

TITLE: Approval of Agreement for Project Easement for Powell Road Pipe Diversion Project

RESOLUTION NUMBER: 14-052

MEETING DATE: June 26, 2014

PREPARED BY: Renae Clark

E-MAIL: rclark@minnehahacreek.org

TELEPHONE: 952-471-8226

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

WORKSHOP ACTION:

<input checked="" type="checkbox"/> Advance to Board mtg. Consent Agenda. action.	<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 type="checkbox"/> Other (specify): _____	

PURPOSE or ACTION REQUESTED:

The Board of Managers is requested to approve the attached agreement and project easement which provided land rights for the construction of a stormwater diversion pipe across private commercial property at the location of 8050 Powell Road, St. Louis Park and 8098 Excelsior Blvd, Hopkins. Total consideration for the easement includes payment of \$77,800 and in-kind work as part of project construction valued at \$16,800.

PROJECT/PROGRAM LOCATION:

See attached maps

PROJECT TIMELINE:

December 2012-May 2013	Project Feasibility
June 2013	Community Informational Meeting and Public Hearing
July 2013	Project Ordering
2014	Design Powell Road Diversion
2015	Construction

PROJECT/PROGRAM COST:

Fund name and number: 325 Blake Road Stormwater Management Project, 3145
Feasibility Study Estimate: \$2,747,100
Expenditures to date: \$88,000
Requested amount of funding: \$77,800
Is a budget amendment requested? No
Is additional staff requested? No

PAST BOARD ACTIONS:

September 22, 2011	RBA 11-085	Authorization to Purchase 325 Blake Road
August 23, 2012	RBA 12-080	Authorization to initiate feasibility
June 13, 2013	Review Draft Feasibility	No Action Required
June 27, 2013	Public Hearing for Ordering	No Action Required
July 25, 2013	RBA 13-078	Ordered 325 Blake Road Stormwater Management Project Authorized staff to solicit project design services
April 24, 2014	RBA 14-029	Authorization to award a design contract to Wenck Associates for a not to exceed amount of \$88,000 for 325 Blake Road Stormwater Management Project: Powell Road Pipe Diversion

SUMMARY:

Through the Minnehaha Creek Watershed District's Balanced Urban Ecology Policy the District recognizes the integrated relationship of water resources and the built environment and that our work is strengthened by collaborative efforts. This framework reinforces the District's commitment to integrating its water resource implementation efforts with urban planning, through innovation, partnership and a sustained geographic focus.

The District has focused strategically on a portion of the Creek system most in need, between West 34th Street and Meadowbrook Lake referred to as the Urban Creek Corridor. The Minnehaha Creek/Lake Hiawatha Total Maximum Daily Load Study identified this area as generating the highest pollutant load per unit area when compared to other reaches of Minnehaha Creek.

The 325 Blake Road parcel in the City of Hopkins was purchased by the District in 2011 and is located in the heart this priority project area for the Minnehaha Creek Watershed District. The site is 16.8-acre and currently houses a cold storage warehouse. The parcel was strategically acquired by MCWD for purposes of expanding the riparian greenway around Minnehaha Creek and improving area wide stormwater management. The portion of the parcel not required to fulfill these purposes will be sold for redevelopment, which will allow the District to recover a significant portion of its initial investment. The site represents one piece of the District's larger strategic initiative to (1) improve the quality and manage the quantity of stormwater runoff; (2) enhance the ecological integrity of the stream system; and (3) facilitate broader community goals of economic development and livability by allowing the restored stream system to be integrated into the developed landscape.

Approximately 329.8 acres of land surrounding 325 Blake Road currently drains to Minnehaha Creek, most of which goes untreated. The July 2013 Feasibility Study evaluated the opportunity to capture as much "first flush" stormwater runoff from surrounding watersheds as possible. The Study indicated that phosphorus loads can be reduced by 70 to 90 percent by infiltrating and filtering the runoff from the 0.5-inch to 1.25-inch rain events. Analysis of the storm sewer networks concluded that that low flow drainage from approximately 268.3 acres could feasibly be diverted to a treatment facility at 325 Blake Road. (See attached drainage area map.)

In July 2013 the Board ordered a capital project comprised of a suite of projects to accomplish regional stormwater management at 325 Blake Road which includes two primary storm sewer diversions, pre demolition work at 325 Blake Road and a regional stormwater treatment area to be located at 325 Blake Rd. The Board authorized pre demolition planning in January 2014 and project design of the Powell Road storm sewer diversion in April 2014.

Drainage will be diverted to 325 Blake Road through construction of two primary storm sewer diversions. A portion of the drainage of subwatersheds west of 325 Blake Road (30.3 acres) will be intercepted and diverted via a constructed storm sewer under Lake Street NE. This pipe would travel east under Blake Road into 325 Blake Road. This work will be planned and coordinated with a planned Metropolitan Council project scheduled for 2015. Drainage from the area south of 325 Blake (216.9 acres) will be captured and diverted on Powell Road through a new storm sewer that would be tunneled under the existing railroad.

The suite of projects are planned for phased implementation. Accordingly, project construction is spread out over a period of time. The Powell Road Diversion is scheduled to be designed in 2014 and constructed in 2015. The Lake Street Diversion is expected to be designed and constructed in 2015 to coincide with Met Council's sewer project. Finally, the facilities on 325 Blake Road will be designed and constructed in coordination with site demolition and redevelopment in 2016 or later.

The new storm sewer diverted on Powell Road will cross private property at the location of 8050 Powell Road, St. Louis Park and 8098 Excelsior Blvd, Hopkins owned by Alex Ugorets. To construct the project we will need a 28,250 SF temporary and 28,616 permanent construction easement. On April 24th the Board reviewed and accepted a signed Letter of Understanding (LOU) with the property owner. Staff with direction of real estate council and District Legal Counsel have negotiated the attached agreement and easement. The agreement and easement terms are consistent with the LOU, property valuation advice, and Board Discussion on May 8, 2014 and generally include:

1. Initial Payment of \$38,900
2. Implementation of a site grading plan as part of the District's construction
3. Agreement that Owner can pave areas shown on the grading plan and based on progress of construction of the District's proposed regional stormwater facility at 325 Blake Road, Owner may use capacity of the facility to the extent required to meet criteria for peak flow, volume and water quality control under the District stormwater management rule.
4. The District has 120 days to provide written notice to proceed with the project. The notice will be accompanied by additional payment of \$38,900.
5. District election to proceed is based on adequate assurance determined by the District Administrator on advice of Legal Council that soil conditions or Rail Authority approval will not impact the District's ability to construct the project.

