

CITY OF MINNETRISTA



CITY COUNCIL AGENDA ITEM

Subject: Approve a retaining wall maintenance agreement with the residents at 865 Bayside Ln

Prepared By: Jasper Kruggel, City Administrator
Gary Peters, Public Works Director

Meeting Date: June 16, 2025

Issue:

There is an existing retaining wall at 865 Bayside Lane that needs a maintenance agreement.

Background/History:

The residents at 865 Bayside Lane had an inquiry as to who owns the retaining wall located in the northwest corner of their lot (see photo in Exhibit B of the included License & Maintenance Agreement). This retaining wall was installed in the mid-1990s and is mostly located on private property, but moves in to, and ends in the City utility right-of-way. It is believed that the developer of the Bayside neighborhood installed the wall, but this is speculation, as there is no record plan for this wall in any City Hall files.

Overview:

The wall is around 30 years and appears to be in stable condition but will eventually need maintenance, repairs, and/or replacement. Bearing in mind the future costs to perform this work, the City Administrator asked the City Attorney from Kennedy & Graven to draft a maintenance agreement for the retaining wall. The agreement states that the property owners at 865 Bayside Ln will be responsible for any future maintenance, repairs, and/or replacement of this retaining wall, including the section of retaining wall located in the City right-of-way. The maintenance agreement is attached for your review.

Recommended City Council Action:

Motion to approve the License and Maintenance Agreement for retaining wall improvements for the wall located at 865 Bayside Lane in Minnetrista, between the property owners at said address and the City of Minnetrista.

Mission Statement:

The City of Minnetrista will deliver quality services in a cost effective and innovative manner and provide opportunities for a high quality of life while protecting natural resources and maintaining a rural character.

LICENSE AND MAINTENANCE AGREEMENT FOR RETAINING WALL IMPROVEMENT

This License and Maintenance Agreement for Retaining Wall Improvement (this “Agreement”) is made and entered into on the _____ day of _____, 2025, by and between the City of Minnetrista, a Minnesota municipal corporation, (the “City”) and Joseph Allen Werner and Elizabeth Carol Werner, married to each other (the “Property Owners”).

RECITALS:

WHEREAS, the Property Owners are the owners of the property legally described in Exhibit A attached hereto (the “Property”); and

WHEREAS, street right-of way was dedicated by the developer to the City in the plat of Bayside which is described in Exhibit B attached hereto (the “Right-of-Way Property”); and

WHEREAS, there is a retaining wall installed on the Property and the Right-of-Way Property; and

WHEREAS, the Property Owners have requested that the retaining wall that encroaches into the Right-of-Way be allowed to remain on the Right-of-Way Property, said location of the retaining wall is shown on the attached Exhibit B; and

WHEREAS, the City is willing to allow the retaining wall to remain on the Right-of-Way Property, provided that the Property Owners agree to maintain it in perpetuity; and

WHEREAS, the parties wish to set forth the terms and conditions under which the Property Owners will maintain the retaining wall; and

NOW, THEREFORE, subject to the license terms and conditions of this Agreement, in reliance upon the above recitals, and in reliance upon the representations, warranties and covenants of the parties herein contained, the City and the Property Owners agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Terms. The following terms, unless elsewhere defined specifically in this Agreement, shall have the following meanings as set forth below.

1.2 Property Owners. “Property Owners” means Joseph Allen Werner and Elizabeth Carol Werner, married to each other or their heirs, successors, or assigns.

1.3 City. “City” means the City of Minnetrista, a Minnesota municipal corporation.

1.4 City Engineer. “City Engineer” means the appointed city engineer of the City and his/her delegates.

1.5 Retaining Wall Improvement. “Retaining Wall Improvement” means the retaining wall, a portion of which is located within the Right-of-Way Property, the location of which is shown on the attached Exhibit B.

ARTICLE 2

MAINTENANCE OF RETAINING WALL IMPROVEMENT

2.1 Maintenance of the Retaining Wall Improvement. The Property Owners agree to maintain the Retaining Wall Improvement. The Property Owners shall maintain the Retaining Wall Improvement on the Right-of-Way Property in perpetuity. Maintenance shall be performed at the Property Owners’ own expense. If the Property Owners disturb the surface of any of the Right-of-Way Property in order to maintain the Retaining Wall Improvement, they must fully restore the surface within 14 days of the disturbance.

