



CITY COUNCIL MEETING AGENDA
REGULAR MEETING
TUESDAY, JULY 17, 2018

CITY COUNCIL MEETING TIME: 6:30 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council Workshop Meeting Minutes, June 28, 2018
 - b. Approval of Accounts Payable; Checks Numbered 18129-18141.
 - c. Approval of Additional Election Judge for the 2018 Elections.
5. Set Agenda – Anyone Not on the Agenda can be Placed Under Open/Misc.
 6. Reports of Boards and Committees by Council and Staff.
 7. Hamilton Bros. (Applicant/Owner) requests that the City consider the following actions for the property located at 1050 County Road 83 (PID No. 35-118-24-41-0001) in Independence, MN:
 - a. **ORDINANCE 2018-03** – Considering approval of the Hamilton Century Farm Storm Sewer Improvement Tax District.
 - b. **DEVELOPMENT AGREEMENT** – Consider approval of the agreement by and between the City of Independence and Hamilton Bros., Inc. for Hamilton Century Farm Subdivision.
 8. Open/Misc.
 9. Adjourn.

MINUTES OF A SPECIAL MEETING AND WORK SESSION OF THE
INDEPENDENCE CITY COUNCIL
THURSDAY, JUNE 28, 2018 –7:00 A.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a work session of the Independence City Council was called to order by Mayor Johnson at 7:00 a.m.

2. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts, Fisher and McCoy

ABSENT: Councilor Grotting

STAFF: Interim City Administrator Kaltsas, Administrative Assistant Beth Horner, Public Works
Director Larry Ende

VISITORS: None

3. GENERAL ADMINISTRATION

a. Planning Items:

- Comprehensive Plan Meeting Schedule- discussion around developments being considered and how that comes into the play with the Comprehensive Plan requirements. It was determined another meeting would be needed with the Planning Commission and then Comp Plan Meeting scheduled.
- Potential Development (County Line Road and Highway 12)- Kaltsas said he had a call from KLN Brands which owns Tuffy Dog Food are interested in building a factory at the corner of Highway 12 and County Line Road. A concern would be the smell that would be generated. Kaltsas said KLN said it would provide 1500 jobs and the factory would be huge. Spencer said sewer and water would be an issue.
- Nuisance Issues- discussion around outstanding issues and how to proceed. Determined finality is needed and to proceed through legal channels as directed.
- Solar Development- a property owner with 12-15 acres is interested in solar. Betts said it would take 20 years for a solar unit to break even. Spencer noted the amount of neighbor comments against this type of structure when previously considering solar.

b. Public Works:

- Klaers Road Condition- Spencer said it was not built to city specs. Ende noted part was in Greenfield. Spencer said it is not technically a road but rather a driveway. Kaltsas said the resident that lives on the Greenfield section of road lives in Independence. McCoy said there could be an easement over to Eagle Ridge. 100% could be assessed and if they don't want to do it than it is their responsibility from here on out.
- Lake Rebecca Road E. (Possible Vacation)- Kaltsas said Three Rivers has always wanted it back. It has been a problem. Spencer said there are two campsites and Kaltsas said Three Rivers would just close it if we gave it back to them. Johnson said let it go and vacate it. Others were in agreement.

c. 2019 Budget:

- Estimated Tax Capacity Increase- there will be a budget workshop later this month. Initial numbers show a 5.78% increase for 2019.
- General Budget Goals- more in depth at upcoming budget workshop
- Personnel Committee- Kaltsas noted Ende will be retiring in 2019 so that will need to be figured into the budget. It would be good to have a personnel committee meet about that and Spencer volunteered to lead that effort. Kaltsas said Horner had completed her Clerk training so the personnel committee could address her title change, etc. as well.

4. Adjourn

Meeting adjourned at 8:32 a.m.

Respectfully submitted,

Trish Bemmels, Recording Secretary

DRAFT

City of Independence

Approval of Election Judges for the 2018 Elections

To: City Council
From: Beth Horner
Meeting Date: July 17, 2018

Discussion:

The City Council is required to appoint election judges for the upcoming 2018 primary and regular elections. Staff has prepared a list of an additional judge for consideration by the City Council. The following election judge can be considered for appointment by the City Council:

- Darcy Ciatti

Recommendation:

It is recommended that the City Council approve the appointment of the aforementioned election judge.

City of Independence

Final Plat for a 17 Lot Subdivision to be Kown as Hamilton Century Farms and
Located on the Property at 385 County Road 110 N.

