

Agenda
Zumbrota City Council
Regular Meeting
Thursday May 7, 2026, at 6:00 p.m., City Hall

1. Call to Order/Pledge of Allegiance

2. Amendments/Adoption of Agenda

3. Public Comments: *(Individuals may address the City Council about any item of concern. Speakers must state their name and limit their remarks to three minutes. Generally, the City Council will not take official action on these items but may refer the matter to staff for a future report or direct that the matter be scheduled for a future meeting agenda.)*

4. Consent Agenda

All items listed on the consent agenda are considered routine by the council and will be approved by one motion. There will be no separate discussion on these items unless a council member requests, in which case the item will be removed from the consent agenda and be considered in its normal sequence on the agenda.

- a. Minutes 4/16/26 Regular Meeting

5. Accounts Payable 5/7/2026 (Amundson)

6. New Business

- a. Posting the Police Chief Position
- b. Resolution 2026-16 Pleasant Avenue Unbudgeted Transfers
- c. Chain Link Fence Repair Quotes
- d. Highlands Development Agreement
- e. Set a Work Session

7. Reports

- a. Finance, HR Director / Public Works Director / City Engineer / Library Director / Police Chief / City Attorney / Deputy City Administrator / City Administrator
- b. Mayor Hammel
- c. Council members, Prigge, Bucher, Amundson, Raasch

8. Adjournment



MEMORANDUM

DATE: May 7, 2026
TO: Mayor Hammel and Members of the City Council
FROM: Brian Grudem, City Administrator
RE: City Council Meeting May 7, 2026

Consent Agenda

Minutes 4/16/26 Regular Meeting

Staff recommends approval of the minutes from the April 16, 2026, regular City Council meeting.

New Business

Posting the Police Chief Position

The Personnel Committee has reviewed and updated the Police Chief job description (attached). The Committee is requesting Council direction on whether to proceed with an internal-only posting or to open the position to external candidates.

If we proceed with an internal posting, we will post it for a week (May 8th-15th) and interview any candidates the week of May 18th.

If council wishes to do an external posting, we will post for two weeks (May 8th –22nd) and plan on doing interviews the week of May 25th.

Resolution 2026-16 Pleasant Avenue Unbudgeted Transfers

See the attached memo from Finance/HR Director Kim Simonson. Staff recommends approval of Resolution 2026-16 Pleasant Avenue Unbudgeted Transfers.

Chain Link Fence Repair Quotes

See the attached memo from Public Works Director Jeff Meyers.

Set a Work Session

Staff requests that the Council schedule a work session in May to review the proposed revisions to the water billing ordinance and address any additional items as needed.

Highlands Development Agreement

See the attached memo from Deputy City Administrator Myles Robb, staff recommends approval of the Highlands 7th Development Agreement.

**CITY OF ZUMBROTA
COUNCIL MEETING MINUTES
APRIL 16, 2026
6:00 P.M.
TOWN HALL**

Mayor Todd Hammel called the Zumbrota City Council to order at 6:00 PM. PRESENT: Mayor Todd Hammel, Council members Bob Prigge, Kevin Amundson, Fred Raasch, and Joan Bucher. Others present: City Administrator Brian Grudem, City Engineer Bill Angermann, Finance/HR Director Kim Simonson, Deputy City Administrator Myles Robb, Police Chief Pat Callahan, Police Sergeant Stephanie Miner, Public Works Director Jeff Meyers, Library Director James Hill, City Attorney Mike Flaherty, Dave Grimsrud (NewsRecord), Holly Galbus (remote) and Aaron Wichmann (remote).

AMENDMENTS/ADOPTION OF AGENDA

MOTION Amundson, second Prigge to adopt the agenda. Approved 5-0-0.

PUBLIC COMMENT

CONSENT AGENDA:

MOTION Amundson to approve the consent agenda as follows:

4-A. MINUTES – 04/2/2026 REGULAR MEETING MINUTES

4-B. 4/8/2026 PUBLIC HEARING POOL TAX ABATEMENT

Approved 5-0-0.

5-A. ACCOUNTS PAYABLE 4/16/2026

MOTION Amundson, second Bucher to approve the accounts payable of \$356,372.27.

Approved 5-0-0.

PUBLIC HEARING

OLD BUSINESS

6-A. RESOLUTION 2026-15 ACCEPT OR REJECT POOL BIDS

MOTION Bucher, second Hammel to approve Resolution 2026-15 Accepting the Pool Bids and authorizing staff to proceed with processing the issuance of tax abatement bonds. Approved by roll call: Hammel, aye; Prigge, nay; Bucher, aye; Amundson, nay; Raasch, aye. Approved 3-2-0.

NEW BUSINESS

7-A. 2026 STREET RECONSTRUCTION – PLEASANT AVENUE LOOP - BIDS

Angerman presented the following bids for the Pleasant Avenue Loop Project:

Alcon Excavating	\$2,345,821.85
A-1 Excavating	\$2,444,444.00
Schumacher Excavating	\$5,531,362.20
St. Contracting Inc.	\$2,597,220.00
BCM Construction	\$2,688,386.32
Wencl Construction	\$2,779,410.00
Heselton Construction	\$2,877,750.00

The contractor could choose to complete the project over two years.

MOTION Bucher, second Amundson to accept the bid from Alcon Construction for \$2,345,821.85.

Approved 5-0-0.

7-B. CHARTER FRANCHISE AGREEMENT (DRAFT)

Grudem has been working with City Attorney Mike Flaherty and Celeste Flynn on the new Charter Franchise Agreement. It is a 10-year agreement with an automatic 5-year extension unless either party notifies the other within three years of the end of the agreement. The only change from the previous agreement now the City will receive 5% of gross revenues rather than 4%.

This is the first reading for council. Grudem asked Council to contact him with any input.

7-C. CARE CENTER NO PARKING SIGNS

Amy Salchow from Zumbrota Health Services contacted City Staff to request two signs that read “No parking between 7am-5pm” They would be placed between the visitor parking driveway and the loading dock driveway off of 4th street. This is Amy’s request:

On 4th St, where the Bridges and ZHS are located, there is a dock and driveway between the buildings. It turns out that trucks cannot back up very easily when dropping off at our loading dock. To solve this, I would propose having two street signs saying no parking between 7am-5pm on the south side of the drive. This would prevent the two parking spots on 4th street, directly outside ZHS, from being used during the day and deliveries would be easier to drop off.

The Cost of the signs and install is \$243.51 and Zumbrota Health Services would pay that fee. Staff recommend installing the requested signs. **MOTION** Amundson, second Prigge to install the two no parking signs as requested by Zumbrota Health Services with the care facility paying 243.51 for signage and install. Approved 5-0-0.

7-D. RESOLUTION 2026-14 HIGHLANDS FINAL PLAT

The city received an application from Bigelow Homes for a final plat to construct 28 single-family homes along the Zumbrota Golf Course. A public hearing was held for the preliminary plat on February 10th with a dozen residents. Comments were heard regarding the construction timeline, road access, and possible inclusion of a park. City Engineer Bill Angerman submitted a review letter to the city and recommended conditional approval of the final plat. Letter will be attached for Council review. **MOTION** Amundson , second Prigge to approve Resolution 2026-14 Highlands Final Plat. Approved by roll call: Hammel, aye; Prigge, aye; Bucher, aye; Amundson, aye; Raasch, aye. Approved 5-0-0.

7-E. PRELIMINARY PLAT AND REZONE – ST. PAUL ROAD

Ben Olsen Realty has submitted a preliminary plat application for 612 St. Paul Road. The owner of the property is seeking to subdivide his industrial lot to create 5 single-family home lots. Materials were created by Boulton and Menk Engineering and conditional approval was recommended by City Engineer Bill Angerman. A public hearing was held on April 14th and questions/comments were heard regarding the proximity to the floodplain and the current gravel road. There is currently no developer attached to the project. **MOTION** Amundson second Prigge to approve the preliminary plat and rezone. Approved 5-0-0.

7-C. REVISED WATER ORDINANCE (DRAFT)

Simonson presented the Council with a draft of the revised water ordinance. The following changes were noted:

- Implementation of a monthly paper billing fee (proposed at \$3.00 beginning in 2026) to offset printing, materials, and postage costs.

- Implementation of a monthly meter reading fee (proposed at \$68.00 beginning in 2026) for meters that have not been upgraded to smart meters, reflecting the additional labor and time required for manual readings.
- Establishment of a “No Read” meter fee, applied when a meter is not functioning and the customer does not respond to requests for access to complete necessary repairs. This fee is intended to recover staff time and administrative costs associated with repeated service attempts and would be waived if the resident complies within a specified time period.

Council will discuss this item at future work sessions and meetings.

COMMENTS

POLICE CHIEF PAT CALLAHAN

Said he and Sergeant Pasquale had just gotten back from the Chiefs’ conference. He thanked the Council for allowing them to attend. Friday is the memorial proclamation ceremony at 12:28 pm. He invited the Council to attend the ceremony.

CITY ENGINEER BILL ANGERMANN

Stated he had been at the Capitol all day regarding the sanitary district.

DEPUTY CITY ADMINISTRATORY MYLES ROBB

Said there will be a ground breaking ceremony for the new apartment building on the 27th. More information will be forthcoming.

COUNCIL MEMBER BOB PRIGGE

Congratulated Library Director James Hill on the circulation numbers of the Library and on the outstanding work the Hill and his staff are doing.

The meeting was adjourned at 6:54 pm.

