

MEETING DATE: November 19, 2015

TITLE: Authorization to Amend the Gray's Bay Dam Easement and Execute a new Easement Agreement with the City of Minnetonka

RESOLUTION NUMBER: 15-095

PREPARED BY: Tiffany Schaufler

E-MAIL: tschaufler@minnehahacreek.org

TELEPHONE: 952-641-5413

REVIEWED BY: Administrator Counsel Program Mgr. (Name): _____
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Not reviewed at Workshop. Seeking approval at Nov.19 Board Meeting.	

PURPOSE or ACTION REQUESTED:

Authorization to amend a 1979 easement the District holds over a City of Minnetonka parcel north of the Gray's Bay Dam; and authorization to execute a new easement agreement with the City of Minnetonka.

PROJECT/PROGRAM LOCATION:

Property north of the Gray's Bay Dam and emergency spillway. See Attachment A for a map of the area.

PAST BOARD ACTIONS:

December 10, 1998: Board voted in favor to discuss executing a conveyance that would narrow the easement north of the dam to a "reasonable dimension" through a process of discussion with the City of Minnetonka.

November 3, 2005; RES 05-053: Minnehaha Creek Headwaters Outlet Structure Improvement – Cooperative Agreement Amendment

SUMMARY:

In 1979, Hennepin County and the District entered into a cooperative agreement in which Hennepin County transferred ownership and control of the dam structure to the District. Through this agreement Hennepin County also granted an easement to the District over two parcels of land on either end of the dam for construction, operation, inspection and access to the new control structure and dam. The purposes of the easement are for access to the dam to construct, reconstruct, maintain and restore; temporary placement and storage of materials; and to provide stability with respect to the termini of the dam or its accessories. In 2005, in conjunction with a District project improving the dam structure and associated property for public purposes, the easement was amended to clarify the District's right to maintain the broader range of public improvements.

Of these two parcels of land, one is a parcel of dimensions 150 feet by 150 feet north of the fixed weir that affords the District access to the dam/weir and staging area (see parcel in Attachment A). Hennepin County conveyed this parcel to the City of Minnetonka in 1996. In 1998 the City approached the District about narrowing the District easement over this City property. At the December 10, 1998 Board of Managers meeting the Board voted in favor to discuss executing a conveyance that would narrow the easement north of the dam to a "reasonable dimension" through a process of discussion with the City of Minnetonka.

In October 2015 the City approached the District again about narrowing the District's easement over the City parcel north of the dam as the City is working on a land exchange. The City of Minnetonka is currently coordinating a land exchange agreement with the property owners to the east of the City parcel. Under the proposed land exchange agreement, the City will convey a 35-foot wide strip of land ("Strip Parcel") from the City parcel and combine it with the property to the east (see Attachment B for a sketch of the land exchange). Since the entire City property is encumbered by the 1979 District easement, the land exchange agreement is contingent on the District vacating its easement over the Strip Parcel.

District staff and the District engineer have determined that vacating the easement within the Strip Parcel should not affect the District's ability to maintain the dam. The remaining easement would continue to provide the District access over and use of the entire redescribed City parcel, which should provide the District enough land to be able to access the dam structure and temporarily store materials to maintain and restore it as needed. The City land exchange also will benefit the District by formally establishing City ownership of public ROW from Crosby Road to access the City parcel and District easement.

If the Board of Managers is agreeable to vacating the District's easement over the Strip Parcel the next steps are to:

1. Amend the 1979 easement to vacate the easement as to the parcel now owned by the City.
2. Execute a new easement agreement with the City of Minnetonka that will encumber the City parcel as it will be described after the City conveys the Strip Parcel to the adjacent residential owner.

ATTACHMENTS:

- Attachment A: Aerial Map of Property
- Attachment B: Sketch of the Land Exchange
- Attachment C: DRAFT 1979 Easement Vacation Document
- Attachment D: DRAFT New Easement Agreement with City of Minnetonka

RESOLUTION

RESOLUTION NUMBER: 15-095

TITLE: **Authorization to Amend the Gray’s Bay Dam Easement and Execute a new Easement Agreement with the City of Minnetonka**

WHEREAS, on June 5, 1979 the District and Hennepin County (“County”) entered into an agreement (County Agreement 80463) in which the County transferred ownership and control of the dam structure to the District; and

WHEREAS, as part of County Agreement 80463, the County granted an easement to the District over two County parcels of land for access and staging to construct, maintain, repair and reconstruct the Gray’s Bay Dam Outlet Structure; and

WHEREAS, in 1996 the County transferred one of the parcels of land with a PID of 0811722410010 to the City of Minnetonka (“City”); and

WHEREAS, in October 2015 the City approached the District and requested that the District adjust its easement rights on the City parcel to accommodate the City’s proposed land exchange with the owner of the adjacent residential parcel; and

WHEREAS, under the City’s proposed land exchange agreement, the City will adjust its parcel to convey a 35-foot wide strip of land (“Strip Parcel”) from the City parcel and combine it with the adjacent parcel, and in exchange will confirm ownership of public ROW that provides City and District road access to the parcel; and

WHEREAS, the City’s proposed land exchange agreement is contingent on the District vacating its easement over the Strip Parcel; and

WHEREAS, the District continues to require adequate access to the dam site and adequate staging area for any work thereon, and the Board finds that the right to make use of the redescribed City parcel for those purposes will remain adequate; and

WHEREAS, for the purpose of accommodating the City, the MCWD Board of Managers is agreeable to vacate the District’s easement over the Strip Parcel; and

WHEREAS, the 1979 District easement with the County will be amended to delete the description of the City parcel; and

WHEREAS, the City and District will execute a new easement agreement that reflects the new boundary of the City land after conveyance of the Strip Parcel.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the Board President, on advice of counsel, to amend the District’s 1979 easement with the County to vacate the second parcel description; and

BE IT FURTHER RESOLVED that the Board of Managers authorizes the Board President, on advice of counsel, to execute a new easement agreement with the City of Minnetonka to reflect the new boundary of the City parcel after conveyance of the Strip Parcel.

