



Please note that, pursuant to the authority provided by Minn. Stat. Sec. 13D.021, subd. 1(1), the City has determined that in-person meetings of the City Council are not practical or prudent due to the COVID-19 public health pandemic and the declared national, state, and local emergencies. Meetings of the Council will be conducted by electronic or telephonic means. Under Minn. Stat. Sec. 13D.021, subd. 3, to the extent practical and possible, the City Council will allow individuals to monitor the meeting electronically. Access to the meeting can be obtained online by following the link provided below or by contacting the City Hall for instructions and methods for obtaining access to the meeting.

Meeting Access Information: <https://www.ci.independence.mn.us/meetings>

**PLEASE NOTE:** Beginning at 5:00 PM and prior to the City Council Meeting, the Mayor and Council Members will be interviewing candidates for the open Planning Commission Alternate Positions.

**CITY COUNCIL MEETING AGENDA**  
**TUESDAY AUGUST 3, 2021**  
**CITY COUNCIL MEETING TIME: 5:30 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 Minutes from the July 20, 2021, Regular City Council Meeting.
  - b. Approval of City Council Minutes from the July 21, 2021, City Council Workshop Meeting.
  - c. Approval of Accounts Payable; (Batch #1 Checks Numbered 20605-20608, Batch #2 Checks Numbered 20609-20634).
  - d. Approval of the Following Development Agreements:
    - i. Schefers Hills Subdivision
    - ii. Lake Sarah Hill Subdivision
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. Open/Misc.
  8. Adjourn.

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, JULY 20, 2021 –6:30 P.M.  
Public Works Garage & Virtual

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Betts, McCoy and Grotting (arrived late).

ABSENT: None

STAFF: City Administrator Kaltsas, Police Chief Kroells.

VISITORS: All attended virtually.

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 Minutes from the July 6, 2021 Regular City Council Meeting.
- b. Approval of Accounts Payable; (Batch #1 Checks Numbered 20585-20592, Batch #2 Checks Numbered 20593-20604).
- c. Approval of Pay Application #7 from Rochon for City Hall Improvements.
- d. Assembly Permit Consideration:
  - i. 3658 County Road 90 – Family Reunion on August 13&14, 2021.
  - ii. 2026 Copeland Road – Wine Tasting on September 11, 2021.

**Motion by Spencer, second by McCoy to approve the Consent Agenda. Ayes: Johnson, Spencer, McCoy and Betts. Nays: None. Absent: Grotting. Abstain. None. MOTION DECLARED CARRIED.**

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

**Spencer attended the following meetings:**

- Highway 12 Safety Coalition-Virtual
- Lake Sarah Improvement Association (ice cream social)

**Grotting attended the following meetings:**

- Not present

**McCoy attended the following meetings:**

- None

**Betts attended the following meetings:**

- Highway 12 Safety Coalition-Virtual

**Johnson attended the following meetings:**

- NLC Energy, Environment & Natural Resources-Virtual
- Board meeting for Senior Community Services-Virtual
- NLC Small Cities-Virtual
- Regional Council of Mayors-In person

**Horner attended the following meetings:**

- Absent

**Kaltsas attended the following meetings:**

- None

**7. Minnesota Senator David Osmek: Annual Council Visit. (Council member Grotting arrived at this time)**

Transportation bill, a one time small cities. Johnson asked how much was in that fund, Osmek couldn't remember for sure. He defended what they did last July by requiring better police training for Minneapolis and St. Paul. He sees good cops doing good work. Problems with catching people with warrants and then letting them go. Gets very frustrated with the legislative process. The \$6 million to start planning for a park over I-94 is turning into a \$2 billion project. This isn't an appropriate use of taxpayers dollars. Johnson asked if there are anymore special sessions, Osmek said they're not sure yet. A committee has been established to talk about a bonus plan for first responders which he agrees with, but not necessarily for grocery store workers. McCoy asked about approval of fire district, but he had no updates on this. Met Council said they'd continue to work on the Comp Plan.