City Administrator Brian Grudem

CITY OF ZUMBROTA

ACCOUNTS PAYABLE

April 2, 2026

CHECK	PAYEE	DESCRIPTION	AMOUNT	DEPARTMENT
82630	ACE HARDWARE ZUMBROTA	SUPPLIES	8.32	STREETS
82631	APPEL'S SERVICE INC	TIRES	518.32	POLICE
82632	AUTOMATION SERVICES INC	SERVICE CALL AND REPAIR	4,421.99	WATER
82633	BACKWOODS METAL WORKS LLC	SHOP SUPPLIES	149.00	STREETS
82634	BECKLEY'S OFFICE PRODUCT	SHREDDING	140.00	GENERAL
82635	BUSBY HARDWARE	SUPPLIES	12.34	STREETS
82636	CCP DIRECT	SAFETY GLASSES	60.35	STREETS/WATER/SEWER
82637	CINTAS CORPORATION	RUGS AND SHOP TOWEL	136.41	STREETS
82638	CLEMENSON, SHANNON	LODGING	70.12	POLICE
82639	D'S AUTO CARE	TIRE INSTALLATION	148.00	POLICE
82641	FRONTIER	WATER LEVEL INDICATOR	135.86	GENERAL
82642	GOODHUE CO RECORDER	ORDINANCE FILING FEES	92.00	PZ
82643	GOODHUE COUNTY ATTORNEY	LEGAL FEES	2,446.00	GENERAL
82644	GREAT AMERICA FINANCIAL SVCS	COPIER LEASE	137.22	GENERAL
82645	GRUDEM, BRIAN	MILEAGE	33.06	GENERAL
82646	HAWKINS WATER TREATMENT GROUP	CHEMICALS	150.00	SEWER
82647	LODERMEIERS	LAWNMOWER	17,800.00	CAPITAL EQUIPMENT
82648	LOFFLER	COPIER COSTS	15.23	POLICE
82649	MAID IT CLEAN LLC	CLEANING	504.00	GENERAL
82650	MN POLLUTION CONTROL	PERMIT	5,900.00	SEWER
82651	NAPA AUTO PARTS STORE	PARTS AND SUPPLIES	55.85	STREETS
82652	NELSON SCREEN PRINTING	UNIFORM EXPENSE	126.00	WATER
82653	SEMMCHRA	PASS THRU HOUSING FIX UP	6,641.00	SEMMCHRA GRANT
82654	STREICHER'S	UNIFORM EXPENSE	888.96	POLICE
82655	VERIZON	CELL PHONE, DATA, TABLETS	929.25	POLICE/GENERAL/SEWER
82656	BUSBY HARDWARE	SUPPLIES	142.65	STREETS/SEWER
82657	CINTAS CORPORATION	RUGS AND SHOP TOWEL	115.93	GENERAL
82658	CORE AND AMIN	WATER METERING SUPPLIES	437.65	WATER
82659	CORPORATE MECHANICAL	BOILER REPAIR	1,485.00	SEWER
82660	DAKOTA SUPPLY GROUP	NOZZLE SECTION ASSEMBLY	2,705.11	WATER
82661	DAVE SYVERSON TRUCK CENTER	REPAIRS	341.41	STREETS
82662	MINNESOTA ENERGY	NATURAL GAS	3,543.74	GENERAL/SEWER
82663	NAPA AUTO PARTS STORE	PARTS AND SUPPLIES	304.08	STREETS/POLICE/SEWER
82664	XCEL ENERGY	ELECTRICITY	6,902.94	ST LIGHT/PARK/GENERAL/WATER
82665	ZTA POSTMASTER	UB POSTAGE	677.10	WATER/SEWER
82666	MN DEPT OF HEALTH	WATER SURCHARGE QTRLY	5,414.00	WATER
82667	MOSAIC	2026 EQUINOX	31,337.25	
		TOTAL	<u>94,926.14</u>	

DATE: 5/7/2026

MAYOR: _____

COUNCIL MEMBER: _____

CITY ADMINISTRATOR: _____



Job Description

JOB TITLE: Police Chief		Department: Police	
REPORTS TO: City Administrator		SUPERVISES: Police Sergeants and Officers	
EFFECTIVE DATE: ?????		FLSA STATUS: Non-Exempt	

Position Summary

The Police Chief serves as the chief law enforcement officer for the City of Zumbrota and is responsible for the leadership, administration, and operation of the Police Department. The position provides executive-level direction consistent with Minnesota POST Board standards, Minnesota law, and generally accepted policing practices.

The Police Chief is responsible for delivering professional, community-oriented policing services focused on public safety, constitutional policing, transparency, and community trust.

Essential Duties and Responsibilities

Executive Leadership and Department Administration

- Provides overall leadership, direction, and management of Police Department operations.
- Develops departmental mission, goals, policies, and strategic priorities consistent with City objectives.
- Ensures compliance with Minnesota POST Board standards, Minnesota Statutes, and federal constitutional requirements.
- Evaluates department effectiveness using crime trends, performance metrics, and community feedback (common practice in Red Wing and Byron policing models).
- Serves as the primary advisor to the City Administrator and City Council on public safety matters.

Community Policing and Public Engagement

- Maintains a regular patrol presence as operational demands allow.
- Implements community policing strategies consistent with mid-sized Minnesota departments such as Cannon Falls and Byron.
- Builds partnerships with schools, businesses, civic organizations, and residents.
- Maintains visible presence in the community and responds to public concerns in a timely and professional manner.
- Conducts public presentations and represents the department at community meetings and events.
- Promotes transparency, procedural justice, and legitimacy in policing operations.

Personnel Management and Professional Standards

- Directs all sworn and non-sworn personnel within the Police Department.
- Oversees recruitment, hiring, training, scheduling, evaluation, and discipline.
- Ensures compliance with Minnesota POST licensing requirements and continuing education standards.
- Develops and maintains officer training programs including but not limited to de-escalation, crisis intervention, defensive tactics, and cultural competency.
- Promotes a professional, ethical, and accountable organizational culture.

Use of Force, Accountability, and Risk Management

- Ensures department policies align with Minnesota POST Board model policies and constitutional policing standards.
- Oversees review of use-of-force incidents, complaints, and internal investigations.
- Ensures proper documentation and accountability processes.
- Implements risk management strategies to reduce liability and improve officer performance and public trust.

Criminal Investigations and Patrol Oversight

- Oversees and participates in criminal investigations, accident investigations, and emergency responses.
- Ensures thorough, timely, and accurate completion of reports and case files.
- Oversees evidence handling, chain-of-custody procedures, and coordination with the Minnesota Bureau of Criminal Apprehension (BCA).
- Ensures effective patrol coverage and response to calls for service.
- Provides testimony in court proceedings as needed.

Budgeting and Municipal Administration

- Prepares and administers the department's annual budget in coordination with the City Administrator.
- Monitors expenditures and ensures fiscal responsibility and transparency.
- Oversees procurement, maintenance, and replacement of vehicles, equipment, and technology.
- Recommends staffing levels and resource allocation based on operational needs, calls for service, and other community policing benchmarks.

Records, Technology, and Compliance

- Ensures compliance with Minnesota Government Data Practices Act (Minn. Stat. Ch. 13).
- Oversees accurate maintenance of reports, records, and CJIS systems.

- Ensures compliance with state and federal crime reporting requirements (UCR/NIBRS).
- Oversees use of department technology including records management systems and digital evidence systems.

Interagency Coordination and Emergency Management

- Coordinates with local, county, state, and federal law enforcement agencies.
- Participates in regional task forces and mutual aid agreements.
- Assists in emergency management planning and disaster response coordination.
- Provides command leadership during critical incidents and multi-agency responses.

MINIMUM QUALIFICATIONS

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education and Experience

- Associate’s Degree in Criminal Justice, Law Enforcement, or related field AND four (4) years of sworn law enforcement experience; OR
- Bachelor’s Degree in Criminal Justice or related field may substitute for up to two (2) years of experience
- Prior supervisory or command experience preferred

Trainings, Certificates, and Licenses

- Possess a valid Peace Officer License issued by the Minnesota Police Officers Standards and Training Board (P.O.S.T.), or certified by P.O.S.T.
- Possess a driver’s license valid in the state of Minnesota
- Possess First Responder certification

DESIRED QUALIFICATIONS

The requirements listed below are representative of the formal education, experience and training preferred in order to exceptionally perform all of the functions of this position.

Education

Bachelor’s Degree with a focus on criminal justice, law enforcement or a related field

Experience

Police experience in a city or municipality or equivalent experience

Trainings, Certificates, and Licenses (in addition to the required training as noted above)

- Leadership Training
- Investigative Training
- FTO Training
- Special Certifications (Ex. DMT, DRE, phlebotomy)

Knowledge, Skills, and Abilities

Knowledge

- Minnesota criminal, traffic, and constitutional law
- POST Board licensing and professional standards
- Modern policing strategies including community policing and procedural justice
- Criminal investigations and evidence management
- Municipal budgeting and public administration
- Data practices and records compliance requirements

Skills and Abilities

- Leadership and organizational management at a municipal executive level
- Strong communication skills with elected officials, staff, and the public
- Ability to analyze crime data and operational trends
- Effective decision-making in high-stress or emergency situations
- Ability to build and maintain public trust and community partnerships
- Proficiency with law enforcement technology and reporting systems

Work Environment

- Combination of office, field, and emergency response settings
- Exposure to outdoor weather conditions and stressful incidents
- Occasional exposure to hazardous environments
- Work outside normal business hours, including nights, weekends, and holidays
- Moderate to high noise levels during emergency response situations

Required Physical Abilities and Work Conditions

The physical demands and work conditions described here are representative of those that must be met by an individual to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Hazards

While performing the duties of this job, this position may occasionally climb 5 to 200 steps, kneel, crouch, squat, crawl, reach above shoulder level, run, push/pull 1 to 150 lbs., lift 1 to 400 lbs., carry 50 to 200 lbs. This position may frequently balance, bend/stoop, sit, and perform repetitive motions; and continuously sit, stand, walk, finger/enter data/keystroke, feel, talk, hear, smell, and drive.

While performing the duties of this job, this position will use close vision, far vision, depth perception, visual acuteness, color vision, and peripheral vision.

While performing the duties of this job, this position will use their right and left hand for simple handling or grasping, firm handling or grasping and fine handling or manipulation.