Resolution Number 15-095 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

ATTACHMENT A

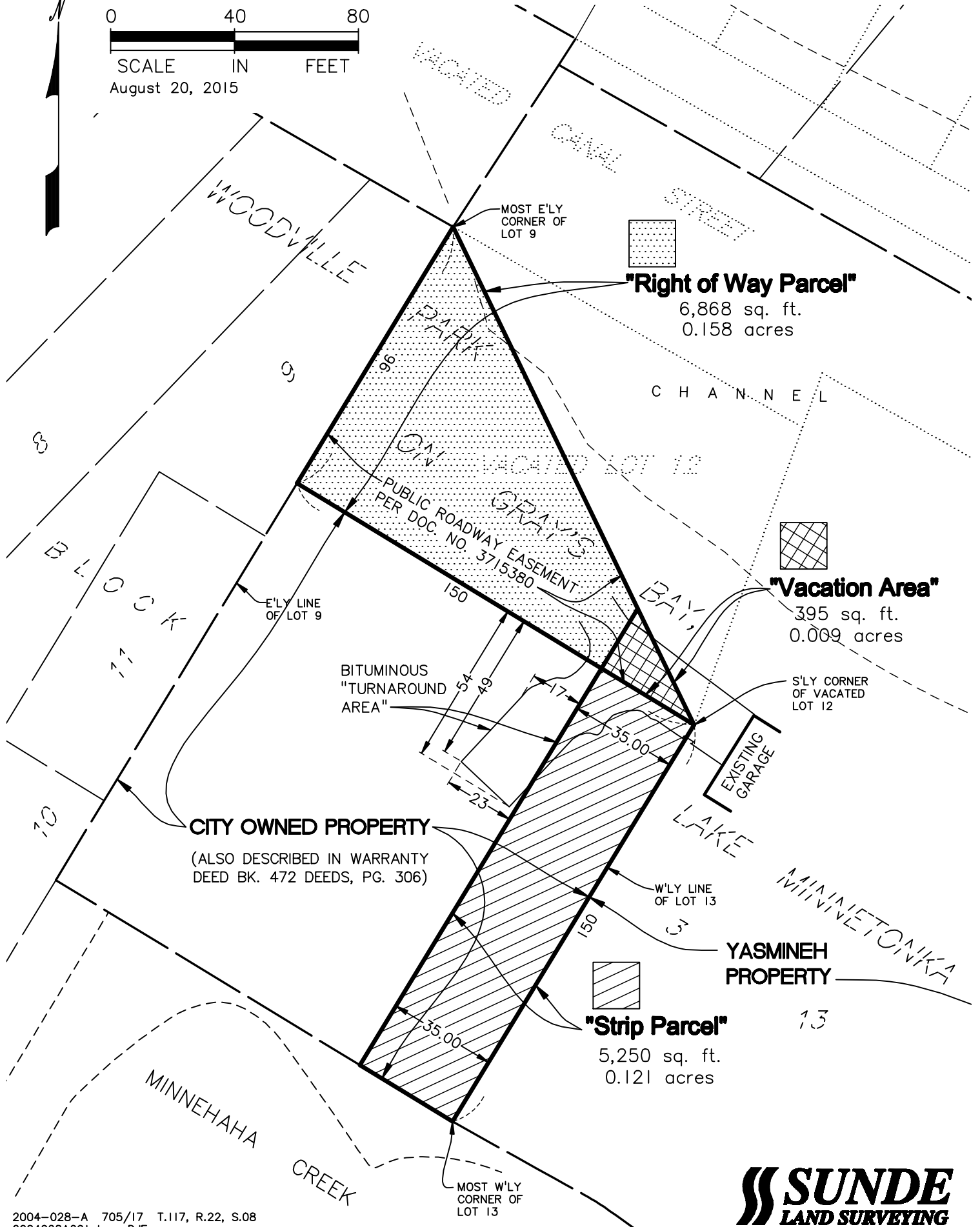
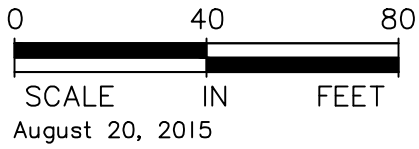
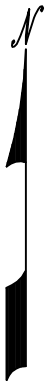
City Parcel highlighted in blue



City Parcel highlighted in blue



ATTACHMENT B



"Right of Way Parcel"

6,868 sq. ft.
0.158 acres

"Vacation Area"

395 sq. ft.
0.009 acres

"Strip Parcel"

5,250 sq. ft.
0.121 acres

CITY OWNED PROPERTY

(ALSO DESCRIBED IN WARRANTY DEED BK. 472 DEEDS, PG. 306)

YASMINEH PROPERTY

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ATTACHMENT C

PARTIAL RELEASE OF EASEMENT AGREEMENT

THIS INSTRUMENT is made as of November ___, 2015 by MINNEHAHA CREEK WATERSHED DISTRICT, a Minnesota public body, corporate and politic (“District”) and CITY OF MINNETONKA, a Minnesota municipal corporation (“City”).

WHEREAS, City is the fee owner of real property in Hennepin County, Minnesota, legally described as follows:

All that part of Section 8, Township 117 North, Range 22 West of the 5th Principal Meridian, described as follows: Commencing at a point at lower water mark on Lake Minnetonka which said point is located as follows: Commencing at the 1/4 section corner between Sections 8 and 9, Township 117, Range 22; thence south on section line 644 feet; thence West at right angles 1012.5 feet to said point of beginning of land to be described; thence North 32 degrees 27 minutes East 150 feet to a point which is 517.4 feet South and 932 feet West of said 1/4 section corner; thence North 57 degrees 33 minutes West 150 feet; thence South 32 degrees 27 minutes West 150 feet; thence Southeasterly to place of beginning.

The courses given above are on the assumption that said above mentioned section line is due North and South.

(the “City Property”); and

WHEREAS, the City Property is subject to a certain Easement Agreement filed in the Office of the County Recorder, Hennepin County, on June 19, 1979 as Document No. 4480317, in favor of the District (the “Easement”), as amended by Amendment to Easement Agreement filed in the Office of the County Recorder, Hennepin County, on January 4, 2006 as Document No. 8723814, and City is the successor in interest to Hennepin County with respect to the City Property;

WHEREAS, the City desires to convey a portion of the City Property to a third party, free and clear of the Easement, and to enter into a new easement agreement with the District for the portion of the City Property that will remain in City ownership.

NOW THEREFORE, in consideration of the new easement agreement to be entered between the parties:

The parties agree that the Easement is released and terminated as to the following described real estate:

Commencing at a point at lower water mark on Lake Minnetonka which said point is located as follows: Commencing at the 1/4 section corner between Sections 8 and 9, Township 117, Range 22; thence south on section line 664 feet; thence West at right angles

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1012.15 feet to said point of beginning of land to be described; thence North 32 degrees 27 minutes East 150 feet to a point which is 517.4 feet South and 932 feet West of said 1/4 section corner; thence North 57 degrees 33 minutes West 150 feet; thence South 32 degrees 27 minutes West 150 feet; thence southeasterly along said low water mark to place of beginning. The courses given are on the assumption that said section line is due north and south.