**8. West Hennepin Public Safety Director Gary Kroells: Presentation of the June 2021 Activity Report.**

Kroells stated through June 30, 2021 there were a total of 457 incidents handled by WHPS. 334 incidents were in the City of Independence and 123 in Maple Plain. Kroells highlighted several cases. Chief Kroells reminded all that Night to Unite will be August 3.

\*For a complete list of incidents please see the packet for tonight's meeting\*

**9. Consider Acceptance of the Corona Virus Local Recovery Funds Established Under the American Rescue Plan Act:**

- RESOLUTION No. 21-0720-01** – Accepting the funds and authorizing staff to take necessary actions to acquire the funds.

We will be receiving a certain amount of Corona funds from the State and we will discuss how we'll utilize these funds tomorrow morning. Grotting asked if Kaltsas saw any use the City would have for these funds, and Kaltsas said that he did. Grotting asked the cut off date, and it was confirmed a few years. Kaltsas said the sewer always needs funds, and that we'll get the allocation and then see.

**Motion by Spencer, second by Betts to approve Resolution No. 21-0720-01 to accept the funds and authorize staff to take necessary actions to acquire the funds. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

10. Set date to Consider Approval of the 2022 Budget and Tax Levy: December 7<sup>th</sup>, 2021 at 6:00 PM.

**Motion by Betts, second by McCoy to approve the 2022 Budget and Tax Levy meeting be held December 7<sup>th</sup>, 2021 at 6:00 P.M. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

11. Discuss City Council Meeting Date/Time that Conflicts with Night to Unite on August 3<sup>rd</sup>, 2021.

Kaltsas said there will be some Planning items that will need to be discussed, and it's hard to move the meeting to a different night to capture everyone's schedules.

**Motion by Grotting, second by McCoy to move the August 3<sup>rd</sup> City Council meeting to 5:00 P.M. in order to avoid a conflict with Night to Unite. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None.**

12. John Klinkner (Applicant/Owner) is requesting the following action for the property located at 2160 Nelson Road (PID No. 19-118-24-13-0001) in the City of Independence, MN:

- a. **RESOLUTION No. 21-0720-02** – Considering approval of a rural view lot subdivision to allow the creation of two (2) rural view lots on the subject property.

The applicant's representative approached the City about the possibility of subdividing the property in order to realize the allowable rural view lots. The applicant would like to establish two (2) rural view lots and has configured both to maximize the value of the new lots created. The applicant is proposing to create two (2) rural view lots in accordance with the provisions set forth in the City's Zoning Ordinance. The subject property has a total acreage of 80.84 acres.

The Agriculture Zoning District prohibits the subdivision of property with two exceptions: rural view lot subdivisions and lot line rearrangements. The provisions in the Agriculture Zoning District also allow one (1) rural view lot for every 40 acres of land under the same ownership. Under the current zoning standards, the subject property has the ability to realize two (2) rural view lots for a total of three (3) lots across the property.

Rural view lots must have the following characteristics:

**Lot size required -** between 2.5 and 10 acres

**Lot size proposed -** Parcel A – 10.00 acres  
Parcel C – 10.00 acres

**Buildable Upland Required -** 2.5 acres

**Buildable Upland Proposed -** Parcel A – ~10.00 acres  
Parcel C – ~9.00 acres

**Minimum lot frontage required –** 300 LF (for property between 5-10 acres)

**Minimum lot frontage proposed –** Parcel A – 662 LF  
Parcel B – 670 (Nelson Rd) / 812 (Copeland Rd)  
Parcel C – 507 LF

**Ratio of lot frontage to lot depth required -** no more than 1:4

**Ratio of lot frontage to lot depth proposed –** Parcel A – ~1:1  
Parcel 4 – ~1:1.5

In addition to the minimum size necessary to subdivide, the ordinance requires at least 2.5 acres of buildable upland, 300 LF of frontage on a right of way and no greater than a 1:4 ratio of lot frontage to lot depth for each rural view lot. Based on the proposed subdivision, both proposed rural view lots would meet all applicable setbacks.