ATTACHMENTS:

1. Letter of Understanding
2. Project Agreement for easement with attached maps
3. Easement with attachments
4. Drainage Area Map

RESOLUTION

RESOLUTION NUMBER: 14-052

TITLE: **Approval of Agreement for Project Easement for Powell Road Pipe Diversion Project**

WHEREAS, The Minnehaha Creek Watershed District (MCWD) has adopted a *Comprehensive Water Resources Management Plan (WRMP)* in accordance with Minnesota Statutes §103B.231;

WHEREAS, the District's *Water Resources Management Plan* includes a Land Conservation Program;

WHEREAS, the WRMP capital improvement program includes the Minnehaha Creek Volume and Load Reduction project, which encompasses the construction of stormwater facilities to manage stormwater from the developed contributing area that presently discharges into Reaches 19-21 of the creek without volume control or water quality treatment;

WHEREAS, the WRMP established Minnehaha Creek as a key conservation area with goals of collaborating to create and preserve natural stream corridors, provide buffers, supplement other program activities, increase stormwater runoff abstraction, provide flood control, and promote public education and access;

- WHEREAS, the WRMP provides that the Land Conservation Program will help accomplish these goals by connecting or expanding existing public lands, undertaking a restoration project, or by leveraging redevelopment opportunities, and further provides for capital spending within the Minnehaha Creek corridor (e.g., 5.8.2 and 5.8.5) to restore streambank stability and reduce stormwater volumes and nutrient *loading* to the creek, including construction of infiltration basins and devices, wetland restoration, reforestation, revegetation, and stormwater detention;
- WHEREAS, the Board of Mangers adopted a policy “In Pursuit of a Balanced Urban Ecology in the Minnehaha Creek Watershed District” to guide the MCWD’s planning and watershed management activities, integrating its water resource implementation efforts with urban planning, through innovation, partnership and a sustained geographic focus;
- WHEREAS, the Minnehaha Creek/Lake Hiawatha Total Maximum Daily Load Study identified the area between West 34th Street and Meadowbrook Lake as generating the highest pollutant load per unit area when compared to other reaches of Minnehaha Creek;
- WHEREAS, the MCWD established the area between West 34th Street and Meadowbrook Lake as a priority area for capital project improvements, aimed at stormwater improvement and streambank restoration;
- WHEREAS, in 2011 the District acquired property at 325 Blake Road for the purposes of stream restoration, stormwater management, corridor improvements, public land expansion and redevelopment opportunities;
- WHEREAS, the planned improvements at 325 Blake Road are part of a larger comprehensive effort to manage regional stormwater and improve the riparian corridor that includes Methodist Hospital, Reach 20, 7630 Excelsior Blvd, Cottageville Park and Knollwood Mall;
- WHEREAS, the Board of Managers has reviewed the feasibility analysis and associated technical and financial information regarding the project for a regional stormwater project at 325 Blake Road in the Minnehaha Creek Subwatershed, which examines the feasibility of collecting and managing stormwater discharging to the creek within Reaches 19-21 and has considered all input received from interested parties during the course of review;
- WHEREAS, in accordance with Minnesota Statutes § 103B.251, subdivision 3, the MCWD held a duly noticed public hearing on ordering of the Project on June 27, 2013, at which time all interested parties had the opportunity to speak for and against the Project;
- WHEREAS, the City of Hopkins City Council adopted a resolution of support for the project at their July 9, 2013 Council meeting;
- WHEREAS, the City of St. Louis Park City Council adopted a resolution of support for the project on September 3, 2013;
- WHEREAS, pursuant to Minnesota Statutes § 103B.251 and the WRMP, the MCWD Board of Managers ordered the 325 Blake Road Stormwater Management Project, with a total estimated cost of \$2,747,100;
- WHEREAS, District staff is exploring means of defraying and fairly allocating project costs and shall make recommendations to the Board of Managers in advance of final design approval by the Board;
- WHEREAS, the MCWD Board of Managers authorized a project design contract with Wenck Associates for a not to exceed amount of \$88,000;

WHEREAS, MCWD Staff, in consultation with legal counsel, and the affected landowner of 8050 Powell Road, St. Louis Park and 8098 Excelsior Blvd, Hopkins, have developed the attached agreement and easement to provide for access and permanent rights over the project area to construct, maintain, and repair the project for total payment from the Watershed District to the Land Owner of \$77,800 plus additional site grading work as in kind payment valued at \$16,800;

WHEREAS, at the MCWD Board Workshop dated June 12, 2014 it was moved by Manager Miller, seconded by Manager Casale and passed 4-0 that this resolution be forward to the next Board Meeting for final action.

NOW, THEREFORE, BE IT RESOLVED, the MCWD Board of Managers authorize the Board President, upon advice of counsel, to sign the agreement to convey the project easement 8050 Powell Road, St. Louis Park and 8098 Excelsior Boulevard, Hopkins and authorize initial payment of \$38,900;

BE IT FURTHER RESOLVED, that the Board of Managers take the following additional actions to execute the transaction:

1. Authorize the District Administrator to take all steps necessary to ensure District performance of its rights and responsibilities under the agreement;
2. Upon satisfaction to the District Administrator of all requirements and responsibilities within the agreement, authorize final payment in the amount of \$38,900 for a 28,250 SF temporary construction easement and 28,616 permanent construction easement located at 8050 Powell Road, St. Louis Park and 8098 Excelsior Boulevard, Hopkins;
3. Authorize the Board President, upon advice of counsel, to sign, accept, and record the easement at 8050 Powell Road, St. Louis Park and 8098 Excelsior Boulevard, Hopkins;

Resolution Number 14-052 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: June 26, 2014.

Secretary Date: _____



The Minnehaha Creek Watershed District is committed to a leadership role in protecting, improving and managing the surface waters and affiliated groundwater resources within the District, including their relationships to the ecosystems of which they are an integral part. We achieve our mission through regulation, capital projects, education, cooperative endeavors, and other programs based on sound science, innovative thinking, an informed and engaged constituency, and the cost effective use of public funds.

Mr. Alex Ugorets
Midland Glass Company
410 11th Avenue South
Hopkins MN 55343

April 18, 2014

Dear Mr. Ugorets:

This letter is to maintain progress in the conversations between us about an agreement between Ugorets Properties LLC and the Minnehaha Creek Watershed District. This is in the context of the District’s proposed project to route presently untreated stormwater from a drainage area within Hopkins and St. Louis Park to water quality treatment facilities on the District’s property at 325 Blake Road. The letter is intended to memorialize the elements of a potential agreement as we have discussed them. It, of course, has no binding effect, but it would be the District’s hope to complete the necessary analysis and move forward to the drafting of a legally binding agreement. Any such agreement would require the approval of the District’s board of managers.

The District is seeking recordable easements across your land at 8050 Powell Road and 8098 Excelsior Boulevard in order to install and maintain in perpetuity underground stormwater pipes and associated equipment. The routing that we have discussed is as shown on the enclosed site plan. You have identified an easement held by a cell phone tower corporation as the only encumbrance that may conflict with the District’s proposed pipe alignment. This is a surface easement for a communications tower and access to it. The potential conflict is with the east-west part of the pipe alignment. We would work together, and with this corporation, to see if the two easements can be co-located along this section. If that can’t be done, you would grant an easement parallel and adjacent to the current easement, and directly south of it.

As the site plan indicates, the construction would include a lateral pipe collecting stormwater from the west and connecting into the main line at the northern edge of your property before it crosses under the railway corridor. The area served by this inlet would be mostly the eight-acre apartment complex just to your west, along with a part of your property. The general design intent would be to divert storm flows, up to the first inch of rainfall, to the 325 Blake Road facility. During larger rainfall events, excess surface runoff would flow to the east, along the northern edge of your property, as it does at present.

When installation is complete, the conveyances would become a part of St. Louis Park’s stormwater infrastructure, and would be owned and maintained by St. Louis

Park. Accordingly, the District would intend to assign the perpetual easement to St. Louis Park.