While performing the duties of this job, this position will use their right and left foot for repetitive movements.

Surroundings

While performing the duties of this job, this position will experience exposure to inside environmental conditions, exposure to outside environmental conditions, exposure to noise, dust, fumes, gases, chemicals, or oils requiring special mitigating precautions or protective gear, working in narrow aisles or passageways, work around moving mechanical parts, working in close quarters, exposure to extreme heat, exposure to extreme cold, working at unguarded heights, exposure to infectious diseases, work around prisoners or mental patients, work around or handle weapons, work includes defending self and others from bodily harm and exposure to smoke and fire.

The above statements are intended to describe the general nature and level of work being performed by individuals employed in this job. They are not intended to be an exhaustive list of all duties and qualifications required of personnel in this job. The employer may and reserves its right to change the job description and establish, modify or eliminate job duties and responsibilities and jobs at its discretion with or without notice.

REVIEW

I acknowledge reviewing this job description.

Employee

Date

I acknowledge reviewing and approving this job description.

Department Head

Date

City Administrator

Date

City of Zumbrota Police Chief Salary Schedule

	Level	1	2	3	4	5	6	7
2026	14	\$47.04	\$49.19	\$51.35	\$53.45	\$55.59	\$57.81	\$60.13



MEMORANDUM

DATE: May 7, 2026

TO: Mayor Hammel and Members of the City Council

FROM: Kim Simonson, Finance/HR Director

RE: Unbudgeted Transfer for Pleasant Avenue Loop

This is the beginning of construction season, and I will be regular requests to transfer money from the Capital Projects Fund (106) and Infrastructure Fund (201) to pay for the Pleasant Avenue Loop Construction Project (429). This request is for \$92,500 from both funds 106 and 201 to be transferred into fund 429.



CITY OF ZUMBROTA

RESOLUTION 2026-16

RESOLUTION OF THE CITY OF ZUMBROTA CITY COUNCIL APPROVING UNBUDGETED TRANSFERS TO FUND PLEASANT AVENUE RECONSTRUCTION PROJECT.

WHEREAS The City of Zumbrota has incurred expenses related to the 2026 Pleasant Avenue Reconstruction Project (Fund 429),

WHEREAS the project has will be funded by the Infrastructure Fund (Fund 201) and Capital Projects Fund (Fund 106),

WHEREAS the 2026 Pleasant Avenue Reconstruction Project (Fund 429) a need of \$67.849.09,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ZUMBROTA, MINNESOTA AS FOLLOWS:

- Transfer from Fund 201 Infrastructure Fund of \$92,500.00 to 2026 Pleasant Avenue Reconstruction Project (Fund 429)
- Transfer from Fund 106 Capital Projects Fund of \$92,500.00 to 2026 Pleasant Avenue Reconstruction Project (Fund 429)

Motion introduced by _____, seconded by _____ and adopted this 7th day of May 2026 upon the following roll call vote:

AYES:

NAYS:

ABSENT:

SIGNED:

ATTEST:

Todd Hammel, Mayor

Brian Grudem, City Administrator

	<u>Aye</u>	<u>Nay</u>			
Todd Hammel	___	___	Fred Raasch	___	___
Bob Prigge	___	___	Joan Bucher	___	___
Kevin Amundson	___	___			



MEMORANDUM

DATE: May 7th 2026

TO: Mayor Hammel and Members of the City Council

FROM: Jeff Meyers, Public Works Director

RE: Chain link repair & Cantilever gate install

City staff is requesting the repair of 20' of 6' high chain link fence and the installation of a 24' cantilever security gate. The 20' of chain link will repair a couple spots damaged by downed trees over the past few years. The cantilever security gate will replace the original swing style security gate that was removed a few years ago due to damages and inoperability. These repairs will once again give city staff a secure area at the rear of the shop to store project materials and equipment attachments. City staff received two quotes:

Century Fence - \$8,350.00

American Fence Company - \$6,619.00

City staff recommends approval of the quote from American Fence Company in the amount of \$6,619.00.

Quote

Century Fence Company
14839 Lake Dr NE
Forest Lake, MN 55025



Quote To:
ESTIMATING DEPARTMENT

Project Location:
City of Zumbrota
925 N Star Dr
Chris Mack 507-696-3284
Zumbrota, MN

Quote #: 35635
Quote Date: 4/10/2026

Description

Replace Swing Gate with 26' Slide Gate and add 5' to Existing Next to Gate, Straighten Latch Post / Repair on Back Line (15' new fabric, 1 Stick of rail, Spot tie as needed)

Furnish and install 20 LF of 6 Foot high galvanized chain link fence. Line posts shall be 2" O.D. Galvanized steel pipe Driven 48" in depth and spaced a maximum of 10' on centers. The fence shall consist of top rails which will be 1-5/8" O.D. Galvanized pipe. The fence shall consist of bottom tension wire.

- 2 - Gate post: 4" O.D. Galvanized pipe - Concrete Set
- 1 - Single Slide Galvanized Gate: 26' Opening Width

Notes:

Excludes Asphalt patching, Clearing, Excavation through rock, Excavation through frost, Hydro-excavating, Permit, Private Utility Locate, Removal of spoils from post holes offsite

Quote Total: \$8,350.00

Quote Valid For 15 days

Buyer's Signature: _____

Date: _____

Submitted by: *Jason Larson*

Change Acceptance:

This quote when accepted in writing by purchaser and by Century Fence Company includes the terms and conditions set forth on www.centuryfence.com which are incorporated by reference and becomes a contract between two parties. If the project is cancelled upon agreement and special materials were purchased, the customer agrees to pay 100% of the material cost

Terms of Payment: Net Cash upon receipt of invoice.

Jason Larson
Office: 651-464-7373
Cell: 612-666-1680
Email: JLarson@centuryfence.com

AMERICAN FENCE COMPANY

Omaha · Lincoln · Grand Island · Sioux City · Des Moines · Cedar Rapids · Sioux Falls · Rochester
AmeriFence Corporation – Kansas City · AmeriFence Corporation – Madison · American Security & Gate Company – Fargo

FENCING & GATE PROPOSAL

Date: 4/24/2026	
Attn: ESTIMATING DEPARTMENT	
Project: City Of Zumbrota Fence Repair and Cantilever Installation	
Project Address: 311 Kennedy Drive , Zumbrota MN	
Scope: Provide materials and labor to repair a 20 LF section of damaged 6' tall galvanized chainlink fence Provide materials and labor to install (1) 24' W cantilever gate	
Fence Repair 72" tall KK galvanized chain link fabric 2 1/2" O.D terminal post 2" O.D line posts driven 48" into grade 1 5/8" O.D toprail	
Cantilever gate installation 4" O.D gate posts to be set in 16" x 48" concrete footings 2 1/2" O.D latch post to be set in 12" x 48" concrete footing Gate frame to be constructed of 2" O.D rail and secured with propylene cantilever gate rollers Latch post to be secured with lockable cantilever latch	
Addendums: NA	Specification Sections: NA
Plan Sheets: NA	Details: NA

Project Specific Notes:
1. Only the scope and qtys listed above are covered under this quote; anything outside of this will need to be quoted before accepted.
2. No prevailing wages are included in quote.
3. No removals of stumps, brush, rocks, trees or other obstructions that may interfere with our scope is included. Install locations must be clear of all debris before work commences. This includes any hole filling from this debris.
4. If special-order material applies, it cannot be paid on a per unit basis.
5. No permits, bonds, dues, completed operations, professional liability insurance or primary noncontributory is included unless noted in the scope above.
6. No rock excavation is included in quote. Any rock excavation, drilling that may be required will result in additional cost, not covered by American Fence Company.
Start Date: Allow two – four weeks for submittals. Once approved, material will be ordered within ten business days. Lead times can vary; request lead time of materials at time of submittal request.
Crew Size: 2-4 depending on available work.
<i>Notes are specific to the scope and directly impact project pricing. If not agreeable, advise prior to acceptance.</i>

Project Pricing: \$6,619.00
<i>Unless otherwise stated, pricing does not include excise tax, subject to change after 30 days of date of proposal. This proposal is not binding unless signature is affixed to page two. Do not sign and return this sheet without signed second page. A purchase order initiates your project engineering process and holds your material pricing for 30 days. If American Fence Company does not</i>



MEMORANDUM

DATE: May 7, 2026
TO: Mayor Hammel and Members of the City Council
FROM: Myles Robb, Deputy City Administrator
RE: City Council Meeting May 7, 2026

Highlands Development Agreement

As a part of the 7th phase of the Highlands Subdivision, the city council approved the preliminary and final plat. The City and Bigelow homes have been in conversations and working on addressing a development agreement pursuant to section 5 of the subdivision ordinance. Staff has attached a copy to the agreed version of the development agreement.

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Developer Installed Improvements)

HIGHLANDS 7TH SUBDIVISION

AGREEMENT (the “Agreement”) dated May 7th, 2026, by and between the **CITY OF ZUMBROTA**, a municipal corporation under the laws of the State of Minnesota, with its principal office located at 175 West Avenue, Zumbrota, MN 55992-1695 (the “City”); and Zumbrota Golf Course Properties LLC, a corporation under the laws of the State of Minnesota, with its principal office located at 4131 26th Street Northwest Suite 2, Rochester, Minnesota 55901 (the “Developer”); (collectively the “parties”).

RECITALS

WHEREAS, the Developer is the fee owner of a parcel of real property located in the City of Zumbrota, Goodhue County, Minnesota, with Parcel Identification (PID) No. 723940320, which is legally described in Exhibit A, which is attached hereto and incorporated herein by reference, (the “Development Property”); and

WHEREAS, the Developer has requested and received approval by the City to construct a subdivision as part of the Highlands of Zumbrota (referred to herein as the “plat”); and

WHEREAS, the Developer proposes a project consisting of twenty-eight single family homes, continuing the Highlands development in its 7th phase and associated public improvements on the Development Property, including but not limited to street improvements, sanitary sewer, water main, stormwater management facilities, sidewalk and trails, grading and erosion control facilities and other improvements (the “Project”); and

WHEREAS, the Developer and the City, desire to enter into this Agreement in satisfaction of applicable City requirements and to set out the undertakings and obligations of each party from this point forward with respect to the Project and with respect to the City Approval Process, all as required by the City’s Code of Ordinances (the “Code”).

