



**Monday, March 30, 2020**  
6:30 pm

City Hall – Council Chambers  
5200 - 85<sup>th</sup> Ave North

**THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY  
OF THE CITY OF BROOKLYN PARK  
SPECIAL MEETING – AGENDA #3**

**President Jeffrey Lunde, Vice President Susan Pha, Treasurer Lisa Jacobson and  
Secretary Tonja West-Hafner, Commissioners Mark Mata, Terry Parks, Wynfred Russell and  
Executive Director Kim Berggren and Assistant Executive Director Jay Stroebe**

For reasonable accommodations or alternative formats, contact Theresa Freund, 763-493-8059 or email [theresa.freund@brooklynpark.org](mailto:theresa.freund@brooklynpark.org).

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***Our Mission: Brooklyn Park, a thriving community inspiring pride where opportunities exist for all.***

***Our Goals:***

***Strong Neighborhoods • Adapting to Changing Demographics • Public Safety  
Financial Sustainability • Community Image • Focused Redevelopment and Development***

**I. ORGANIZATIONAL BUSINESS**

**1. CALL TO ORDER/ROLL CALL**

**2. PUBLIC COMMENT AND RESPONSE**

This provides an opportunity for the public to address the EDA on items, which are not on the agenda. Open Forum will be limited to 15 minutes (if no one is in attendance for the Open Forum, the Regular Meeting may begin) and it may not be used to make personal attacks, to air personality grievances, to make political endorsements or for political campaign purposes. Commissioners will not enter into a dialogue with citizens. Questions from the EDA will be for clarification only. Open Forum will not be used as a time for problem solving or reacting to the comments made but, rather, for hearing the citizen for informational purposes only.

**2A. RESPONSE TO PRIOR PUBLIC COMMENT**

**2B. PUBLIC COMMENT**

**3. APPROVAL OF AGENDA**

**II. STATUTORY BUSINESS AND/OR POLICY IMPLEMENTATION**

**4. CONSENT**

4.1 None

The following items relate to the EDA's long-range policy-making responsibilities and are handled individually for appropriate debate and deliberation. (Those persons wishing to speak to any of the items listed in this section should fill out a speaker's form and give it to the Secretary. Staff will present each item, following in which audience input is invited. Discussion will then be closed to the public and directed to the EDA table for action.)

**5. Public Hearings**

5.1 None.

**6. General Action Items**

6.1 Consider Authorizing an Amendment to the EDA General Fund Budget in the Amount of \$1,712,060 to Transfer Funds to the City for Acquisition of Parcels 6, 7, and 8 for the 101st Avenue and Highway 169 Interchange Project, CIP 4042-19

6.1A Resolution

6.1B General Parcel Layout Map

6.1C Parcel 6 Map

6.1D Parcel 7 Map

6.1E Parcel 8 Map

6.1F Purchase Agreement

**III. DISCUSSION - These items will be discussion items, but the EDA may act upon them during the meeting.**

**7. Discussion Items**

7.1 None

**IV. WORK SESSION**

**8. Work Session**

8.1 None

**V. ADJOURNMENT**

Since we do not have time to discuss every point presented, it may seem that decisions are preconceived. However, background information is provided for the EDA on each agenda item in advance from City staff; and decisions are based on this information and past experiences. If you are aware of information that has not been discussed, please raise your hand to be recognized. Please speak from the podium. Comments that are pertinent are appreciated. Items requiring excessive time may be continued to another meeting.

The Brooklyn Park Economic Development Authority's Agenda Packet is posted on the City's website.

To access the agenda packet go to [www.brooklynpark.org](http://www.brooklynpark.org)

**The Next Scheduled EDA Meeting is April 20, 2020**

# City of Brooklyn Park Request for EDA Action

<b>Agenda Item:</b>	6.1	<b>Meeting Date:</b>	March 30, 2020
<b>Agenda Section:</b>	General Action	<b>Prepared By:</b>	Jeff Holstein, Transportation Engineer Jennifer Jordan, Senior Project Manager
<b>Resolution:</b>	X		Jennifer Jordan, Senior Project Manager
<b>Attachments:</b>	6		
<b>Item:</b>	Consider Authorizing an Amendment to the EDA General Fund Budget in the Amount of \$638,084 to Transfer Funds to the City for Acquisition of Parcels 6, 7, and 8 for the 101st Avenue and Highway 169 Interchange Project, CIP 4042-19		

## Executive Director's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2020-\_\_\_\_ AUTHORIZING AMENDMENT TO THE EDA GENERAL FUND BUDGET IN THE AMOUNT OF \$638,084 TO TRANSFER FUNDS TO THE CITY FOR ACQUISITION OF PARCELS 6, 7, and 8 FOR THE 101<sup>st</sup> AVENUE AND HIGHWAY 169 INTERCHANGE PROJECT, CIP 4042-19.

## Overview:

The City Council took several actions over the past five years confirming Brooklyn Park's participation in the design, construction and right of way (ROW) acquisition for an interchange on Trunk Highway 169 at 101<sup>st</sup> Avenue North. In April 2019, the City Council authorized approval of appraised values, offers for compensation, and acquisition by eminent domain for the interchange project.

The City received the final appraisals for the required right of way needs of the project in May/June and initial offers were made to the affected properties. The offers were based on independent appraisals for the fair market value of the property including severance damages (where required). The initial offers were followed by one month of negotiations, as required by the state, prior to filing for eminent domain on July 15, 2019. The City obtained title and possession by the condemnation action via "quick-take" process of the required properties on October 15, 2019.

Staff continued to work with the City's land acquisition consultant (WSB Associates) and the City Attorney to reach negotiated settlements with all property owners. The April 2019 Council action approved allowing staff and consultants to negotiate reasonable settlements with the property owners with subsequent Council approval. The City Attorney and WSB indicated it was reasonable for the City's last written offer (LWO) prior to filing for eminent domain to be higher than the City appraised values. The goal of the higher offer was to minimize "risk" by avoiding condemnation, additional City attorneys' fees, and paying the court cost and attorneys' fees of the landowner.

Parcels 6, 7 and 8 are located in the northwest quadrant of the TH 169 / 101<sup>st</sup> Avenue junction and owned by the same person. Parcel 6 is a 14,503 square feet (sf) parcel with no buildings with a project taking of 5,801 sf. Parcel 7 is a total take of 38,455 sf and includes a single-family home and a detached garage. Parcel 8 is a 234,614 sf parcel with several older outbuildings and a project taking of 120,843 sf. Each of these three parcels are slated for future Business Park land use. The residual portions of Parcels 6 and 8 will not have vehicle access subsequent to the taking needed for the project. The City acquired Parcel 5 in October 2019. Parcel 5 is adjacent (west) to Parcels 6, 7 and 8 and does have the potential for direct access to and from 101<sup>st</sup> Avenue in the After Condition. The City Council approved a commitment to re-provide access to the residual portions of Parcels 5, 6 and 8 via this potential access at the October 14, 2019 meeting (City Council Resolution #2019-163).

On February 18, 2019 at the EDA Work Session, staff discussed the potential purchase of the three residual parcels (Parcels 5, 6 and 8). Staff outlined an option to purchase these residual parcels and combine them into a developable parcel. The EDA agreed to allow staff to pursue this option assuming a reasonable purchase price and if the acquisitions help the City manage its risk.

The City tested each of the five parcels located in the northwest corner of the project for contamination in order to convey the project portions of these parcels to MnDOT and have MnDOT assume ownership and maintenance responsibilities for the interchange in the After Condition. The City also tested the residual portions of Parcels 5, 6 and 8 for contamination to make an informed decision regarding the potential purchase of these residual properties. The City Council approved retaining SRF Consulting Group, Inc. and its soils and contamination sub-consultant (Braun Intertec Corp.) at the April 22, 2019 meeting to provide these services. The results of the Braun investigation indicated no apparent contamination issues on the residual portions of Parcels 6 and 8. Parcel 5 residual has already been purchased by the City using EDA funds.