The only other substantial issue that you have identified to date is your three-year lease to a landscaping company to use a part of your land as storage for its landscaping business. The leased area lies across the pipe alignment and indeed presently is the planned work site from which to advance the pipe under the railroad right-of-way by means of directional drilling. The District's present plan is to do the work in 2015. Before entering into a binding agreement with you, the District would need to ensure that the lease would not obstruct the District's work. We have discussed that both parties would consult with the landscaping company in good faith to identify a way for the District's work to proceed without depriving the landscaping company of its lease rights or otherwise unacceptably affecting its operations. The District will ask to review the lease, to improve our ability to identify a good solution. The District also may work directly with them to explore arrangements.

We have discussed that the District may compensate you for the easement in a cash payment, by work-in-kind, or by a combination. You expressed the intent to improve and pave a linear section of your property south of the District's proposed north-south alignment, including a buried perforated pipe to give you drainage. This work would require a District permit and the pipe would be sized to meet the District's stormwater management requirements. You indicated the intent to do this work soon; during construction of the District's project, we would connect your pipe into the municipal system. The District engineer has reviewed a design for the work and developed a basic cost estimate. You have suggested that the District's easement compensation include a payment equal to the estimate.

You also have asked that while the District is performing the work, it improve the contours of your property in three specific areas on the northern end of your property, as identified on the attached site plan. The precise elevations and contours would be incorporated into the grading plans that the District's contractor would use. Your goal is to convert these areas into economically usable land that subsequently could be paved.

The paving of these areas also would require a stormwater permit from the District. It is not clear that runoff from these areas could easily be managed on site. It would be least problematic if you don't pave these areas until the District's Blake Road facility is built and operational.

We also discussed the District's ability to guarantee you a permit for such future paving. We have consulted with the District's attorney and he has advised that the District cannot legally promise you an outcome on a permit application that has not yet been submitted and may not be submitted for some time. However, there are some options that you may find acceptable. For example, if you intend to pave in the foreseeable future, you can obtain a permit soon and renew it as needed. Permits have a one-year duration, but extensions are routinely granted for at least two or three years if there has been no fundamental change in circumstances.

Also, as discussed, as a part of easement compensation the District can grant your property a portion of the 325 Blake Road stormwater treatment capacity, which you then could use to meet the requirements of a future permit, at least in part. There may be other ways to address your concern, as well.

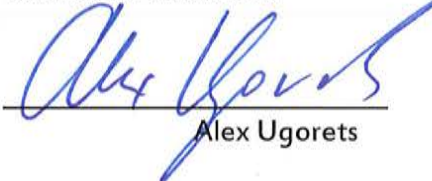
Two final notes should be made.

First, the new stormsewer would lie in both St. Louis Park and Hopkins, and on completion would become the property of St. Louis Park. Therefore, the District probably will need to secure the concurrence of either or both of these cities in the terms of an agreement with you.

Second, there may be pollutant contamination on your property, as the result of railroad operations and perhaps other sources. In an agreement, the District would ask you to protect the District from liability related to any preexisting contamination, and likewise would be willing to offer you the same protection with respect to any disturbance of contamination that its work produces. The District also would intend to work with the Minnesota Pollution Control Agency to manage potential liability related to the work. As the fee owner of the property, you would be asked to commit your cooperation to such efforts, as needed.

Again, this letter is intended to confirm the mutual understandings of Ugorets Properties LLC and the District, and is not legally binding in any respect. However, if you believe it is inaccurate or incomplete in any way, I would encourage you to contact me as soon as possible so that we do not allow any misunderstandings to develop. The District greatly appreciates your cooperation and interest to date, and is eager to move forward on this effort.

If the preceding is accurate and acceptable, please sign, date and return the original copy. If you wish to discuss, I'm of course happy to do so at your earliest convenience. We greatly appreciate your cooperation and are eager to move forward on this effort.



Alex Ugorets

Date: 4/18/2014

Yours truly,



James Wisker
Minnehaha Creek Watershed District
Director of Planning, Projects & Land Conservation

AGREEMENT

Ugorets Properties LLC, Ugorets 8098 LLC and the Minnehaha Creek Watershed District

**8050 Powell Road, St. Louis Park
8098 Excelsior Boulevard, Hopkins
Hennepin County, Minnesota**

THIS AGREEMENT is entered into by and among Ugorets Properties LLC and Ugorets 8098 LLC, both with address 410 11th Avenue South, Hopkins MN 55343 (together, "Owners") and the Minnehaha Creek Watershed District ("District"), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

RECITALS

A. Owner Ugorets Properties LLC owns in fee simple certain real property located at 8050 Powell Road, St. Louis Park, MN. Owner Ugorets 8098 LLC owns in fee simple certain real property located at 8098 Excelsior Boulevard, Hopkins MN. These two parcels are contiguous and are referred to herein, together, as the "Property."

B. The District wishes to install and maintain a subsurface storm water conveyance system with associated surface appurtenances across the Property as a part of the Powell Road Pipe Diversion Project, a project to collect and transport stormwater from developed land within the Cities of Hopkins, St. Louis Park and Edina for water quality treatment in regional stormwater management facilities, in order to manage surface stormwater flows within the catchment area and improve water quality in Minnehaha Creek, Lake Hiawatha, and the Mississippi River, in accordance with purposes as set forth in Minnesota Statutes §§103B.201 and 103D.201 (the "Project"). For this reason, the District requires a temporary construction and a perpetual easement across the Property.

C. When Project construction is complete, the District intends to convey ownership of and maintenance responsibility for the Project to the City of St. Louis Park or the City of Hopkins, which would incorporate the Project improvements on the Property into its municipal storm sewer system. For this reason, the easement to be conveyed under this Agreement is made explicitly assignable to another public body that would be responsible for the system.

D. The parties enter into this Agreement for Owners to convey easements to the District pursuant to the mutual covenants and conditions set forth herein,

the receipt and sufficiency of which hereby are acknowledged. This Agreement establishes valuable mutual consideration and is legally binding.

AGREEMENT

1. Attachment A hereto, incorporated herein, consists of plan sheets showing the dimensions, profile, alignment and grading plans for the Project. Owners have had the opportunity to obtain an assessment of the hydraulic and hydrologic effects of the Project on the Property, including but not limited to the effect of the Project on the extent and duration of standing water on the Property during and after rainfall events. Owners have been provided with an assessment prepared by the District's consulting engineer.

2. The purpose of the Project is not specifically to improve the management of stormwater runoff on the Property, however the District has used its best efforts to secure a design that will do so. The District represents that the Project will not adversely affect stormwater conditions on the Property for rainfall events up to the 100-year, 24-critical event, but otherwise makes no representation as to the design or performance of the Project. Nothing herein limits the District's authority to adjust the design, provided the adjustment is consistent with the District's representation stated in this section.

3. Attachment B hereto, incorporated herein, is a grading plan for three areas located on the northern portion of the Ugorets 8098 property. As a part of its construction of the Project, the District will implement this grading plan and will seed and stabilize the three areas in accordance with that plan.

4. Within 10 business days after this Agreement becomes effective, the District will pay \$38,900 to Alex Ugorets, individually, on behalf of Owners, jointly, and Owners will execute an easement materially identical to the easement attached as Attachment C hereto, incorporated herein. From the time this Agreement is effective until Owners execute the easement, Owners will not grant, convey or lease any right to use or occupy the Property or otherwise encumber the Property so as to impair a right of the District as set forth in Attachment C. The District may record and re-record the easement at its expense.