<i>To:</i>	City Council
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	July 17, 2018
<i>Applicant:</i>	Marilyn Hamilton
<i>Owner:</i>	Hamilton Bros Inc.
<i>Location:</i>	385 County Road 110 N

Property/Site Information:

The property is located on the west side of County Road 110 N and just south of the Luce Line Trail. There is an existing home and several accessory buildings located on the property. The property is comprised of densely wooded areas, wetlands and tillable acreage.

Property Information: 385 County Road 110 N

Zoning: *Rural Residential*

Comprehensive Plan: *Rural Residential*

Acreage: ~106 acres

Subject Property Aerial



UPDATE:

The City Council approved the final plat for the proposed subdivision on July 10, 2018. The Council tabled the discussion relating to adoption of the storm sewer tax improvement district and development agreement to allow the City attorney an opportunity to review the language of each document. The City attorney has reviewed the documents and made revisions to the development agreement and ordinance as follows:

Ordinance No. 2018-03 was revised to include an additional sentence at the end of paragraph 1.01.

"Any real estate acquisition shall be by voluntary conveyance or by eminent domain proceedings conducted in accordance with applicable law."

Paragraph 5 of the development agreement was also revised to clarify that the storm water district tax could only occur following failure of the developer to cure any identified issues. Paragraph 5 states that the City reserves all rights to impose the stormwater district tax regardless of what the Maintenance Agreement provides. The proposed language limits that provision by adding at the end:

"... provided, however, that the City shall not exercise such rights unless the Developer or its successors or assigns does not timely cure a failure to maintain the Stormwater Improvements after receipt of written notice as provided in paragraph 2 above."

With this addition, the City will not be able to impose the tax until after it notifies the homeowners' association of a failure to maintain the ponds, and they fail to take action.

Recommendation:

Council can approve the revised **Ordinance 2018-03** and development agreement based on the recommended changes.

Attachments:

1. **ORDINANCE 2018-03**
2. **Development Agreement**



ORDINANCE NO. 2018-03

**AN ORDINANCE ESTABLISHING THE HAMILTON CENTURY FARM
STORM SEWER IMPROVEMENT TAX DISTRICT**

THE CITY OF INDEPENDENCE, MINNESOTA DOES ORDAIN:

Section I. Background: Findings.

1.01. The City is authorized by Minnesota Statutes, Sections 444.16 – 444.21 (the “Act”) to establish a storm sewer improvement tax district (the “District”) to acquire, construct, reconstruct, extend, maintain and otherwise improve storm sewer systems and related facilities within the District in accordance with the Act and to levy a tax on all taxable property within the District to finance such activities. Any real estate acquisition shall be by voluntary conveyance or by eminent domain proceedings conducted in accordance with applicable law.

1.02. It is found and determined that it is in the best interests of Independence and its storm water management program that the District be established for the property being developed as Hamilton Century Farm. The District shall be comprised of the following land within Independence legally described as follows:

The North Half of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter in Section 35, Township 118, Range 24, Hennepin County, Minnesota, except that part of said Southeast Quarter of the Southeast Quarter lying South of Painter Creek.

And to be platted as Hamilton Century Farm, Hennepin County, Minnesota.

Section II. Establishment: Authorizations.

2.01. The Hamilton Century Farm Storm Sewer Improvement Tax District is established. The city shall have all powers and authority conferred by the Act in the operation and financing of the activities of the District.

2.02. The boundaries of the District are as described above.

2.03. The City Administrator is authorized and directed to file a certified copy of the ordinance with the Hennepin County Auditor, the Office of the Hennepin County Recorder.

Section III. This ordinance shall become effective upon its adoption and publication and shall be recorded with the Hennepin County Auditor, Registrar of Titles and Recorder.

Adopted by the City Council of the city of Independence this 17th day of July, 2018.

Marvin Johnson, Mayor

Attest:

Mark Kaltsas, City Administrator

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF INDEPENDENCE
AND
HAMILTON BROS., INC.
FOR
HAMILTON CENTURY FARM

This document drafted by:

Kennedy & Graven, Chartered
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Minneapolis, MN 55402
(612) 337-9300 (RJV)

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SIGNATURES 12-13

- EXHIBIT A LEGAL DESCRIPTION OF PROPERTY
- EXHIBIT B LIST OF PLAN DOCUMENTS
- EXHIBIT C FORM OF STORMWATER MAINTENANCE AGREEMENT
- EXHIBIT D SUBDIVISION IMPROVEMENT COST ESTIMATE

This Development Agreement (the “Agreement”) is made and entered into this ___ day of _____, 2018, by and between the city of Independence, a municipal corporation under the laws of Minnesota (the “City”), and Hamilton Bros., Inc., a Minnesota corporation (the “Developer”).