[signature pages follow]

DRAFT

ATTACHMENT D

EASEMENT AGREEMENT

THIS INDENTURE is made as of November __, 2015, by and between CITY OF MINNETONKA, a Minnesota municipal corporation (“City”) and MINNEHAHA CREEK WATERSHED DISTRICT, a Minnesota public body, corporate and politic (“District”).

Recitals

A. City is the owner of real property in Hennepin County, Minnesota, legally described on the attached Exhibit A (the “Property”). The location of the Property is depicted on the attached Exhibit B.

B. The Property is adjacent to the Gray’s Bay Dam, located on Lake Minnetonka at the headwaters of Minnehaha Creek (the “Dam”). The Dam is located on property owned by Hennepin County (“County Property”) and consists of an operable structure for managing the water level of Lake Minnetonka, a fixed overflow weir, a stabilized and planted shoreline, and associated appurtenances and improvements. The District assumed ownership of the Dam and responsibility for its maintenance and operation by a June 5, 1979 agreement between Hennepin County and the District attached as Exhibit C (“Contract 80463”). The approximate location of the Dam is depicted on the attached Exhibit B.

C. The Property and County Property are subject to an Easement Agreement filed in the Office of the County Recorder, Hennepin County, on June 19, 1979 as Document No. 4480317, that conveys to the District a perpetual right of ingress and occupation to construct, reconstruct, inspect, modify, maintain, restore and repair the Dam (“First Easement Agreement”).

D. The City has requested that the First Easement Agreement be vacated with respect to the Property and replaced with an Easement Agreement that pertains specifically to the Property. The District’s relinquishment of its rights under the First Easement Agreement in conjunction with the City’s conveyance of this Easement Agreement constitutes consideration for the rights conveyed hereunder. The City and District concur that the rights here conveyed remain appurtenant to the District’s ownership rights in the Dam and its easement rights in the County Property.

Terms

1. Easement Grant. City hereby grants to District a non-exclusive easement over, across and upon the entirety of the Property, subject to all the terms and conditions set forth below, including specifically the provisions of paragraph 4 regarding amendment of the Easement Area. The term “Easement Area” as used in this instrument refers to that portion of the Property encumbered by this instrument, as this instrument may be amended from time to time.

2. Easement Scope. The easement granted by this instrument is for the following purposes only:

ATTACHMENT D

- a. For access to the Dam in order to construct, reconstruct, inspect, modify, maintain, restore or repair the Dam.
 - b. For temporary placement or storage of equipment, machinery, materials and tools necessary for and in connection with work upon the Dam, while such work is being conducted.
 - c. To provide stability necessary to the structural support of the termini of the Dam.
3. Reserved Rights. The City reserves the right to use the Property for any use that will not materially interfere with the District's ability to operate, maintain, repair and replace the Dam.
3. District Responsibilities. The District agrees to comply with the following requirements:
- a. In exercising its rights under this Agreement, the District will use its best efforts to minimize interference with the City's use of the Property.
 - b. In connection with its use of the Property, District agrees to keep the Property in a good and safe condition and agrees not to commit waste on the Property. After any use of the Property by District, its officers, agents, employees or contractors, the District agrees, at District's expense, to promptly restore any damaged or disturbed area to as nearly the same condition as existed prior to District's use as is reasonably possible. If any portion of the restored Property (i) settles within two years of the restoration or (ii) appreciably deteriorates within a shorter than normal period of ordinary usage, due to any cause other than an affirmative action by the City, then on request of the City the District agrees, at its expense, to repair and restore the same, in a good and workmanlike manner, so that the grade is consistent with the grade of the surrounding unrestored property. If the District fails to promptly restore the Property, the City may at its discretion perform the restoration, and the District agrees to reimburse the City for its actual costs within 30 days after the City's written demand.
 - c. The District agrees to promptly remove any equipment, machinery, materials or tools placed or stored on the Property promptly after completion of the work or improvement that necessitated its use.
 - d. The District agrees to defend, indemnify, save and hold harmless the City, its officers, agents and employees from any and all liability, claims, demands, actions or causes of actions or costs, including reasonable attorney's fees, arising directly or indirectly out of the District's exercise of rights under this Easement Agreement, or any activity on the County Property in conjunction with the exercise of such rights, by the District, its officers, agents, contractors or employees, except to the extent attributable to the negligence or willful act of the City or any party operating under its direction or control.
 - e. In any contract that the District enters with any contractor to perform work on the Dam or within the Easement Area, the District agrees to include contract provisions: (i) obligating the contractor to defend, indemnify and hold harmless the City, its officers,

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agents and employees from claims, actions, losses, damages and costs, including attorney's fees, arising out of related to the contracted work or the actions of the contractor, its agents or employees; (ii) requiring the District's contractor to obtain commercial liability insurance with liability limits at least equal to those specified under Minnesota Statutes §466.04, as it may be amended, naming the City as an additional insured with primary, non-contributory coverage. The commercial liability policy will be occurrence basis; cover both contractor's work and completed operations; contain no exclusion for explosion, collapse or underground work; and include contract liability coverage.

4. Amendment. This Easement Agreement may be amended by written agreement of the parties at any time. At any time that the City identifies a new or different use of the Property by the City, the City may request that the Easement Area be defined or, if previously defined, amended or relocated. The District agrees to define, amend or relocate the Easement Area, on the District's concurrence, not to be unreasonably withheld, that the revised Easement Area does not unreasonably impair or impede the District's ability to operate, maintain, repair, modify or replace the Dam.

5. Assignment. The District may not assign or transfer its rights or privileges under this Agreement in any manner, by operation of law or otherwise, without the City's written consent. Subject to that restriction, this Agreement inures to the benefit of and is binding upon the parties, their successors and assigns. Notwithstanding the foregoing, the City consents to the District's assignment of this Easement Agreement to Hennepin County in the event of, and effective on, termination of Contract 80463.

6. Termination. This Easement Agreement is perpetual, but will terminate: (a) by written agreement of the parties; (b) if the District is terminated pursuant to Minnesota Statutes chapter 103D or as the Legislature may otherwise provide, with no designation of a successor to its rights and obligations.

[signature pages follow]

This instrument drafted by:
City of Minnetonka (Legal)
14600 Minnetonka Blvd.
Minnetonka, MN 55345
952-939-8200

ATTACHMENT D

Signature Page for City

CITY OF MINNETONKA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on November __, 2015, by Terry Schneider, mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

(SEAL)

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on November __, 2015, by GERALYN BARONE, city manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

(SEAL)

ATTACHMENT D

EXHIBIT A

Description of Property and Easement Area

Property description:

All that part of Section 8, Township 117 North, Range 22 West of the 5th Principal Meridian, described as follows: Commencing at a point at lower water mark on Lake Minnetonka which said point is located as follows: Commencing at the 1/4 section corner between Sections 8 and 9, Township 117, Range 22; thence south on section line 644 feet; thence West at right angles 1012.5 feet to said point of beginning of land to be described; thence North 32 degrees 27 minutes East 150 feet to a point which is 517.4 feet South and 932 feet West of said 1/4 section corner; thence North 57 degrees 33 minutes West 150 feet; thence South 32 degrees 27 minutes West 150 feet; thence Southeasterly to place of beginning; , EXCEPT the Southeasterly 35.00 feet of said described land.

