

DATE: June 6, 2023

CONSENT

TO: Mayor and City Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: Approve Draw on Southwind LLC's Letter of Credit

BACKGROUND:

With each new plat that is approved, entering into a Development Agreement is a requirement of final plat approval. In order to ensure the public improvements are completed as detailed in the approved plans, the city also requires a letter of credit (LOC) from the developer. Our standard form requires the LOC to automatically renew each year unless notice is given 45 days ahead of time to the City that it will not be renewed.

ISSUE FOR DISCUSSION:

Should Council approve staff drawing on the Letter of Credit for Southwind?

PROPOSAL DETAILS/ANALYSIS:

On May 8, 2023 we received an email from Kyle Johnson representing First State Bank and Trust who issued the LOC for Larry Alm, developer of Southwind of Lake Elmo LLC that they would not be renewing the LOC when it expires July 17, 2023.

In October 2022, the 2 year warranty inspection was completed on the landscaping. As detailed in the attached report from Stantec, two trees were to be replaced. HKGI did a reinspection in May following notice of the nonrenewal of the LOC and found these two trees had not been replaced and still failed to meet standards. The developer and bank were notified of the failed inspection and intent to draw on the LOC on May 18th. The only response has been from the bank asking how much.

Staff would propose the city draw on the LOC in the amount of \$5,000 to cover the cost of planting two new trees (\$1,200), replenishing the negative escrow balance (\$2,089.82) and to cover future billings from legal and landscaping related to these inspections and pulling of the LOC.

FISCAL IMPACT:

NA

OPTIONS:

- 1) Authorize the City Clerk to draw on the Letter of Credit for Southwind of Lake Elmo, LLC in the amount of \$5,000
- 2) Authorize the City Clerk to draw on the Letter of Credit for Southwind of Lake Elmo, LLC in a different amount
- 3) Do not authorize staff to draw on the Letter of Credit for Southwind of Lake Elmo, LLC

RECOMMENDATION:

If removed from the consent agenda:

"Motion to authorize staff to draw \$5,000 on the Letter of Credit for Southwind of Lake Elmo LLC"

ATTACHMENTS:

- Notice of Non Renewal from First State Bank and Trust
- LOC, April 2019
- Landscape Inspection Report 10/4/22
- Landscape Inspection Report 5/17/23



8147 Globe Dr.
Suite 205
Woodbury, MN 55125

Kyle Johnson
(651) 756-7588
kyle@johnsonbealka.com

VIA CERTIFIED MAIL

May 8, 2023

City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, Minnesota 55042
Attn: City Administrator

Re: Southwind of Lake Elmo/Letter of Credit Notice of Non-Renewal

My firm represents First State Bank and Trust ("Bank"). As you are aware, Bank issued, in favor of the City of Lake Elmo ("City"), a certain Irrevocable Letter of Credit, dated July 17, 2017, initially in the maximum amount of \$591,521.70 (as the same has been amended and partially released from time to time, collectively, "Letter of Credit").

The Letter of Credit automatically renews for successive one-year terms unless, at least forty-five (45) days prior to July 17 of any year, Bank delivers notice to the City that it intends to cancel the Letter of Credit. Please accept this letter as formal notification to the City that the Bank is electing to cancel the Letter of Credit.

The Letter of Credit currently has an outstanding maximum exposure of \$70,326.00. The remaining Letter of Credit security relates only to landscaping work. The landscaping has been completed for several years and the final inspection last fall concluded that, with the exception of two (2) trees in dispute, the landscaping is acceptable. The two (2) year warranty period has expired. The two (2) trees in dispute are budding this spring.

Should you have any questions or comments, do not hesitate to reach out. Also, please advise if I should direct this communication elsewhere.

Sincerely,

Johnson Bealka, PLLC

By: _____

A handwritten signature in black ink, appearing to read 'Kyle Johnson', written over a horizontal line.

Kyle Johnson, Attorney

CC: Larry Alm, Southwind Builders (via email)
Scott Faust, First State Bank and Trust (via email)

IRREVOCABLE LETTER OF CREDIT

No. 22358

Date: April 22, 2019

TO: City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Dear Sir or Madam:

We hereby issue, for the account of Southwind of Lake Elmo, LLC, a Minnesota limited liability company, and in your favor, our Irrevocable Letter of Credit in the amount of Seven Hundred Ninety-Three Thousand Four Hundred Three and 00/100 Dollars (\$793,403.00), 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. 22358, dated April 22, 2019, of First State Bank and Trust;
- b. Be signed by the Chairperson or Clerk of the City of Lake Elmo; and
- c. Be presented for payment at 5891 Neal Ave. N., Oak Park Heights, Minnesota 55082, on or before 4:00 p.m. on July 17, 2019.