There is an existing home and several detached accessory buildings that would be located on the newly created Parcel A. This home is accessed off of Nelson Road. The new lot would have 10 acres and all existing structures would meet applicable building setbacks.

Parcels B and C would be vacant properties with no existing structures in the after condition. The applicant is proposing to subdivide the property into lots that take advantage of the natural characteristics of the property and offer the best geographic location for a potential new home site. The remaining 60-acre Parcel B would have multiple locations for a future home site which could be accessed off of either Nelson or Copeland Roads.

The City received an on-site septic report verifying that the proposed rural view lots can accommodate a primary and secondary on-site septic system. The applicant has provided the requisite drainage and utility easements as required by ordinance (Section 500.15, Subd.'s 1 and 2) for all three parcels. Parcel B will have **no** rural view lot subdivision eligibilities following this subdivision.

The newly created rural view lots (Parcels A and C) will be required to pay the City's requisite Park Dedication fee. For this property the requirement is as follows: Lot A and C (10 acres) \$7,250 each. This fee will need to be paid prior to recording the subdivision.

*Park dedication fee of \$3,500 per lot up to 4.99 acres,  
plus \$750 per acre for each acre over 5 acres*

The City will need to determine if the proposed rural view lot subdivision is in keeping with the requirements set forth by the City. The proposed subdivision of this property is intended to maximize the value in each of the lots being created while meeting all applicable criteria. The proposed lots being created generally align with the character of the surrounding properties and the intent of the City's Comprehensive Land Use Plan.

***Discussion:***

Planning Commissioners reviewed the application and found no issues or concerns relating to the proposed minor subdivision. Commissioners recommended approval to the City Council.

***Recommendation:***

The Planning Commission recommended approval of the request for a rural view lot subdivision with the following findings and conditions:

1. The proposed rural view lot subdivision meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. Approval of the rural view lot subdivision is subject to the following:
  - a) The Applicant shall pay the park dedication fees in the amount of \$14,500, for the newly created Parcels A and C, prior to the applicant receiving final approval to record the subdivision by the City.
  - b) The Applicant shall pay for all costs associated with the City's review of the requested minor subdivision.
  - c) The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.
  - d) The Applicant shall execute and record the requisite drainage and utility easements with the county within six (6) months of approval.
  - e) Parcel B will have no remaining rural view lot eligibilities.

Johnson asked if each of the 10 acres will still have Ag status, and Kaltsas said they would. Johnson asked if there's access from the big portion to Nelson Rd. Kaltsas said there might be limited access due to wetland but there would also be access from Copeland.

**Motion by Spencer, second by Betts to approve Resolution No. 21-0720-02 to consider approval of a rural view lot subdivision**

to allow the creation of two (2) rural view lots on the subject property. Ayes: Johnson, Spencer, McCoy, and Betts. Nays: None. Absent: None. Abstain. Grotting. MOTION DECLARED CARRIED.

Motion by Spencer, second by McCoy to adjourn at 7:20 p.m. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.





DRAFT

MINUTES OF A WORK SESSION OF THE  
INDEPENDENCE CITY COUNCIL  
WEDNESDAY JULY 21, 2021–7:00 A.M.  
(Public Works Garage & Virtual)

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, Spencer, Grotting, and McCoy  
ABSENT: None  
STAFF: City Administrator Kaltsas, Assistant to Administrator Horner,  
VISITORS: WHPS Chief Kroells, Steve McDonald (ABDO)

3. General Administration

- a. 2022 Budget/Finance
  - o Preliminary Budget and Levy Review/Discussion
    - Police/Fire Budget Updates
- b. City Hall Facility Renovations Update and WHPS/PW Accessory Building Construction
- c. American Rescue Plan Act – Covid Funding Allocation Discussion

Kaltsas stated the goal the City's been trying to achieve is to keep the tax rate flat. Kaltsas has started putting together Council's increase. We're funding a Public Works capital budget of \$60,000. We're also continuing to fund the streets for drain tiling and seal coating. Betts asked about what is left on the streets this year. Kaltsas said we are still going to stripe Providence, and tiling Copeland.

