether the City will perform the snow plowing. The City shall not be responsible for repairing damage to the streets caused by snow plowing. Snow plowing services shall not constitute final acceptance of the streets by the City.

11.6 SPRING WEIGHT RESTRICTIONS. During any period of spring weight restrictions, when the streets within the Development have the first lift of pavement, but prior to final acceptance of the improvements by the City, the Developer shall post signage at each entrance to the Property as notice restricting access to vehicles with an axle weight of five tons or less.

ARTICLE 12 EROSION CONTROL

12.1 EROSION CONTROL AND THE MINNESOTA POLLUTION CONTROL AGENCY'S (THE "MPCA") NATIONAL POLLUTION DISCHARGE ELIMINATION

SYSTEM, PHASE II CONSTRUCTION PERMIT. Developer acknowledges that if the development of the Development Property is subject to the MPCA's Phase II Construction Permit issued pursuant to Phase II of the National Pollution Discharge Elimination System ("NPDES"), the Developer will obtain the permit, develop the required Storm Water Pollution Prevention Plan ("SWPPP") and submit a copy of the permit (including the SWPPP) to the City prior to the initiation of construction of the Municipal Improvements for the development. Developer's compliance with the permit and accompanying SWPPP is a term and condition of this Agreement and enforceable by the City. In addition, the City may impose additional erosion control requirements if in the opinion of the City Engineer such requirements are necessary to retain soil and prevent siltation of streams, ponds, lakes, or other adjacent properties, or of City utility systems. The Developer shall comply with the erosion control plans and with any such additional instruction it receives from the City. All areas disturbed by the excavation and backfilling operations shall be reseeded forthwith after the completion of the work in that area. Seed shall include rye grass or other fast-growing seed to provide a temporary ground cover as rapidly as possible. All seeded areas shall be mulched and disc- anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion.

Upon transfer of any portion of the Development Property to an individual owner or builder, Developer shall prepare and file notices of termination and adequately transfer continuing construction erosion control and storm water management compliance to subsequent owners. The City may withhold any and all approvals from owners or builders found to be non-compliant with applicable NPDES permit standards.

In the absence of applicable erosion control regulation, the Developer shall, at a minimum comply with the erosion control standards of Stearns County.

ARTICLE 13 WETLAND MITIGATION AND PROTECTION

13.1 PERMITTING. The development of the Development Property must comply with all wetland protection legislation and Developer will be responsible for any permitting necessary. Notwithstanding anything in this Agreement to the contrary, the Developer shall be responsible for all wetland mitigation that is required for construction of any of the Municipal Improvements. Developer will complete and pay for all permitting, credit purchases, and/or other mitigation costs that may be involved. The City may, however, take action to minimize charges or costs to the City in the event the Developer fails to obtain all permits and complete all mitigation that may be necessary for the construction of the Municipal Improvements.

13.2 PROTECTION. Neither Developer nor any future owner of any portion of the Development Property may fill or disturb the wetlands on the Development Property except with the written consent of the City and with appropriate state and federal permits.

ARTICLE 14
INDEMNIFICATION

14.1 INDEMNIFICATION. Anything to the contrary herein notwithstanding, the City and Council, its officers, agents, employees, and representatives shall not be liable or responsible in any manner to the Developer, contractor or subcontractors, materialmen, laborers, or to any other person or persons whomsoever, for any claims, demands, damages, actions, or causes of action of any kind or character whatsoever arising out of or by reason of the execution of this Agreement; the design, performance, and completion of the Municipal Improvements and any and all work which is the Developer's obligation to perform pursuant to this Development Agreement; the grant by the City and its Council of any approval related to the Development Property, including, but not limited to, approval of any grading plan, drainage plan, preliminary, or final plats for the Development Property; the failure by Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Development Agreement; the failure by the Developer to pay contractors, subcontractors, laborers, or materialmen; the failure by Developer to pay for materials; the failure by Developer to obtain necessary permits and authorization to construct the work described in this Development Agreement; because building permits were issued prior to the completion and acceptance of the Municipal Improvements; or the City's exercise of any of its rights in the event of a default by Developer. Developer further agrees to indemnify, defend, and hold the City, its officers, engineers, agents and employees harmless from all such claims, demands, damages, actions, or causes of action, and all costs, disbursements, and expenses resulting from such claims, including attorneys' fees. The release and indemnification in this provision shall not include the engineering firm of Bolton & Menk ("B&M") in the performance of engineering services for the design and development of the plans and specifications for the Municipal Improvements on behalf of Developer.

ARTICLE 15 MISCELLANEOUS

15.1 STREET NAMING. Street names must be approved by the City, as applicable.

15.1 PROFESSIONAL CONSULTANT FEES. If the City must bring and incur costs in an enforcement action upon the default of the Developer, and the City prevails in the enforcement action, then Developer shall reimburse the City for costs incurred in the enforcement action, including reasonable fees of the City's professional consultants.