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 July 17 of each year), the Bank delivers written notice to the Lake Elmo 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: City Administrator, City Hall, 3800 Laverne Ave. N. Lake Elmo Minnesota 55042 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. 500.

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

This Letter of Credit shall be governed by the laws of the State of Minnesota as supplemented (to the extent consistent with this Letter of Credit) by the most current provisions of the Uniform Customs and Practices for Commercial Documentary Credits, 2007 Revision, 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.

THIS LETTER OF CREDIT IS A REPLACEMENT IN FULL OF (1) THAT CERTAIN IRREVOCABLE LETTER OF CREDIT NO. 22111 DATED JULY 17, 2017, MADE BY FIRST STATE BANK AND TRUST IN THE AMOUNT OF FIVE HUNDRED NINETY-ONE THOUSAND FIVE HUNDRED TWENTY-ONE AND 70/100 DOLLARS (\$591,521.70); AND (2) THAT CERTAIN IRREVOCABLE LETTER OF CREDIT NO. A049 DATED JULY 17, 2017, MADE BY PLATINUM BANK IN THE AMOUNT OF ONE MILLION THREE HUNDRED EIGHTY THOUSAND TWO HUNDRED SEVENTEEN AND 00/10 DOLLARS (\$1,380,217.00), WITH A CURRENT OUTSTANDING AMOUNT OF TWO HUNDRED ONE THOUSAND EIGHT HUNDRED EIGHTY ONE AND 30/100 DOLLARS (\$201,881.30).

First State Bank and Trust
(a Minnesota banking corporation)

By: _____

Scott W. Faust

Its: Senior Vice President

This is the signature page to that certain Irrevocable Letter of Credit dated April 22, 2019.

File: 227701130

To: Molly Just, City of Lake Elmo Planning Director

From: Sarah Harding, Landscape Architect
Mark Flicker, Landscape Architect

Subject: Southwind 1st Addition Landscape Warranty
2-year Reinspection – October 4, 2022

Date: October 12, 2022

	Acceptance	1-year Inspection	1-year Re-inspection	2-Year Inspection	2-Year Re-inspection	Final Inspection Acceptance
Southwind	9/1/2020	6/3/2021	9/28/2021	9/15/2022	10/04/2022	

Attendees:

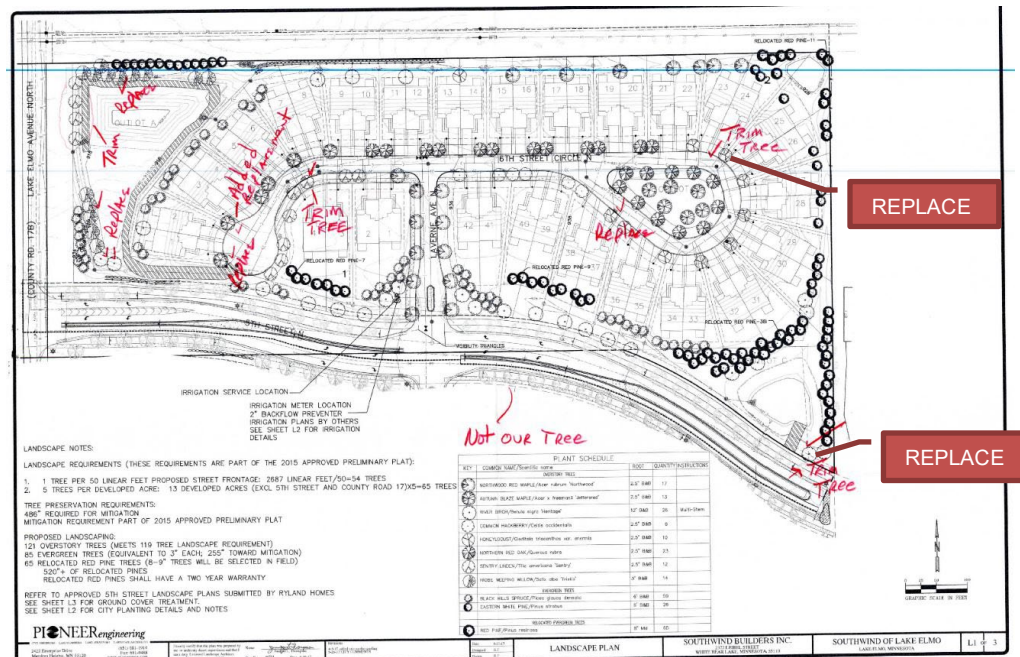
Mark Flicker, Landscape Architect

Landscape Inspection Summary:

A walk through of the landscape conditions was completed for the 2-year reinspection of Southwind 1st Addition.