Kaltsas talked about the staffing changes made within the City. We will have fulltime presence at the front window, so we've added a part time admin staff.

Kroells addressed the police budget. He's working with ABDO now and they're looking at an 11% increase. We had a \$34,000 surplus which is no longer available, no longer have crime prevention dollars, no longer have drug task force money, and there was a 40% increase in workers comp. We're at 7-8% reserves, which is under the 10% we like to keep. He feels there's a problem in hiring officers in the area. He doesn't want his officers to leave so feels it's important to keep them. Johnson asked about health insurance, which saw a 6% increase. Spencer asked if we could use some COVID dollars for WHPS. Kaltsas said we can use COVID for infrastructure, like data. Kaltsas reminded us that the majority of our budgets is personnel. Spencer asked about any equipment replacement. Kaltsas said he was contacted about doing another \$10,000,000 conduit bond. Betts noted the new building will require fewer repairs and asked about the North Memorial building. Kaltsas said they were meeting with them that day.

Johnson asked about the renovation update. Kaltsas said we are to have a punch list walk through next week and get staff back in there to work. Kaltsas gave a staffing update. We've hired Amber Simon as the

Administrative Assistant and her husband Matt Simon for Public Works. We've also hired Linda Johnson as part time Admin.

Johnson inquired about the Comp Plan, and Kaltsas said he's still working with MetCouncil to accept his latest proposal on density. They want us to have a density that no one in Independence wants, which is no more than 2.7-3 units per acre. Medina has a 130 townhome area going in by Holiday Gas Station. Kaltsas said we're trying to keep them around 3 in the Jerde tree farm area. There are still a lot of Cities not done with their Comp Plans. We get to drive land use.

Steve MacDonald apologized for being late. He concurred Kroells has a hurdle to get his budget approved.

Kaltsas said there was no Planning Commission meeting last night due to lack of quorum. We want to bring the interested alternate Planning Commissioners in for the Council to meet. So for the Council meeting August 3<sup>rd</sup> we'll see if either or both of them are able to come to the meeting. This meeting will be at 5:00. Spencer asked about changing the Planning Commission meeting, and Kaltsas will find out today when we would be able to have an alternate meeting.

Kaltsas said we'll tweak the budget and will do another workshop in August.

The Workshop adjourned at 8:15 a.m.

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Respectfully Submitted,  
Beth Horner/ Recording Secretary

**DEVELOPMENT AGREEMENT  
BETWEEN SCHEFERS AND  
THE CITY OF INDEPENDENCE**

**SCHEFERS HILLS**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Independence, a municipal corporation under the laws of Minnesota (the “City”), and Elmer J. Schefers and Barbara A. Schefers, Trustees of the Schefer Living Trust dated November 11, 2008 (the “Developer”).

WITNESSETH:

WHEREAS, Developer is the fee owner of land located at 3590 Independence Road and identified by (PID No. 12-118-24-32-0003), which land is legally described on Exhibit A attached hereto (the “Property”), and;

WHEREAS, Developer has obtained certain approvals for development of the Property as a three (3) lot subdivision to be platted as Schefers Hills, and;

WHEREAS, the City Council conditionally approved the preliminary and final plat of Schefers Hills (the “Subdivision”) on July 6, 2021 by Resolution 21-0706-06, and;

WHEREAS, the Property has been re-zoned RR-Rural Residential with the S-Shoreland Overlay, and;

WHEREAS, the foregoing City approvals are referred to hereinafter as the “City Approvals,” and;

WHEREAS, approval of the plat was conditioned upon the Developer entering into a developer agreement addressing, among other matters, construction of a road to City street standards.