The courses given above are on the assumption that said above mentioned section line is due North and South.

Easement description:

The Easement granted herein encumbers the entirety of the Property.

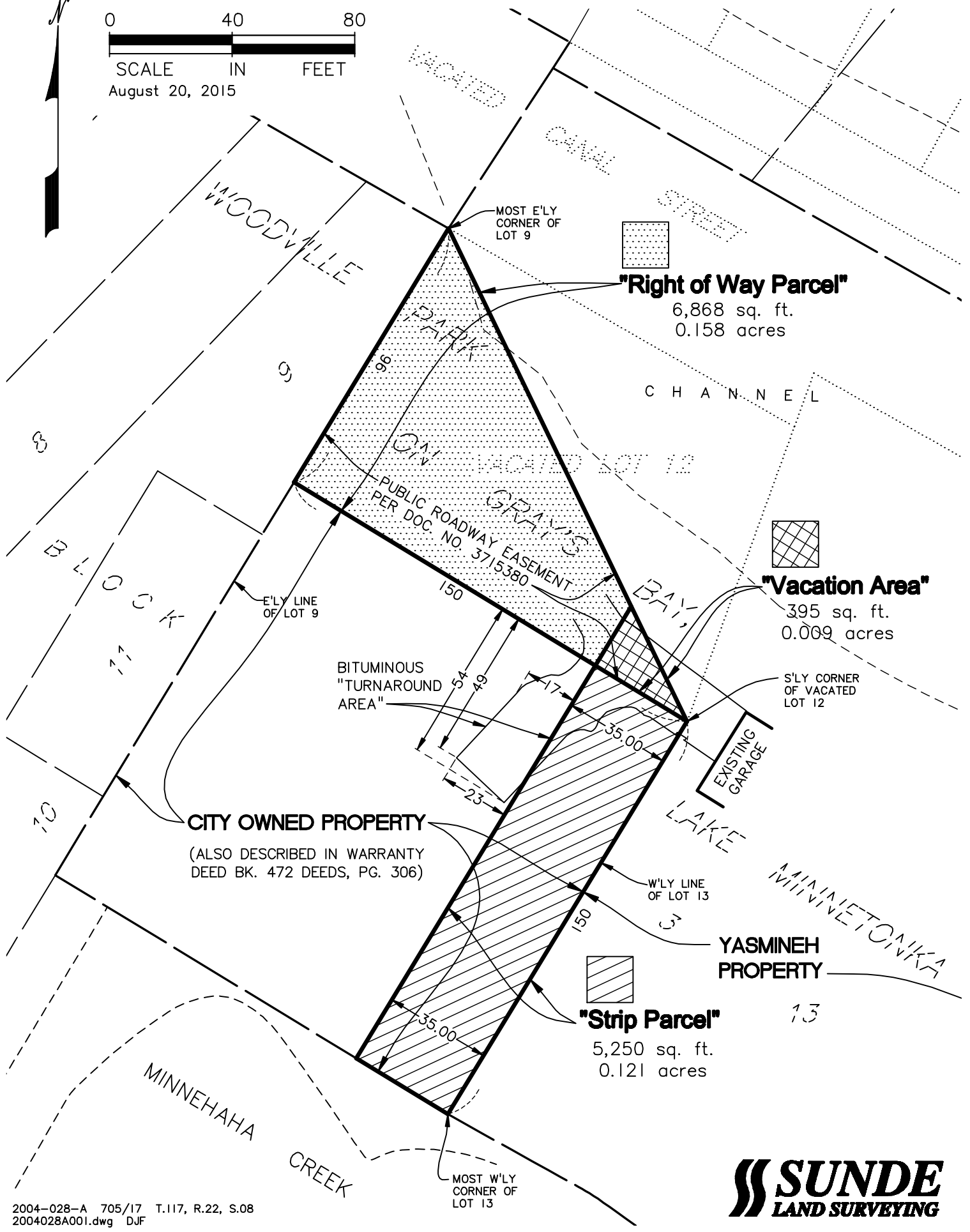
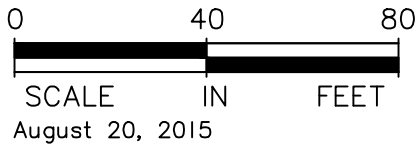
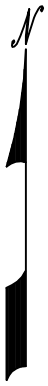
ATTACHMENT D

EXHIBIT B

Location of Property and Easement Area

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EXHIBIT B



"Right of Way Parcel"
6,868 sq. ft.
0.158 acres

"Vacation Area"
395 sq. ft.
0.009 acres

"Strip Parcel"
5,250 sq. ft.
0.121 acres

CITY OWNED PROPERTY
(ALSO DESCRIBED IN WARRANTY DEED BK. 472 DEEDS, PG. 306)

YASMINEH PROPERTY

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EXHIBIT C

June 5, 1979 agreement between Hennepin County and the District

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ATTACHMENT D

Agreement No. 80463

AGREEMENT

THIS AGREEMENT, Made by and between the COUNTY OF HENNEPIN, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "COUNTY", and the MINNEHAHA CREEK WATERSHED DISTRICT, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "DISTRICT";

W I T N E S S E T H:

WHEREAS, the Gray's Bay Dam on Lake Minnetonka, which forms the source of Minnehaha Creek, is in need of repair; and

WHEREAS, Hennepin County owns the dam structure and land and additional adjacent land for dam-related purposes; and

WHEREAS, Hennepin County manages lake improvement programs in accordance with M.S. 378.31; and

WHEREAS, the Minnehaha Creek Watershed District, established in accordance with M.S. Chapter 112, pursuant to law, ordered the basic water and land management project for Minnehaha Creek on April 20, 1978, which project includes replacement of a portion of the existing dam and installation of a new control structure and improvements to the existing public facilities at Gray's Bay dam site; and

WHEREAS, it is also desirable to modify and upgrade the public access areas in the control structure area; and

WHEREAS, Hennepin County has agreed, by Resolution No. 77-11-1155 dated November 29, 1977, to contribute to the cost of construction of portions of the dam and control structure and future repair and maintenance costs thereof and to authorize the continued use of pertinent County

ATTACHMENT D

property in connection with the construction, management, operation and maintenance of the facilities by the DISTRICT and to provide for the ownership of said dam and control structure by the DISTRICT; and

WHEREAS, M.S. §§471.59 and 112.68 authorize the DISTRICT and the COUNTY to contract with each other in order to accomplish the foregoing objectives;

NOW, THEREFORE, the parties agree as follows:

I.