WITNESSETH:

WHEREAS, the Developer is the fee owner of land located at 385 County Road No. 110 North, which land is legally described on Exhibit A attached hereto (the “Property”); and

WHEREAS, in April, 2018, the City Council approved the re-zoning of the Property to Rural Residential (RR) and the preliminary plat of Hamilton Century Farm (the “Subdivision”); and

WHEREAS, the above-described City approvals are collectively referred to hereinafter as the “City Approvals”; and

WHEREAS, the final approval of the plat of Hamilton Century Farm is contingent upon the Developer entering into a development agreement satisfactory to the City, which development agreement will be recorded against the Property.

NOW, THEREFORE, based on the mutual covenants and obligations contained herein, the parties agree as follows:

1. Right to Proceed. The Property is approximately 106 acres and the Subdivision consists of seventeen (17) single family residential lots and several outlots. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer may not construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- a) the final plat of Hamilton Century Farm has been filed with Hennepin County;
- b) this Agreement has been executed by the Developer and the City;
- c) the required Improvement Deposit and escrow amount (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- d) final engineering and construction plans in digital form have been submitted by the Developer and approved by the city engineer;
- e) the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City Approvals and has given the City the additional construction inspection escrow required by this Agreement;
- f) the Developer has responded to all comments in the memoranda from Hakanson Anderson dated March 6 and June 15, 2018, and from MSA Professionals dated March 8 and June 15, 2018, and such responses have been approved in writing by the city administrator;
- g) the Developer has obtained written approval from the Minnehaha Creek Watershed District and provided evidence of such approval to the City;

- h) the Developer has provided evidence of lawful establishment of a homeowners association;
- i) the Developer has executed the stormwater maintenance agreement in the form attached hereto as Exhibit C;
- j) the Developer has paid the park dedication fee required by section 13 of this Agreement;
- k) the Developer or the Developer's engineer has initiated and attended a preconstruction meeting with the City engineer and staff; and

Upon completion or satisfaction of the foregoing conditions precedent, the Developer shall notify the City and, upon confirmation of completion, the City shall provide written notice that the Developer may proceed.

2. Plans; Improvements. a) The Developer agrees to develop the Property in accordance with the City Approvals, and to construct all improvements in accordance with the approved engineering and construction plans (collectively, the "Plans"). All terms and conditions of the City Approvals are hereby incorporated by reference into this Agreement. The documents which constitute the Plans are those on file with and approved by the City and are listed on Exhibit B attached hereto. The Plans may not be modified by the Developer without the prior written approval of the City.

b) In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

- 1. streets;
- 2. stormwater facilities; and
- 3. street lighting and signage.

c) All work performed by or on behalf of the Developer related to construction of the Subdivision Improvements shall be restricted to the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and 8:00 a.m. through 4:00 p.m. on Saturday. Construction on homes within the Subdivision shall be restricted to the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday and 8:00 a.m. through 4:00 p.m. on Saturday and Sunday.

3. Erosion Control. a) All construction regarding the Subdivision Improvements shall be conducted in a manner designed to control erosion and in compliance with all City ordinances and other requirements, including the City's permit with the Minnesota Pollution Control Agency regarding municipal separate storm sewer system program dated June 30, 2014. Before any portion of the Subdivision is rough graded, an erosion control plan shall be implemented by the Developer as approved by the City. The City may impose reasonable, additional erosion control requirements after the City's initial approval, if the City deems such necessary due to a change in conditions. All areas disturbed by the excavation shall be reseeded promptly after the completion of the work in that area unless construction of streets or utilities, buildings or other improvements is anticipated immediately thereafter. Except as otherwise provided in the erosion control plan, seed shall provide a temporary ground cover as rapidly as

possible. All seeded areas shall be mulched, and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion.

b) If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems reasonably appropriate to control erosion based on the urgency of the situation. The City agrees to provide reasonable notice to the Developer in advance of any proposed action, including notice by telephone or email in the case of emergencies, but limited notice by the City when conditions so dictate will not affect the Developer's obligations or the City's rights hereunder.

c) The Developer agrees to reimburse the City for all expenses it incurs in connection with any action it takes to control erosion. No grading or construction of the Subdivision Improvements will be allowed and no building permits will be issued within the Subdivision unless the Developer is in full compliance with the erosion control requirements. The erosion control measures specified in the Plans or otherwise required within the Subdivision shall be binding on the Developer and its successors and assigns.

