



## STAFF REPORT

DATE: November 1, 2022

### **CONSENT**

**AGENDA ITEM:** First Amendment to WAC Prepayment Agreement

**TO:** Mayor and City Council

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

---

### **BACKGROUND:**

In 2014 the City entered into a WAC Prepayment Agreement with EN Properties LLC. The annual \$50,000 payments were made in years 2015-2021. In July 2022, Terry Emerson, representing EN Properties LLC, sent a letter to the city requesting “that the city suspend or cancel current and future prepaid WAC payments”

The Council discussed the amendment at their October 11, 2022 work session and directed that it be placed on the agenda for approval after signature by EN Properties.

### **ISSUE BEFORE COUNCIL:**

Should the Council amend the Prepayment WAC Agreement with EN Properties?

### **PROPOSAL DETAILS/ANALYSIS:**

A copy of the signed First Amendment is included in your packet. Once executed and recorded against the property, the city will release the letter of credit and return \$2,000 to EN properties.

### **FISCAL IMPACT:**

\$2,000 will be refunded from the water fund with 116 prepaid WAC credits applied to the property for future development.

### **OPTIONS:**

- 1) Approve the First Amendment to the WAC Prepayment Agreement
- 2) Amend and then Approve the First Amendment to the WAC Prepayment Agreement
- 3) Do not approve an amendment to the WAC Prepayment Agreement

### **RECOMMENDATION:**

Per direction at the work session, if removed from the consent agenda:

***“Motion to approve the First Amendment to the WAC Prepayment Agreement with EN Properties.”***

### **ATTACHMENT:**

- First Amendment

## FIRST AMENDMENT TO WAC PREPAYMENT AGREEMENT

**THIS FIRST AMENDMENT TO WAC PREPAYMENT AGREEMENT** is made and entered into as of \_\_\_\_\_, 2022 by and between the **City of Lake Elmo, Minnesota**, a municipal corporation and political subdivision under the laws of the State of Minnesota ("**City**") and **EN Properties LLC.**, a Minnesota limited liability company ("**Owner**"):

### RECITALS

- A. The City and Owner entered into an Agreement dated June 3, 2014, where Owner would provide advance payment and security for a specified number of water availability charges ("WAC") to the City (the "Agreement").
- B. The Agreement called for Owner to pay for 166 WAC in the total amount of \$500,000.00 over the course of ten years at a rate of \$50,000 per year.
- C. As of the date herein, Owner has paid a total of \$350,000.00 toward WAC which entitles owner to credit for 116 WAC with \$2,000.00 remaining.
- D. Owner wishes to terminate payments under the Agreement, retain credit for 116 WAC, and receive payment from the City for the \$2,000.00.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this First Amendment, the City and Owner agree as follows:

- 1. Paragraph 1 of the Agreement is deleted and replaced with the following:


**SUMMARY OF SECURITY REQUIREMENTS.** Owner shall pay for 116 WAC units in the total amount of \$348,000.00 in connection with the placement of a municipal water services to The Terminus. To secure in advance, payment of these WAC units totaling \$348,000.00, Owner shall post and maintain, until full payment has been received by the City, an irrevocable letter of credit in a form satisfactory to the City in an amount not less than \$500,000.00 to secure payment. The letter of credit may be drawn upon by the City if, within one (1) year of the date of this agreement, the Owner has not paid to the City a minimum of \$50,000.00 and paid \$50,000.00 per year thereafter until \$348,000.00 has been paid to the City. The payment shall be due July 1st of each year. Actual payments (because of development) for WAC fees will be deducted from the fees otherwise owed annually if WAC fees are more than the minimum amount owed of \$50,000.00 per year, a credit will be issued for the following year or years.

- 2. The City agrees to release 100% of the Security upon execution of this First Amendment.
- 3. The City will credit 116 WAC to Owner to be credited to any WAC owed for the Property upon development of the Property. The City will pay to Owner \$2,000 in overpayment

for 116 WAC. In the event that there remain unused WAC units attributable to the Property, Owner may make a written request to the City for a refund of the unused WAC units. The City shall refund the amount paid by Owner for the unused WAC units to Owner within 30 days of Owner making the request to the City. Unused WAC units will be refunded to Owner by City at the rate of \$3,000.00/unit, not to exceed 116 WAC or \$348,000.00.

4. The remaining terms of the Agreement remain in effect.

EN PROPERTIES, LLC  
a Minnesota limited liability company

By   
Its Manager

By \_\_\_\_\_

Its \_\_\_\_\_

CITY OF LAKE ELMO, MINNESOTA

By \_\_\_\_\_  
Charles Cadenhead, Mayor

By \_\_\_\_\_  
Julie Johnson, City Clerk