5. Ugorets 8098 may elect to pave or otherwise improve the areas delineated in Attachment B. If this work is undertaken: (a) once a regional stormwater management facility on property owned by the District at 325 Blake Road, Hopkins, is functional; or (b) at an earlier time with the District's written concurrence, based on the progress of construction of such facility, Ugorets

8098 may use capacity of said facility to the extent required to meet criteria for peak flow, volume and water quality control under the District stormwater management rule. This grant is not effective if, in the interim, the District rule has been amended so that compliance may not be fulfilled by a facility in the location or of the type of the 325 Blake Road facility. However, in such a case, Ugores 8098 may request a variance, which the District board of managers would consider in the ordinary fashion.

6. The District's obligations under sections 3, 4 and 5, above, and Owners' obligations under 4, above, will vest only on the District's written notice to Owners that it elects to proceed with the Project. If the District does not provide such notice within 120 days of the execution of this Agreement, the Agreement will expire. The District's written notice of an election to proceed will be accompanied by an additional payment of \$38,900 to Alex Ugores, individually, on behalf of Owners, jointly.

7. The District may elect not to proceed with the Project under section 6, above, for any reason. If it elects not to proceed, the payment of \$38,900 cited in section 6 is payable to Owners; however, this payment is not owing if the District, in good faith, elects not to proceed for failure to achieve a satisfactory outcome with respect to one of the following two contingencies:

a. Completion of environmental due diligence and receipt of adequate assurances from the Minnesota Pollution Control Agency with respect to existing site environmental conditions. Owners will cooperate as necessary to obtain such assurances.

b. Obtaining the right to install and maintain the stormwater conveyance under the adjacent rail right-of-way.

8. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement. Specific performance is an available remedy regardless of the adequacy of a remedy at law.

9. Each communication under this Agreement will be made to the following addresses of the parties:

District:

Project Manager, Powell Road Project
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345-1503

Ugorets Properties LLC, Ugorets 8098 LLC:

Alex Ugorets
410 11th Avenue South
Hopkins MN 55343

Contact information will be kept current. A party may change its contact by written notice to the other parties.

9. This Agreement is effective on execution by the District and Owners and expires three years thereafter, unless sooner pursuant to section 6, above. The District's obligation under section 5, above, will survive expiration.

10. A party's failure to enforce a provision of this Agreement does not waive the provision or that party's right to enforce it subsequently. An amendment to this Agreement must be in writing and executed by the parties. The above Recitals are incorporated into this Agreement.

OWNER Ugorets Properties LLC

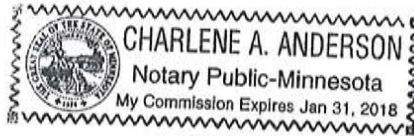
Alex Ugorets
By: Alex Ugorets [title] *Pres.*

Date: *6/12/14*

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this *12th* day of *June*, 2014, by Alex Ugorets as *President* of Ugorets Properties LLC.

Anderson
Notary Public



OWNER Ugorets 8098 LLC

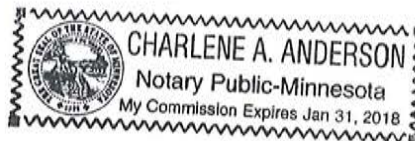
Alex Ugorets
By: Alex Ugorets [title] *Pres.*

Date: *6/12/14*

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this 12th day of June, 2014,
by Alex Ugorets as President of Ugorets 8098 LLC.

Anderson
Notary Public



MINNEHAHA CREEK WATERSHED DISTRICT

Sherry White, President

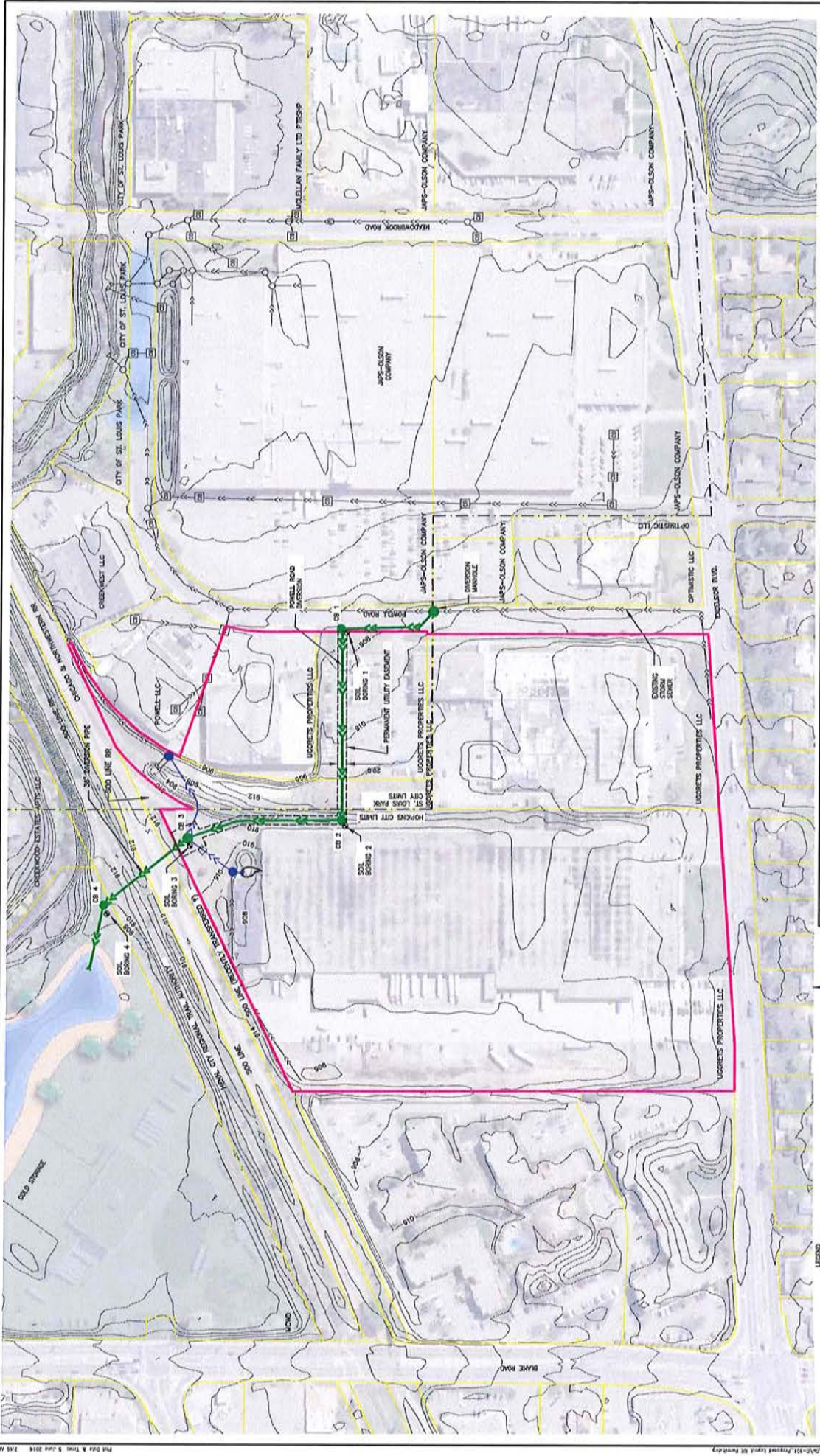
Date:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ___ day of _____, 2014,
by Sherry White as President of the Minnehaha Creek Watershed District.