Findings:

- Trees had been replaced or trimmed per the developer provided plan document, on 9-30-2022 (as shown below) which differs from the recommendations noted in the 9-15-2022 inspection memo.
- One (1) tree noted in the 9-15-2022 inspection memo to be replaced (on the south side of 5th Street) was determined to have been installed as part of the Hunter's Crossing Development. This tree is the responsibility of City of Lake Elmo, not this Development.



October 12, 2022

Molly Just
Planning Director
City of Lake Elmo
Page 2 of 2

Recommendation:

It is recommended that conditions of the 2-year reinspection of the landscape warranty for Southwind 1st Addition include:

- Replacement of (2) trees as noted on the 9-30-2022 (attached above). These (2) trees had been trimmed, rather than being replaced as originally noted in previous inspections because their central leader was dead. By trimming rather than replacing these 2 trees, the overall tree health and form is not conducive for long term success, in a public right-of-way street tree setting and is seen as a maintenance hazard. See attached pictures below for noted trimmed tree conditions.
- All other trimmed trees and replacement trees were found to be acceptable.



Stantec Consulting Services Inc.

Sarah Harding, PLA (MN)

City of Lake Elmo Municipal Landscape Architect

P: 952-334-4838

E: sarah.harding@stantec.com

MEMORANDUM

TO: Sophia Jensen
FROM: Tim Solomonson, PLA
DATE: 5/17/2023
RE: City of Lake Elmo Sketch Plan Review | Sunflower Meadows

Southwinds 1st Addition – Warranty Inspection and Close-out

Inspector and Inspection Date:

Tim Solomonson, Landscape Architect – 5.17.23

Landscape inspection summary

A site warranty inspection was conducted to assess the status of warranty work identified in the 2-year reinspection memo (Oct 4, 2022).

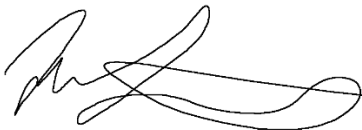
Findings:

- No replacement work had been completed; trees identical to site photos provided in the prior memo. (Blue map items)
- Substantial additional landscape and tree issues identified which are out of the warranty period. (Red map items)

Recommendation:

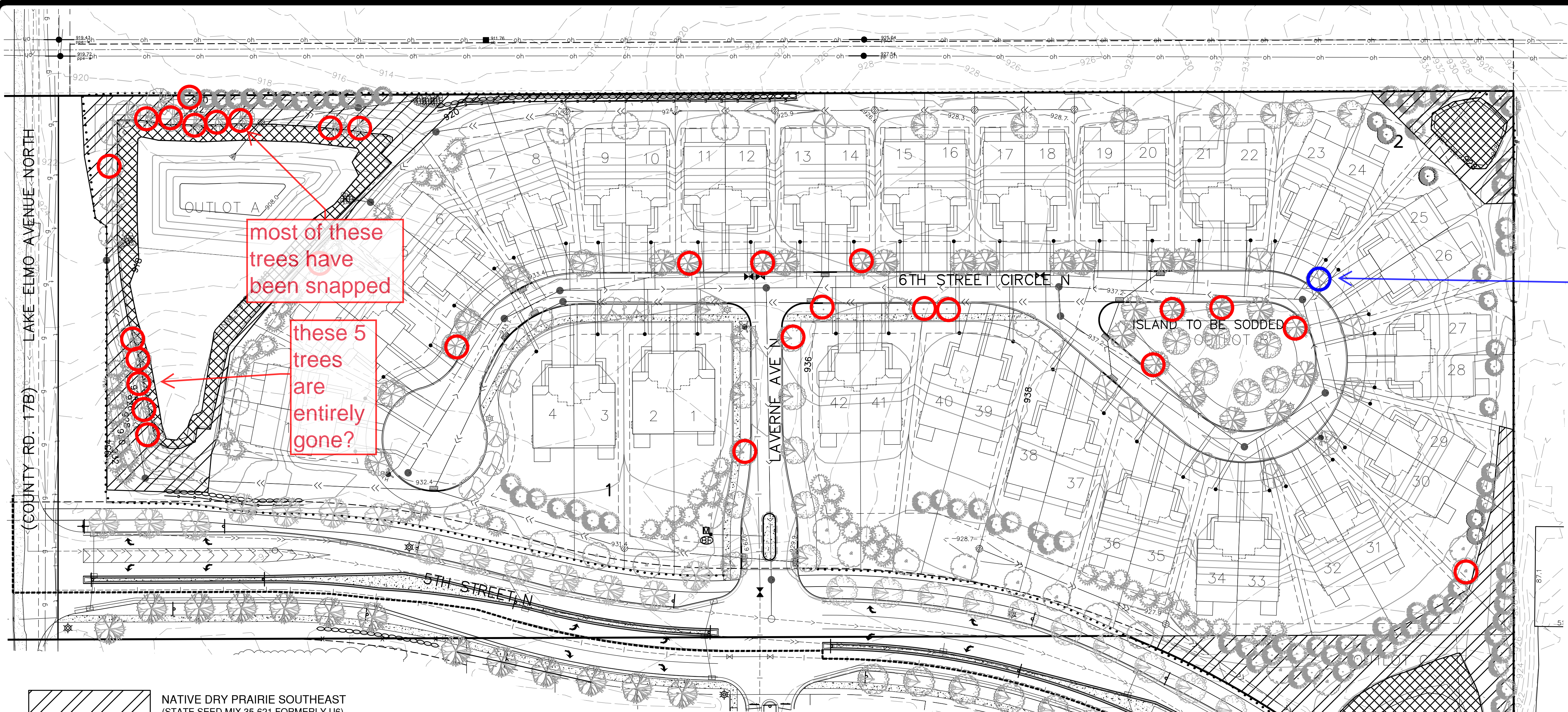
The replacements identified in the October 4 2022 memo were never carried out, therefore it is recommended that conditions of the final acceptance of landscape warranty satisfy requirements identified in the October 2, 2022 memo.