The City's appraiser estimated the total Parcel 6 value (project portion + residual portion) at \$51,000, the total Parcel 7 value at \$205,000 and the total Parcel 8 value (project portion + residual portion) at \$822,000. The total value of Parcels 6, 7 and 8 combined is \$1,078,000. These values were the original purchase offers for the properties contingent upon no contamination issues and EDA and Council approval. Based on discussions with the City attorney and WSB, it was deemed reasonable to increase the City's offer for the entirety of Parcels 6, 7 and 8 to \$1,712,060 to avoid risk of a higher award and eliminate litigation costs associated with the condemnation process. The land values are consistent with those paid for Parcels 5 and 9.

Prior experience suggested there was significant potential for a dispute that would expose the City to a much higher award than its appraised value total of \$1,078,000. Regardless of the final award amount, the City would probably pay the owner's litigation costs if the case went to the condemnation hearing. This settlement eliminates the risk of paying both the owner's and City's litigation costs.

The landowner has accepted the City's offered purchase price and the City Attorney prepared a purchase agreement to convey ownership from the landowner to the City. A copy of this document is attached. In this agreement, the owner is waiving his statutory right of first refusal. As a result, the City will not have to offer the surplus property to them before selling it to a third party.

Staff and WSB have reviewed this document and recommend the City Council approve the purchase agreement for acquisition of all of Parcels 6, 7 and 8 for the TH 169 / 101<sup>st</sup> Avenue Interchange Project. The City Council will need to take formal action to transfer the residual portion of Parcels 6 and 8 to the EDA at a later date.

#### **Primary Issues/Alternatives to Consider:**

The City's previous acquisition by negotiation for all of Parcel 5 allows the City the opportunity to provide access to the residual portions of Parcels 6 and 8, which should mitigate the potential for large severance damages for those two parcels.

The City deposited the City appraised values of the taking for Parcels 6, 7 and 8 with the district court on October 15<sup>th</sup> as part of the quick-take process. The court has retained this amount. Approval of the Purchase Agreement will result in the City processing a new payment to the owner for the full agreed upon amount (\$1,712,060) and then receiving reimbursement of the \$1,078,000 from the court.

#### **Budgetary/Fiscal Issues:**

The Interchange Project (No. 4042-19) is included in the City's 2020-2024 Capital Improvement Plan. Funding is planned to come primarily from grants, with limited funds from the City's EDA and special assessments.



The excess that will be assembled into a developable parcel will be fully funded by the EDA. The \$638,084 would be for the remaining portion, which would be expected to be paid for with EDA funds.

**Attachments:**

- 6.1A RESOLUTION
- 6.1B GENERAL PARCEL LAYOUT MAP
- 6.1C PARCEL 6 MAP
- 6.1D PARCEL 7 MAP
- 6.1E PARCEL 8 MAP
- 6.1F PURCHASE AGREEMENT

THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY  
OF THE CITY OF BROOKLYN PARK

RESOLUTION #2020-

AUTHORIZING AN AMENDMENT TO THE EDA GENERAL FUND BUDGET IN THE AMOUNT OF \$638,084 TO TRANSFER FUNDS TO THE CITY FOR ACQUISITION OF PARCELS 6, 7, and 8 FOR THE 101st AVENUE AND HIGHWAY 169 INTERCHANGE PROJECT, CIP 4042-19

WHEREAS, the Brooklyn Park Economic Development Authority (the “EDA”) and the City of Brooklyn Park (the “City”) are undertaking a highway interchange project located at Highway 169 and 101<sup>st</sup> Avenue in the City (the “Project”), which is expected to cost approximately \$28.2 million;

WHEREAS, the EDA and the City have determined the Project is needed because it contributes to the economic development potential of the community by allowing nearby business parks and mixed-use neighborhoods to expand;

WHEREAS, EDA desires to transfer \$638,084 from its general fund budget to the City for the acquisition of Parcels 6, 7, and 8, a portion of which will be used for the Project and a portion of which will be held for future redevelopment; and

WHEREAS, the EDA has determined that it is necessary to amend its general fund budget to provide for the transfer of money to the City in order for the City to acquire such property.

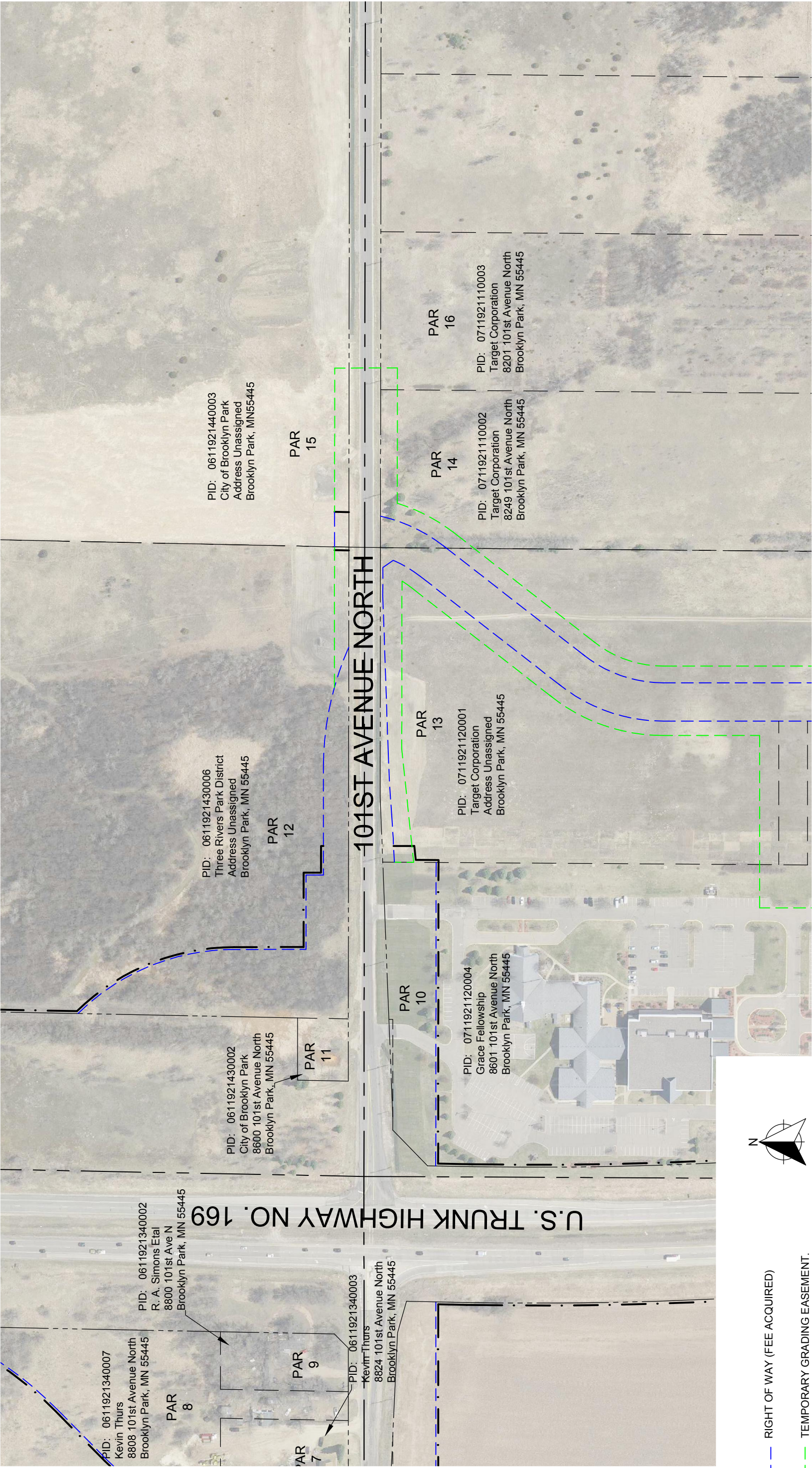
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Brooklyn Park Economic Development Authority (the “Board”) as follows:

1. The EDA finds (a) that its objectives in encouraging development, redevelopment and expansion of commercial properties within the City would be advanced by the Project and (b) that the expenditure of EDA funds for the acquisition of Parcels 6, 7, and 8 for the Project and for redevelopment purposes is necessary in order to fully develop that area of the City.
2. The EDA hereby appropriates and commits to transfer to the City up to \$638,084 to pay costs of the acquisition of Parcels 6, 7, and 8 and authorizes the expenditure of available EDA general fund dollars for such purpose in the amount of up to \$1,712,060 or such amount as determined necessary for such purpose by the Executive Director of the EDA in consultation with City Engineer.
3. The EDA hereby authorizes an amendment to its budget consistent with the transfer authorized above for the acquisition of Parcel 6, 7, and 8.

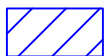
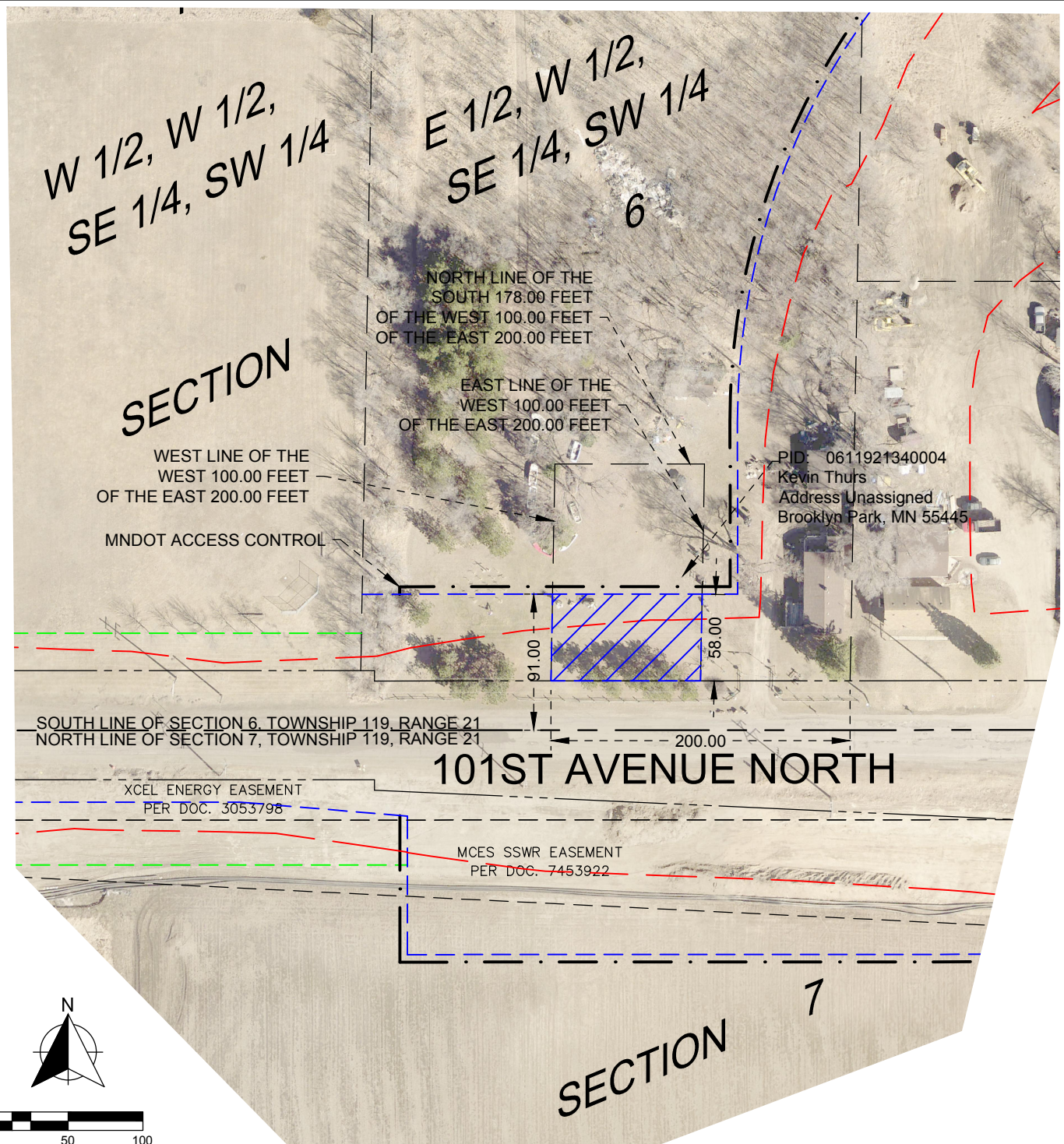












RIGHT OF WAY (FEE ACQUIRED) = 5,801 SQ. FT.



TEMPORARY GRADING EASEMENT = 0 SQ. FT.

CONSTRUCTION LIMITS

Prepared by:



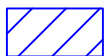
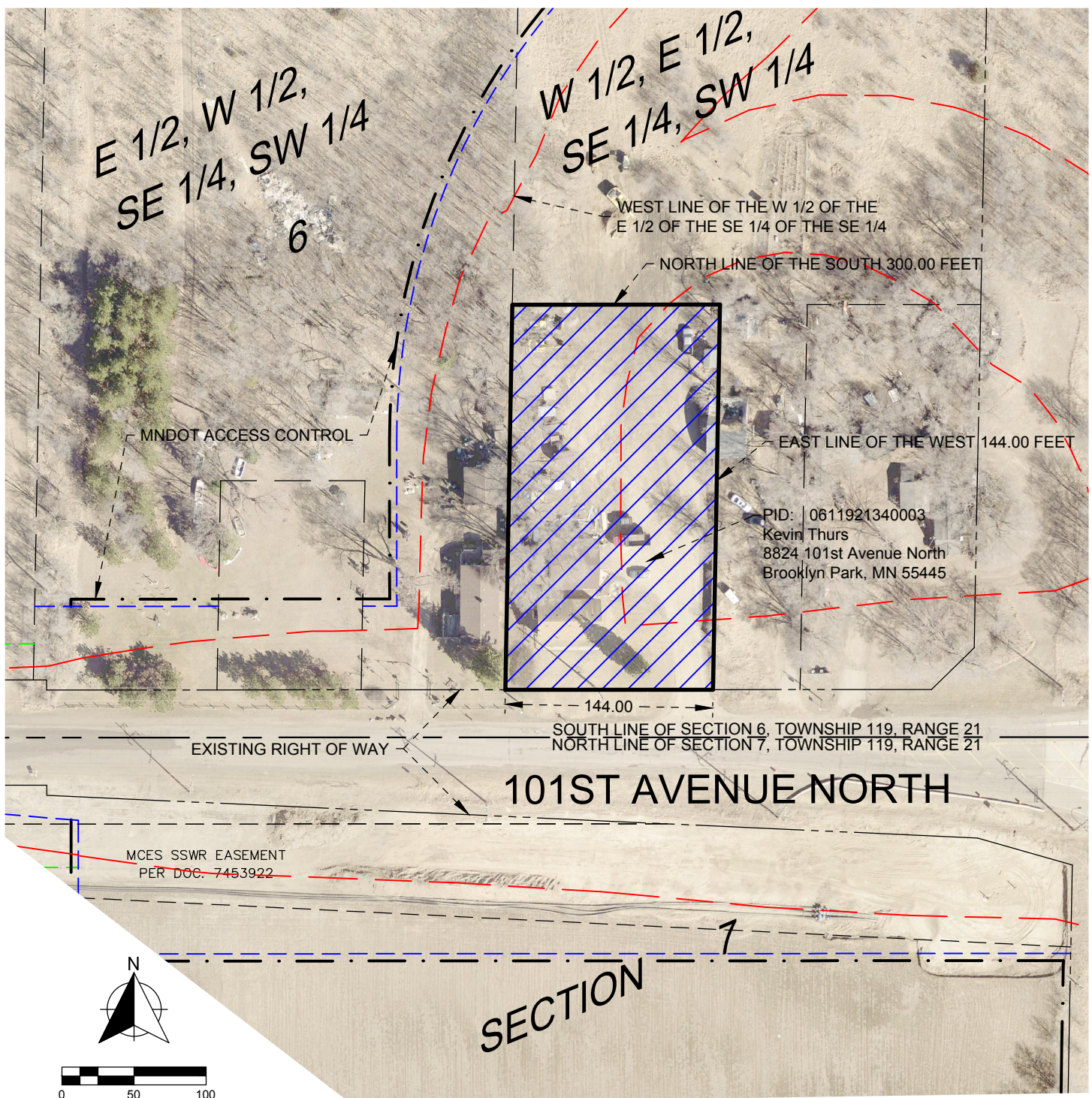
TH 169 / 101st Avenue Interchange  
Easement Exhibit  
Parcel 6  
Address Unassigned  
Brooklyn Park, Minnesota