Notary Public

This document prepared by:
Smith Partners P.L.L.P.
Old Republic Title Building
400 Second Avenue South – Suite 1200
Minneapolis MN 55401
(612) 344-1400



LEGEND

- EXISTING CONTOURS
- CITY BOUNDARY LINES
- EXISTING STORM SEWER
- DIVERSION FOR REGIONAL TREATMENT
- LOCAL DRAINAGE IMPROVEMENT AND DIVERSION

SCALE

1 INCH = 100 FEET

REVISIONS

NO.	REVISION DESCRIPTION	DATE	BY	APP'D	REV DATE
1	ISSUED FOR APPROVAL	12/27/13	JTB		
2	ADDED TO COMMENTS	6/17/14	JTB		

DATE: 12/27/2013 **REV. NO.:** _____

SCALE: 1" = 100'

PROJECT TITLE: PERMIT FOR RAILROAD CROSSING AND DIVERSION PROJECT

PROJECT NO.: 0185-5087

SHEET NO.: C-101

DATE: DEC. 2013

BY: JTB

APP'D: _____

SCALE: AS SHOWN

REV. NO.: _____

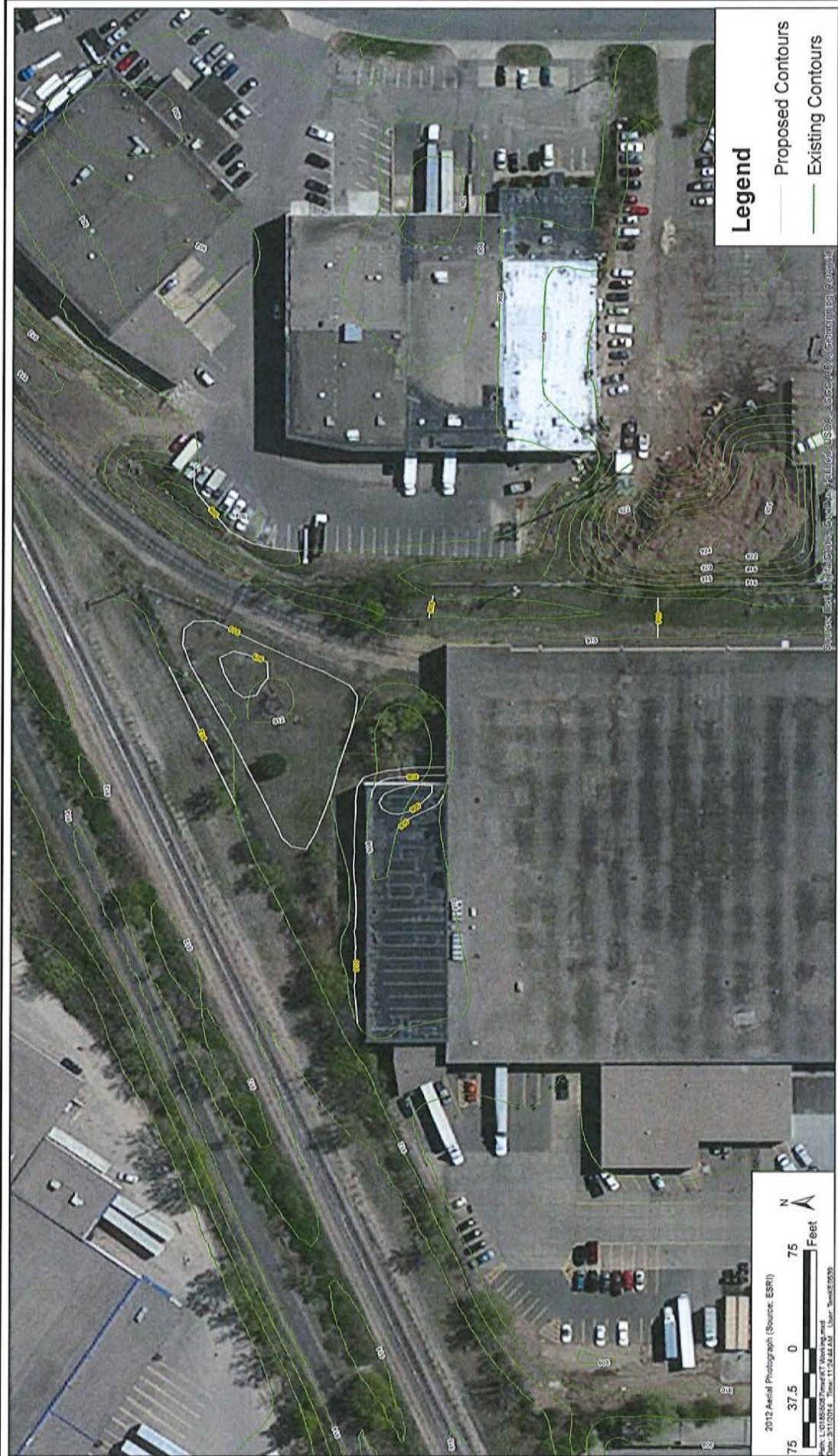
ATTACHMENT A

PROPOSED LAYOUT

ENLARGED SITE PLAN

MINNEHAHA CREEK WATERSHED DISTRICT
CITY OF ST. LOUIS, COUNTY OF WARREN

Wenck
INCORPORATED
1875 W. WASHINGTON ST.
ST. LOUIS, MO 63103
TEL: 314.433.1100



Legend

— Proposed Contours

— Existing Contours



2012 Aerial Photograph (Source: ESRI)
 Path: L:\GIS\2012\Aerial\12_Aerial.mxd
 Date: 3/11/2014 1:57:11 PM
 User: chris@esri.com

MAR 2014
 ATTACHMENT B

Wenck
 Engineers - Scientists
 Business Professionals
 www.wenck.com
 1800 Pioneer Creek Center
 Maple Plain, MN 55359-0429
 1-800-472-2232

MINNEHAHA CREEK WATERSHED DISTRICT
 Proposed Grading Plans

EASEMENT

**8050 Powell Road, St. Louis Park
8098 Excelsior Boulevard, Hopkins
Hennepin County, Minnesota**

Legal description of Burdened Property: *[Exhibit A]*

THIS EASEMENT is entered into by and among Ugorets Properties LLC and Ugorets 8098 LLC, both with address 410 11th Avenue South, Hopkins MN 55343 (together, "Owners") and the Minnehaha Creek Watershed District ("District"), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

A. Owner Ugorets Properties LLC owns in fee simple certain real property located at 8050 Powell Road, St. Louis Park, MN. Owner Ugorets 8098 LLC owns in fee simple certain real property located at 8098 Excelsior Boulevard, Hopkins MN. These two parcels are contiguous and are referred to herein, together, as the "Property."

B. The District wishes to install and maintain a subsurface storm water conveyance system with associated surface appurtenances across the Property as a part of the Powell Road Pipe Diversion Project, a project to collect and transport stormwater from developed land within the Cities of Hopkins, St. Louis Park and Edina for water quality treatment in regional stormwater management facilities, in order to manage surface stormwater flows within the catchment area and improve water quality in Minnehaha Creek, Lake Hiawatha, and the Mississippi River, in accordance with purposes as set forth in Minnesota Statutes §§103B.201 and 103D.201.

C. For the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owners convey to the District and the District accepts construction and perpetual easements on the Property, as specifically set forth herein.