15.2 DEFAULT AND REMEDIES. If Developer fails in any way to perform or observe any covenant, condition, or obligation contained in this Agreement or the any other agreement between Developer and the City relating to the Development Property, Developer agrees that the City may do any, all, or any combination of the following: (i) halt all further approvals regarding platting, improvements or issuance of building permits or occupancy permits relating to the Development Property; (ii) seek injunctive relief; (iii) terminate this Agreement and all of the obligations contained herein without terminating

Developer's obligation to reimburse the City for costs it has incurred with regard to this Agreement or the Development Property; (iv) draw on or utilize any funds or other security provided to the City pursuant to this Agreement and complete the Municipal Improvements; (v) suspend any work or improvement on the Development Property by issuing a stop work order; and/or (vi) take any other action at law or in equity which may be available to the City.

15.3 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. If any agreement contained in this Agreement is breached by the Developer and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breaches hereunder. All waivers by the City must be in writing to be effective.

15.4 NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the City shall 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. In order to entitle the City to exercise any remedy reserved to the City, it shall not be necessary to give notice.

15.5 ASSIGNMENT. This Agreement may not be assigned by Developer except upon obtaining the express written consent of the City. Developer's obligations hereunder shall remain in full force and effect even if the Developer sells or otherwise transfers one or more lots, any entire final plat, or any part of a final plat.

15.6 INTEGRATION. This Agreement contains all of the understandings and agreements between the parties. This Agreement may not be amended, changed, or modified without the express, written consent of the parties hereto.

15.7 EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

15.8 GOVERNED BY MINNESOTA LAW. This Agreement shall be interpreted under the laws of the State of Minnesota.

15.9 BINDING ON SUCCESSORS AND ASSIGNS. This Agreement shall run with the Development Property and will be binding on and enforceable by and against the parties, their successors, legal representatives and assigns.

15.10 SEVERABILITY. In the event any provision or part of this Agreement is determined to be void or unenforceable, the remainder of the Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CITY OF ROCKVILLE, MINNESOTA

By Its Mayor

ATTEST:

By Administrator-Clerk

Eichi, Inc.
2195 Silver Lake Road
New Brighton, MN 55112
By Martin N. Harstad, its President

STATE OF MINNESOTA)

) SS

COUNTY OF STEARNS)

On this _____ day of April 2021, before me, a Notary Public for this County, personally appeared Duane Willenbring, to me personally known, who, being by me duly sworn did say that he is the Mayor of the City of ROCKVILLE, a Minnesota municipal corporation, named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF STEARNS)

On this _____ day of April, 2021, before me, a Notary Public for this County, personally appeared Martin Bode, to me personally known, who, being by me duly sworn did say that he is the City Administrator-Clerk of the City of ROCKVILLE, a Minnesota municipal corporation, named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

On this _____ day of April, 2021, before me, a Notary Public for this County, personally appeared, to me personally known, who, being by me duly sworn did say that he is Martin N. Harstad, the President of Eichi, Inc., and that said instrument was signed on behalf of said Corporation.

Notary Public

THIS INSTRUMENT DRAFTED BY:
Jovanovich, Dege & Athmann, PA
1010 W. Saint Germain, Suite 420
St. Cloud, MN 56301

EXHIBIT A
(Legal Description of Development Property)

EXHIBIT B
PLANS AND SPECIFICATIONS

EXHIBIT C
PUBLIC IMPROVEMENTS MAP

**CITY OF ROCKVILLE, MINNESOTA
RESOLUTION NO. 2021-23**

WHEREAS, the City of Rockville is in need of a prosecuting body to represent the City of Rockville throughout the court proceedings of all ordinance violations occurring within its city limits; and

WHEREAS, the private firm of Jovanovich, Dege & Athmann, PA (hereinafter “JDA”) has provided prosecution services in the past, including the enforcement of ordinance violations; and

WHEREAS, the City of Rockville desires to continue to use JDA to prosecute all ordinance violations that occur within the city limits.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ROCKVILLE, MINNESOTA:

That the City of Rockville does hereby agree to utilize the services of Jovanovich, Dege & Athmann, PA to prosecute all ordinance violations occurring within the jurisdiction of the municipality and within the City of Rockville. Prosecution services shall be rendered by JDA commencing January 1, 2021 and extending until the Rockville City Council or JDA cancels such services. The City shall forward current ordinances to JDA and immediately inform JDA of any changes made during this period.

Whereupon, said Resolution is hereby declared adopted on this 28 day of April, 2021.

Duane Willenbring, Mayor

ATTEST:

City Seal

Martin M. Bode, City Administrator