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each does hereby covenant and agree with the other as follows:

1. **REQUEST FOR PLAT APPROVAL.** The Developer has sought and received Final Plat approval for PID 723940320 (referred to in this Agreement as the “plat”). The platted land is situated in the County of Goodhue, State of Minnesota. The Developer is seeking to develop a portion of the plat, the Development Property, for the purpose stated above.
2. **CONDITIONS OF PLAT APPROVAL.** The City has approved the plat on the condition that the Developer enter into this Agreement, furnishes the security required by it, records the plat with the County Recorder or Registrar of Titles within 60 days after the City Council approves the Final Plat, and submits evidence of recording the plat to the City within 60 days after the date of recording.
3. **RIGHT TO PROCEED/CONDITIONS PRECEDENT.** Unless separate written approval has been given by the City, within the Development Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings within the Development Property until all of the following conditions have been satisfied:

- a. This Agreement has been fully executed by both parties and filed with the City Administrator.
This Agreement shall be recorded by the Developer within 60 days following execution hereof;
 - b. The necessary security has been received by the City;
 - c. The plat has been recorded with the County Recorder's Office;
 - d. The site plan for the project on the Development Property and the plans and specifications for the Improvements related thereto have been approved and signed by the City Engineer with such conditions as required by the City Code;
 - e. A certificate of public liability and property damage insurance as described in this Agreement has been filed with the City Administrator; and
 - f. The City Engineer has issued a letter that all conditions have been satisfied and that the Developer may proceed.
4. **FURTHER SUBDIVISION.** The City may refuse to approve further subdivision within the plat if the Developer has breached this Agreement and the breach has not been remedied. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases may not proceed until Development Agreements for such phases are approved by the City and executed by the parties.
5. **PRELIMINARY PLAT STATUS.** If the plat is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, within five (5) years after preliminary plat approval.
6. **CHANGES IN OFFICIAL CONTROLS.** For two (2) years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may

require that any future development of the Development Property comply with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.

7. **DEVELOPMENT PLANS.** The plat shall be developed in accordance with the following plans where applicable. The plans shall not be attached to this Agreement. If the plans vary from the written terms of this Agreement, the written terms shall control. The plans are:

- a. Plan A - Plat
- b. Plan C - Final Construction Plans and Specifications for Public Improvements
- c. Plan E - Stormwater Pollution Prevention Plan

The foregoing plans and specifications shall be prepared by a competent licensed professional engineer engaged by the Developer and shall be subject to the City's review and approval. The required Improvements below shall be installed in accordance with the City approved plans for such improvements and the policies, rules, regulations, standards and ordinances of the City. No work shall commence on the Project or the required Improvements until the Developer obtains a building permit for the Project and the Improvements and pays all costs and fees required in connection with the procurement of the building permit.

8. **IMPROVEMENTS.**

- a. The Developer shall construct and install, at its sole cost and expense and subject to the terms and conditions contained herein, the following public or private improvements (the "public improvements" or "Improvements") in compliance with City approved plans and specifications prepared in accordance with all policies, rules, regulations, standards, specifications and ordinances of the City and as shown on the final construction plans and summarized below:

- i. Streets
- ii. Sanitary Sewer
- iii. Watermain

- iv. Storm Sewer
 - v. Grading, Drainage and Erosion Control
 - vi. Street Lighting
 - vii. Utilities (gas, electric, cable, telephone, etc.)
 - viii. Street Signs installed by city and paid by the Developer
 - ix. Surveying and Monuments Required by Minnesota Statutes
- b. The Improvements shall be constructed and installed in accordance with the latest versions in place at the time of this Agreement of the City Code, zoning ordinance and subdivision regulations, City standard specifications for utilities and street construction, and the City's engineering guidelines and standard detail plates, as applicable. The City will provide construction observation, at the Developers expense, to provide confirmation to the City that the construction is in conformance with the approved plans and specifications. The City will also arrange for soil and material testing of all public infrastructure through a geotechnical testing company. In addition, the Developer's engineer will be required to certify that the construction work meets the approved City requirements, specifications, and standards as a condition of City acceptance and provide record drawings for all Improvements. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's observers and City Engineer to the extent applicable to comply with the approved plans and specifications, or applicable City Code or statutes for which the City observers have jurisdiction. The Developer's engineer shall provide for on-site project management and construction staking. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. As required by the City, the Developer or its engineer shall schedule a pre-construction meeting at a mutually agreeable time at City Hall, or another location acceptable to the City, with all parties concerned, including the City staff, to review the program for the construction work.

- c. All labor and work shall be done and performed in the best and most work like manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer, which approval shall not be unreasonably withheld. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by this Agreement. If applicable, the contractor(s) shall have experience in the installation of municipal water and sanitary sewer mains; shall demonstrate the successful completion of at least three such installations and municipal acceptance thereof; and shall be able to obtain the requisite performance and payment bonds for the purchase and installation of the minimum Improvements required hereby. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Agreement, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the plans and specifications.
- d. The Developer shall replace or repair any damage or destruction to any property or improvements located on County or City land or in County or City streets, boulevards and rights-of-way, or adjacent private property not owned by Developer, caused by Developer, or its contractors and subcontractors, during the construction of the required Improvements and the Project. Any contaminated soils encountered during the construction of the Improvements and development on the Development Property shall be addressed as set forth in a Response Action Plan to be approved by the Minnesota Pollution Control Agency (MPCA) or other applicable agency having jurisdiction.
- e. The Developer shall be solely responsible for the costs of constructing the required Improvements. The costs of constructing the Improvements shall include the actual construction costs, the actual engineering, administration and any legal costs related thereto, and all other costs relating to the construction of the Improvements. The

engineering, administration and legal costs shall include the actual outside construction engineering assistance costs and the legal costs.

- f. If this Agreement is terminated for any reason the City shall have no obligation to construct the Project or Improvements.

9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION.

The Developer shall pay a fee for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and the Developer's engineer on status or problems regarding the Project, coordination for final inspection and acceptance, Project monitoring during the warranty period, and processing of requests for reduction in security.

The Developer shall also deposit seven percent (7%) of the estimated construction cost to pay for construction administration, observation and geotechnical testing performed by the City's in-house engineering staff or consulting engineer. This deposit is estimated to be \$78,000. If the City's costs exceed the deposit, the Developer agrees to reimburse the City within 30 days of billing. Should the costs be less than the amount of the deposit, upon completion of the Improvement's, the amount of the remaining deposit shall be returned to the Developer. The Developer shall deposit the full construction observation fees with the City prior to the final plat being recorded. No construction of public improvements will be authorized until the construction observation fees have been paid to the City.

- 10. CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in this Agreement.

- 11. PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary and required permits for the Project from the Minnesota Pollution Control Agency

(MPCA), Minnesota Department of Health (MDH), and all other agencies and governmental authorities with jurisdiction over the Project and the Improvements before proceeding with construction of the Project and the Improvements. Copies of these permits shall be provided to the City Engineer, and may include but are not limited to the following:

- Minnesota Department of Health for Watermains
- NPDES Permit for Stormwater Management
- MPCA for Sanitary Sewer Extensions
- City of Zumbrota/Safebuilt for Building Permits

12. **TIME OF PERFORMANCE.** Except as otherwise provided in this Agreement, the Developer shall install all required improvements and other work required by this Agreement by October 30th, 2026, with the exception of the final wear course of asphalt on streets. The final wear course on streets shall be installed between May 15th and October 1st the first summer after the base layer of asphalt has been in place one freeze thaw cycle. Any deficiencies in the base, asphalt, curb or other improvements in the judgment of the City Engineer must be repaired by the Developer at its own cost prior to final paving. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

13. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with this Agreement, the Project and Improvements and plat development, as applicable. The license shall expire upon the acceptance by the City of the Improvements. The City shall thereafter have the right to enter the Property to perform inspections as authorized by City Code.

14. **CONSTRUCTION ACCESS.** Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Fairway Street. No construction traffic is permitted on the adjacent local streets other than identified herein.

15. **EROSION AND SEDIMENT CONTROL.** Prior to initiating site grading, the erosion and sediment control plan shall be implemented by the Developer and inspected and approved by the City Engineer. The Erosion Control Plan and Storm Water Pollution Prevention Plan (SWPPP) shall be implemented by the Developer. Erosion and sediment control practices must comply with the Minnesota Pollution Control Agency's (MPCA) Best Management Practices and applicable MPCA NPDES permit requirements for construction activities and the Developer's SWPPP. The City may impose additional erosion and sediment control requirements if they would be beneficial in the City's judgment. All areas disturbed by the excavation and backfilling operations shall be reseeded within 48 hours after the completion of the work or in an area that is inactive for more than seven (7) days unless authorized and approved by the City Engineer. Except as otherwise provided in the erosion and sediment control plan, seed shall be in accordance with the City's current seeding specifications, if any, which may include certified oat seed to provide a temporary ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored, and watered as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City Engineer, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work, the City may draw down the letter of credit or any other security required herein to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat and Project plans for the Development Property, as applicable, are in full compliance with the approved erosion control plan.

