



## STAFF REPORT

DATE: July 20, 2021

### **CONSENT**

**AGENDA ITEM:** Water Tower Option Agreement

**SUBMITTED BY:** Kristina Handt, City Administrator

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### **BACKGROUND:**

A water tower is needed in the area south of 10<sup>th</sup> Street and as close to Lake Elmo Ave as possible in order to provide adequate water service for growth in the eastern area of Lake Elmo. Staff has been reaching out to multiple property owners in the area for a couple years trying to secure a location to build the water tower. A right of entry was granted in April while the seller's attorney reviewed the agreement. Soil borings are underway and should be available by the end of July.

### **ISSUE BEFORE COUNCIL:**

Does Council approve the water tower option agreement with the Peltiers?

### **PROPOSAL:**

Included in your packet is an option agreement drafted by the city attorney and signed by the Peltier trust representative. This agreement gives the city the option to purchase .82 acres for a water tower facility and obtain the necessary easements. The stormwater easement may be abandoned in the future if the seller develops the rest of the parcel and meets the watershed requirements.

The option price is \$1,000. If the city moves forward with the purchase this applies to the purchase price. If the city does not, the seller keeps the \$1,000. The option period expires on March 1, 2022.

In addition to the \$50,000 purchase price the city at its expense, will extend trunk watermain pipe along Lake Elmo Avenue to the location on the Option Property where the city will be constructing a water tower. As part of this project, lateral watermain stubs for connection for future development will be placed by the city, at the expense of the city to serve the property both north and south of Hudson Boulevard and west of Lake Elmo Avenue.

Section 9.3 details the allocation of various closing costs amongst the city and the seller which are typical. Real estate taxes will be prorated at closing. Sellers pay broker fees.

### **FISCAL IMPACT:**

\$50,000 purchase price plus cost of extending water mains (estimated at \$385,000). Closing costs as discussed above. All funds would come from the water fund.

**OPTIONS:**

- 1) Approve the Option Agreement for Water Tower Site
- 2) Amend and then Approve the Option Agreement for the Water Tower Site
- 3) Do not approve the Option Agreement for the Water Tower Site

**RECOMMENDATION:**

If removed from the consent agenda:

***“Motion to approve the Option Agreement for the Water Tower Site with Peltiers.”***

**ATTACHMENTS:**

- Option Agreement

## OPTION AGREEMENT

**THIS OPTION AGREEMENT** (the “**Option Agreement**”), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”) by and between The Estate of Gene M. Peltier and the Estate of Ann E. Peltier (the “**Sellers**”) and the City of Lake Elmo, a Minnesota municipal corporation (the “**Buyer**”).

### Recitals

**WHEREAS**, the Sellers are the owners of that certain real property located in the City of Lake Elmo, Washington County, Minnesota, being legally described on **Exhibit A** attached hereto (the “**Property**”); and

**WHEREAS**, the Buyer wishes to construct and maintain a city water tower facility in the area of the Property; and

**WHEREAS**, to assist in said purpose, the Buyer wishes to obtain an option to purchase a portion of the Property consisting of approximately 0.82 acres and as more specifically depicted on **Exhibit B** attached hereto (the “**Option Property**”); and

**WHEREAS**, in addition, the Buyer wishes to obtain an option to purchase an additional permanent drainage and utility easement immediately adjacent to and west of the water tower site for the construction of a storm water management facility required for watershed permitting to construct the water tower. At the Sellers’ option, this facility may be abandoned and the easements may be vacated by the Buyer, at the time the Sellers develop the property adjacent to the Option Property, contingent upon the Sellers’ storm water plans meeting all watershed district requirements. The drainage and utility easements to be purchased by the Buyer are depicted on **Exhibit B** attached hereto (collectively, the “**Option Easements**”); and

**WHEREAS**, in addition, the Buyer may require a permanent drainage and utility easement, up to 30 feet in width, for the installation of trunk watermain running south along the west side Lake Elmo Avenue, with said easement location to be determined as part of the process to identify the County right-of-way dedication requirements and to complete design layout for the proposed watermain along the east side of Seller’s property, and said permanent drainage and utility easement to be dedicated at no cost to the City in the City’s

standard form of easement agreement, also included in the definition of “**Option Easements**”; and