The DISTRICT will construct new portions of a dam and also a control structure (hereinafter collectively referred to as "Dam") at Gray's Bay, Lake Minnetonka, which will replace portions of the existing Gray's Bay Dam, will modify and upgrade appurtenances to said Dam as it deems necessary, and will own, operate, manage, inspect, control, repair, and maintain said Dam and its appurtenances, said Dam, including the earthen portions thereof, being located and extended in and across certain portions of the lake bed lying between those certain parcels of land described in Paragraph IV below and shown on Exhibit 1, attached hereto.

For good and valuable consideration, the COUNTY does hereby transfer and convey to the DISTRICT all of its rights, title and interests in said Dam, provided that unless otherwise provided by the Legislature or by mutual agreement of the herein parties; the DISTRICT shall not relinquish, give, sell or transfer, in any manner, any of the DISTRICT'S right, title or interest in said Dam to any person as defined in Section 645.44(7) of Minnesota Statutes, without first giving to the COUNTY a reasonable opportunity to re-acquire, at a nominal cost, any or all of the right, title or interest in said Dam being offered to said person. It is understood that in the event of any such re-acquisition of the Dam by the COUNTY, the DISTRICT shall assure that the Dam is in a sound and proper state of repair.

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II.

The DISTRICT will obtain all necessary approvals and permits including but not limited to Minnesota Department of Natural Resources, U.S. Corps of Engineers and City of Minnetonka and will comply with any and all requirements or restrictions pertaining to said Dam.

III.

The DISTRICT will pay all costs in connection with the construction of the Dam, including, but not limited to, engineering fees, investigation costs, appraisal costs, administration costs, surveying costs, dredging costs, demolition costs, construction costs, attorneys fees, permit and license fees and all other costs whether similar or dissimilar in nature relating to work or improvement of the Dam and its appurtenances. The DISTRICT will keep an accurate record of all such costs which will be open to examination by the County at any time and the DISTRICT shall furnish copies of construction specifications, bid tabulations and, at the COUNTY'S option, a financial accounting or summary of such costs.

IV.

The COUNTY, through the vehicle of an easement, which document is attached hereto as Exhibit 2, authorizes the use of the following-described property to the DISTRICT to construct, reconstruct, inspect, modify, maintain, restore or repair the Dam and appurtenances thereto; for the temporary storage only of necessary equipment, machinery, materials and tools in connection therewith; for access to said Dam in connection with any work or improvements thereto; and to provide stability as may be necessary with respect to supports essential to the termini of the Dam. Such authority shall exist until said DISTRICT is terminated pursuant to the provisions of M.S. 112.411 or as the Legislature may otherwise provide or until this contract is terminated by the herein

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parties as provided hereunder.

Lot 20, Intpa-Nini Lake Minnetonka, as the same appears upon the plat thereof on file and of record in the office of The Register of Deeds in and for Hennepin County, and

Commencing at a point on the low water mark on Lake Minnetonka which said point is located as follows: Commencing at the 1/4 Section corner between Sections 8 and 9, Township 117 North, Range 22 West; thence south on section line 644 feet; thence west at right angles 1012.5 feet to said point of beginning of land to be described; thence North 32 degrees 27' East 150 feet to a point which is 517.4 feet south and 932 feet west of said 1/4 Section corner; thence North 57 degrees 33' West 150 feet; thence South 32 degrees 27' West 150 feet to low water mark of said lake; thence southeasterly along said low water mark to place of beginning. The courses given are on the assumption that said section line is due north and south.

It is incumbent upon the DISTRICT to be ever mindful of the fact that portions of the aforesaid-described property are utilized by the general public for various activities. It shall be the responsibility of the DISTRICT to use its best efforts and good faith to make such use of the property as herein permitted so as to minimize interference with the general public.

V.

The COUNTY will pay to the DISTRICT by May 9, 1979, the sum of Forty Thousand Dollars (\$40,000) as its share of all the aforesaid costs set forth in Section III above.

VI.

The COUNTY will pay ten percent (10%) of the actual costs of repair and maintenance of the Dam to the DISTRICT for the calendar year 1980 and each year thereafter until said Dam shall cease to be managed and controlled by the DISTRICT. Said payments shall be made after the DISTRICT submits an accounting and detailed invoice in a form acceptable to the COUNTY.

The DISTRICT agrees that the COUNTY or any of its duly authorized representatives, at any time during normal

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business hours and as often as the COUNTY may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, records, etc. which are pertinent and involve transactions relating to this Agreement. Such material must be retained for two years by the DISTRICT.

VII.

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the DISTRICT as the agent, representative or employee of the COUNTY for any purpose or in any manner whatsoever. The DISTRICT represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the DISTRICT or other persons, while engaged in the performance of any work or services required by the DISTRICT under this Agreement, shall have no contractual relationship with the COUNTY and shall not be considered employees of the COUNTY and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the DISTRICT its officers, agents, contractors or employees shall in no way be the responsibility of the COUNTY and the DISTRICT does hereby hold the COUNTY harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the COUNTY, including, without limitation, tenure rights, medical and

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hospital care, sick and vacation leave, severance pay and P.E.R.A.

The COUNTY has herein divested itself of its ownership interests in the Dam and it is the intention of the parties herein that the COUNTY shall not be liable for any injury or damage to person or property which, in any manner, might occur or claims of any kind that might be asserted because of the Dam. Accordingly, it is understood that the COUNTY, its officers, agents or employees, either in their individual or official capacity, shall not be responsible or liable in any manner to the DISTRICT for any liability, claim, demand, costs, action or cause of action of any kind or character arising out of the fact of the existence of the Dam itself or any appurtenance, or arising out of the fact of transfer to the DISTRICT of ownership of the Dam and the related rights and obligations in connection therewith, or arising out of or by reason of any action or omission with respect to any work or improvement by the DISTRICT, or arising out of any acts or omission of any contractor under any contract let by the DISTRICT for the performance of any work with respect to the Dam or appurtenances thereto; the DISTRICT agrees to defend, indemnify, save and keep said COUNTY, its officers, agents and employees harmless from any and all liability, claims, demands, actions or causes of actions or costs, including attorney's fees arising out of, directly or indirectly, the acts or omissions of the DISTRICT, its officers, agents, contractors or employees (1) with respect to the existence, operation, or management of the Dam or appurtenances or any malfunctions, leaks or breaks therein, and (2) with respect to any construction, work, improvement, inspection, modification, maintenance or repair relating to said Dam or appurtenances, and (3) with respect to the storage, movement, operation, use, possession or existence of equipment, machinery, tools or materials

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belonging to the DISTRICT, its officers, agents, employees or contractors, and (4) with respect to the use, in any manner, of the property described in Paragraph IV hereof.