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

1. Right to Proceed. The Developer may not construct public or private improvements within the Subdivision until all the following conditions precedent have been satisfied:

a) the final plat has been filed with Hennepin County;

- b) this Agreement has been executed and filed with Hennepin County;
- c) the required Improvement Deposit and escrow amount (as hereinafter defined) have been received by the City from 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;
- f) the Developer has obtained written approval from the Pioneer Sarah Creek Watershed Management Commission;
- g) the Developer has paid the park dedication fee as per paragraph 8, and;
- h) the Developer has attended a preconstruction meeting with the City engineer and staff.

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

2. Plans; Subdivision Improvements. a) The Developer agrees to develop the Property in accordance with the City Approvals, and to construct all improvements (“Subdivision Improvements”) in accordance with the approved engineering and construction plans (the “Plans”). All terms and conditions of the City Approvals are hereby incorporated by reference into this Agreement. 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 Subdivision Improvements including the upgrade and reconstruction of Pete Drive to the City’s public road standards.

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 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. All construction 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 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.

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 and the requirements of the City engineer. The Developer shall submit plans and specifications for the Subdivision Improvements. The Developer shall obtain any necessary permits from any other agency having jurisdiction before proceeding with construction. The City shall inspect the Subdivision Improvements at the Developer's expense. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. 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 November 15, 2021, 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) If building permits are issued prior to the completion and acceptance of all Subdivision Improvements serving any lot, 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.

6. Stormwater Improvements. The Developer agrees to complete all Subdivision Improvements in accordance with the Plans, all City requirements, and the requirements of the Sarah Creek Watershed Management Commission.

7. 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, Forty Seven Thousand Eight Hundred Forty Three and 00/100 Dollars (\$47,843.00) (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 B 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.

8. Park Dedication Requirements. The Developer shall pay a cash-in-lieu park dedication fee of Seven Thousand Four Hundred Twenty Eight and 00/100 Dollars (\$7,428.00) for the Subdivision.

9. Sewer Connection Fee. The Developer shall pay Twenty Six Thousand One Hundred Thirty Three and 40/100 Dollars (\$26,133.40) for the connection of two to the municipal sanitary sewer system.

10. Responsibility for Costs; Deposit. In addition to any payments or deposits made, the Developer shall pay to the City a deposit in the amount of \$10,000.00 to reimburse the City for its reasonable costs and expenses in reviewing the final plat, rezoning and for drafting and negotiation of this Agreement. The Developer further agrees to reimburse the City in full for any additional costs within 45 days after notice in writing by the City including the reasonable cost incurred in the enforcement of any provision of this Agreement, and including reasonable engineering and attorneys' fees, and construction observation and administration relating to construction of the Subdivision Improvements. The City shall reimburse itself for expenses from the deposit and will provide the Developer with a copy of any invoice for costs or expenses 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.

11. 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.

12. 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.

13. 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.

14. 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 home is connected to the municipal sanitary sewer system and such connection has been approved by the City, 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.

15. 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. The Developer shall provide dust control to the satisfaction of the City's engineer throughout construction within the Subdivision.

16. 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.

17. 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.

18. 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 Shady Beach Park 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.

19. 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.

20. 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: Elmer J. and Barbara A. Schefers  
3590 Independence Road  
Independence, MN 55359

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  
150 South Fifth Street, Suite 700  
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.

21. 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.

22. 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.

23. 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.

**[Signature pages to follow]**

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  
City Administrator

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Marvin Johnson and Mark Kaltsas, the Mayor and City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

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

**DEVELOPER:**

**SCHEFERS LIVING TRUST DATED  
NOVEMBER 11, 2008**

**Elmer J. Schefers**

\_\_\_\_\_  
Its Trustee

**Barbara A. Schefers**

\_\_\_\_\_  
Its Trustee

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021,  
by Elmer J. Schefers and Barbara A. Schefers. the Trustees of the Schefers Living Trust dated  
November 11, 2008, on behalf of said trust.