**WHEREAS**, in addition, the Buyer wishes to obtain an option to purchase a temporary construction easement over the remaining portion of the Property for the purpose of construction staging for the water tower (the “**Option Temporary Easement**”); and

**WHEREAS**, the Sellers are willing to grant to the Buyer an exclusive option to purchase the Option Property, the Option Easements, and the Option Temporary Easement under those certain terms and conditions as outlined herein; and

#### Terms of the Agreement

**NOW, THEREFORE**, the Sellers and the Buyer have agreed to set forth their agreement regarding the Option Property, the Option Easements, and the Option Temporary Easement pursuant to this Option Agreement, as follows:

1. Option. The Sellers hereby grant to the Buyer an exclusive right and option to purchase the Option Property, the Option Easements, and the Option Temporary Easement subject to the conditions set forth below (the “**Option**”).
2. Option Price. The Sellers hereby acknowledge receipt from the Buyer of the sum of \$1,000 which shall constitute the option payment (the “**Option Payment**”). The Option Payment shall be non-refundable except as otherwise stated herein. In the event that the Buyer purchases the Option Property, the Option Easements, and the Option Temporary Easement pursuant to this Option Agreement, the Option Payment shall be converted to the purchase price payable for the Option Property, the Option Easements, and the Option Temporary Easement. In the event the Buyer does not purchase the Option Property, the Option Easements, and the Option Temporary Easements pursuant to this Option Agreement, the Option Payment shall be retained by the Sellers as consideration for granting the Option.
3. Option Period.
  - 3.1 The period during which the Option may be exercised by the Buyer (the “**Option Period**”) shall commence upon the Effective Date and shall expire on March 1, 2022.
  - 3.2 If the Buyer does not timely exercise the Option or closing does not occur for any reason whatsoever other than the Sellers’ default hereunder, the Option shall lapse, and the Option Payment made shall be retained by the Sellers as consideration for granting the Option and the Buyer shall have no further rights with respect to the Property.
4. Purchase Price/Consideration. The total purchase price for the Option Property, the Option Easements, and the Option Temporary Easement shall be \$50,000. As additional consideration for the Option Property, the Option Easements, and the

Option Temporary Easements, the Buyer, at its expense, will extend trunk watermain pipe along Lake Elmo Avenue to the location on the Option Property where the Buyer will be constructing a water tower. As part of this project, lateral watermain stubs for connection for future development will be placed by the Buyer, at the expense of the Buyer to serve the property both north and south of Hudson Boulevard and west of Lake Elmo Avenue.

5. Exercise of Option. This Option shall be deemed exercised if, within the Option Period, the Buyer gives written notice to the Sellers of the Buyer's intent to exercise the Option. If the Buyer exercises the Option and the Sellers default in any obligations under this Option Agreement, the Buyer shall have the right to enforce specific performance of this Option Agreement.
6. Title Matters. Promptly after exercising the Option, the Buyer shall obtain a commitment for an ALTA owner's title insurance policy. Within 10 business days after receipt of the title commitment, the Buyer shall notify the Sellers in writing of any objections to title, or the objections shall be deemed waived. The Sellers shall have 30 days after receipt of the objections to cure the objections, during which period the closing will be postponed, if necessary. The Sellers shall use all reasonable efforts to cure any objections. If the objections are not cured within such 30 day period, the Buyer will have the option to either of the following: (i) terminate this Option Agreement by giving written notice to the Sellers; or (ii) cure the objections at the Buyer's expense. If this Option Agreement is terminated due to the Sellers' decision not to cure title objections or failure to cure title objections or any other default of the Sellers, the Sellers shall repay to the Buyer the Option Payment previously paid.
7. Due Diligence Investigation. Commencing on the date that the Buyer exercises this Option, the Buyer shall have a due diligence period of 120 days ("**Due Diligence Period**") to make all such investigations as the Buyer, in its sole and absolute discretion, deems reasonable and necessary in determining the suitability of the Property for the Buyer's needs. All such investigations, reviews and approvals shall be at the Buyer's expense.
  - 7.1. Right of Entry. During the Option Period and the Due Diligence Period, the Buyer shall have the right to enter upon the Property for the purpose of taking soil tests and borings, making surveys and maps and performing investigative work, including environmental testing and assessment, as the Buyer may deem necessary; provided, however, the Buyer shall indemnify and hold the Sellers harmless from any mechanics' liens or claims arising out of such investigative work by the Buyer. The Buyer may assign this right to a third party or parties at its sole discretion.
8. Contingencies.