In any contract with a contractor performing any work or furnishing any article with respect to said Dam, the DISTRICT shall insert a clause requiring the contractor to hold the COUNTY harmless and also clauses requiring the contractor to provide and maintain insurance, all as follows:

1. The contractor shall defend, indemnify and save harmless the County of Hennepin, its officers, agents and employees from all suits, actions and claims of any character brought because of injuries or damages received or sustained by any person, persons or property on account of the operations of the said contractor or any subcontractor or their agents or employees, or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect or misconduct of said contractor or any subcontractor or their agents or employees; or because of any claims arising or amounts recovered from infringements of patent, trademark or copyright; or because of any claims arising or amounts recovered under the Workers' Compensation Act; or under any other law, ordinance, order or decree; or because of claims (including, without limitation quasi-contractual claims), liens and claims of liens for labor performed or material furnished or subcontracted for by contractor without proper authorization of the DISTRICT; and contractor shall pay all damages, costs and expenses, including reasonable attorney's fees in connection therewith.

2. The contractor shall not commence work under the contract until he has obtained the following insurance, and such insurance has been filed with the Hennepin County Bureau of Public Service, Department of Environment and Energy. Any such insurance shall be written by and insurance company or companies duly licensed with the state of Minnesota. The contractor shall deposit a certified duplicate copy of the public liability and property damage insurance policies required hereunder with the above department. The contractor shall also furnish a certificate of insurance from the insurance company issuing the policies for Workers' Compensation Insurance and such other insurance as is herein required. All policies and certificates shall provide that the policies shall give thirty (30) days' written notice to the County before cancellation, material change or non-renewal.

The contractor shall procure and maintain insurance policies during the life of the contract and until the work to be performed has been fully accepted, as follows:

A. Public Liability and Property Damage Insurance:
For and in behalf of himself, a general liability policy protecting against claims or damages for personal injuries, including accidental death, as well as against claims for property damage which may arise from operations under the contract, whether such operations be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them; provided that the contractor may require each of its subcontractors

ATTACHMENT D

to procure and maintain, during the life of its subcontract, public liability coverage as provided herein. Said Public Liability and Public Property Damage insurance policy shall provide that the insurance company waives the right to assert the immunity of any governmental entity as a defense to any claim made under said insurance. The amount of said insurance will be as follows: Public Liability Insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of bodily injuries to, or death of one person and subject to the same limit for each person in a total amount of not less than Five Hundred Thousand Dollars (\$500,000.00) on account of one occurrence and property damage insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) for all damages to or destruction of property in any one occurrence. The liability policies shall include contractual liability coverage protecting the County, its officers, agents and employees.

Property Damage Liability Coverage shall include coverage for hazards of explosion, collapse and damage to underground property and broad form property damage. Completed Operations Coverage shall be maintained in effect during construction and for a period of not less than one year after date of substantial completion of the work. The contractor shall be responsible for all deductions or retentions which may apply to any of the insurance coverages.

B. Workers' Compensation Insurance: For all his employees employed at the site of the project and, in case any work is sublet, the contractor shall require the subcontractor to provide Workers' Compensation Insurance for all his employees.

C. Automobile Public Liability Insurance One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of the bodily injuries to, or death of one person, and subject to that limit for each person, a total of Three Hundred Thousand Dollars (\$300,000.00) for any one occurrence, and property damage liability insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) for all damages to or destruction of property in any one occurrence. Said insurance shall be written on a Comprehensive Automobile Liability Form and shall cover owned, non-owned and hired vehicles and shall also cover loading and unloading operations, provided that the contractor may include any subcontractor in its policy or require any subcontractor to obtain its own automobile liability coverage, as set forth herein.

VIII.

In accordance with Hennepin County Affirmative Action Policy and the County Commissioners' policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service or activity on the grounds of race, color, creed,

ATTACHMENT D

religion, age, sex, handicap, marital status, affectional preference, public assistance status, ex-offender status or national origin; and no person who is protected by applicable Federal and State laws against discrimination shall be otherwise subjected to discrimination. The DISTRICT will furnish all information and reports required by Hennepin County or by Executive Order No. 11246 and Revised Order No. 4 and by the rules and regulations and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

IX.

This contract shall commence upon its execution by the DISTRICT and the COUNTY and shall terminate upon mutual agreement of the parties hereto. Neither the COUNTY nor the DISTRICT shall assign, sublet or transfer this Agreement without the written consent of the other.

X.

The COUNTY and the DISTRICT each binds itself, its successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement, except as above. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a part hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the 5th day of June, 1979. *jc*

COUNTY OF HENNEPIN, STATE OF MINNESOTA:

By: *Nancy Olson*
Chairman of its County Board

And: *David Cochran*
Deputy County Administrator

ATTEST: *Judith A. Chumley*
Deputy County Auditor

Upon proper execution, this Agreement will be legally valid and binding.

David Cochran
Assistant County Attorney
Date: 5-9-79

APPROVED AS TO EXECUTION:

David Cochran
Assistant County Attorney
Date: 5-9-79

MINNEHAHA CREEK WATERSHED DISTRICT

By: *David H. Cochran*
Its

And: *Albert L. Johnson*
Its

ATTACHMENT D

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

On this 30th day of April, 1979, before me appeared David H. Cochran and Albert L. Lehman to me personally known, who, being by me duly sworn, did say that they are respectively the President and Vice President of MINNEHAHA CREEK WATERSHED DISTRICT, the District described in and who executed the foregoing instrument; that the said instrument was executed in behalf of said District by authority of its Board of Managers and said David H. Cochran and Albert L. Lehman acknowledge said instrument to be the free act and deed of said District.