\_\_\_\_\_  
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  
DEVELOPMENT AGREEMENT**

Legal Description of the Property

The land subject to this Development Agreement is legally described as follows:

The West 51 ½ rods of Government Lot Four (4), Section 12, Township 118, Range 24, and the South One (1) rod of the Southwest Quarter of the Northwest Quarter (SW ¼ of the NW ¼) of Section 12, Township 118, Range 24, Hennepin County, Minnesota.

To be platted as:

Lots 1-3, Block 1, Schafers Hills  
Hennepin County, Minnesota

Current address:

3590 Independence Road  
Independence, MN.

# EXHIBIT B

## ENGINEER'S ESTIMATE

PRELIMINARY ENGINEER'S ESTIMATE  
Grading, Utility, and Street Construction

**SCHEFER HILLS**  
Independence, Minnesota

Otto Project No. 20-0158  
Date 07-14-21

SCHEDULE A - SANITARY SEWER				
CONTRACT ITEM	UNITS	EST QUANT	UNIT PRICE	TOTAL
1.5" PVC Forcemain SCH 40	LF	122	\$ 30.00	\$ 3,660.00
Connect to Existing Forcemain	EACH	2	\$ 2,000.00	\$ 4,000.00
<b>TOTAL</b>				<b>\$ 7,660.00</b>

SCHEDULE B - STORM SEWER				
CONTRACT ITEM	UNITS	EST QUANT	UNIT PRICE	TOTAL
15" CMP Storm Sewer FES w/ Trash Guard	EACH	1	\$ 2,500.00	\$ 2,500.00
<b>TOTAL</b>				<b>\$ 2,500.00</b>

SCHEDULE C - STREET CONSTRUCTION				
CONTRACT ITEM	UNITS	EST QUANT	UNIT PRICE	TOTAL
Subgrade Preparation (1' Depth)	LS	1	\$ 1,500.00	\$ 1,500.00
Agg. Base Cl. 5 In Place 6"	TON	123	\$ 24.00	\$ 2,952.00
Rip Rap	CY	5.2	\$ 75.00	\$ 390.00
<b>TOTAL</b>				<b>\$ 4,842.00</b>

SCHEDULE D - GRADING				
CONTRACT ITEM	UNITS	EST QUANT	UNIT PRICE	TOTAL
Grading	LS	1	\$ 10,000.00	\$ 10,000.00
Material Export, LV (Field Verify)	CY	613	\$ 10.00	\$ 6,130.00
Silt Fence w/Bioroll	LF	92	\$ 4.00	\$ 368.00
Resoration (Mix 25-141 Type I Mulch)	ACRE	0.43	\$ 918.00	\$ 395.17
<b>TOTAL</b>				<b>\$ 16,893.17</b>

CONTRACT ITEMS	TOTAL
SCHEDULE A - SANITARY SEWER	\$ 7,660.00
SCHEDULE B - STORM SEWER	\$ 2,500.00
SCHEDULE C - STREET CONSTRUCTION	\$ 4,842.00
SCHEDULE D - GRADING	\$ 16,893.17
<b>TOTAL</b>	<b>\$ 31,895.17</b>

**DEVELOPMENT AGREEMENT  
BETWEEN DesMARAIS  
AND THE CITY OF INDEPENDENCE**

**LAKE SARAH HILL**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the city of Independence, a municipal corporation under the laws of Minnesota (the “City”), and (“DesMarais”)(the “Developer”).

WITNESSETH:

WHEREAS, DesMarais is the fee owner of land located at the northeast corner of CSAH 11 and Woodhill Drive (PID No. 01-118-24-34-0010), which land is legally described on Exhibit A attached hereto (the “Property”), and;

WHEREAS, DesMarais has contracted with one another to provide for subdivision and development of the Property, and together as Developer have obtained certain approvals for development of the Property as Lake Sarah Hill, and;

WHEREAS, the City Council conditionally approved the preliminary and final plat of Lake Sarah Hill (the “Subdivision”) on July 6, 2021 by Resolution 21-0706-03, and;

WHEREAS, the City approvals are referred to hereinafter as the “City Approvals,” and;

WHEREAS, the final approval of the plat was conditioned upon the Developer entering into an agreement addressing, among other matters, the removal of the two detached accessory structures located on Lot 2, Block 1, Lake Sarah Hill or the bringing of such structures into compliance with all applicable legal requirements including the City’s building code and zoning code.