- 8.1 If the Buyer exercises the Option, the Buyer's obligation to purchase the Option Property, the Option Easements, and the Temporary Option Easement shall be contingent on the following:
- a. By the end of the Due Diligence Period, the Buyer has determined, in its sole and absolute discretion, that it is satisfied with the results and matters disclosed by the Buyer's investigation of the Property pursuant to Section 7 of this Option Agreement;
  - b. On or before the closing date, the Buyer has obtained all governmental approvals required for the Buyer's intended use of the Option Property, the Option Easements, and the Option Temporary Easement including, but not limited to, the subdivision of the Property being approved as depicted in the attached **Exhibit B**;
  - c. Approval of the purchase of the Option Property and the Option Easements by the Buyer's governing body; and
  - d. The condition of title being satisfactory to the Buyer following the Buyer's examination of title as provided in Section 6 of this Option Agreement.
- 8.2 The contingencies set forth above are for the benefit of the Buyer and may be waived by the Buyer in the Buyer's sole discretion. Notwithstanding any other provision in this Option Agreement, a waiver of a contingency must be in writing to be effective. At the end of the Due Diligence Period, the Buyer will give written notice to the Sellers of the contingencies that have been waived, satisfied, or neither waived nor satisfied.
- 8.3 If closing does not occur due to the failure of any of the above contingencies, the Sellers shall be entitled to retain the Option Payment as provided in Section 3.2 of this Option Agreement.

9. Closing.

- 9.1 Closing Date. The closing shall occur within 30 days after the earlier of the expiration of the Due Diligence Period or the Buyer's written notice that the contingencies set forth in Section 8.1 have been either been waived or satisfied.
- 9.2. Documents to be Delivered by the Sellers. The Sellers agree to deliver to the Buyer the following documents, duly executed as appropriate, at closing:
- a. A duly recordable warranty deed for the Option Property conveying marketable fee simple title to the Option Property to the Buyer, free and clear of any mortgages, liens, or encumbrances other than matters created by or acceptable to the Buyer;

- b. Easement documents in the Buyer's granting drainage and utility easements to the Buyer in the Buyer's standard easement form that are necessary to grant the Buyer all of the Option Easements and Temporary Option Easement as defined by this Agreement;
- c. An affidavit from the Sellers sufficient to remove any exception in the title policy for mechanics' and materialmen's' liens and the rights of parties in possession;
- d. A completed Minnesota Well Disclosure Certificate, unless the warranty deed includes the statement "the Seller certifies that the Seller does not know of any wells on the described Property;"
- e. Any notices, certificates, and affidavits regarding any private sewage systems, underground storage tanks, and environmental conditions as may be required by Minnesota statutes or rules or city ordinances;
- f. An affidavit of the Sellers confirming that the Sellers are not foreign persons within the meaning of Section 1445 of the Internal Revenue Code; and
- g. Customary affidavits, certificates and such other documents as the Buyer or the Buyer's title company reasonably may request to carry out the transactions contemplated under this Option Agreement.

9.3 Closing Costs and Adjustments. Except as otherwise specifically provided in this Option Agreement, the costs of the purchase transaction shall be paid and allocated as follows:

- a. Title and Related Costs. The Sellers shall pay all costs of the preparation of a title commitment, including the abstracting fees, if required by the title company, title search and exam fees, and all recording fees and charges related to the filing of any instrument required to make title marketable. The Buyer shall pay all premiums required for issuance of a title insurance policy. All closing fees charged by the title company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Option Agreement shall be split equally between the Buyer and the Sellers.
- b. Deed Tax and Recording Fees. The Sellers shall pay any state deed tax, conservation fee or other federal, state, or local documentary or revenue stamps or transfer tax with respect to the warranty deed to be delivered by the Sellers. The Buyer shall pay recording fees and charges related to the filing of the warranty deed and the easements.