WSB Project No. 012336-000

Date: 1/22/19







RIGHT OF WAY (FEE ACQUIRED) = 38,455 SQ. FT.



TEMPORARY GRADING EASEMENT = 0 SQ. FT.

--- CONSTRUCTION LIMITS

Prepared by:



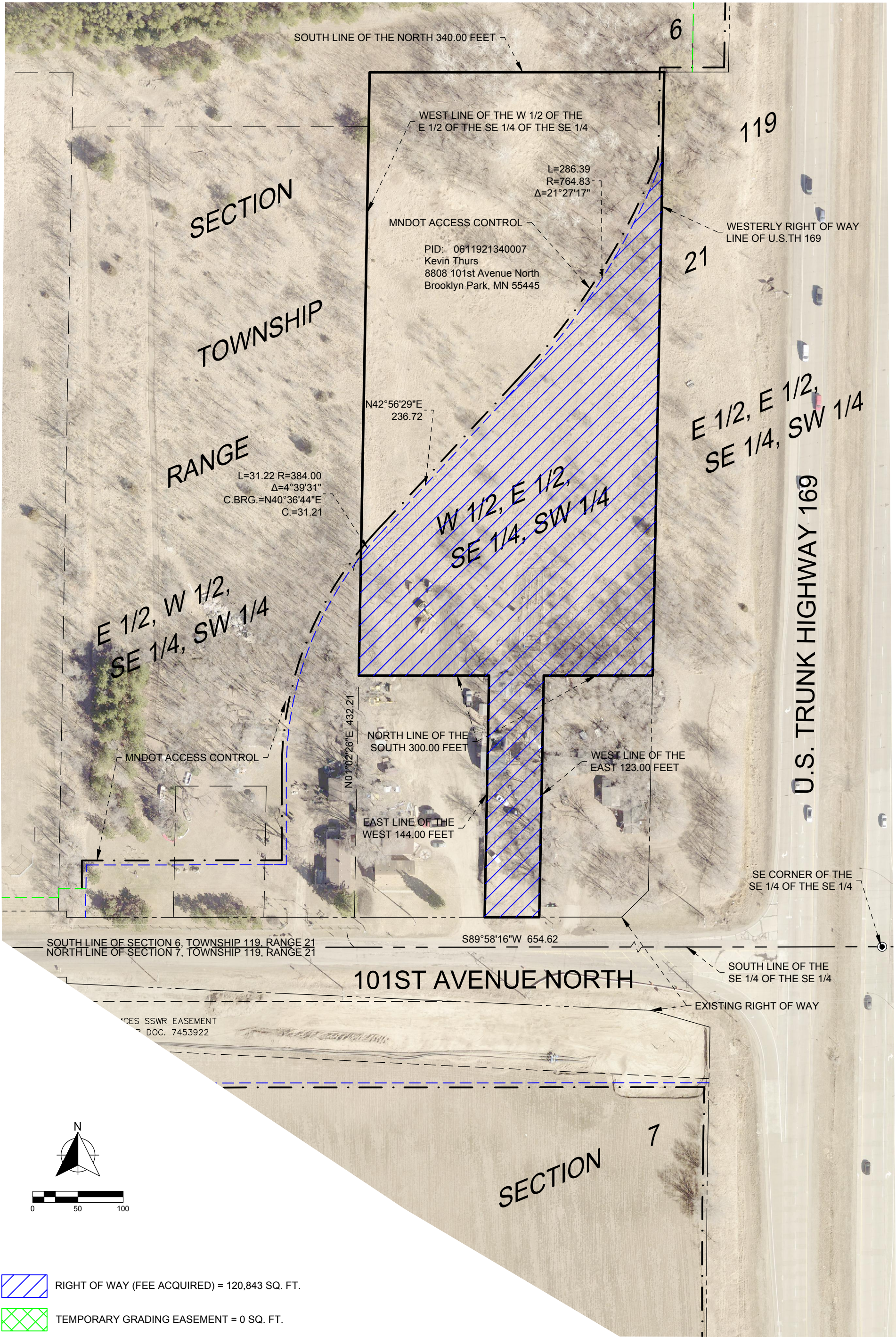
TH 169 / 101st Avenue Interchange  
Easement Exhibit  
Parcel 7  
8824 101st Ave N  
Brooklyn Park, Minnesota

WSB Project No. 012336-000

Date: 1/22/19







Prepared by:



TH 169 / 101st Avenue Interchange  
Easement Exhibit  
Parcel 8  
8808 101st Avenue North  
Brooklyn Park, Minnesota

WSB Project No. 012336-000

Date: 3/1/19





## PURCHASE AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 2020, by and between Kevin Thurs, single, (“Seller”), and the City of Brooklyn Park, a municipal corporation under Minnesota law (“Purchaser”).

### RECITALS:

A. This Agreement arises from the reconstruction of the 101<sup>st</sup> Avenue and TH169 Interchange Project (“Project”) and the related condemnation action titled *City of Brooklyn Park v. Strootman et al.*, filed in Hennepin County District Court as No. 27-CV-19-11928 (“Condemnation Action”),

B. Seller was the fee owner of Parcel 6, the Parcel 6 Remainder, Parcel 7, Parcel 8, and the Parcel 8 Remainder (collectively, the “Property”) and all of which are legally described on Exhibit A attached hereto and incorporated herein. In the Condemnation Action and under the statutory quick-take process, Purchaser acquired title to and the right to possession of the portion of Parcel 6 Parcel 7 and the portion of Parcel 8 which was required by Purchaser for the Project (collectively, the “Necessary Property”) on October 15, 2019 (“Quick-Take Date”).

C. Seller desires to convey the Parcel 6 Remainder and the Parcel 8 Remainder to Purchaser and Purchaser desires to purchase the same, pursuant to, and in accordance with the terms and conditions set forth herein.