Gary R. Macomber

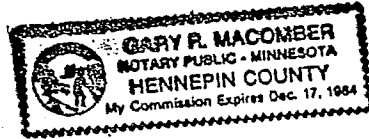


Exhibit 2

EASEMENT AGREEMENT

THIS INDENTURE, Made this 5th day of June, 1979, between the COUNTY OF HENNEPIN, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as "COUNTY", and the MINNEHAHA CREEK WATERSHED DISTRICT, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as "DISTRICT";

W I T N E S S E T H:

That the COUNTY, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant; bargain, sell and convey unto said District an easement to, from, upon, over, under and across the property described below for the following purposes:

1. For access to that certain Dam lying in portions of the lake bed between the below-described parcels of property in order to construct, reconstruct, inspect, modify, maintain, restore or repair said Dam and appurtenants thereto, the approximate location of said Dam being depicted on Exhibit A attached hereto;
2. For the temporary placing or storage only of necessary equipment, machinery, materials and tools in connection with any work or improvements with respect to the Dam and any appurtenant;
3. To provide stability as may be necessary with respect to supports essential to the termini of the Dam or appurtenances;

All pertaining to the following parcels of land, to-wit:

Lot 20, Intpa-Nini Lake Minnetonka, as the same appears upon the plat thereof on file and of record in the office of The Register of Deeds in and for Hennepin County, and

Commencing at a point on the low water mark on Lake Minnetonka which said point is located as follows: Commencing at the 1/4 Section corner between Sections 8 and 9, Township 117 North, Range 22 West; thence south

TRANSFER ENTERED

JUN 19 1979

FINANCE DIVISION
HENNEPIN COUNTY

BY [Signature] DEPUTY

ATTACHMENT D

on section line 664 feet; thence west at right angles 1012.15 feet to said point of beginning of land to be described; thence North 32 degrees 27' East 150 feet to a point which is 517.4 feet south and 932 feet west of said 1/4 Section corner; thence North 57 degrees 33' West 150 feet; thence South 32 degrees 27' West 150 feet to low water mark of said lake; thence southeasterly along said low water mark to place of beginning. The courses given are on the assumption that said section line is due north and south.

The parties hereto agree that the use of the easement area above described shall be subject to the following conditions and agreements:

1. This easement shall cease, terminate and be extinguished if said District is terminated pursuant to the provisions of M.S. 112.411 or as the Legislature may otherwise provide or if that certain contract between the District and the County bearing Hennepin County Contract No. 80463 is terminated; and the County shall at once have the right to resume exclusive possession of the said land.
2. The District, being cognizant of the fact that portions of the above-described property are utilized by the general public for various activities, shall use its best efforts and good faith to make such use of the property as herein permitted so as to minimize interference with the general public.
3. The County shall have the right to use the easement area for any use not inconsistent with said easement and which will not interfere with the herein granted uses of said easement by the District.
4. District agrees to keep said property in a good and safe condition free from waste, so far as affected by District's operations, and after use of said property in any manner by District, its officers, agents, employees or contractors, District at its own expense shall promptly restore all such property to as nearly the same condition as existed prior to any such use as is reasonably possible. If any portion of the restored property should (a) settle within two (2) years of such restoration or (b) appreciably deteriorate within a shorter than normal period of ordinary usage, whether due to poor workmanship, defective or insufficient materials, or adverse climatic conditions at the time of such restoration, the District at its own expense and in a good and workmanlike manner shall repair or restore the same as is necessary and so that it is consistent with the grade of the surrounding unrestored property. Should the District fail to restore said property promptly, all as aforesaid, the County, at its sole election, may perform such restoration at the expense of the District, which expense District agrees to pay to County upon demand.
5. Any equipment, machinery, materials or tools placed or

ATTACHMENT D

stored on the herein easement property shall be removed by the District at its expense promptly after completion of the work or improvement which necessitated the use, placement or storage of the same.

6. The District agrees to defend, indemnify, save and keep said County, its officers, agents and employees harmless from any and all liability, claims, demands, actions or causes of actions or costs, including attorney's fees arising out of, directly or indirectly, the acts or omissions of the District, its officers, agents, contractors or employees (a) with respect to the existence, operation, or management of the Dam or appurtenances or any malfunctions, leaks or breaks therein, and (b) with respect to any construction, work, improvement, inspection, modification, maintenance or repair relating to said Dam or appurtenances, and (c) with respect to the storage, movement, operation, use, possession or existence of equipment, machinery, tools or materials belonging to the District, its officers, agents, employees or contractors, and (d) with respect to the use, in any manner, of the property described herein.

In any contract with a contractor performing any work or furnishing any article with respect to said Dam, the District shall insert a clause requiring the contractor to hold the County harmless and also clauses requiring the contractor to provide and maintain insurance, all as follows:

A. The contractor shall defend, indemnify and save harmless the County of Hennepin, its officers, agents and employees from all suits, actions and claims of any character brought because of injuries or damages received or sustained by any person, persons or property on account of the operations of the said contractor or any subcontractor or their agents or employees, or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect or misconduct of said contractor or any subcontractor or their agents or employees; or because of any claims arising or amounts recovered from infringements of patent, trademark or copyright; or because of any claims arising or amounts recovered under the Workers' Compensation Act; or under any other law, ordinance, order or decree; or because of claims (including, without limitation quasi-contractual claims), liens and claims of liens for labor performed or material furnished or subcontracted for by contractor without proper authorization of the District; and contractor shall pay all damages, costs and expenses, including reasonable attorney's fees in connection therewith.

ATTACHMENT D

B. The contractor shall not commence work under the contract until he has obtained the following insurance, and such insurance has been filed with the Hennepin County Bureau of Public Service, Department of Environment and Energy. Any such insurance shall be written by and insurance company or companies duly licensed with the state of Minnesota. The contractor shall deposit a certified duplicate copy of the public liability and property damage insurance policies required hereunder with the above department. The contractor shall also furnish a certificate of insurance from the insurance company issuing the policies for Workers' Compensation Insurance and such other insurance as is herein required. All policies and certificates shall provide that the policies shall give thirty (30) days' written notice to the County before cancellation, material change or non-renewal.

The contractor shall procure and maintain insurance policies during the life of the contract and until the work to be performed has been fully accepted, as follows:

C. Public Liability and Property Damage Insurance:
For and in behalf of himself, a general liability policy protecting against claims or damages for personal injuries, including accidental death, as well as against claims for property damage which may arise from operations under the contract, whether such operations be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them; provided that the contractor may require each of its subcontractors injuries, including accidental death, as well as against claims for property damage which may arise from operations under the contract, whether such operations be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them; provided that the contractor may require each of its subcontractors to procure and maintain, during the life of its subcontract, public liability coverage as provided herein. Said Public Liability and Public Property Damage insurance policy shall provide that the insurance company waives the right to assert the immunity of any governmental entity as a defense to any claim made under said insurance. The amount of said insurance will be as follows: Public Liability Insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of bodily injuries to, or death of one person and subject to the same limit for each person in a total amount of not less than Five Hundred Thousand Dollars (\$500,000.00) on account of one occurrence and property damage insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) for all damages to or destruction of property in any one occurrence. The liability policies shall include contractual liability coverage protecting the County, its officers, agents and employees.