- c. Subdivision of the Property. The parties agree to share equally all costs and expenses associated with the subdivision of the Property to create the Option Property.
- d. Tests and Reports. The Buyer shall pay the costs of any surveys, soil tests, environmental assessments, inspection reports, appraisals, or other tests or reports ordered by the Buyer in connection with its purchase of the Option Property, the Option Easements, and the Option Temporary Easement.
- e. Government Approvals. With the exception of the subdivision approval, the Buyer shall pay all costs for obtaining any other government approvals that may be required in order to close on the Option Property or as required for the Buyer's intended use of the Option Property. At the Buyer's request, the Sellers will join in any application for any government approval requested by the Buyer.
- f. Legal and Accounting Fees. Each party shall pay its own legal and accounting fees in connection with this transaction.

10. Real Estate Taxes and Assessments.

10.1 In the event Buyer exercises the Option, the parties shall pay and allocate real estate taxes and special assessments with respect to the Property as follows:

- a. The Sellers shall be responsible for all real estate taxes, including any deferred real estate taxes, penalties, or interest, for the years prior to the year in which closing occurs. The Buyer and the Sellers shall prorate as of the date of closing the real estate taxes for the Property that are due and payable in the year of closing. Because the Option Property is part of a larger tax parcel, the taxes attributable to the Option Property shall be apportioned based on the ratio of square feet of the Option Property to the total square feet of the Property; the parties shall prorate the taxes attributable to the Option Property; and the Sellers shall pay the taxes attributable to the remainder of the larger tax parcel.
- b. The Sellers shall pay all special assessments levied against the Option Property as of the closing date, including special assessments certified for payment with real estate taxes and all deferred assessments. The Buyer shall assume payment of any special assessments that are pending but not levied against the Option Property as of the closing date.
- c. The parties hereby acknowledge that all real estate taxes will be required to be paid prior to the subdivision of the property required by this Option Agreement. The parties further acknowledge and



agree to pay all real estate taxes in accordance with this Section in a timely fashion which may require the taxes to be pre-paid in advance in order to accomplish the desired subdivision resulting in the Option Property.

11. Sellers' Representations and Warranties. The Sellers hereby represent and warrant to the Buyer, and the Sellers will represent and warrant to Buyer as of the closing date that:

11.1 Title. The Sellers have good, indefeasible, and marketable fee simple title to the Property.

11.2 Condemnation. There is no pending or, to the actual knowledge of the Sellers, threatened condemnation or similar proceeding affecting the Property or any portion thereof, and the Sellers have no actual knowledge that any such action is contemplated.

11.3 Defects. The Sellers are not aware of any latent or patent defects in the Property, such as sinkholes, weak soils, unrecorded easements, and restrictions.

11.4. Legal Compliance. The Sellers have complied with all applicable laws, ordinances, regulations, statutes, rules, and restrictions pertaining to and affecting the Property and the Sellers shall continue to comply with such laws, ordinances, regulations, statutes, rules, and restrictions.

11.5 Legal Proceedings. There are no legal actions, suits or other legal or administrative proceedings, pending or threatened, that affect the Property or any portion thereof; and Sellers have no knowledge that any such action is presently contemplated.

11.6 Refuse and Hazardous Materials. The Sellers have not performed and has no actual knowledge of any excavation, dumping or burial of any refuse materials or debris of any nature whatsoever on the Property. To the Sellers' best actual knowledge and belief, there are no "Hazardous Materials" (as hereinafter defined) on the Property that would subject the Buyer to any liability under either federal or state laws, including, but not limited to, the disposal of any foreign objects or materials upon or in the Property, lawful or otherwise. Without limiting the generality of the foregoing, the Sellers represent and warrant to the Buyer that, to the Sellers' best actual knowledge and belief:

11.6.1 The Property is not now and has never been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with Hazardous Materials;

- 11.6.2 No Hazardous Materials have ever been installed, placed, or in any manner handled or dealt with on the Property;
- 11.6.3 There are no underground or aboveground storage tanks on the Property; and
- 11.6.4 Neither the Sellers nor any prior owner of the Property or any tenant, subtenant, occupant, prior tenant, prior subtenant, prior occupant, or person (collectively, "**Occupant**") has received any notice or advice from any governmental agency or any other Occupant with regard to Hazardous Materials on, from or affecting the Property.