4. Site Grading; Haul Routes. a) In order to construct the Subdivision Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Subdivision and adjacent property. All grading must be done in compliance with this Agreement, the Plans and with all requirements of the Minnesota Pollution Control Agency regarding contaminated soils. The City may withhold issuance of a building permit for the Subdivision until the approved certified grading plan is on file with the City and all erosion control measures are in place as determined by the City. Within 30 days after completion of the grading, the Developer shall provide the City with an "as constructed" grading plan and a certification by a registered land surveyor or engineer.

b) The Developer agrees that any fill material which must be brought to or removed from the Subdivision while grading the site or during construction of the Subdivision Improvements or any buildings located within the Subdivision will be transported using the haul routes established by the City. For purposes of this provision, the City designates CSAH 110 as the haul route.

5. Construction of Subdivision Improvements. a) All Subdivision Improvements shall be installed in accordance with the Plans, the City Approvals, the City's subdivision regulations, the City's engineering standards for utility construction (as hereinafter defined) and the requirements of the City engineer as indicated in the comments from MSA Professionals. The Developer shall submit plans and specifications for the Subdivision Improvements prepared by a registered professional engineer. The Developer shall obtain any necessary permits from the Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources, the Minnesota Department of Health, the Metropolitan Council, the Minnehaha Creek Watershed District and any other agency having jurisdiction over the Subdivision before proceeding with construction. The City shall inspect all work regarding the Subdivision Improvements at the Developer's expense. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. Prior to beginning construction of any element of the Subdivision Improvements, the Developer or the Developer's engineer shall schedule a

preconstruction meeting with all parties concerned, including the City staff and engineers, to review the program for the construction work. Within 45 days after the completion of the Subdivision Improvements, the Developer shall supply the City with a complete set of reproducible “as constructed” plans and three complete sets of paper “as constructed” plans, each prepared in accordance with City standards and also electronic versions of said plans in AutoCADD and shapefile formats based on Hennepin County coordinates. Iron monuments must be installed in accordance with state law. The Developer’s surveyor shall submit a written notice to the City certifying that the monuments have been installed. All Subdivision Improvements required by this Agreement shall be completed by no later than December 15, 2018, except as specifically noted otherwise in this Agreement.

b) The Developer agrees to require its contractor to provide to the City a warranty bond against defects in labor and materials for all elements of the Subdivision Improvements for a period of two years from the date of their acceptance by the City. During such period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. A decision regarding whether a Subdivision Improvement shows signs of failure shall be made by the City in the exercise of its reasonable judgment. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Improvement Deposit (as hereinafter defined) to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Improvement Deposit. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

c) No building permit shall be issued for structures within the Subdivision until adequate street access is available to the lot in question. If, for any reason, building permits are issued prior to the completion and acceptance of all Subdivision Improvements serving any lot, the final wear course of bituminous excepted, the Developer assumes all liability and costs resulting in delays in completion of the Subdivision Improvements and damage to the Subdivision Improvements caused by the City, the Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties. No temporary or permanent certificate of occupancy shall be issued for any structure within the Subdivision until all streets, except for the final wear course of bituminous, have been completed.

6. Street. a) The Developer agrees to construct the street within the Subdivision in accordance with City specifications and the Plans. The City’s street specifications are contained in the most recent edition of its engineering standards (the “Engineering Standards”), which is hereby incorporated into this Agreement by reference. If there is a conflict between the Plans and the Engineering Standards, the Engineering Standards shall prevail except when an alternative has

been explicitly approved in writing by the City. Following completion of the street and inspection thereof by the City engineer, the City agrees to accept the street for maintenance if they are deemed by the City to have been constructed according to City specifications, including the Engineering Standards and the Plans. Removal of snow and ice from the street within the Subdivision shall remain the responsibility of the Developer until the City accepts the street for maintenance.

b) The streets shall be completed by no later than the date for completion of all Subdivision Improvements except that the final wear course of bituminous shall not be completed until after _____ new homes in the Subdivision have been completed. Notwithstanding the above, the City reserves the right to require installation of the wear course regardless of the number of homes completed whenever, at its sole discretion, it deems that to be in the public interest. After notice by the City, the Developer will have 90 days to install the wear course, which period may be extended to 180 days in recognition of seasonal weather conditions and the availability of bituminous. The Developer shall also repair or replace all broken or failing curbs and sidewalks at the time of installation of the final wear course of bituminous.

c) In order to allow the Developer to grade and to construct the streets and the related improvements, the City hereby agrees to grant to the Developer a temporary easement for purposes of street and utility installation over, under and across the Subdivision rights-of-way. The easement will commence upon filing of the plat of Hamilton Century Farm with Hennepin County and shall terminate upon completion and acceptance by the City of the work described herein regarding road and utility construction within the Subdivision.