D. Seller and Purchaser desire to stipulate to the total amount of compensation to be paid by Purchaser and to be accepted by Seller: (i) in settlement of the Seller’s claims for compensation due to the Purchaser’s taking of the Necessary Property, in the Condemnation Action, and (ii) for the purchase of the Remainder Property (defined below).

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter expressed, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are hereby acknowledged, Purchaser and Seller agree as follows:

### 1.0 Property To Be Purchased.

(a) Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the following real property and all associated improvements:

(i) a parcel which has no assigned address, but lies north of 101<sup>st</sup> Avenue North and south of the parcel at 8832 -101<sup>st</sup> Avenue North, Brooklyn Park, Minnesota (which parcel being sold hereunder is referred to herein and described in Exhibit A attached hereto as “Parcel 6 Remainder”), and is subject to Hennepin County Property Identification No. 06-119-21-34-0004 and Torrens Certificate No.1354474; and

(ii) a parcel which is located at 8808-101<sup>st</sup> Avenue North, Brooklyn Park, MN 55445, which is referred to herein as Parcel 8 Remainder, is legally described on Exhibit A attached hereto, and is subject to Hennepin County Property Tax Identification No. 06-119-21-34-0007 and Torrens Certificate No. 859151 (“Parcel



8 Remainder”),

(the Parcel 6 Remainder and Parcel 8 Remainder are collectively referred to in this Agreement as “Remainder Property”).

(c) In the Condemnation Action, the Court approved the Purchaser’s petition and authorized Purchaser to obtain title to and possession of the Necessary Property. Petitioner deposited its approved appraisal of value in the office of the District Court Administrator in the amount of \$21,000 for the necessary portion of Parcel 6, (“Parcel 6 Deposit”), in the amount of \$205,000 for Parcel 7 (“Parcel 7 Deposit”), and in the amount of \$424,000 for the necessary portion of Parcel 8 (“Parcel 8 Deposit”).

2.0 Purchase Price. The purchase price to be paid by Purchaser for both the Necessary Property and the Remainder Property is One Million Seven Hundred Twelve Thousand Sixty and no/100ths Dollars (\$1,712,060.00) (“Purchase Price”).

Seller assigns the Quick-Take Deposit to Purchaser, effective as of the Closing Date.

3.0 Closing Date. The Closing of the purchase and sale contemplated by this Agreement shall occur April 17, 2020. The Closing shall take place at the office of Title Company or at such other place as the parties shall mutually agree.

Seller shall deliver possession of the Remainder Property to Purchaser on the Closing Date.

4.0 Evidence of Title. As soon as practicable but no later than 10 days after the Effective Date of this Agreement, Purchaser shall order and provide to Seller at Purchaser’s sole cost and expense, a preliminary commitment for an ALTA Owner’s Policy of Title Insurance, issued by Title Company, in the amount of the Purchase Price, to insure Purchaser’s title to the Remainder Property, including copies of documents referenced in Schedule B thereof (collectively, the “Title Commitment”). The Title Company shall provide an electronic version of the commitment and all documents described in the commitment. The Title Commitment shall have an effective date of no earlier than the Effective Date of this Agreement. The Title Commitment shall include affirmative coverages for appurtenant easements, if any, and zoning, access, contiguity, tax parcel and comprehensive endorsements. The Title Commitment shall obligate Title Company to delete standard exceptions from the Title Commitment and the policy upon Title Company’s receipt of a seller’s affidavit from Seller.

5.0 Purchaser’s Conditions to Closing. The closing of the transaction contemplated by this Agreement and the obligations of the Purchaser to purchase the Remainder Property shall be subject to the following conditions:

(a) Documents. Within five days of the Effective Date, Seller shall deliver to Purchaser those documents listed herein which are in Sellers’s reasonable control or possession.

(b) City Council Approval. Promptly following signing of this Agreement by

Seller, Purchaser shall submit this agreement to the City Council of Purchaser for approval and shall undertake to obtain City Council approval of this Agreement within 30 days following execution of this Agreement by Seller.

- (c) Approval of City of Brooklyn Park Economic Development Authority. Promptly following signing of this Agreement by Seller, Purchaser shall submit this agreement to the Board of Commissioners of the City of Brooklyn Park Economic Development Authority for approval and shall undertake to obtain Board approval of this Agreement within 30 days following execution of this Agreement by Seller.
- (d) DELETED
- (e) Representations and Warranties. The representations and warranties in this Purchase Agreement shall be true at the time of closing as though such representations and warranties were made at such time.
- (f) Marketability. Prior to Closing, marketability of title to Remainder Property shall have been established or waived pursuant to the provisions of this Purchase Agreement.
- (g) Expiration of Appeal Period for Report of Commissioners. Expiration of appeal period under Minnesota Statutes, Section 117.145 from the Report of Commissioners, which the City is to file and serve as provided under paragraph 15 of this Agreement. *[To avoid a delay of the Closing Date, the Parties will need to work towards fulfilling this condition immediately upon execution of the Agreement.]*

6.0 Representations and Warranties. Seller makes the following representations and warranties to Purchaser:

- (a) Seller has the full and complete authority to sell the Remainder Property.
- (b) Seller is not a foreign person, or a foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.
- (c) There are no unsatisfied judgments or state or federal tax liens of record against Seller, and there have been no labor or materials furnished to the Remainder Property for which payment has not been paid. If there are unsatisfied liens or judgments against a person with a name similar to Seller, they are not against Seller, and Seller will provide evidence satisfactory to Title Company, prior to Closing, that such liens or judgments are not against Seller. Seller has not previously had indebtedness against him discharged in bankruptcy. At or before Closing, Seller will provide Purchaser such recordable documents as Title Company may require in order to deliver marketable title of the Remainder Property to Purchaser at Closing, notwithstanding any previous bankruptcy.
- (d) To Seller's knowledge, there are no unrecorded mortgages, contracts, purchase

agreements, options, leases, easements or other agreements or interests in effect relating to the Remainder Property.

- (e) Seller has not received notice of any new public improvement project(s), the cost of which a governmental entity may assess against the Remainder Property.
- (f) To Seller's knowledge, neither the Remainder Property is in violation of any statute, law, ordinance or regulation, nor is there an action, litigation, governmental investigation, condemnation or administrative proceeding of any kind pending or, to Seller's best knowledge, threatened, against or involving the Remainder Property.
- (g) To Seller's knowledge, Seller is not in default in the performance of any obligation under any easement agreement, covenant, condition, restriction, or other instrument or agreement relating to either the Remainder Property.
- (h) There are not now, nor to Seller's actual knowledge have there ever been, underground or above ground storage tanks of any size or type located on the Remainder Property, nor any Hazardous Substances (defined below) located on the Remainder Property in violation of applicable governmental requirements, and neither of said properties has been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances in violation of applicable governmental requirements. To Seller's actual knowledge, no activity has been undertaken on either of said properties that would cause or contribute to the discharge of Hazardous Substances or of fluids into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions that would require a permit under any federal or state law or local ordinance. For purposes of this Agreement, the term "Hazardous Substances" includes but is not limited to substances defined as "hazardous substances," "toxic substances," "hazardous wastes" "pollutants" or contaminants" under federal or Minnesota law. The term "hazardous substance" shall also include asbestos, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and synthetic gas).
- (i) For the purposes of satisfying any applicable requirements of Minn. Stat. §152.0275, Seller discloses and certifies that, to the best of his knowledge, methamphetamine production has not occurred on the Remainder Property.
- (j) That prior to Closing, Seller will have terminated any and all existing leases, rental agreements or license agreements with any tenants of the Remainder Property (nothing in this Agreement waives any rights the tenants may have to relocation assistance under state or federal law).
- (k) At Closing, Seller will execute and deliver to Purchaser a waiver of right of first refusal form pursuant to Minn. Stat., Section 117.226 with respect to the Necessary Property and the Remainder Property in the form attached hereto as Exhibit C.