The term "**Hazardous Materials**" as used herein includes, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as may be defined as a hazardous or toxic substance by any federal, state or local environmental law, ordinance, rule, or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (42 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S. C. Section 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) and in the regulations adopted and publications promulgated pursuant thereto.

- 11.7 Legal Capacity. The Sellers have the legal capacity to enter into this Option Agreement and the person(s) signing this Option Agreement on behalf of the Sellers has the authority to sign this Option on behalf of the Sellers. The Sellers have not filed, voluntarily or involuntarily, for bankruptcy relief within the last year under the United States Bankruptcy Code, nor has any petition for bankruptcy or receivership been filed against Sellers within the last year.
- 11.8 Leases. There are no third parties in possession of the Option Property, or any part thereof; and there are no leases, oral or written, affecting the Option Property or any part thereof.
- 11.9 Foreign Status. The Sellers are not "foreign persons" as such term is defined in the Internal Revenue Code.

11.10 Methamphetamine Production. To the best of the Sellers' knowledge, methamphetamine production has not occurred on the Property.

The Sellers' representations and warranties set forth in this Section 11 shall be continuing and are deemed to be material to the Buyer's execution of this Option Agreement and the Buyer's performance of its obligations hereunder. All such representations and warranties shall be true and correct on and as of the closing date with the same force and effect as if made at that time; and all of such representations and warranties shall survive the closing and any cancellation or termination of this Option Agreement, and shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any party hereto. The Sellers agree to defend, indemnify, and hold the Buyer harmless for, from, and against any loss, costs, damages, expenses, obligations, and attorneys' fees incurred should an assertion, claim, demand, action, or cause of action be instituted, made or taken, which is contrary to or inconsistent with the representations or warranties contained herein.

12. Assignment of Option. The Buyer shall not assign this Option Agreement to a third party without the consent of the Sellers.

13. Notices. Any notice, demand, request, or other communication which may or shall be given or served by the Sellers on the Buyer or by the Buyer on the Sellers, shall be deemed have been given or served on the date the same is hand delivered or the date of receipt or the date of delivery if deposited in the United States mail, registered or certified, postage prepaid, and addressed as follows:

a. If to the Sellers:       The Trustee of the Gene M. Peltier Trust  
                                  Attention: \_\_\_\_\_  
                                  10407 Grand Oaks Trail  
                                  Woodbury, MN 55129

                                  The Trustee of the Ann E. Peltier Trust  
                                  Attention: \_\_\_\_\_  
                                  10407 Grand Oaks Trail  
                                  Woodbury, MN 55129

b. If to the Buyer:       City of Lake Elmo  
                                  Attention: City Administrator  
                                  3880 Laverne Avenue North, Suite #100  
                                  Lake Elmo, Minnesota 55042

                                  with a copy to:       Sarah J. Sonsalla  
  Kennedy & Graven, Chartered  
  150 South 5<sup>th</sup> Street, Suite 700  
  Minneapolis, MN 55402-1299

or such other address as either party may give to another party in accordance with this Section 13.

14. Brokers. The Sellers are represented by Cushman & Wakefield in this transaction contemplated by this Option Agreement. The Sellers shall be responsible for paying any fees or commissions that are owed to Cushman & Wakefield for this transaction. The Buyer represents and warrants to the Seller that the Buyer has not dealt with any brokers in connection with the transaction contemplated by this Option Agreement. Each party agrees to indemnify, defend, and hold the other party harmless from the claims of any broker, real estate agent or similar party claiming through the indemnified party.
15. Binding Effect. This Option Agreement binds and benefits the parties and their heirs, successors, and assigns.
16. No Partnership or Joint Venture. Nothing in this Option Agreement shall be construed or interpreted as creating a partnership or joint venture between the Sellers and the Buyer relative to the Property.
17. Entire Agreement. This Option Agreement contains the entire understanding of the parties hereto with respect to the Property and supersedes all prior agreements or understandings between the parties with respect to the same.
18. Cumulative Rights. Except as may otherwise be provided herein, no right or remedy herein conferred on or reserved by either party is intended to be exclusive of any other right or remedy provided by law, but such rights and remedies shall be cumulative in and in addition to every other right or remedy given herein or elsewhere or existing at law, equity or by statute.
19. Amendment and Modification. No amendment, modification or waiver of any condition, provision or term of this Option Agreement shall be valid or have any effect unless made in writing, signed by the party to be bound and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by either party of any defaults by the other party shall not affect or impair any right arising from any previous or subsequent default.
20. Severability. Each provision, section, sentence, clause, phrase, or word of this Option Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word of this Option Agreement is determined to be illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of remainder of this Option Agreement.
21. State Law. This Option Agreement shall be construed and enforced in accordance with the laws of Minnesota.
22. Agreement to Run with the Land. This Option Agreement shall be recorded by the Buyer at its expense in the records of Washington County. This Option Agreement