CONSTRUCTION EASEMENT

1. The Construction Easement is on and under that portion of the Property shown in Exhibit B, attached and incorporated herein.
2. The District may occupy the Construction Easement to construct the Project. For that purpose, the District may operate and stage construction vehicles and equipment; stockpile materials; install and maintain erosion and sediment control measures; remove vegetation; excavate, fill and grade; and otherwise engage in construction activity. Before occupying the Construction Easement, the District will give Owner 15 days' written notice at the address stated above. Owner will be responsible to inform and coordinate with tenants.
3. After giving notice per section 2, above, the District will act in good faith to obtain contractor progress on construction so as not to extend the period of occupation unreasonably. During the District's occupation of the Construction Easement for construction, the District and Owner will coordinate so that inconvenience to Owner and any lessee of Owner is limited to the extent possible without impairing the District's ability to reasonably perform its work.
4. The District may place excess excavated materials on the Property within the area delineated as "Excess Soils" on the site plan marked on Exhibit C, attached and incorporated herein. The District will stabilize and seed all areas where materials are placed.
5. At the close of construction, the District will remove all trash, debris and excess materials; repair any damage that it causes to any surface or subsurface feature outside of the Perpetual Easement as defined in section 6, below; and restore and stabilize disturbed soils and vegetation within the Perpetual Easement.

PERPETUAL EASEMENT

6. The Perpetual Easement is on and under that portion of the Property described in Exhibit B.
7. In perpetuity, the District may maintain the Project and may enter the Perpetual Easement to inspect, repair, reconstruct or decommission the Project. For those purposes, the District may operate and stage construction vehicles and equipment; stockpile materials; install and maintain erosion and sediment control measures; remove vegetation; excavate, fill and grade; and otherwise engage in the listed activities. The District will give Owner 15 days' written notice before entering for any activity other than inspection or in response to emergency.

8. If any authorized activity under section 7, above, reasonably requires that the District occupy an area outside of the Perpetual Easement, Owner and the District will cooperate in good faith to accommodate that need. Except in the case of an emergency, the District will give Owner 15 days' written notice at the address stated above before occupying area outside of the Perpetual Easement. Owner will inform and use best efforts to coordinate with its tenants.

9. After any disturbance by the District, it will stabilize and reseed exposed soils and ensure all trash, debris and excess materials are removed.

GENERAL TERMS

10. Owners reserve all rights and privileges associated with ownership of the Property except as specifically provided in this easement. Owners retain all financial obligations and bear all costs and liabilities of any kind accruing from the fee ownership of the Property. Owners are not responsible to maintain the Project.

11. An Owner will not take any action that materially interferes with the District's exercise of its rights under this easement. An Owner may place temporary structures within the Perpetual Easement and otherwise occupy that area, but will be responsible to promptly remove any such occupation at its own cost as needed to allow the District to make use of the Perpetual Easement pursuant hereto. An Owner will not place a permanent structure, utility or paved surface, or plant trees, within or under the Perpetual Easement. An Owner will not engage or allow any other person to engage in any activity that would disturb or penetrate the soil to a depth of 24 inches or more within the Perpetual Easement.

12. The rights conveyed to the District under this easement are extended and limited to authorized District representatives, agents, contractors and subcontractors. The District may assign this easement and any rights hereunder only to another public body and only for purposes of constructing, inspecting, maintaining, repairing, reconstructing, decommissioning and removing the Project as specified under this easement. This easement creates no general right of public entry onto the Property.

13. Each Owner makes the following representations, each to the best of Owner's knowledge:

a. There is no unrecorded or unregistered constraint on Owner's legal capacity to convey this easement and each right conveyed to the District herein. This easement does not constitute a default under any indenture,

agreement, mortgage, lease or other instrument to which Owner is a party.

b. No action, suit or proceeding at law or in equity, administratively or otherwise, has been instituted or threatened that affects the Perpetual or Construction Easement.

c. No lien for services or materials (mechanic's or materialmen's lien) affects the Perpetual or Construction Easement.

d. Owner has not handled, stored or disposed of a hazardous material on or affecting the Perpetual Easement in violation of any federal, state or local law and, to the best of Owner's knowledge, no prior owner, tenant, occupant or licensee of the Property has handled, stored or disposed of any hazardous material on or affecting the Perpetual Easement in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

"Owner's knowledge" means the knowledge of Alex Ugorets.

14. The District holds each Owner harmless, and agrees to defend and indemnify Owner, from and against any and all suits, actions, causes of action, proceedings, claims, costs and damages to the extent caused by the District's actions on the Property pursuant to this easement. Owners, jointly and severally, hold the District harmless, and agree to defend and indemnify it, from and against any and all suits, actions, causes of action, proceedings, claims, costs and damages to the extent caused by the preexisting environmental condition of the Property. Nothing in this easement creates a right in any third party or affects any immunity, defense or liability limit the District or an Owner enjoys under law.

15. Nothing in this easement, including but not limited to section 14, above, constitutes agreement by the District to hold harmless, defend or indemnify an Owner with respect to any preexisting environmental condition on the Property. Nothing herein constitutes an intention of the District to act as an owner or operator of the Property with respect to any laws relating to such

preexisting environmental condition. Owners will not make any claim that the District is an owner or operator with respect to such preexisting condition.

16. Each Owner and the District remain solely responsible to maintain liability and other insurance for their own uses of and authority over the Property.

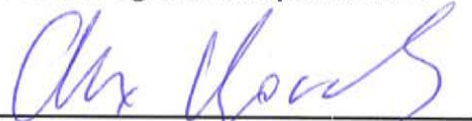
17. A decision by a party not to exercise its rights of enforcement in the event of a breach of a term of this easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

17. A party will not exercise a right of enforcement against another party for injury or alteration to the Property resulting from a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm and earth movement resulting from natural forces or the act of a third party.

18. Any notice or other communication that the District must give to an Owner will be in writing and delivered to the Owner at 410 11th Avenue South, Hopkins MN 55343, or such other address as an Owner has designated by written notice to the District.

19. All recitals above are a part of this easement. The District and an Owner may amend this easement only with respect to that Owner's property and only by a writing duly executed by both parties and meeting all requirements of law. The terms of this easement shall bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Property. This easement is appurtenant to public property, including public right-of-way and District property on which public stormwater management facilities are to be constructed, and to private property that is publicly served by the facilities to be constructed hereunder. The District bears the cost of duly recording or registering this easement in the Hennepin County land records.

OWNER Ugorets Properties LLC


By: Alex Ugorets [title]

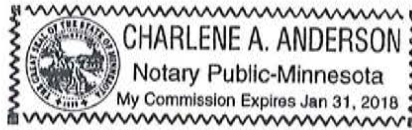
Date:

6/12/14

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this 12th day of June, 2014,
by Alex Ugorets as President of Ugorets Properties LLC.

Anderson
Notary Public



OWNER Ugorets 8098 LLC

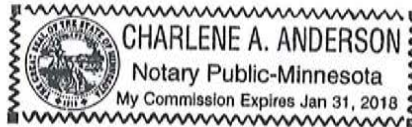
Alex Ugorets
By: Alex Ugorets [title]

Date: 6/12/14

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this 12th day of June, 2014,
by Alex Ugorets as President of Ugorets 8098 LLC.

Anderson
Notary Public



MINNEHAHA CREEK WATERSHED DISTRICT

Sherry White, President

Date:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ___ day of _____, 2014,
by Sherry White as President of the Minnehaha Creek Watershed District.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION of BURDENED PROPERTIES

EXHIBIT A

LEGAL DESCRIPTION of BURDENED PROPERTIES

8050 Powell Road, St. Louis Park

That part of the Southwest Quarter of the Northwest Quarter, Section 20, Township 117, Range 21, described as beginning at a point on the South line of said Southwest Quarter of the Northwest Quarter distant 67.4 feet East from the Southwest corner of said Southwest Quarter of the Northwest Quarter; thence North, parallel with the West line of said Southwest Quarter of the Northwest Quarter, a distance of 262.5 feet; thence East, parallel with said South line, to the center line of Powell Road; thence South along said center line to said South line; thence West along said South line to the point of beginning.