The foregoing representations and warranties shall be accurate on the date hereof and on the date of Closing. If, at any time prior to the Closing, Seller acquires actual knowledge of events or circumstances which render the representations and warranties set forth in this section inaccurate in any respect, Seller shall immediately notify Purchaser in writing and Purchaser shall have the right to terminate this Agreement. At Closing Seller shall execute and deliver to Purchaser a certificate of Seller certifying that the representations contained in this section are true as of the Closing or, if such representations are no longer true, describing, in detail, the reasons why the representations are no longer true (the "Bring Down Certificate"). Seller will indemnify Purchaser, its successors and assigns, against and will hold Purchaser, its successors and assigns harmless from, any loss, liability, costs, expenses or damages, including reasonable attorney's fees, that Purchaser incurs because of the Seller's breach of any of the above representations and warranties, the inaccuracy of any of the above representations when made or remade, or Seller's failure to notify Purchaser, before the Closing, if the representations set forth above become inaccurate and Seller actually knows of such inaccuracy. The representations, warranties and indemnification set forth above shall survive the Closing of this transaction and Seller's delivery of the Deed for a period of 12 months.

Purchaser makes the following representations and warranties to Seller:

- (a) The individuals executing this Agreement on behalf of Purchaser have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by Purchaser herein, and to bind Purchaser thereto; and Purchaser has the full and complete authority to purchase the Remainder Property.
- (b) Purchaser shall promptly pay, when due, any and all charges for engineering, surveying or other studies, reports, assessments or investigations which are commissioned or requested by Purchaser and not the responsibility of Seller under this Agreement.

The representations and warranties contained in this section shall be true and correct on the Effective Date and Closing date.

7.0 Real Estate Taxes and Special Assessments. Purchaser affirmatively states that it is not assessing, nor has assessed, any Special Assessments on the Necessary Property and Remainder Property related to the project that resulted in the Condemnation Action and further that Seller does not owe any Special Assessments on the Necessary Property and Remainder Property related to the project that resulted in the Condemnation Action. The Parties shall pay the real estate taxes and special assessments due and owing on the Remainder Property as of the Closing Date as follows:

- (a) At or before the Closing, Seller shall pay all payable real estate taxes and special assessments and any due and payable penalties and interest in all years prior to the year of Closing, including all deferred taxes attributable to years prior to the year of Closing.

- (b) Purchaser and Seller shall prorate the real estate taxes due and payable in the year of Closing, on a per diem basis using a calendar year, to the date of the Closing. Seller shall pay the balance of all special assessments levied, pending, certified or deferred as of the Effective Date, except in no event shall Seller be required to pay special assessments imposed or to be imposed by Purchaser in connection with Purchaser's proposed 101<sup>st</sup> Avenue and Highway 169 Interchange Project.
- (c) Purchaser shall pay all real estate taxes due and payable in the years following the year of Closing.

At Closing, the Parties shall pay the real estate taxes and special assessments due and owing on the Necessary Properties as of the Closing Date as follows:

- (a) At or before the Closing, Seller shall pay all payable real estate taxes and special assessments and any due and payable penalties and interest in all years prior to the year of the Quick-Take Date, including all deferred taxes attributable to years prior to the year of Quick-Take Date.
- (b) Purchaser and Seller shall prorate the real estate taxes due and payable in the year of Closing, on a per diem basis using a calendar year, to the Quick-Take Date. Seller shall pay the balance of all special assessments levied, pending, certified or deferred as of the Quick-Take Date, except in no event shall Seller be required to pay special assessments imposed or to be imposed in connection with Purchaser's proposed 101<sup>st</sup> Avenue and Highway 169 Interchange Project.
- (c) Purchaser shall pay all real estate taxes due and payable in the years following the year of the Quick-Take Date.

8.0 Closing Documents. At or prior to Closing, the parties shall execute and deliver the following with respect to the Remainder Property:

- (a) Warranty Deed conveying title to Purchaser;
- (b) Assignment of all Licenses and Permits needed to operate those properties, if any;
- (c) Assignment of all Contracts, Warranties and Guarantees, if any;
- (d) Any documents reasonably required by the title company;
- (e) Affidavit Regarding Seller (MN Uniform Conveyancing Blanks Forms);
- (f) FIRPTA Affidavit. A non-foreign affidavit, properly executed, containing such information as is required by Internal Revenue Code Section 1445 (b)(2) and its regulations;
- (g) IRS Form. A designation agreement designating the "reporting person" for the purposes of completing Internal Revenue Form 1099 and, if applicable, Internal

Revenue Form 859;

(h) Well Certificate. A certificate (or statutory statement on the Deed) signed by Seller warranting that there are no wells on the Remainder property within the meaning of Minnesota Statutes, Chapter 103L, or if there are wells, a Well Certificate in the form required by law;

(i) Storage Tanks. If the Remainder Property contains or contained a storage tank, an affidavit with respect thereto, as required by Minnesota Statutes, Section 116.48;

(j) Bring Down Certificate from Seller;

(k) A Release and Termination of Right of First Refusal in the form attached hereto as Exhibit C; and

(l) All other documents required hereunder to effectuate the provisions of this Purchase Agreement.

9.0 Closing Costs. The following costs and expenses shall be paid in connection with the Closing:

(a) Seller shall pay the cost of:

(i) All expenses to correct any title objections that Seller elects to undertake pursuant to section 4.0 above;

(ii) Proration as of the Closing date of all utilities and operating expenses and rents;

(iii) All real property taxes and installments of special assessments required under section 7.0 above; and

(iv) All attorneys' fees and expenses incurred by Seller (but, in no event, shall Seller be required to pay attorney's fees and expenses incurred by Purchaser) in the purchase and sale of the Parcel 6 Remainder or Parcel 8 Remainder, the negotiation of this Agreement, or in the eminent domain proceeding.

(v) All real estate commissions, if any.

(b) Purchaser shall pay the cost of:

(i) UCC searches;

(ii) Additional soil reports or inspection reports required by Purchaser;

(iii) Any recording fees for recording the Deed;

(iv) The Title Company's closing fee;

- (v) Proration as of the Closing date of real property taxes and installments of special assessments as provided in section 7.0 above;
- (vi) Proration as of the Closing date of all utilities and operating expenses and rents as provided herein;
- (vii) All attorneys' fees and expenses incurred by Purchaser;
- (viii) All of the fees associated with the Title Policy and half of closing fees;
- (ix) All other Closing fees customarily paid for by Purchaser in a transaction of this type;
- (x) All fees associated with the issuance of the Owner's Title Insurance Commitment, including State and Federal Tax Liens, Judgment and Bankruptcy Searches;
- (xi) All State Deed Taxes and/or transfer taxes on deeds (for purpose of State Deed Tax, the parties acknowledge that \$638,084.33 of the Purchase Price is allocable to the acquisition of the Remainder Property); and
- (xii) Recording fees on all releases and satisfactions of existing mortgages;

10.0 Title To Be Delivered. Seller agrees to convey marketable fee simple title in the Remainder Property to Purchaser at closing subject only to:

- (a) Covenants, conditions, restrictions, declarations and easements of record, if any, without effective forfeiture provisions and which do not interfere with present Improvements;
- (b) Utility and drainage easements which do not interfere with present Improvements;
- (c) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (d) Building, zoning and subdivision laws, ordinances and State and Federal regulations which do not interfere with present Improvements.