shall run with the land and is binding upon the Sellers and their heirs, successors, and assigns.

23. Investigation of the Property. Commencing the Effective Date of this Option Agreement, upon notice to the Sellers, the Buyer may enter upon the Property for the purpose of taking soil tests and borings on the Option Property and the location on the Property in which the Option Easements and the Temporary Option Easement would be located, making surveys and maps and performing investigative work, including environmental testing and assessments, as the Buyer may deem necessary; provided, however, the Buyer shall indemnify and hold the Sellers harmless from any mechanics' liens or claims arising out of such investigative work by the Buyer. The Buyer may assign this right to a third party or parties at its sole discretion.

*{Remainder of Page Intentionally Left Blank; Signature Pages to Follow}*

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

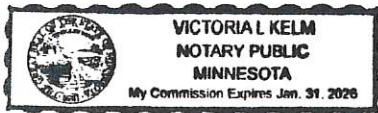
SELLERS

THE TRUSTEE OF GENE M. PELTIER TRUST

By: Bruce M. Peltier  
BRUCE M. PELTIER  
Its: TRUSTEE

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Washington )

The foregoing instrument was acknowledged before me this 18 day of June, 2021, by Victoria L. Kelman, the Trustee of The Gene M. Peltier Trust, on behalf of the Estate. Bruce Peltier



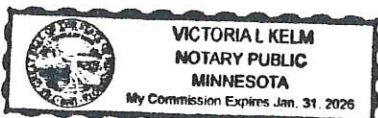
Victoria L. Kelman  
Notary Public

THE TRUSTEE OF ANN E. PELTIER TRUST

By: Bruce M. Peltier  
BRUCE M. PELTIER  
Its: TRUSTEE

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Washington )

The foregoing instrument was acknowledged before me this 18 day of June, 2021, by Bruce Peltier, the Trustee of The Ann E. Peltier Trust, on behalf of the Estate.



Victoria L. Kelman  
Notary Public

**BUYER**

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Charles Cadenhead  
Its: Mayor

By: \_\_\_\_\_  
Julie Johnson  
Its: City Clerk

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF WASHINGTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Charles Cadenhead and Julie Johnson, the Mayor and City Clerk, respectively of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

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

This instrument was drafted by:

Kennedy & Graven, Chartered (SJS)  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402-1299  
(612) 337-9300

**EXHIBIT A**  
Legal Description of the Property

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35,  
TOWNSHIP 29 NORTH, RANGE 21 WEST, LYING NORTH OF THE NORTHERLY  
RIGHT OF WAY OF MINNESOTA HIGHWAY NO. 12; EXCEPTING THEREFROM THE  
SOUTH 627.90 FEET OF THE WEST 618.00 FEET THEREOF; AND ALSO  
EXCEPTING THEREFROM THE SOUTH 213.75 FEET OF THE EAST 222.75 FEET  
THEREOF; AND ALSO EXCEPTING THEREFROM THE NORTH 150.00 FEET OF THE  
EAST 888.80 FEET THEREOF; AND ALSO EXCEPTING THEREFROM PARCEL 39 OF  
MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 82-  
44 RECORDED AS DOCUMENT NO. 429593. SUBJECT TO RIGHT OF WAY OF  
LAKE ELMO AVENUE NORTH AND ANY EASEMENTS OF RECORD



## EXHIBIT B

Depiction of the Option Property, Option Easements, and Option Temporary Easement

Approximate Water Tower Location (Shown in Red)