Registered property
Certificate of Title No. 1006644

4103 Texas Ave. S., St. Louis Park

That part of the Southwest Quarter of the Northwest Quarter, Section 20, Township 117, Range 21, described as beginning at the Southwest corner of said Southwest Quarter of the Northwest Quarter; thence East along the South line of said Southwest Quarter of the Northwest Quarter a distance of 67.4 feet; thence North, parallel with the West line of said Southwest Quarter of the Northwest Quarter, a distance of 279.5 feet; thence Northerly along a tangential curve to the right, having a radius of 1,206.94 feet, a distance of 136.57 feet; thence Northeasterly along a compound curve, having a radius of 491.67 feet, a distance of 375.86 feet; thence Northeasterly along a compound curve, having a radius of 547.71 feet, a distance of 147.66 feet; thence North 25 degrees 23 minutes West (assuming the West line of Southwest Quarter of the Northwest Quarter as bearing North and South) a distance of 8 feet, more or less, to the Southeasterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence South 64 degrees 37 minutes West along said Southeasterly right-of-way line a distance of 255.35 feet, more or less, to a point 155.2 feet Northeasterly along said Southeasterly right-of-way line from the West line of said Southwest Quarter of the Northwest Quarter; thence Southwesterly along a curve concave to the Southeast, having a radius of 521.67 feet, to a point on the West line of said Southwest Quarter of the Northwest Quarter distant 108.8 feet South along said West line from said Southeasterly right-of-way line; thence South along said West line to the point of beginning.

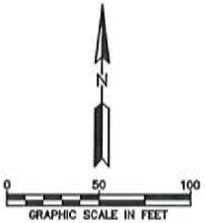
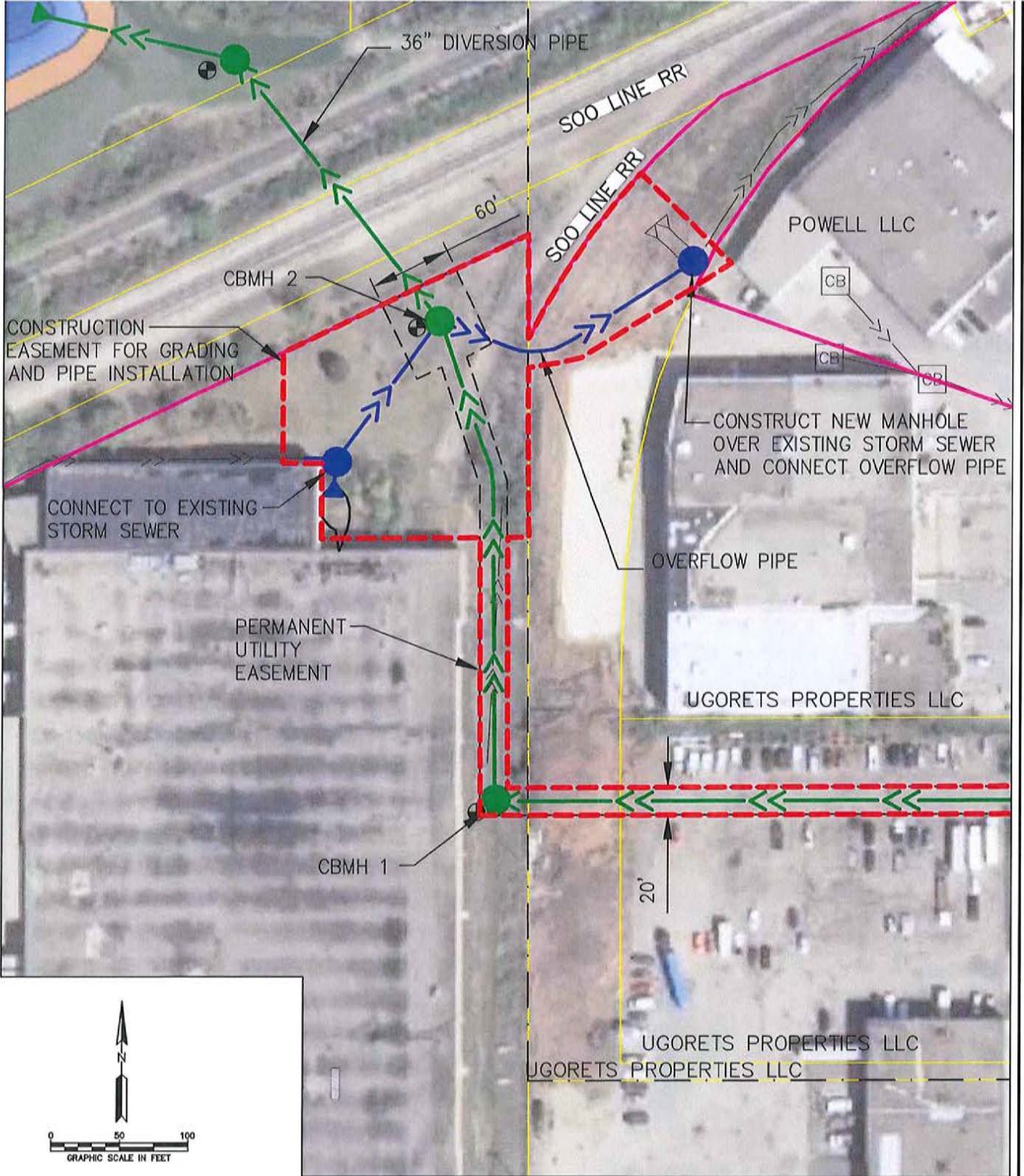
Registered property
Certificate of Title No. 1006644

8098 Excelsior Boulevard, Hopkins

That part of Lots 75 and 76, Auditor's Subdivision Number 239, Hennepin County, Minnesota, described as follows, to-wit: Commencing at the Northeast corner of said Lot 75; thence Southwesterly along the Northerly line of said Lot 75 a distance of 592.17 feet to a point 535.0 feet West of, measured at right angles to, the East line of said Lot 75; thence South 1081.95 feet parallel with the East line of said Lots 75 and 76 to the South line of said Lot 76; thence Easterly along the South line of said Lot 76 a distance of 536.18 feet to the Southeast corner of said Lot 76; thence North 1300.42 feet along the East line of Lots 75 and 76 to the point of beginning except the Northwesterly 30 feet thereof.