11.0 Operation Prior to Closing. During the Executory Period, Seller shall operate and maintain the Remainder Property in the same manner as they are being operated on the date hereof and in accordance with prudent and reasonable standards. Seller shall execute no contracts, leases, or other agreements regarding either of said properties during the Executory Period which extend beyond the Closing date without the prior written consent of Purchaser, which consent may be withheld by Purchaser at its sole discretion. Seller shall not pledge or transfer any interest in or encumber or permit the encumbrance of either the Remainder Property with any lien, easement, interest or agreement from and after the Effective Date without the prior written consent of Purchaser, which may be withheld in Purchaser's sole and absolute discretion.

12.0 Personal Property. Seller shall remove all personal property from the Property by the Closing Date. Any personal property remaining shall be deemed abandoned.

13.0 Default.

- (a) If Purchaser defaults in the performance of Purchaser's obligations under this Agreement due to no fault of Seller, then Seller may either: (i) terminate this Agreement in accordance with Minnesota Statutes, Section 559.21; or (ii) seek specific performance of this Agreement.
- (b) If Seller defaults in the performance of Seller's obligations under this Agreement due to no fault of Purchaser, then Purchaser may either (i) terminate this Agreement in accordance with Minnesota Statutes, Section 559.21; or (ii) seek specific performance of this Agreement.
- (c) Notwithstanding anything in this Agreement to the contrary, any action by Seller for specific performance must be commenced no later than 90 days after the date of the occurrence of Purchaser's default. The limitation set forth in the preceding sentence shall not apply to claims for indemnification or contribution specifically provided for in this agreement, if any

14.0 Assignment. Prior to the Closing, Purchaser shall be entitled to assign the Agreement to another legal entity. Such entity will assume all of the rights, duties and obligations of the Purchaser under the Agreement and Purchaser under the Agreement shall be released from any such right, duties and obligations.

15.0 Stipulation of Settlement. Prior to Closing, the Seller shall executed and deliver to Purchaser a Stipulation of Settlement, in form acceptable to Purchaser: (a) confirming that the compensation paid to Seller under this Agreement satisfies the obligations of Purchaser to pay compensation for the taking of Parcels 6, 7 and 8 in the Condemnation Action; (b) stipulating to an order of the court directing the court administrator to disburse the Deposits to Purchaser ("Stipulation of Settlement").

Upon execution of this Stipulation of Settlement, the City shall schedule and give notice to all parties with an interest of a hearing at which the Commissioners will issue a Report of Commissioners consistent with the Stipulation of Settlement. The City shall then file with the court and serve on all interested parties the Report of Commissioners, thereby triggering the 40-day appeal period.

17.0 Miscellaneous. The following general provisions govern this Agreement:

- (a) Time of Essence. Time is of the essence of this Agreement.
- (b) Governing Law. This Agreement is made and executed under and in all respects to be governed by the laws of the State of Minnesota.
- (c) Notices. The mailing addresses of the Seller and Purchaser are as follows (or to such other respective addresses as may be designated by notice given in accordance



with provisions of this section):

If to Purchaser: City of Brooklyn Park  
Attn: Jesse Struve, City Engineer  
5200-85<sup>th</sup> Avenue North  
Brooklyn Park, MN 55443-4301

With copy to:

Douglas Shaftef  
Kennedy & Graven Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

If to Seller: Kevin Thurs  
5717-113<sup>th</sup> Avenue North.  
Champlin, MN 55316

With copy to:

Dan Biersdorf  
Biersdorf & Associates  
150 South Fifth Street #3100  
Minneapolis, MN 55402

Any notice, request, demand or other communication permitted or required hereunder shall be in writing and shall be deemed duly delivered when delivered personally or when deposited in the United States mail, First Class, postage prepaid or delivered to a reputable courier addressed to the party for whom it is intended at the address specified above or at such other address as either party shall notify the other of in writing as provided above.

(d) Due Diligence Period. Unless extended by Purchaser pursuant to Section 3, Purchaser shall have 30 days from the date of execution of this Purchase Agreement on behalf of Purchaser to complete all necessary due diligence. If: (1) the Purchaser is not satisfied with Seller's title to the Remainder Property; (2) the Purchaser is not satisfied with soil conditions present on the Remainder Property, or (3) Purchaser finds hazardous substances or pollutants to be present on the Remainder Property; Purchaser may terminate this Agreement in writing prior to the expiration of the 30-day period. Unless extended by Purchaser pursuant to Section 3, should the 30 days expire without any such notice, it will be deemed that the Purchaser has waived the right to terminate this Agreement due to the physical condition of the properties.

(e) Amendment. This Purchase Agreement shall be amended only by a written instrument signed by Seller and Purchaser.

- (f) Successors and Assigns. This Purchase Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.
- (g) Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof.
- (h) Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void or unenforceable by any court of law at equity it shall only affect such particular portion or paragraph of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.
- (i) Assignability. This Purchase Agreement and the rights hereunder may not be assigned by either party, except that Purchaser may assign its rights to the Brooklyn Park Economic Development Authority at or prior to Closing and Sellers may assign his rights for purposes of effecting a tax free exchange.
- (j) Counterparts. This Purchase Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Purchase Agreement.
- (k) Relocation Benefits. Nothing in this agreement prohibits Seller from pursuing all relocation benefits for which he is eligible under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 ("URA"), and regulations promulgated thereunder.

[Signature page for Real Estate Purchase Agreement]

**SELLER**

\_\_\_\_\_  
**Kevin Thurs, single**

**PURCHASER**

**City of Brooklyn Park**

By \_\_\_\_\_  
**Jeffrey Lunde, Mayor**

**Attest:** \_\_\_\_\_  
**Jay Stroebel, City Manager**

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**Parcel No. 6 (Partial Taking):** Property I.D. 06-119-21-34-0004, Torrens, Certificate No. 1354474

**Property Address:** Unassigned (lying north of 101<sup>st</sup> Av N, and south of the parcel at 8832 – 101<sup>st</sup> Av N), Brooklyn Park, MN 55445

**Description of Subject Property:**

The South 178.00 feet of the West 100.00 feet of the East 200.00 feet of the East Half of the West Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 119, Range 21, Hennepin County, Minnesota.

**Description of portion of Property to be taken in fee:**

The north 58.00 feet of the South 91.00 feet of the Subject Property (described above).

**Description of access to be taken:**

All right of access, being the right of ingress to and egress from the hereinbefore described property to be taken in fee.

Subject to easements of record, except as taken herein.

**Parcel 6 Remainder:** Property I.D. 06-119-21-34-0004, Torrens, Certificate No. 1354474

**Property Address:** Unassigned (lying north of 101<sup>st</sup> Av N, and south of the parcel at 8832 – 101<sup>st</sup> Av N), Brooklyn Park, MN 55445

**Description of Subject Property:**

The South 178.00 feet of the West 100.00 feet of the East 200.00 feet of the East Half of the West Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 119, Range 21, Hennepin County, Minnesota.,

Except: The north 58.00 feet of the South 91.00 feet thereof.

**Parcel No. 7 (Total Taking):** Property I.D. 06-119-21-34-0003, Torrens, Certificate No. 1343997

**Property Address:** 8824 – 101<sup>st</sup> Av N, Brooklyn Park, MN 55445

**Description of Subject Property:**

The West 144 feet of the South 300 feet of West Half of the East Half of the Southeast Quarter of the Southwest Quarter in Section 6, Township 119, Range 21, Hennepin County, Minnesota.