Hoisington Koegler Group, Inc.

A handwritten signature in black ink, appearing to read 'Tim Solomonson', with a stylized flourish at the end.

Tim Solomonson, PLA (MN)

City of Lake Elmo Municipal Landscape Architect
P: 612.802.0142
E: tim@hkgi.com



NATIVE DRY PRAIRIE SOUTHEAST
(STATE SEED MIX 35-621 FORMERLY U6)

Common Name	Scientific Name	Rate (kg/ha)	Rate (lb/ac)	% of Mix (% by wt)	Seeds/ sq ft
side-oats grama	<i>Bouteloua curtipendula</i>	1.27	1.13	10.23%	2.48
blue grama	<i>Bouteloua gracilis</i>	0.76	0.68	6.19%	10.00
kalm's brome	<i>Bromus kalmii</i>	0.35	0.31	2.78%	0.90
nodding wild rye	<i>Elymus canadensis</i>	1.68	1.50	13.61%	2.86
slender wheatgrass	<i>Elymus trachycaulus</i>	1.32	1.18	10.76%	3.00
junegrass	<i>Koeleria macrantha</i>	0.46	0.41	3.71%	30.00
little bluestem	<i>Schizachyrium scoparium</i>	1.69	1.51	13.70%	8.30
sand dropseed	<i>Sporobolus cryptandrus</i>	0.25	0.22	1.98%	16.00
prairie dropseed	<i>Sporobolus heterolepis</i>	0.29	0.26	2.32%	1.50
Total Grasses		8.07	7.20	65.28%	75.04
butterfly milkweed	<i>Asclepias tuberosa</i>	0.07	0.06	0.52%	0.09
whorled milkweed	<i>Asclepias verticillata</i>	0.01	0.01	0.11%	0.05
bird's foot coreopsis	<i>Coreopsis palmata</i>	0.06	0.05	0.50%	0.20
white prairie clover	<i>Dalea candida</i>	0.10	0.09	0.78%	0.60
purple prairie clover	<i>Dalea purpurea</i>	0.17	0.15	1.32%	0.80
ox-eye	<i>Helopsis helianthoides</i>	0.07	0.06	0.51%	0.13
round-headed bush clover	<i>Lespedeza capitata</i>	0.03	0.03	0.31%	0.10
rough blazing star	<i>Liatris aspera</i>	0.02	0.02	0.17%	0.11
dotted blazing star	<i>Liatris punctata</i>	0.02	0.02	0.23%	0.06
wild bergamot	<i>Monarda fistulosa</i>	0.03	0.03	0.30%	0.85
horsemint	<i>Monarda punctata</i>	0.02	0.02	0.22%	0.80
stiff goldenrod	<i>Oligoneuron rigidum</i>	0.07	0.06	0.59%	0.98
large-flowered beard tongue	<i>Penstemon grandiflorus</i>	0.04	0.04	0.35%	0.20
black-eyed susan	<i>Rudbeckia hirta</i>	0.10	0.09	0.86%	3.20
gray goldenrod	<i>Solidago nemoralis</i>	0.01	0.01	0.14%	1.65
skyblue aster	<i>Symphoricarum coccineum</i>	0.01	0.01	0.06%	0.20
silky aster	<i>Symphoricarum sericeum</i>	0.02	0.02	0.19%	0.20
bracted spidenwort	<i>Tradescantia bracteata</i>	0.01	0.01	0.12%	0.05
heart-leaved alexanders	<i>Zizia aurea</i>	0.02	0.02	0.21%	0.10
Total Forbs		0.90	0.80	7.49%	10.37
Oats or winter wheat (see note at beginning of list for recommended dates)		3.36	3.00	27.23%	1.33
Total Cover Crop		3.36	3.00	27.23%	1.33
Totals:		12.33	11.00	100.00%	86.75
Purpose:		Regional dry prairie reconstruction for wetland mitigation, ecological restoration, or conservation program plantings.			
Planting Area:		Eastern Broadleaf Forest Province excluding Hardwood Hills subsection. MndOT Districts Metro & 6.			