16. In order to provide stormwater management and control, to meet the City's stormwater permitting requirements, City Code and state law and regulations, as applicable, and to promote the water quality and volume control to the City's stormwater system and water bodies, the Developer and

the City agree that pond shall be cleaned out by the developer after all future phases are complete and prior to city taking ownership of the ponds. Prior to commencement of construction of the Project and pursuant to City Code, the City and Developer shall enter into an agreement on a form acceptable to the City and containing terms and conditions as required by the City setting forth, in a recordable instrument, an agreement to establish covenants and declarations upon the Development Property for the installation of and ongoing operation, repair, maintenance and replacement of such stormwater facilities as required by applicable City Code and law at the Developer's and the Developer's successors' and assigns' cost and expense.

- 17. STREET MAINTENANCE DURING CONSTRUCTION AND SIDEWALKS.** The Developer shall be responsible for all street maintenance until the streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage. The Developer shall be responsible for keeping streets within and without the subdivision swept clean of dirt and debris that may spill or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning as necessary to sweep within and immediately adjacent to the development. The streets shall include Andrews Lane, those portions of Eagle Lane, and those portions of Highlands Avenue, as determined by the City Engineer. A copy of this contract shall be approved by the City before grading is started, and shall remain in full force and effect until all construction within the Project is completed. When directed to do so by the City, the Developer shall have all streets cleaned of accumulated debris, dirt, and mud.

18. **OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Agreement and acceptance of Improvements by the City, the Improvements lying within public easements and public rights-of-way shall become City property without further notice or action upon completion and City acceptance thereof. Prior to acceptance of the Improvements by the City, the Developer must furnish the following affidavits:

- a. Contractor's Certificate;
- b. Engineer's Certificate;
- c. Developer's Certificate;

certifying that all construction has been completed in accordance with the terms of this Agreement.

The requisite forms will be furnished by the City of Zumbrota and are attached hereto as Exhibit B. Upon receipt of the required affidavits, the City Engineer will recommend acceptance to the City Council of the completed public improvements. Within thirty (30) days after the completion of the Improvements, the Developer shall supply the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in a format acceptable to the City Engineer (e.g., AutoCAD format, DWG or a .DXF file), and two complete sets of hard copy "record" plans, all prepared in accordance with City standards. Upon receipt of these documents, and the warranty documents specified in this Agreement, the City Engineer will recommend acceptance of the completed public improvements.

19. **PARK DEDICATION.** No parkland dedication is required of the developer related to this agreement. The Developer previously (dedicated/paid fees in lieu of dedication) in conjunction of the development of the 1st addition of the Highland Development, which were sufficient to meet the parkland dedication standards in City Code Subdivision Ordinance Section 4, subd. 6 for this 7th Addition.

20. **SANITARY SEWER AND WATER TRUNK UTILITY CHARGES.** Pursuant to the 1st Highlands Development Agreement dated October 2, 2003, The Developer and city agreed to a receive utility availability charges before the final plat was released for recording. This payment

was for the entire gross area less the quantity ponding, wetland areas, and the area designated for golf course development, including areas in subsequent phases. Areas donated to the city and land platted as an easement was not deducted from the gross area, this includes: parks, pathways, street rights-of-way, and utility easements. The sanitary sewer and water access/availability area charges were paid on the previous city charge of \$1500 per acre for water and \$1500 per acre for sewer. For a total of 90 acres, the city received a payment of \$272,000 in 2003.

21. **SANITARY SEWER, STORM SEWER AND WATERMAIN.** The Developer shall install or contract for the installation of all public improvements in the Project related to sanitary sewer, storm sewer and watermains, as required by the City in accordance with those plans approved by the City Engineer.
22. **TRAFFIC CONTROL AND STREET NAME SIGNS.** Any street name signs, stop signs, or other directional and safety signs required by the City shall be provided and installed by the City at the expense of the Developer.
23. **WETLAND MITIGATION.** No wetland mitigation is planned for the site. The Developer is responsible for any undisclosed mitigation on the land, and will be required to submit any necessary security should subsequent wetlands be identified.
24. **BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**
 - a. Grading, curb and gutter, sidewalk and one lift of asphalt shall be installed on all public and private streets and drives prior to issuance of any building permits, adjacent to these lots. No Certificate of Occupancy will be issued until the grading, curbing, sidewalk and one lift of asphalt is installed in accordance with approved plans on all public streets and private drives. In addition, no Certificates of Occupancy shall be issued for any buildings until the sewer and water has been installed and tested to the satisfaction of the City Engineer, which shall not constitute final acceptance of the sewer and water utilities.
 - b. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City within 30 days of the date of an invoice from the City to the Developer, shall

be grounds for denial of building permits, including lots sold to third parties, and the halting of all work in the plat or on the Development Property.

- c. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties. No certificates of occupancy and no sewer and water connection permits may be issued and no one may occupy a building for which a building permit is issued on either a temporary or permanent basis until the streets and sidewalks needed for access have been paved with a bituminous surface and the utilities are accepted by the City Engineer.

25. UNDERGROUND UTILITIES – PRIVATE. This section covers those smaller private utilities such as gas, electric, phone, cable, etc.

- a. The Developer is responsible for the cost of installing all private utilities of any nature or kind whatsoever.
- b. The Developer shall contact the utility companies to coordinate the installation of the utilities. Private utilities shall not be installed until the curb and gutter are completed and backfilled, as applicable. All utilities shall be installed underground or as otherwise approved in writing by the City Engineer.
- c. The City Engineer must approve of the final location for all private utilities. Joint trenching of the utilities is strongly encouraged. All utilities must be located in public rights-of-way or within drainage and utility easements.
- d. If any conditions set forth in this Agreement conflict with the City's utility franchise agreements, the franchise agreements shall in all cases prevail.

26. RESPONSIBILITY FOR COSTS.

- a. Except as otherwise specified herein, the Developer shall pay all costs incurred by it and the City in conjunction with this Agreement, the approval of the Plat, the grading and

development of the Development Property and the construction of the Improvements required by this Agreement, including but not limited to, all costs of persons and entities doing work or furnishing skills, tools, machinery, equipment and materials; insurance premiums; legal, planning and engineering fees; the preparation and recording of this Agreement and all easements and other documents relating to the Plat and the Development Property, as applicable; all Response Action Plans, traffic studies, environmental assessments and/or engineering and other studies and reports; all permits and approvals; and all City's costs incurred pertaining to the observation and monitoring of the work performed in connection with approval and acceptance of the plat, the Project and the construction of the Improvements and the other work done and improvements constructed on the Development Property or otherwise related to the Project.

- b. The City shall not be obligated to pay Developer or any of its agents or contractors for any costs incurred in connection with the construction of the Improvements or the development of the Development Property. Developer agrees to defend, indemnify, and hold the City and its mayor, council members, employees, agents and contractors harmless from any and all claims of whatever kind or nature and for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, which may arise as a result of Plat approval, the Project, this Agreement, the construction of the Improvements (except for the negligence or intentional misconduct of the City with respect to the construction of the Improvements), the development of the Development Property or the acts of Developer, and its employees, agents, contractors or subcontractors, in relationship thereto.
- c. The Developer hereby covenants and agrees that Developer will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any property that is the subject of the Project or this Agreement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's

interest, the Developer shall take all steps necessary to see that it is removed within thirty (30) business days of its being filed; provided, however, that the Developer may contest any such lien provided the Developer first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.

- d. The Developer shall reimburse the City for reasonable costs incurred in the enforcement of this Agreement, including engineering and attorneys' fees.
- e. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.
- f. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days of the date of the City's invoice to Developer. If Developer fails to pay a required bill, then after providing the Developer with at least fifteen (15) days prior written notice, the City may draw on the Security or alternatively declare the same an event of default, and the City may thereafter assess and certify such unpaid charges to the County Auditor for collection in like manner with property taxes on the Development Property, or the City may take any other actions as may be available under this Agreement, at law, or in equity. Bills not paid within sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.
- g. In addition to the charges and special assessments referred to herein, other charges and special assessments may be imposed such as but not limited to, City sewer connection charges, City water connection charges, building permit fees and plat review fees, which shall be paid by Developer.
- h. Per the Highlands 6th development agreement, the Developer is required to pay the remaining balance on a sewer extension from the County 6 Blvd up through Eagle Lane. The original balance was for \$68,630 to be paid over 10 years at no interest rate. The

Developer is currently on their sixth installment. The remaining balance of this loan is for \$34,315.

27. SPECIAL PROVISIONS. The following special provisions shall apply:

- a. Implementation of any other recommendations listed by the City Council or City Engineer as follows:
 - i. The Developer shall have all required MPCA stormwater permits approved prior to beginning any installation of public improvements.
- b. The Owner agrees to submit a Street Light Improvement plan and to coordinate the installation of streetlights of a type approved by the City prior to installation, and at such locations as approved by the City and the City's electrical provider, at no cost to the City.
- c. The Developer must obtain a sign permit from Safebuilt prior to installation of any subdivision identification signs.
- d. Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan and is subject to review and approval of the City Engineer.
- e. Utility hook-ups are subject to review and approval by the City Engineer and Public Works Director.

28. MISCELLANEOUS.

- a. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of the Development Property.
- b. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in

accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

- c. Developer shall take out and maintain or cause to be taken out and maintained until two (2) years after the Project is completed and the City has accepted the public improvements, liability and property damage insurance covering bodily injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City and their engineering firm shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City authorizing the commencement of work on the public and private improvements specified in this Agreement. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.
- d. Third parties shall have no recourse against the City or Developer under this Agreement.
- e. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- f. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- g. This Agreement shall run with the land and shall be binding upon Developer and its successors and assigns.

- h. This Agreement will be recorded against the title to the Development Property within 60 days following execution hereof.
- i. The Developer covenants with the City, its successors and assigns, that the Developer is well seized in fee title of the Development Property and/or has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Development Property; that there are no unrecorded interests in the Development Property; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.
- j. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and 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.
- k. The Developer agrees to comply with all local, state and federal laws, ordinances and regulations applicable to the development of the Development Property and Improvements.
- l. The City's approval of the final plat or this Agreement does not include approval of building permits for any structures to be constructed within the Development Property. The Developer must submit and the City approve building plans prior to the issuance of building permits for structures within the Development Property.
- m. Developer agrees to install and pay for a paved 12-foot-wide access driveway to the water booster station located on parcel 727241102. The access driveway will be from the north and will be installed in the next phase of development. The Developer will convey an access easement to the City for the driveway and for a turn around on the north side of the existing booster station. The City will move the existing electric generator to facilitate driveway construction.