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

1. Removal of Structures. On or before July 31, 2022, the Developer shall remove the two existing accessory structures from Lot 2, Block 1, Lake Sarah Hill subject to the City Approvals and applicable law. Until removed, the structures may not continue to be used. In the alternative, the developer may cause the structures to be in compliance with all applicable legal requirements including the City’s building code and zoning code, and to have been inspected by the City with such compliance confirmed, on or before July 31, 2022. Obtaining compliance must include



construction of a principal structure on Lot 2, Block 1. The developer acknowledges and agrees that it must complete such construction and corrections, schedule inspections and receive confirmation of compliance by the deadline and acknowledges and agrees that developer is solely responsible for timely completing the same. Failure to timely cure all identified building and zoning code violations will require immediate removal of the structures.

2. Security. In order to ensure compliance with this Agreement, the Developer has, contemporaneous with this Agreement, deposited Five Thousand Dollars and 00/100 Dollars (\$5,000.00) ("Deposit") with the City. On or after the deadline for removal, the City may draw upon the Deposit to complete removal of the accessory structures. The City agrees to return a portion of the Deposit, in an amount to be determined solely by the City, upon completion of removal. In addition, the Developer agrees the City may specially assess any unreimbursed costs against any lots in the Subdivision to recover any removal costs. 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.

3. Sewer connections. There is one existing connection to the sanitary sewer on the Property serving an existing detached accessory structure. This connection maybe used for Lot 1 or 2, Block 1, Lake Sarah Hill. Connections shall be provided to the three (3) new lots, subject to all applicable connection fees in addition to an initial assessment fee of \$9,550 per lot. The \$9,550 per lot has been paid by Developer contemporaneous with this Agreement.

4. Park Dedication. The Developer shall pay the City's current park dedication fee of \$3,500 per lot (less than 4.99 acres). The \$3,500 per lot has been paid by Developer contemporaneous with this Agreement.

5. No Certificates of Occupancy. The City Approvals do not include approval of a building permit or certificate of occupancy for any structures within the Subdivision. The Developer must perform its obligations under this Agreement prior to issuance of any certificate of occupancy.

6. 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.

7. 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.

8. 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 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.

9. Assignment. The Developer may not assign this Agreement or its rights or obligations hereunder without the prior written permission of the City.

10. 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.

11. 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.

**[Signature pages to follow]**

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  
City Administrator

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Marvin Johnson and Mark Kaltsas, the Mayor and City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

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

**By:** \_\_\_\_\_

\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021,  
by \_\_\_\_\_.

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

**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:

*PROPERTY DESCRIPTION:*

*That part of Lot 3, Block 1, LAKE SARAH FARMS, Hennepin County, Minnesota, according to the recorded plat thereof; lying Southerly of a line described as:*

*Commencing at the Southwest corner thereof; thence Northerly along the West line of said Lot 3, a distance of 10.00 feet to the point of beginning of line to be described; thence Northeasterly deflecting right 67 degrees 53 minutes 40 seconds to the shoreline of Lake Sarah and there ending.*

*ALSO:*

*That part of Lot 4, Block 1, LAKE SARAH FARMS, Hennepin County, Minnesota, according to the recorded plat thereof; lying Westerly of the following described line and its Northeasterly extension.*

*Commencing at the Southeasterly corner thereof; thence Westerly along the Southerly line thereof; distant 328.00 feet to the point of beginning of the line to be described; thence deflect right 90 degrees, a distance of 300.00 feet; thence deflect right 38 degrees to the shoreline of Lake Sarah and there ending.*