Property Damage Liability Coverage shall include coverage for hazards of explosion, collapse and damage to underground property and broad form property damage. Completed Operations Coverage shall be maintained in effect during construction and for a period of not less than one year after date of substantial completion of the work. The contractor shall be responsible for all deductions or retentions which may apply to any of the insurance coverages.

ATTACHMENT D

D. Workers' Compensation Insurance: For all his employees employed at the site of the project and, in case any work is sublet, the contractor shall require the subcontractor to provide Workers' Compensation Insurance for all his employees.

E. Automobile Public Liability Insurance One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of the bodily injuries to, or death of one person, and subject to that limit for each person, a total of Three Hundred Thousand Dollars (\$300,000.00) for any one occurrence, and property damage liability insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) for all damages to or destruction of property in any one occurrence. Said insurance shall be written on a Comprehensive Automobile Liability Form and shall cover owned, non-owned and hired vehicles and shall also cover loading and unloading operations, provided that the contractor may include any subcontractor in its policy or require any subcontractor to obtain its own automobile liability coverage, as set forth herein.

7. This Agreement or the rights and privileges granted shall not be assigned, transferred or sublet by the District in any manner, by operation of law or otherwise, without the written consent of the County. Subject thereto, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have signed and caused this instrument to be executed as of the day and year first above written.

COUNTY OF HENNEPIN, STATE OF MINNESOTA

By: Nancy Olson
Chairman of its County Board

And: Dee Wager
Deputy County Auditor

MINNEHAHA CREEK WATERSHED DISTRICT

By: [Signature]
Its PRESIDENT

And: [Signature]
Its VICE PRESIDENT

ATTACHMENT D

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 30th day of April 1979, before me appeared David H. Cochran and Albert L. Lehman to me personally known, who, being by me duly sworn, did say that they are respectively the President and Vice President of MINNEHAHA CREEK WATERSHED DISTRICT, the District described in and who executed the foregoing instrument; that the said instrument was executed in behalf of said District by authority of its Board of Managers and said David H. Cochran and Albert L. Lehman acknowledge said instrument to be the free act and deed of said District.

Gary R. Macomber



STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 11th day of June, 1979 by Nancy Olkon as Chairman of the Board of Hennepin County Commissioners and by Dee Wagner, Deputy County Auditor, of the County of Hennepin, a body politic and corporate, a Minnesota municipal corporation, on behalf of the County of Hennepin.

Judith A. Chumley



This instrument was drafted by:

LeRoy W. Jackson
2000A Government Center
Minneapolis, Minnesota 55487

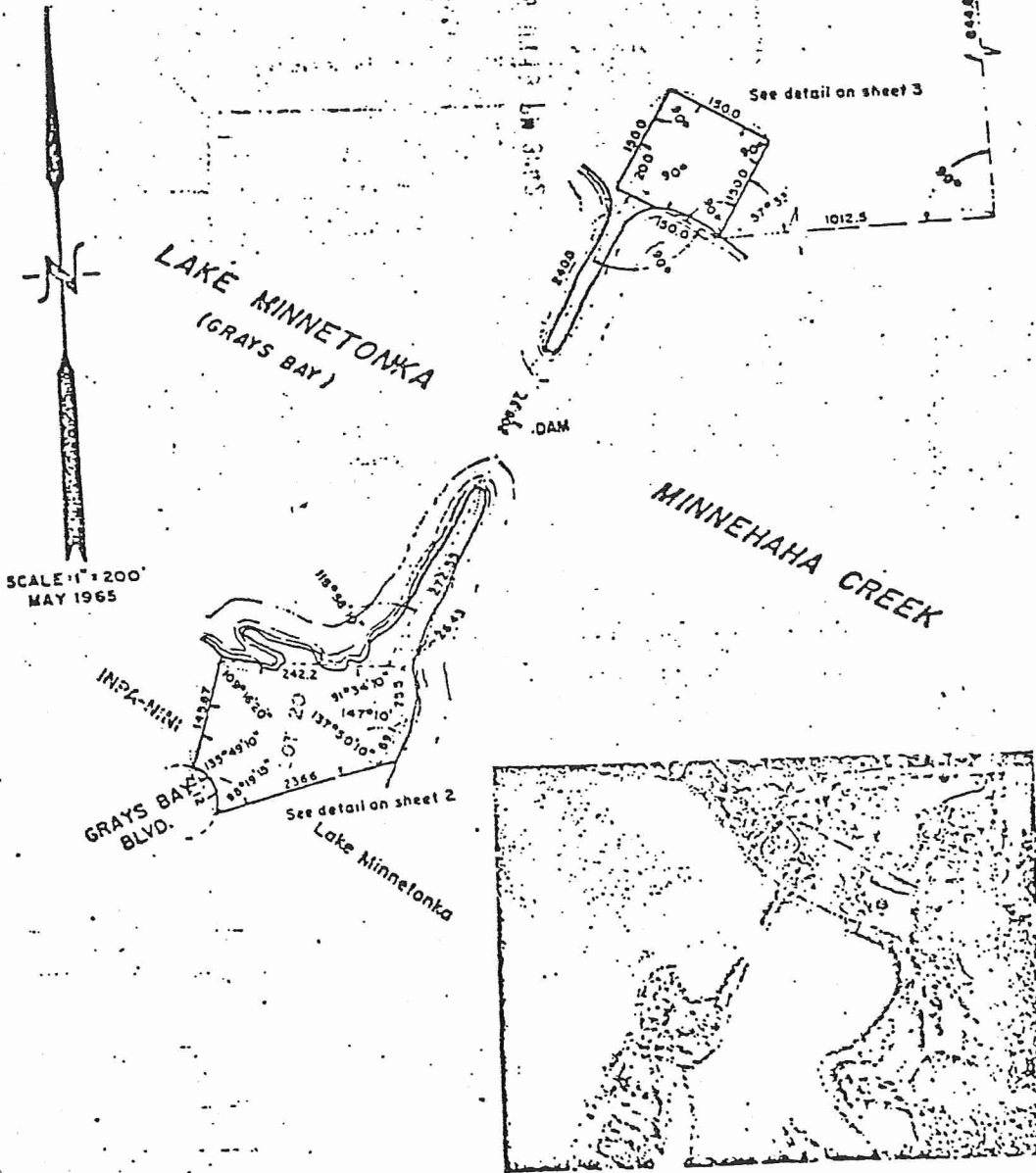
ATTACHMENT D
HENNEPIN COUNTY PROPERTY

EXHIBIT A TO EASEMENT
BETWEEN COUNTY OF HENNEPIN
AND THE MINNEHAHA CREEK
WATERSHED DISTRICT

GRAYS BAY DAM

E. 1/4 Cor. Sec. B, T. 117, R. 22

175 ACRES



SC
V