- n. USPS Cluster Boxes. Cluster boxes meeting requirements set forth in the U.S. Postal Service National Delivery Planning Standards A Guide for Builders and Developers must be installed prior to any homes being issued Certificates of Occupancy.

29. **DEVELOPER'S DEFAULT.** In the event of default by the Developer as to any of the work to be performed by it hereunder or the failure to comply with all terms and conditions of this Agreement, the City may, at its option, take one or more of the following actions:

- a. Perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given notice of the work in default, not less than forty-eight (48) hours in advance. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part for collection with the property taxes on the Development Property;
- b. Obtain an order from a court of competent jurisdiction requiring Developer to perform its obligations pursuant to the terms and provisions of this Agreement;
- c. Obtain an order from a court of competent jurisdiction enjoining the continuation of an event of default;
- d. Halt all development work and construction of improvements until such time as the event of default is cured;
- e. Withhold the issuance of a building permit or permits or certificates of occupancy and/or prohibit the occupancy of any structure(s) for which permits have been issued until the event of default has been cured;
- f. Draw upon and utilize the Security to cover the City's costs to correct the default, the costs to complete any unfinished Project Improvements and/or the costs to enforce this Agreement; or
- g. Exercise any other remedies which may be available to it at law or in equity.

In addition to the remedies and amounts payable set forth or permitted above, upon the occurrence of an event of default by Developer, the Developer shall pay to the City all fees and expenses, including reasonable attorneys fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

30. **WARRANTY.** The Developer warrants all Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for streets and utilities is one (1) year and shall commence following completion and final written acceptance of the work by the City Council. The required warranty period for sod, trees, and landscaping is two growing seasons following installation. The Developer shall post a security in the form of either a) a warranty/maintenance bond for 100% of the cost of the Improvements, or b) a letter of credit or cash escrow for 25% of the amount of the original cost of the Improvements as warranty for the Improvements prior to the City authorizing the commencement of work on the public and private Improvements specified in this Agreement. The retainage from the Project securities identified in this Agreement may also be used to pay for warranty work.

31. **Request for Release of Infrastructure.** Once Developer gives notice by completing the Infrastructure Release Form in accordance with the approved plans the City, City Engineer, and/or City authorized consultants shall promptly conduct a final inspection of the Improvements and notify the Developer of any improvements that do not appear to conform to the approved Plans. If the Developer's improvements do not conform to the approved plans or are later discovered to not conform to the plans, the City shall immediately notify the Developer and/or Representative of the need to repair or replace. The City may in cases of emergencies, proceed to remedy the noted default by Developer and in such cases of emergencies; the Developer hereby waives any and all rights to prior notice of default. Any cost incurred by the City to remedy the default shall be the financial obligation of the Developer and shall be reimbursed or paid to the City within thirty (30) days of receipt of a bill for such costs. Such billing shall include a detailed and itemized list of all costs incurred by the City.

32. **SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City, at the time of final plat approval or approval of this Development Agreement, as applicable, with either a letter of credit or cash escrow or a combination of cash escrow and a letter of credit, as determined by the City, for 125% of the estimated Improvement costs, in the form attached hereto as Exhibits C and D, as applicable, or a City approved alternate form, from a bank (the “Security”) for \$1,355,600. The amount of the Security was calculated as follows:

CONSTRUCTION COSTS:

Streets	<u>\$329,000</u>
Sanitary Sewer	<u>\$115,000</u>
Watermain	<u>\$181,000</u>
Storm Sewer	<u>\$222,000</u>
Grading, and Erosion Control	<u>\$246,000</u>
Street Lighting	<u>\$20,000</u>
TOTAL ESTIMATED CONSTRUCTION COST	<u>\$1,113,000</u>
SECURITY ADD-ON	x 125%
TOTAL PROJECT SECURITIES REQUIRED:	<u>\$1,335,600</u>

This breakdown is for historical reference; it is not a restriction on the use of the Security. The bank shall be subject to the approval of the City Administrator. The Security may be in the form of annually renewable letters of credit. Individual Security instruments may be for shorter terms provided they are replaced at least thirty (30) days prior to their expiration. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term by presenting the bank/escrow agent with a written demand or an affidavit signed by the City Administrator or the City Administrator's designee attesting to the City's right to draw down and receive funds under the Security. If the

required Improvements are not completed at least thirty (30) days prior to the expiration of the Security, the City may also draw the Security down. If the Security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval, the Security may be reduced from time to time by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the amounts certified by the Developer's engineer shall be retained as Security until: a) all Improvements have been completed, b) iron monuments for lot corners have been installed, c) all financial obligations to the City have been satisfied, d) the required "record" plans have been received by the City, e) a warranty security is provided as specified herein above, f) the public improvements are accepted by the City Engineer, and g) if required by the City Administrator or Code, a title insurance policy indicating that the improvements are free and clear of any and all liens and encumbrances. The City standard specifications for utilities and street construction outline procedures for Security reductions, and reductions in the Letter of Credit, cash escrow or a combination thereof, shall be considered only after underground utilities are tested and found to be satisfactory and again after the base bituminous layer has been placed.

33. **SUMMARY OF CASH REQUIREMENTS.** The following is a summary of the cash requirements under this Agreement which must be furnished at the time of final plat approval or approval of this Agreement, as applicable. The Developer shall not proceed with any Improvements until these cash requirements have been paid to the City:

City Engineering Construction Admin & Observation	\$78,000
City Legal Expenses (0.5%)	\$6,000
Sanitary Sewer Extension- 6 th addition	\$34,315
TOTAL CASH REQUIREMENTS	\$104,315

34. **NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following

address:4131 26th St NW Suite 2, Rochester, MN 55901. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Zumbrota City Hall, 175 West Avenue, Zumbrota, MN 55992.

35. **CONSTRUCTION MANAGEMENT.** During construction of the Improvements and the Project, the Developer and its contractors and subcontractors shall minimize impacts from construction on the surrounding neighborhood, as follows:

- a. Definition of Construction Area. The limits of the Project Area shall be as shown in the City approved Grading, Drainage and Erosion Control Plan and shall be demarcated with construction fencing approved by the City Engineer. Any grading, construction or other work outside this area requires approval by the City Engineer and the affected property owner.
- b. Parking and Storage of Materials. Adequate on-site parking for construction vehicles and workers must be provided or provisions must be made to have workers park off site and be shuttled to the Project Area. No fill, excavating material or construction materials shall be stored in the public right-of-way.
- c. Hours of Construction. Hours of construction, including moving of equipment shall be limited to the hours between 7 a.m. and 9 p.m. on weekdays and 9 a.m. and 9 p.m. on weekends or as otherwise provided in City Code.
- d. Site Maintenance. Developer shall ensure that its contractor maintains a clean work site. Measures shall be taken to prevent debris, refuse or other materials from leaving the site. Construction debris and other refuse generated from the Project shall be removed from the site in a timely fashion and/or upon the request by the City Engineer or City Administrator. Employees of the contractor or developer should not use the city's or someone else's property for personal use. Trash created by the construction site that blows into neighboring properties should be cleaned within twenty-four hours of a complaint. After Developer has received at

least forty-eight (48) hour verbal notice, the City may complete or contract to complete the site maintenance work at Developer's expense.

- e. Project Identification Signage. Project identification signs shall comply with City Code.

36. EXPIRATION OF AGREEMENT. This Agreement shall remain in effect until such time as the Developer shall have fully performed all of its duties and obligations under this Agreement. Upon the written request of the Developer and upon the adoption of a resolution by the City Council finding that the Developer has fully complied with all the terms of this Agreement and finding that the Developer has completed performance of all Developer's duties mandated by this Agreement, the City shall issue to the Developer on behalf of the City an appropriate Certificate of Compliance/Completion. Upon issuance of the Certificate of Compliance/Completion by the City, this Agreement shall terminate.

37. TERMINATION; CONDITIONS PRECEDENT.

- a. If Developer fails to: a) acquire fee simple title to all of the Development Property, and b) record this Agreement and the Plat in the office of the Goodhue County Recorder, as applicable and as provided herein, within one (1) year after approval of the Final Plat or this Agreement, as applicable, by the City Council, this Agreement shall terminate and the approval of the Plat shall be null and void, subject to the following:
 - i. All costs, fees and other amounts previously paid to the City in connection with the Plat, the Project Improvements, this Agreement and the Project shall belong to and be retained by the City;
 - ii. The obligations of the Developer for costs incurred shall survive such termination and continue with respect to unpaid costs, fees and expenses incurred prior to such termination;
 - iii. The indemnifications of Developer shall survive and continue after such termination;and

- iv. The parties shall be released from all other obligations and liabilities under this Agreement not specified above.
 - b. The City shall have no obligation to construct the Improvements and Developer shall have no right to construct the Improvements or construct the Project on the Development Property unless the Developer acquires fee simple title to the Development Property and records this Agreement and the Plat in the office of the Goodhue County Recorder as required herein within one (1) year after approval of the final Plat by the City Council.
 - c. In the event of the termination of this Agreement, the parties agree, if requested by the other party, to execute and deliver to the other party a written termination acknowledgment in a form reasonably satisfactory to both parties.
 - d. Developer's right to construct the Improvements is contingent upon its (i)execution of this agreement. Nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, for Developer to close on its purchase of the Development Property, commence the development of the Development Property as set forth herein, or sell or lease homes constructed and located on the Development Property.
38. **ADOPTED BY REFERENCE.** The provisions of the City's Code, Chapters 152 and 153 are hereby adopted by reference in their entirety, unless specifically excepted, modified, or varied by the terms of this Agreement, or by the final plat as approved by the City, as applicable. In the event that a provision of this Agreement is inconsistent with or in conflict with the City's Code, the City Code shall govern.