7. Stormwater Improvements. a) The Developer agrees to complete all elements of the on-site stormwater facilities, including but not limited to ponds, infiltration basins and accompanying structures, in accordance with the Plans and in compliance with all City requirements regarding such improvements. The stormwater facilities serving the Subdivision will remain private and will be maintained by the Developer at its sole expense until taken over by the homeowners association established by Developer. The City does not intend to accept the stormwater facilities as public and does not intend to maintain them. In order to meet the requirements of the Minnehaha Creek Watershed District, the Developer agrees to enter into a Stormwater Maintenance Agreement with the City in the form attached hereto as Exhibit C. The purpose of the Stormwater Maintenance Agreement is to ensure that the Developer and ultimately the homeowners association maintain the stormwater facilities within the Subdivision and to give the City the right but not the obligation to do so if the Developer fails in its obligations. The Stormwater Maintenance Agreement will be recorded against the Property and will run with the land. The Developer acknowledges that i) the on-site storm water improvements will not be accepted by the City; ii) the City does not plan to maintain or pay for maintenance, repair or replacement of the storm sewer improvements and that the Developer and ultimately the lot owners will have primary responsibility for such work; iii) the City has the right but not the obligation to perform necessary work upon the failure or refusal by the Developer or the lot owners to do so; and iv) if the City performs any work on the storm water improvements, the City intends to recover its costs through one of the means available to it, including the right to specially assess the cost of such work against all of the lots within the Subdivision.

b) The parties anticipate that the Developer will make the homeowners association or lot owners responsible for the maintenance, repair or replacement of the storm water improvements as needed and that the lot owners documents recorded with Hennepin County shall so require. The Developer agrees to inform purchasers of lots within the Subdivision that i) the City does not plan to maintain or pay for maintenance, repair or replacement of the storm water improvements and that the lot owners will have primarily responsibility for such work; ii) the City has the right but not the obligation to perform necessary work upon the failure or refusal by the lot owners to do so; and iii) if the City performs any work on the storm water improvements, the City intends to recover the cost of such work against the lots within the Subdivision through one of the means available to it, including the right to specially assess the cost of the work against all the lots within the Subdivision.

c) The Developer acknowledges that the City has established a storm sewer improvement tax district which includes all of the Property. The district was established pursuant to Minnesota Statutes, sections 444.16 to 444.21 and authorizes the City to acquire, construct, reconstruct, extend, maintain, and otherwise improve storm sewer systems and related improvements within the Property if such work becomes necessary in the opinion of the City. In recognition of this possibility, the Developer agrees to provide prospective lot purchasers with a disclosure statement regarding the existence of the storm sewer improvement tax district and the fact that a tax could be imposed on the lots within the Subdivision if the City is required to repair or maintain the storm sewer systems and related improvements. The wording of the disclosure statement must be approved by the City for use in connection with the sale of lots in the Subdivision prior to its distribution or use by the Developer or to the marketing of any of the lots.

8. Street Lighting and Signs. The Developer agrees to install street lighting and street signs within the Subdivision. Prior to the issuance of any building permits, the Developer shall submit lighting details to the City for review and approval by city staff. All lighting shall meet City standards. Street lighting shall include lighting fixtures approved by the City and shall be equipped with luminaries which allow no light more than five percent above the horizontal plane. Street signs shall be of a design approved by the City and shall be dedicated by the Developer to the City after installation and acceptance by the City. The Developer shall pay for the cost of the street lighting and street signs. If the Developer installs street lighting fixtures consistent with the City's standard fixtures, the City will maintain the fixtures thereafter. Street signs requiring repair or replacement will be replaced by the City with the City's standard form of street sign.

9. Improvement Deposit. a) In order to ensure completion of the Subdivision Improvements required under this Agreement, repair of any roads damaged by the Developer or its contractors or subcontractors and satisfaction of all fees due to the City, the Developer agrees to deliver to the City prior to beginning any construction or work within the Subdivision, _____ and 00/100 Dollars (\$ _____) (the "Improvement Deposit"), which represents 150 percent of the estimated cost of the Subdivision Improvements as specified in the Plans. The Improvement Deposit amount represents the maximum risk exposure for the City, based on the anticipated sequence of construction and the estimate of cost of each element of the Subdivision Improvements, rather than the aggregate cost of all required Subdivision Improvements. The City shall deposit the Improvement Deposit in a

City account with a bank of its choosing. The City shall be the sole accountholder and have sole rights to access and control the funds within the account. The estimated cost of the work covered by the Improvement Deposit is itemized on Exhibit D attached hereto. Upon 10 days' written notice to Developer, the City may draw upon the Improvement Deposit, in whole or part, in order to complete construction of any or all of the Subdivision Improvements and other specified work within the Subdivision, to repair any damaged roads and to pay any fees or costs due to the City by the Developer.