DRY SWALE/POND
(STATE SEED MIX 33-262 FORMERLY W4)

Common Name	Scientific Name	Rate (kg/ha)	Rate (lb/ac)	% of Mix (% by wt)	Seeds/ sq ft
big bluestem	<i>Andropogon gerardii</i>	1.68	1.50	3.40%	5.50
American slough grass	<i>Beckmannia syzigachne</i>	1.68	1.50	3.42%	27.60
fringed brome	<i>Bromus ciliatus</i>	1.68	1.50	3.40%	6.05
nodding wild rye	<i>Elymus canadensis</i>	4.48	4.00	9.09%	7.64
slender wheatgrass	<i>Elymus trachycaulus</i>	4.48	4.00	9.10%	10.15
Virginia wild rye	<i>Elymus virginicus</i>	2.80	2.50	5.67%	3.85
switchgrass	<i>Panicum virgatum</i>	0.45	0.40	0.91%	2.05
fowl bluegrass	<i>Poa palustris</i>	1.79	1.60	3.64%	76.50
Indian grass	<i>Sorghastrum nutans</i>	1.68	1.50	3.40%	6.60
Total Grasses		20.74	18.50	42.03%	145.94
marsh milkweed	<i>Asclepias incarnata</i>	0.07	0.06	0.13%	0.10
purple prairie clover	<i>Dalea purpurea</i>	0.10	0.09	0.21%	0.50
Canada tick trefoil	<i>Desmodium canadense</i>	0.10	0.09	0.21%	0.19
ox-eye	<i>Helopsis helianthoides</i>	0.10	0.09	0.20%	0.20
black-eyed susan	<i>Rudbeckia hirta</i>	0.08	0.07	0.17%	2.49
blue vervain	<i>Verbena hastata</i>	0.11	0.10	0.23%	3.50
Total Forbs		0.56	0.50	1.15%	6.98
Oats or winter wheat (see note at beginning of list for recommended dates)		28.02	25.00	56.82%	11.14
Total Cover Crop		28.02	25.00	56.82%	11.14
Totals:		49.32	44.00	100.00%	164.06
Purpose:		Temporarily flooded swales in agricultural settings.			
Planting Area:		Tallgrass Aspen Parklands, Prairie Parkland, and Eastern Broadleaf Forest Provinces. MndOT Districts 2(west), 3B, 4, Metro, 6, 7 & 8.			

SEEDING NOTES:

MULCH: MNDOT TYPE 2 @ 2 TONS PER ACRE AND DISK ANCHORED IN PLACE OR APPROVED EQUAL, INSTALLED TO MINIMUM 90% COVERAGE OF THE SURFACE AREA DISTURBED. MULCH AT 90 % COVERAGE WITH DISC ANCHOR OR HYDROSEED.

POND BENCH AND UP TO HWL TO BE SEEDED WITH MN STATE SEED MIX 33-262 OR EQUIVALENT. SEE GRADING DETAIL NOTES FOR MORE STORMWATER MANAGEMENT DETAILS

DISTURBED UPLAND TO BE SEEDED WITH MN STATE SEED MIX 35-621 OR EQUIVALENT.

ALL LOTS TO BE SODDED TO THE ADJACENT CURB LINES UNLESS DESIGNATED AS SEEDED AREAS

SODDED AREAS TO BE IRRIGATED IRRIGATION BY OTHERS

same tree as pictured in Oct 4, 2022 memo, must be replaced

large areas of perennial die-off