EXHIBIT B

**CONSTRUCTION EASEMENT and LEGAL DESCRIPTION of PERPETUAL
EASEMENT**

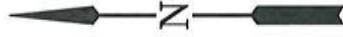


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 1800 PIONEER CREEK CENTER 763-479-4200

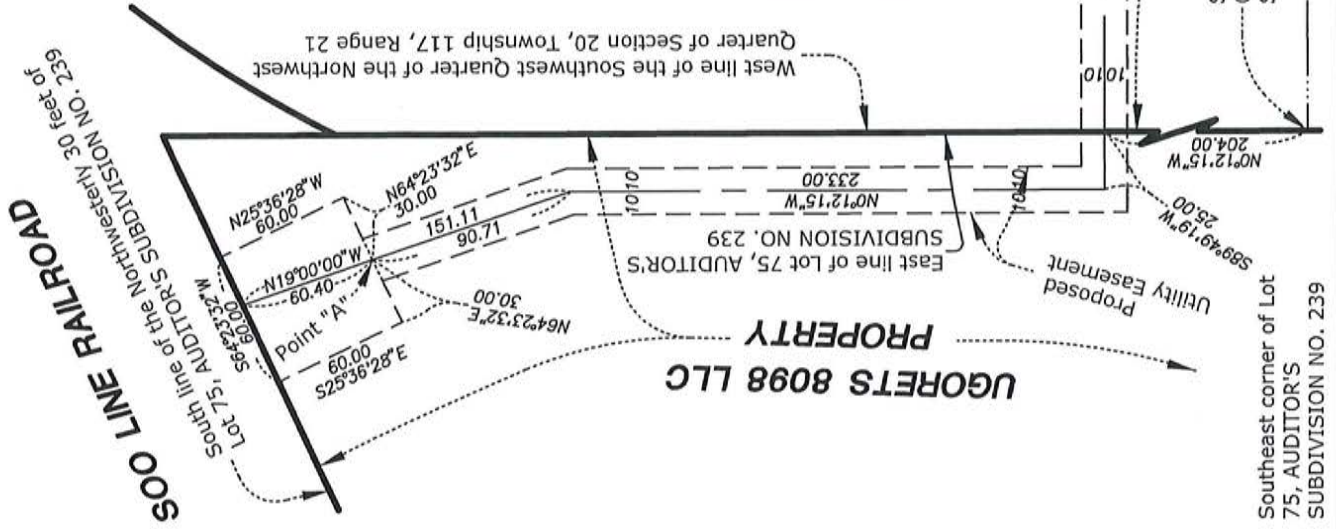
CLIENT			MINNEHAHA CREEK WATERSHED DISTRICT			PROJECT			POWELL ROAD STORMWATER DIVISION PROJECT		
REV			DWN			APP			SHEET TITLE		
REV DATE			DWN BY			PROJECT NO.			SHEET NO.		
DWN BY			CHK'D			DWG DATE			REV NO.		
APP'D			JVB			MAY 2014			0185-5087		
SCALE			JWT			EXHIBIT B					

Easement Sketch for WENCK ASSOCIATES

Area of Ugorets 8098 LLC Easement = 10,574 square feet
 Area of Ugorets Properties LLC Easement = 7,994 square feet



Scale: 1 inch = 80 feet



Rehder and Associates, Inc.
 CIVIL ENGINEERS AND LAND SURVEYORS
 3440 Federal Drive • Suite 110 • Eagan, Minnesota • Phone (651) 452-5051

A 20 foot strip of land over, under and across the following described parcels of land:

That part of the Southwest Quarter of the Northwest Quarter, Section 20, Township 117, Range 21, described as beginning at the Southwest corner of said Southwest Quarter of the Northwest Quarter; thence East along the South line of said Southwest Quarter of the Northwest Quarter a distance of 67.4 feet; thence North, parallel with the West line of said Southwest Quarter of the Northwest Quarter, a distance of 279.5 feet; thence Northerly along a tangential curve to the right, having a radius of 1206.94 feet, a distance of 136.57 feet; thence Northeasterly along a compound curve, having a radius of 491.67 feet, a distance of 375.86 feet; thence Northeasterly along a compound curve, having a radius of 547.71 feet, a distance of 147.66 feet; thence North 25 degrees 23 minutes West (assuming the West line of Southwest Quarter of the Northwest Quarter as bearing North and South) a distance of 8 feet, more or less, to the Southeasterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence South 64 degrees 37 minutes West along said Southeasterly right-of-way line a distance of 255.35 feet, more or less, to a point 155.2 feet Northeasterly along said Southeasterly right-of-way line from the West line of said Southwest Quarter of the Northwest Quarter; thence Southwesterly along a curve concave to the Southeast, having a radius of 521.67 feet, to a point on the West line of said Southwest Quarter of the Northwest Quarter distant 108.8 feet South along said West line from said Southeasterly right-of-way line; thence South along said West line to the point of beginning.

Together with that part of the Southwest Quarter of the Northwest Quarter, Section 20, Township 117, Range 21, described as beginning at a point on the South line of said Southwest Quarter of the Northwest Quarter distant 67.4 feet East from the Southwest corner of said Southwest Quarter of the Northwest Quarter; thence North, parallel with the West line of said Southwest Quarter of the Northwest Quarter, a distance of 262.5 feet; thence East, parallel with said South line, to the center line of Powell Road; thence South along said center line to said South line; thence West along said South line to the point of beginning.

The centerline of said 20 foot strip is described as follows:

Commencing at the southwest corner of the Southwest Quarter of the Northwest Quarter of said Section 20; thence North 0 degrees 12 minutes 15 seconds West, along the west line of said Southwest Quarter of the Northwest Quarter, a distance of 204.00 feet to the beginning of the centerline to be described; thence North 89 degrees 49 minutes 19 seconds East to the west right of way line of Powell Road and there said centerline terminates.

The side lines of said easement are to be lengthened or shortened to terminate on the west line of said Powell Road and on the west line of said Southwest Quarter of the Northwest Quarter.

A 20 foot strip of land over, under and across the following described land:

That part of Lots 75 and 76, Auditor's Subdivision Number 239, Hennepin County, Minnesota, described as follows, to-wit: Commencing at the Northeast corner of said Lot 75; thence Southwesterly along the Northerly line of said Lot 75 a distance of 592.17 feet to a point 535.0 feet West of, measured at right angles to, the East line of said Lot 75; thence South 1081.95 feet parallel with the East line of said Lots 75 and 76 to the South line of said Lot 76; thence Easterly along the South line of said Lot 76 a distance of 536.18 feet to the Southeast corner of said Lot 76; thence North 1300.42 feet along the East line of Lots 75 and 76 to the point of beginning except the Northwesterly 30 feet thereof.

The centerline of said 20 foot strip is described as follows:

Commencing at the southeast corner of said Lot 75; thence North 0 degrees 12 minutes 15 seconds West, along east line of said Lot 75, a distance of 204.00 feet to the beginning of the centerline to be described; thence South 89 degrees 49 minutes 19 seconds West a distance of 25.00 feet; thence North 0 degrees 12 minutes 15 seconds West a distance of 233.00 feet; thence North 19 degrees 00 minutes 00 seconds West a distance of 90.71 feet to a point hereinafter known as "Point A"; thence continuing North 19 degrees 00 minutes 00 seconds West a distance of 60.40 feet to the south line of the North 30 feet of said Lot 75 and there said line terminates.

The side lines of said easement are to be lengthened or shortened to terminate on the east line of said Lot 75.

Together with that part of the above described property described as follows:

Beginning at the aforementioned "Point A"; thence North 64 degrees 23 minutes 32 seconds East a distance of 30.00 feet; thence North 25 degrees 36 minutes 28 seconds East a distance of 60.00 feet to the south line of the North 30 feet of said Lot 75; thence South 64 degrees 23 minutes 32 seconds West, along said south line, a distance of 60.00 feet; thence South 25 degrees 36 minutes 28 seconds East a distance of 60.00 feet; thence North 64 degrees 23 minutes 32 seconds East a distance of 30.00 feet to the point of beginning.

Drainage Area Map