[Remainder of page left intentionally blank.]

CITY OF ZUMBROTA

BY: _____
Todd Hammel, Its Mayor

(SEAL)

AND _____
Brian Grudem, Its City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Todd Hammel and by Brian Grudem, the Mayor and City Administrator of the City of Zumbrota, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Zumbrota
Community Development Department
Zumbrota City Hall
175 West Avenue
Zumbrota, MN 55992
507-732-7318

**FEE OWNER CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, fee owners of all or part of the subject Development Property, the development of which is governed by the foregoing Development Agreement, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject Development Property owned by them.

Dated this ____ day of _____, 20____.

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____,
by _____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Zumbrota
Community Development Department
Zumbrota City Hall
175 West Avenue
Zumbrota, MN 55992
507-732-7318

**MORTGAGEE CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, which holds a mortgage on the subject Development Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this ____ day of _____, 20____.

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____, by _____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Zumbrota
Community Development Department
Zumbrota City Hall
175 West Avenue
Zumbrota, MN 55992
507-732-7318

**CONTRACT PURCHASER CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, which/who has a contract purchaser's interest in all or part of the subject Development Property, the development of which is governed by the foregoing Development Agreement, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the subject Development Property in which there is a contract purchaser's interest.

Dated this ____ day of _____, 20 ____.

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____, by _____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Zumbrota
Community Development Department
Zumbrota City Hall
175 West Avenue
Zumbrota, MN 55992
507-732-7318

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

**Legal Description of Development Property Being Final Platted as
Outlot B, THE HIGHLANDS OF ZUMBROTA SIXTH**

[Insert legal description]

**EXHIBIT B
TO
DEVELOPMENT AGREEMENT**

AFFADAVITS

Pursuant to the Development Agreement, prior to acceptance of the improvements by the City, the Developer must complete and furnish the following affidavits:

- Contractor's Certificate;
- Engineer's Certificate;
- Developer's Certificate;

in substantially the form provided herein, certifying that all construction has been completed in accordance with the terms of the Development Agreement.

REQUEST FOR RELEASE OF INFRASTRUCTURE

Date of Request: _____

Name of Developer: _____

Address: _____

City/State/Zip: _____

Name of Subdivision: _____

Name of Streets to be released to the City:

- a. _____
- b. _____
- c. _____
- d. _____

Dates Developer available to meet with City Engineer & Public Works Superintendent to review the subdivision infrastructure:

- a. _____
- b. _____
- c. _____

Signature of Developer or his/her representative: _____

Date: _____

This space for City Staff use Only

Date infrastructure punch list provided to Developer by City Engineer and City Public Works Superintendent: _____ (attach copy of punch list to this form)

Date punch list completed by Developer: _____

Date work by Developer is approved and recommended for City Council to accept the public infrastructure improvements for _____ Subdivision by:

- a. Date: _____ Approved by: _____
(Name of Engineer)
City Engineer
- b. Date: _____ Approved by: _____

Date City Council accepts the public infrastructure for _____
Subdivision: _____

Date one year infrastructure warranty by the Developer expires: _____

DEVELOPER'S CERTIFICATE OF COMPLIANCE

Project: _____

I/we, the undersigned, certify that the construction of those certain improvements (the "Project") required to be made by _____ (the "Developer") pursuant to that certain Development Agreement (the "Agreement") dated _____, 20____, by and between the City of Zumbrota (the "City") and the Developer, are complete and have been completed all in accordance with the provisions of the Agreement, that the Developer has complied to date with all requirements set forth in the Agreement, and that the work under the above named Project including all appurtenances thereto has been completed in accordance with the City Code (Chapter ____), City standard specifications for utilities and street construction, and the City's engineering standard specifications.

I/we further certify that all charges or bills for labor or services performed or materials furnished, and other charges by the subcontractors for the required Project improvements have been paid in full and in accordance with the terms of that/those contract(s).

I/we further certify that the required Project improvements are free and clear of any and all liens and encumbrances; that no notice of intention to claim liens is outstanding, and that no suits are pending by reason of the Project.

I/we finally certify that the required improvements are free from all defects in material and workmanship from the date of acceptance thereof by the City, that the Developer agrees to remedy all defects arising within the warranty period at the Developer's expense, and that the Developer is now and will remain in compliance with the Warranty/Maintenance Guarantee required by Zumbrota City Code, Chapter ____, section ____ for the required periods stated therein.

This affidavit is made for the purpose of inducing City of Zumbrota to accept the Project improvements made as part of the Project for public ownership thereof in accordance with the Agreement.

DEVELOPER:

BY: _____
_____, Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the _____ of _____, a Minnesota _____, on behalf of _____.

Notary Public

**EXHIBIT C
TO
DEVELOPMENT AGREEMENT**

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Zumbrota
175 West Avenue
Zumbrota, MN 55992

Dear Sir or Madam:

We hereby issue, for the account of (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$ _____, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2 _____, of (Name of Bank)";
- b) Be signed by the Mayor or City Administrator of the City of Zumbrota.
- c) Be presented for payment at (Address of Bank), on or before 4:00 p.m. on November 30, 2_____.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Zumbrota City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: Zumbrota City Administrator, Zumbrota City Hall, 175 West Avenue, Zumbrota, MN 55992, and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____

Its _____

**EXHIBIT D
TO
DEVELOPMENT AGREEMENT
ESCROW AGREEMENT**

This Escrow Agreement (“Escrow Agreement”) is made and entered into this _____ day of _____, 20____, by and between the CITY OF ZUMBROTA, a Minnesota municipal corporation (the “City”), whose address is 175 West Avenue, Zumbrota, MN 55992; _____ [Insert name of Developer], a _____ [Insert Type of Company; corporation, LLC, etc.] under the laws of the State of [Minnesota] (the “Developer”), whose address is _____ [Insert Full Address, City, State, Zip Code]; and _____ [Insert Name of the Bank] (the “Bank” or “Escrow Agent”), as Escrow Agent in connection with the development of a _____ [Insert Type of Development] known as _____ [Insert Name of the Project] (the “Project”) located at _____ [Insert Full Address of Project], Zumbrota, Goodhue County, Minnesota.

RECITALS

WHEREAS, the Developer has received final plat approval from the City for the development of the Project as set forth on the final plat entitled “ _____ ”, dated _____, 20____, (the “Final Plat”); and

WHEREAS, as a condition of Final Plat approval, the Developer and City have also entered into that certain Development Agreement, dated _____, 20____, (the “Development Agreement”); and

WHEREAS, the Developer pursuant to Zumbrota City Code, the Development Agreement, Final Plat and other City approvals, at its own expense, is required to complete the construction of certain public improvements (the “Improvements” or “work”) as part of the Project; and

WHEREAS the Parties to this Escrow Agreement wish to establish a mechanism to secure the obligations of the Developer for the work as set forth above and to provide the City a financial guarantee to assure the satisfactory completion of the required Improvements; and

WHEREAS, pursuant to Zumbrota City Code and the Development Agreement, the Developer must provide security for construction of the required Improvements and an Escrow Account is a permissible form of security; and

WHEREAS, the Developer desires to provide the required Improvements and has established an Escrow Account with the Bank for such purpose; and

WHEREAS, the Bank executes this Escrow Agreement solely in the capacity of Escrow Agent.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties contained herein, each does hereby covenant and agree with the others as follows:

1. Incorporation of Recitals and Documents. The recitals set forth above are acknowledged by the Parties to be true and correct and are hereby incorporated herein by reference. The following documents referred to in this Escrow Agreement are hereby made a part hereof by reference:
 - a. Development Agreement;
 - b. Final Plat; and
 - c. Zumbrota City Code, Chapters 152 and 153.

2. Escrow Account/Funds Amount. To guarantee compliance with the terms of the Development Agreement, the Developer has established an Escrow Account with the Bank and agrees to deposit cash escrow funds in U.S. Dollars into the established Escrow Account with the Bank in that amount required by the Development Agreement, which is

\$ [REDACTED] (the “security”). The security shall be deposited into the established Escrow Account prior to or at the time of Final Plat approval. The Developer shall obtain a letter from the Bank addressed to the City acknowledging Developer’s creation of the required Escrow Account in the name of the City as surety deposit for the Project and verifying that the Developer has deposited the cash escrow funds in the amount of the security required in the Development Agreement. The Developer shall submit the Bank’s letter to the City prior to or at the time of Final Plat Approval.