**Parcel No. 8 (Partial Taking):** Property I.D. 06-119-21-34-0007, Torrens, Certificate No. 859151

**Property Address:** 8808 – 101<sup>st</sup> Av N, Brooklyn Park, MN 55445

**Description of Subject Property:**

The land in Hennepin County, Minnesota, described as follows:

Par 1: The West half of the East half of the Southeast Quarter of the Southwest Quarter, Section 6, Township 119, Range 21, excepting road, and except the North 340 feet thereof, and except the West 144 feet of the South 300 feet of said West half of the East half of the Southeast Quarter of the Southwest Quarter; and except the South 300 feet of the East 132 feet of said West half of the East half of the Southeast Quarter of the Southwest Quarter as measured along the East and South lines thereof;

Par 2: The West 9.0 feet of the following described tract:

Commencing at the Southeast corner of the West half of the East half of the Southeast Quarter of the Southwest Quarter in Section 6, Township 119, Range 21; thence North 300 feet along the East line of said West half of the East half of the Southeast Quarter of the Southwest Quarter; thence West 132 feet parallel with South line of said tract; thence South 300 feet parallel with East line of said tract; thence East 132 feet along the South line of said tract to point of beginning, except road.

**Description of portion of Property to be taken in fee:**

All that part of the Subject Property (described above) lying southeasterly of the following described line:

Commencing at the southeast corner of said Southeast Quarter of the Southwest Quarter; thence South 89 degrees 58 minutes 16 seconds West, assumed bearing, along the south line of said Southeast Quarter of the Southwest Quarter, 654.62 feet to the west line of the West Half of the East Half of said Southeast Quarter of the Southwest Quarter; thence North 01 degrees 02 minutes 26 seconds East, along said west line 432.21 feet to the beginning of the line to be described; thence northeasterly, 31.22 feet along a non-tangential curve concave to the southeast, having a radius of 384.00 feet, a central angle of 04 degrees 39 minutes 31 seconds, and a chord bearing North 40 degrees 36 minutes 44 seconds East; thence North 42 degrees 56 minutes 29 seconds East, tangent to last described curve, 236.72 feet; thence northeasterly, 286.39 feet along a tangential curve concave to the northwest, having a radius of 764.83 feet and a central angle of 21 degrees 27 minutes 17 seconds to the westerly right of way line of United States Trunk Highway 169 and there terminating.

**Description of access to be taken:**

All right of access, being the right of ingress to and egress from the hereinbefore described property to be taken in fee.

Subject to easements of record, except as taken herein.



**Parcel 8 Remainder:**

Property I.D. 06-119-21-34-0007, Torrens, Certificate No. 859151

**Property Address:** 8808 – 101<sup>st</sup> Av N, Brooklyn Park, MN 55445

**Description of Subject Property:**

The land in Hennepin County, Minnesota, described as follows:

Par 1: The West half of the East half of the Southeast Quarter of the Southwest Quarter, Section 6, Township 119, Range 21, excepting road, and except the North 340 feet thereof, and except the West 144 feet of the South 300 feet of said West half of the East half of the Southeast Quarter of the Southwest Quarter; and except the South 300 feet of the East 132 feet of said West half of the East half of the Southeast Quarter of the Southwest Quarter as measured along the East and South lines thereof;

Par 2: The West 9.0 feet of the following described tract:

Commencing at the Southeast corner of the West half of the East half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 119, Range 21; thence North 300 feet along the East line of said West half of the East half of the Southeast Quarter of the Southwest Quarter; thence v West 132 feet parallel with South line of said tract; thence South 300 feet parallel with East line of said tract; thence East 132 feet along the South line of said tract to point of beginning, except road.

**EXCEPT:**

All that part of the Subject Property (described above) lying southeasterly of the following described line:

Commencing at the southeast corner of said Southeast Quarter of the Southwest Quarter; thence South 89 degrees 58 minutes 16 seconds West, assumed bearing, along the south line of said Southeast Quarter of the Southwest Quarter, 654.62 feet to the west line of the West Half of the East Half of said Southeast Quarter of the Southwest Quarter; thence North 01 degrees 02 minutes 26 seconds East, along said west line 432.21 feet to the beginning of the line to be described; thence northeasterly, 31.22 feet along a non-tangential curve concave to the southeast, having a radius of 384.00 feet, a central angle of 04 degrees 39 minutes 31 seconds, and a chord bearing North 40 degrees 36 minutes 44 seconds East; thence North 42 degrees 56 minutes 29 seconds East, tangent to last described curve, 236.72 feet; thence northeasterly, 286.39 feet along a tangential curve concave to the northwest, having a radius of 764.83 feet and a central angle of 21 degrees 27 minutes 17 seconds to the westerly right of way line of United States Trunk Highway 169 and there terminating.

**EXHIBIT B (Deleted)**

**Exhibit C**

**TERMINATION OF RIGHT OF FIRST REFUSAL**

Kevin Thurs, to evidence the release and termination of a right of first refusal under Minnesota Statutes, Section 117.226, states as follows:

1. I was the prior owner of properties described on the attached Exhibit A as:

- (a) Parcel 6
- (b) Parcel 7
- (c) Parcel 8

(Collectively referred to herein as the Property).

2. On the \_\_\_\_ day of \_\_\_\_\_, 2020, I executed a purchase agreement with the City of Brooklyn Park, a political subdivision of the State of Minnesota (the “City”), related to the portion of Parcels 6, 7 and 8 that the City had acquired by condemnation and the remainder that it desired to buy by direct purchase.
3. In the Purchase Agreement, for the receipt of good and substantial consideration, I agreed to release his right of first refusal under Minnesota Statutes, Section 117.226 with respect to the Property.
4. By signing this document, I understand that I am terminating my right of first refusal under Minnesota Statutes, Section 117.226.

[signature page follows]

Dated \_\_\_\_\_, 2020

\_\_\_\_\_  
Kevin A. Thurs

STATE OF MINNESOTA }  
                                      } ss.  
COUNTY OF HENNEPIN }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by Kevin A. Thurs.

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

This instrument was drafted by:

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

**EXHIBIT A TO RELEASE OF FIRST REFUSAL**

**Legal Description of Property**

**Parcel No. 6:** Property I.D. 06-119-21-34-0004, Torrens, Certificate No. 1354474

**Property Address:** Unassigned (lying north of 101<sup>st</sup> Av N, and south of the parcel at 8832 – 101<sup>st</sup> Av N), Brooklyn Park, MN 55445

**Description of Subject Property:**

The South 178.00 feet of the West 100.00 feet of the East 200.00 feet of the East Half of the West Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 119, Range 21, Hennepin County, Minnesota.

**Parcel No. 7:** Property I.D. 06-119-21-34-0003, Torrens, Certificate No. 1343997

**Property Address:** 8824 – 101<sup>st</sup> Av N, Brooklyn Park, MN 55445

**Description of Subject Property:**

The West 144 feet of the South 300 feet of West Half of the East Half of the Southeast Quarter of the Southwest Quarter in Section 6, Township 119, Range 21, Hennepin County, Minnesota.

**Parcel No. 8:** Property I.D. 06-119-21-34-0007, Torrens, Certificate No. 859151

**Property Address:** 8808 – 101<sup>st</sup> Av N, Brooklyn Park, MN 55445

**Description of Subject Property:**

The land in Hennepin County, Minnesota, described as follows:

Par 1: The West half of the East half of the Southeast Quarter of the Southwest Quarter, Section 6, Township 119, Range 21, excepting road, and except the North 340 feet thereof, and except the West 144 feet of the South 300 feet of said West half of the East half of the Southeast Quarter of the Southwest Quarter; and except the South 300 feet of the East 132 feet of said West half of the East half of the Southeast Quarter of the Southwest Quarter as measured along the East and South lines thereof;

Par 2: The West 9.0 feet of the following described tract:

Commencing at the Southeast corner of the West half of the East half of the Southeast Quarter of the Southwest Quarter in Section 6, Township 119, Range 21; thence North 300 feet along the East line of said West half of the East half of the Southeast Quarter of the Southwest Quarter; thence West 132 feet parallel with South line of said tract; thence South 300 feet parallel with East line

of said tract; thence East 132 feet along the South line of said tract to point of beginning, except road.