b) The City agrees to return a portion of the Improvement Deposit, in an amount to be determined solely by the City, upon substantial completion of any significant portion of the covered Subdivision Improvements, delivery of the required warranty bond to the City, and satisfaction of all of the Developer's financial obligations to the City. The Improvement Deposit may also be used as security for additional elements of the Subdivision Improvements. Prior to releasing any portion of the Improvement Deposit, the City shall first be satisfied regarding the quality and completeness of the work and that the Developer has taken such steps as may be necessary to ensure that no liens will attach to the land within the Subdivision. The remaining balance of the Improvement Deposit shall be released in full and returned to the Developer following installation of the final wear course of bituminous on the streets and after satisfaction of all the Developer's financial obligations to the City under this Agreement.

c) It is the intention of the parties that the City at all times have available to it an Improvement Deposit in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Improvement Deposit shall be evaluated by the City in light of that principle.

10. Park Dedication Requirements. The Developer agrees to pay a cash-in-lieu park dedication fee of Fifty Five Thousand One Hundred Twenty-five and 00/100 Dollars (\$55,125.00) for the Subdivision.

11. Responsibility for Costs; Deposit for Construction Inspection. a) The Developer agrees to pay to the City an administrative fee in the amount necessary to reimburse the City for its reasonable costs and expenses in reviewing the final plat of Hamilton Century Farm and the drafting and negotiation of this Agreement. The Developer agrees to reimburse the City in full for such reasonable costs within 45 days after notice in writing by the City. The Developer agrees to reimburse the City for the reasonable cost incurred in the enforcement of any provision of this Agreement, including reasonable engineering and attorneys' fees.

b) The Developer shall also pay a fee for City construction observation and administration relating to construction of the Subdivision Improvements. Construction observation shall include inspection of all the Subdivision Improvements. In order to reimburse the City for the administrative fee and the reasonable cost of inspection of the Subdivision Improvements, the Developer shall deposit an additional \$ _____ with the City, which shall receive and hold such funds solely under the terms of this Agreement. The City shall reimburse itself for expenses from the deposit and will provide the Developer with a copy of any invoice

from the City engineer or evidence of other cost or expense prior to deducting such funds from the deposit. If any funds held exceed the amount necessary to reimburse the City for its costs under this paragraph, such funds shall be returned to Developer without interest. If it appears that the actual costs incurred will exceed the estimate, Developer and City shall review the costs required to complete the project and the Developer shall deposit additional sums with the City.

12. Developer's Default. In the event of default by the Developer as to construction or repair of any of the Subdivision Improvements or any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does any such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including but not limited to, hearing requirements and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes, section 429.081.

13. Insurance. The Developer agrees to take out and maintain or cause to be taken out and maintained until six months after the City has accepted the Subdivision Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its contractors or subcontractors. Liability limits shall not be less than \$500,000 when the claim is one for death by wrongful act or omission or for any other claim and \$1,500,000 for any number of claims arising out of a single occurrence. The City shall be named as an additional insured on the policy. The certificate of insurance shall provide that the City must be given the same advance written notice of the cancellation of the insurance as is afforded to the Developer.

14. Floodplain Regulations. No structures, including fences and accessory structures, may be constructed within the Subdivision below the regulatory flood protection elevation. The Developer must comply with the requirements of the City with regard to flood protection.

15. No Building Permits Approved; Certificates of Occupancy. a) The City Approvals do not include approval of a building permit for any structures within the Subdivision. The Developer must submit and the City must approve building plans prior to an application for a building permit for a structure on any lot within the Subdivision. The Developer or the parties applying for the building permits shall be responsible for payment of the customary fees associated with the building permits and other deferred fees as specified in this Agreement.

b) No certificate of occupancy shall be issued for any home constructed in the Subdivision unless prior thereto the lot has been graded, the driveway has been installed, the sump pump is discharging in an approved location, the septic system and water well are in proper working order and an as built survey of the lot has been submitted and approved by the City. In cases in which seasonal weather conditions make compliance with these conditions

impossible, the City may accept an escrow of sufficient amount to ensure completion of the work during the following construction season.

16. Clean up and Dust Control. The Developer shall daily clean dirt and debris from streets adjoining the Subdivision resulting from construction work by the Developer, its contractors, agents or assigns. Prior to any construction within the Subdivision, the Developer shall identify to the City in writing a responsible party for erosion control, street cleaning, and street sweeping. The Developer shall provide dust control to the satisfaction of the City's engineer throughout construction within the Subdivision.