3. Disbursements from Escrow Account.

- a. The City agrees that the Escrow Account funds on deposit with the Bank shall be deposited in an interest bearing account and shall only be disbursed and used as payment for the required Improvements pursuant to the process and requirements contained in the Development Agreement and this Escrow Agreement. All interest shall accrue to the Developer at such times as the Bank pays interest, but shall remain in Trust with the Bank.
- b. The deposit of the Escrow Account funds by the Developer will be made to ensure that Developer funds are available to the City for withdrawal by the City in the event it becomes necessary for the City, in the City’s judgment, to withdraw the funds in order to complete satisfactory construction of the required Improvements in accordance with the Development Agreement.
- c. The Escrow Account funds shall not be used or pledged by the Developer for any other purpose during the period the Escrow Account is in effect. Upon satisfactory completion of the required public Improvements, as shall be determined by the City Engineer or his designee in writing, money in the Escrow Account, plus any accrued interest, shall be released to the Developer in accordance with the requirements contained in the Development Agreement taking into consideration the required warranty period.
- d. In the judgment of the City, in the event the Developer defaults as the same is defined in the Development Agreement, or otherwise fails to comply with the terms of the Development Agreement, or otherwise fails to complete the required public Improvements to the satisfaction of the City Engineer in accordance with the terms of the Development Agreement and City approved plans and specifications, upon notice by the City to the Bank, the Escrow Account Funds shall be immediately, without further action, paid over to the City, in the amount requisitioned by the City, for use by the City in completion of the required public Improvements and/or to reimburse the City for any costs or expenses incurred by the City therefore.
- e. The City will also promptly submit to the Developer a copy of such notice as it files with the Bank. The consent of the Developer to payments by the Bank to the City shall not be required or solicited. The Bank shall incur no liability to the Developer on account of making such payment to the City, nor shall the Bank be required to inquire into the propriety of any claim by the City of default on the part of the Developer or into the use of such funds by the City in completing such Improvements. The Bank shall not refuse or delay to make such payments to the City when requested by the City by an appropriate notice, and the Developer will not interfere with, object to or otherwise hinder such payments by the Bank to the City.
- f. Any work to be performed by the City pursuant hereto shall be let on a contractual basis as required by governing law, or on a time and material basis or shall be performed by the City with its own personnel and equipment or shall be accomplished in such a manner as in the judgment of the City shall accomplish the work expeditiously and economically.
- g. The City shall be the sole beneficiary of the Escrow Account and shall have sole power to draw upon funds from the Escrow Account in accordance with the terms of the Development Agreement and this Escrow Agreement.
- h. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the above-stated cost. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the amount retained in the Escrow Account, after the time of completion.
- i. All disbursements under this Escrow Agreement from the Escrow Account shall be made by and through the Escrow Agent in accordance with the terms of the Development Agreement and this Escrow Agreement.

- j. If monies are released by the Bank to the City pursuant to this Escrow Agreement and it shall later develop that a portion of the released monies are surplus to the City's needs, any such surplus shall be returned by the City to the Bank to be held and distributed by the Bank pursuant to the terms of the Development Agreement and this Escrow Agreement.
- k. In the event that the Developer furnishes the City with an Irrevocable Letter of Credit, in a form and substance satisfactory to the City, as replacement security for the funds escrowed hereunder, and the City concludes that it is beneficial to the City to do so, the City may release all or a portion of the funds escrowed by this Escrow Agreement and accept the Irrevocable Letter of Credit, provided the Bank reconfirms, in writing its commitment to the terms and conditions contained herein.

4. Bank as Escrow Agent.

- a. As Escrow Agent hereunder, the Bank, acting in such capacity, shall have no duties or responsibilities except for those expressly set forth herein.
- b. The Parties agree that the Escrow Agent shall be a financial institution or title company licensed and registered to operate in the State of Minnesota and shall be acceptable to the City.
- c. The Developer shall indemnify and hold harmless the Bank against any loss, damage or liability, including, without limitation, attorney's fees which may be incurred by the Bank in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the Bank. It is further understood by the Developer that if, as the result of any disagreement between it and any other party or adverse demands and claims being made by it or anyone else upon the Bank, or if the Bank otherwise shall become involved in litigation with respect to this Escrow Agreement, the Developer agrees that it shall reimburse the Bank on demand for all costs and expenses, including, without limitation, attorney's fees, the Bank shall incur or be compelled to pay by reason of such dispute or litigation, including reasonable compensation for time expended in connection with any such dispute or litigation.
- d. The Developer shall indemnify and hold harmless the City against any claim, loss, damage or liability, including, without limitation, attorney's fees, which may be incurred by or brought against the City in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the City.
- e. All indemnification obligations shall survive termination, expiration or cancellation of this Escrow Agreement.
- f. The Bank, acting as such, shall not be liable to anyone by reason of an error or judgment, a mistake of law or fact, or for any act done or step taken or omitted in good faith, and this provision shall survive the termination of this Escrow Agreement.
- g. At the time the last of the escrowed funds are released and disbursed by the Bank in accordance with this Escrow Agreement, the Bank shall be discharged from any obligation under this Escrow Agreement.
- h. In accordance with the provisions above, the Bank may rely upon and shall be protected in acting upon any statement, instrument, opinion, notice, request, order, approval or document believed by the Bank to be genuine and to have been signed or presented by the proper party or parties.
- i. The Escrow Agent shall keep records of all requests and transactions made from the Escrow Account, which records may be inspected by the Developer and the City Engineer, respectively, immediately upon request by either Party to the Escrow Agent.
- j. The Developer is responsible for all costs and fees payable to the Escrow Agent for service rendered by the Bank in accordance with this Escrow Agreement.

5. Substitution or Resignation of Bank. The Bank reserves the right to withdraw from this Escrow Agreement and cease

serving as Escrow Agent hereunder at any time by giving thirty (30) days written notice thereof to the Developer and City. Upon notice of resignation by the Bank, the Developer agrees to find within ten (10) days of such notice a replacement Escrow Agent acceptable to the City. The Bank agrees to deliver the escrowed funds then held by the Bank to such replacement escrow holder and notify all parties hereto. The Bank shall thereupon be released from any and all responsibility or liability to the Parties hereto. If the Developer fails to appoint a replacement escrow agent within such ten (10) day period, the Bank shall petition any court having jurisdiction for the appointment of a successor escrow agent or for instructions as to the disposition of the documents and moneys held by it under this Escrow Agreement. In any event such court appoints a successor escrow agent, the Bank shall deliver the escrowed funds then held pursuant to this Escrow Agreement, and all records and other documents held by it under this Escrow Agreement, upon payment of all fees and expense reimbursements due to the Bank, to such successor escrow agent and the Bank shall thereby be released from any and all responsibility or liability to the Parties hereto. Pending such appointment or instructions, the Bank shall continue to be bound by the terms of this Escrow Agreement.

6. Notices. Any notice provided for or permitted under this Escrow Agreement, unless otherwise provided herein, will be treated as having been received (a) when delivered personally, (b) when sent by confirmed facsimile or (c) three (3) days following when sent by certified mail, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this paragraph (except that the Escrow Agent shall not be bound by or required to act upon any notice unless and until actually received by it).

- a. If to the Developer, at:

- b. If to the City, at:

Zumbrota City Administrator
Zumbrota City Hall
175 West Avenue
Zumbrota, MN 55992

- c. If to the Escrow Agent, at:

Such notice will be treated as having been received upon actual receipt if actual receipt occurs earlier than as provided in clauses (a) through (c) hereof. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless delivered to an officer of the Escrow Agent having responsibility under this Agreement.

7. Termination. This Escrow Agreement shall terminate and be of no force or effect upon the completion of the terms and conditions contained herein and completion of the retained security requirements (retainage) contained in the Development Agreement; provided however, that the security requirements for the warranty period required in the Development Agreement are otherwise provided for in a manner acceptable to the City and in accordance with the Development Agreement. Subject to the retainage requirements contained in the Development Agreement, in the event that the security requirements for the warranty period required in the Development Agreement are not otherwise provided for in an alternate manner acceptable to the City, this Escrow Agreement shall not terminate until the expiration of the required warranty period, except that the amount of the security remaining in the Escrow Account for the warranty period shall be as provided in the Development Agreement.

8. General Terms.

- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Escrow Agreement and understand fully the contents thereof; that in executing this Escrow Agreement they voluntarily accept all terms described in this Escrow Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Escrow Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Escrow Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Successors and Assigns. This Escrow Agreement may not be assigned by the Developer or Bank without the prior written consent of the City. This Escrow Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No other person has any rights, interest, or claims hereunder or is entitled to any benefits under or on account of this Escrow Agreement as a third-party beneficiary or otherwise.
- d. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.
- e. Governing Law. This Escrow Agreement shall be deemed to have been made and accepted in Goodhue County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Escrow Agreement without regard to its choice of law or conflict of laws principles.
- f. Data Practices. The parties acknowledge that this Escrow Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- g. No Waiver. Nothing in this Escrow Agreement shall be construed to waive any immunities or limitations to which the City is entitled under Minn. Stat. Chapter 466 or otherwise. No waiver by any party to this Escrow Agreement of any condition or of any breach of any provision of this Escrow Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained in this Escrow Agreement.
- h. Entire Agreement. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Escrow Agreement.
- i. Headings and Captions. Headings and captions contained in this Escrow Agreement are for convenience only and are not intended to alter any of the provisions of this agreement and shall not be used for the interpretation of the validity of the agreement or any provision hereof.
- j. Cooperation. The parties hereto agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Escrow Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Escrow Agreement.
- k. No joint venture or partnership. The parties hereto agree that they will be independent contractors in performing their respective obligations under this Escrow Agreement. This Escrow Agreement is not intended to create nor does it create, a relationship of partners or joint ventures between the parties hereto.
- l. Severability. The invalidity or unenforceability of any provision of this Escrow Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Escrow Agreement shall be construed and enforced as if the agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

- m. Force Majeure. Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment, or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.
- n. Compliance with Laws. The parties hereto shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to the subject matter hereof.
- o. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
- p. Execution. This Escrow Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart, facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

(Remainder of page left intentionally blank.)

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

DEVELOPER: _____

By: _____
_____, It _____ Scott H

CITY: CITY OF ZUMBROTA

By: _____
Todd Hammel, Its: Mayor

By: _____
Brian Grudem, Its: City Administrator

BANK/ESCROW AGENT: _____

By: _____
_____, It _____

ACKNOWLEDGMENT OF DEVELOPER

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the _____ of _____, a _____ [e.g., corporation, limited liability company, limited liability partnership] under the laws of the State of _____ [Minnesota], on behalf of the _____ and pursuant to the authority granted by its _____ [e.g., board of directors].

NOTARY PUBLIC

ACKNOWLEDGMENT OF CITY

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Todd Hammel and by Brian Grudem, the Mayor and City Administrator of the City of Zumbrota, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

ACKNOWLEDGMENT OF BANK

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the _____ of _____, a _____ *[e.g., corporation, limited liability company, limited liability partnership]* under the laws of the State of _____ *[Minnesota]*, on behalf of the _____ and pursuant to the authority granted by its _____ *[e.g., board of directors]*.

NOTARY PUBLIC