17. Compliance with Laws. The Developer agrees to comply with all laws, ordinances, regulations and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of Minnesota. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits for the Subdivision.

18. Agreement Runs With the Land. This Agreement shall run with the Property and shall be recorded against the title thereto and shall bind and inure to the benefit of the City and the Developer and their successors and assigns. The Developer's successor in title may be responsible for obligations under this Agreement as required by the City. The Developer warrants that there are no unrecorded encumbrances or interests relating to the Property. The Developer agrees to indemnify and hold the City harmless for any breach of the foregoing covenants.

19. Indemnification. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless from claims made by it and third parties for damages sustained or costs incurred resulting from approval of the final plat of Hamilton Century Farm and the other City Approvals. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees, except matters involving acts of gross negligence by the City.

20. Assignment. The Developer may not assign this Agreement or its rights or obligations hereunder without the prior written permission of the City, which consent shall not be unreasonably withheld, conditioned or denied.

21. Notices. Any notice or correspondence to be given under this Agreement shall be deemed to be given if delivered personally or sent by United States certified or registered mail, postage prepaid, return receipt requested:

- a) as to Developer:

b) as to City: City of Independence
1920 County Road 90
Independence, MN 55359-9448
Attn: City Administrator

with a copy to: Robert Vose
Kennedy & Graven
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

or at such other address as any party may from time to time notify the others in writing in accordance with this paragraph. The Developer shall notify the City if there is any change in its name or address.

22. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

23. Non-waiver. Each right, power or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

24. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

[The remainder of this page intentionally blank]

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

CITY OF INDEPENDENCE

By: _____
Marvin Johnson, Mayor

By: _____
Mark Kaltsas
Acting City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by Marvin Johnson and Mark Kaltsas, the Mayor and Acting City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

**DEVELOPER
HAMILTON BROS., INC.**

By: _____

Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018,
by _____, the _____, on behalf of
Hamilton Bros., Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

**EXHIBIT A TO
DEVELOPMENT AGREEMENT**

Legal Description of the Property

The land subject to this Development Agreement is located in Hennepin County, Minnesota and is legally described as follows:

[Insert Legal Description]

**EXHIBIT B TO
DEVELOPMENT AGREEMENT**

List of Plan Documents

The following documents prepared by _____ collectively constitute the Plans:

Sheet	Title	Revision Date
	Title Sheet	
	Final Street Plan	
	Final Storm Sewer Plan	
	Final Grading Plan	
	Final Erosion Control Plan	
	Drainage Map	

**EXHIBIT C TO
DEVELOPMENT AGREEMENT**

**FORM OF
STORMWATER MAINTENANCE AGREEMENT**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2018, by and between the city of Independence, a Minnesota municipal corporation (the “City”), and Hamilton Bros., Inc., a Minnesota corporation (the “Developer”).

WITNESSETH:

WHEREAS, the Developer owns certain real property located in Hennepin County, Minnesota, legally described on Exhibit A attached hereto (the “Property”); and

WHEREAS, the Developer has granted to the City conservation, drainage and utility easements over portions of the Property through a conservation easement and dedication on the plat of Hamilton Century Farm; and

WHEREAS, those portions of the Property subject to the conservation, drainage and utility easements are hereinafter collectively referred to as the “Easement Areas”; and

WHEREAS, the Developer intends to construct within the Easement Areas certain stormwater facilities (the “Stormwater Improvements”) for the benefit of the Property; and

WHEREAS, by a separate development agreement (the “Development Agreement”), the City and the Developer have entered into an agreement for the construction and maintenance of the Stormwater Improvements; and

WHEREAS, the Minnehaha Creek Watershed District requires permanent provisions for handling of storm runoff, including terms and conditions for operation and maintenance of all Stormwater Improvements, and requires such provisions to be set forth in an agreement to be recorded against the Property; and

WHEREAS, the City and the Developer intend to comply with certain conditions, including entering into a maintenance agreement regarding the Stormwater Improvements;

NOW, THEREFORE, in consideration of mutual covenants of the parties set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Maintenance of the Stormwater Improvements.** The Developer and its successors or assigns as fee owners of the Property shall be responsible for maintaining the Stormwater Improvements and for observing all drainage laws governing the operation and maintenance of the Stormwater Improvements. The Developer shall provide the City with a schedule acceptable to the City for the periodic inspection of the Stormwater Improvements by the Developer. The

Developer shall make all such scheduled inspections, keep record of all inspections and maintenance activities, and submit such records annually to the City. The cost of all inspections and maintenance, including skimming and cleaning of the Stormwater Improvements, shall be the obligation of the Developer and its successors or assigns as the fee owner of the Property.

2. City's Maintenance Rights. The City may maintain the Stormwater Improvements, as provided in this paragraph, if the City reasonably believes that the Developer or its successors or assigns has failed to maintain the Stormwater Improvements in accordance with applicable drainage laws and other requirements and such failure continues for 30 days after the City gives the Developer written notice of such failure or, if such tasks cannot be completed within 30 days, after such time period as may be reasonably required to complete the required tasks provided that Developer is making a good faith effort to complete said task. The City's notice shall specifically state which maintenance tasks are to be performed. If Developer does not complete the maintenance tasks within the required time period after such notice is given by the City, the City shall have the right to enter upon the Easement Area to perform such maintenance tasks. In such case, the City shall send an invoice of its reasonable maintenance costs to the Developer or its successors or assigns, which shall include all reasonable staff time, engineering and legal and other reasonable costs and expenses incurred by the City. If the Developer or its assigns fails to reimburse the City for its costs and expenses in maintaining the Stormwater Improvements within 30 days of receipt of an invoice for such costs, the City shall have the right to assess the full cost thereof against the Property. The Developer, on behalf of itself and its successor and assigns, acknowledges that the maintenance work performed by the City regarding the Stormwater Improvements benefits the Property in an amount which exceeds the assessment and hereby waives any right to hearing or notice and the right to appeal the assessments otherwise provided by Minnesota Statutes, Chapter 429. Notwithstanding the foregoing, in the event of an emergency, as determined by the city engineer, the 30-day notice requirement to the Developer for failure to perform maintenance tasks shall be and hereby is waived in its entirety by the Developer, and the Developer shall reimburse the City and be subject to assessment for any expense so incurred by the City in the same manner as if written notice as described above has been given.

3. Hold Harmless. The Developer hereby agrees to defend, indemnify and hold harmless the City and its agents and employees against any and all claims, demands, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or resulting from the Developer's, or the Developer's agents' or employees' negligent or intentional acts, or any violation of any safety law, regulation or code in the performance of this Agreement, without regard to any inspection or review made or not made by the City, its agents or employees or failure by the City, its agents or employees to take any other prudent precautions. In the event the City, upon the failure of the Developer to comply with any conditions of this Agreement, performs said conditions pursuant to its authority in this Agreement, the Developer shall indemnify and hold harmless the City, its employees, agents and representatives for its own negligent acts in the performance of the Developer's required work under this Agreement, but this indemnification shall not extend to intentional or grossly negligent acts of the City, its employees, agents and representatives.

4. Costs of Enforcement. The Developer agrees to reimburse the City for all costs

prudently incurred by the City in the enforcement of this Agreement, or any portion thereof, including court costs and reasonable attorneys' fees.

5. Rights Not Exclusive. No right of the City under this Agreement shall be deemed to be exclusive and the City shall retain all rights and powers it may have under Minnesota Statutes, sections 444.16 to 444.21 to acquire, construct, reconstruct, extend, maintain and otherwise improve the Stormwater Improvements, provided, however, that the City shall not exercise such rights unless the Developer or its successors or assigns does not timely cure a failure to maintain the Stormwater Improvements after receipt of written notice as provided in paragraph 2 above.

6. Notice. All notices required under this Agreement shall either be personally delivered or be sent by United States certified or registered mail, postage prepaid, and addressed as follows:

a) as to Developer: Hamilton Bros., Inc.

b) as to City: City of Independence
1920 County Road 90
Independence, MN 55359-9448
Attn: City Administrator

with a copy to: Robert Vose
Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

or at such other address as any party may from time to time notify the others in writing in accordance with this paragraph.

7. Successors. All duties and obligations of Developer under this Agreement shall also be duties and obligations of Developer's successors and assigns. The terms and conditions of this Agreement shall run with the Property.

8. Effective Date. This Agreement shall be binding and effective as of the date first written above.

9. Governing Law. This Agreement shall be construed under the laws of Minnesota.

**DEVELOPER
HAMILTON BROS., INC.**

By: _____

Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018,
by _____, the _____, on behalf of
Hamilton Bros., Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

CITY OF INDEPENDENCE

By: _____
Marvin Johnson, Mayor

By: _____
Mark Kaltsas
Acting City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by Marvin Johnson and Mark Kaltsas, the Mayor and the Acting City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

**EXHIBIT A TO
STORMWATER MAINTENANCE AGREEMENT**

The land subject to this Stormwater Maintenance Agreement is located in Hennepin County, Minnesota and is legally described as follows:

[Insert Legal Description]

**EXHIBIT D TO
DEVELOPMENT AGREEMENT**

Subdivision Improvement Cost Estimate

[To be inserted]