ARTICLE 3

CITY LICENSE GRANT

3.1 License Grant. The City hereby grants the Property Owners a license to maintain the Retaining Wall Improvement on the Right-of-Way Property pursuant to the terms and conditions of this Agreement.

3.2 License. The terms of this Agreement shall only create a license for the Property Owners to maintain the Retaining Wall Improvement on the aforementioned properties. This Agreement does not create an interest in real property such as an easement or any other property right.

3.3 No Taking. The termination of this Agreement by the City shall not constitute a taking as defined in Minnesota Statutes Section 117.025. The City and the Property Owners acknowledge and agree that the City must have the ability to use the Right-of-Way Property for any public purpose and that such use may eliminate part or all of the Right-of-Way Property that is available for the Retaining Wall Improvement.

3.4 Removal. The City reserves the right to remove, as necessary in the opinion of the City Engineer, any and all elements of the Retaining Wall Improvement that threaten the safety of the public. The Property Owners agree to reimburse the City for any reasonable expenses or costs incurred by the City for the removal of the Retaining Wall Improvement.

ARTICLE 4

INDEMNIFICATION OF CITY

4.1 Indemnification of City. The Property Owners hereby agree to indemnify, defend and hold the City, its council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a) the installation and maintenance of the Retaining Wall Improvement on the Right-of-Way Property pursuant to this Agreement by the Property Owners, their contractors, their agents, or any party acting under the authorization or direction of the Property Owners; and
- b) any other activity on the Right-of-Way Property pursuant to this Agreement or under the assumed authority of the City by the Property Owners, their contractors, their agents, or any party acting under the authorization or direction of the Property Owners.

The Property Owners shall not be responsible to indemnify, defend or hold harmless the City for any claim, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and attorneys' fees, that are incurred due to the negligence or intentional misconduct of the City, its employees, officials, agents or contractors.

4.2 Governmental Immunity. Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by the Property Owners, their heirs, successors, or assigns, shall be subject to any governmental immunity defenses of the City under common law and the maximum liability limits provided in Minnesota Statutes, Chapter 466.

4.3 Hazardous Substances. The Property Owners agree that no hazardous substances, pollutants or contaminants shall be used for any installation or maintenance of the Retaining Wall Improvement on the Right-of-Way Property. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release of any hazardous substances, pollutants, or contaminants, caused by the Property Owners.

ARTICLE 5

CITY MAINTENANCE RIGHTS

5.1 Failure to Maintain. If the Property Owners fail to maintain the Retaining Wall Improvement on the Right-of-Way Property in accordance with the terms of this Agreement, the City may, but is not obligated to maintain the Retaining Wall Improvement, as provided in this paragraph or terminate this Agreement. If the City reasonably believes that the Property Owners have failed to maintain the Retaining Wall Improvement in accordance with the terms of this Agreement and such failure continues for 30 days after the City gives the Property Owners written notice of such failure or, if such tasks cannot be completed within 30 days, after such time period as may be reasonably required to complete the required tasks provided that the Property Owners

are making a good faith effort to complete said task. If the Property Owners do not complete the maintenance tasks within the required time period after such notice is given by the City, the City shall have the right to perform such maintenance tasks on the Right-of-Way Property at the Property Owners' cost. In such case, the City shall send an invoice of for all costs associated with the installation or maintenance performed by the City including, but not limited to, all staff time, engineering and legal and other reasonable costs and expenses incurred by the City.

ARTICLE 6 **TERM**

6.1 Term and Termination. This Agreement shall be effective on the date set forth above. The Retaining Wall Improvement has been installed by the City on the Right-of-Way Property. The Property Owners shall remain responsible for maintaining the Retaining Wall Improvement on the Right-of-Way Property in perpetuity. In the event that the Property Owners default with respect to the terms of this Agreement, after providing the Property Owners with 30 days' written notice of the default and the Property Owners fail to cure the default, the City may terminate this Agreement.

ARTICLE 7 **MISCELLANEOUS**

7.1 City's Duties. The terms of this Agreement shall not be considered an affirmative duty upon the City to maintain the Retaining Wall Improvement on the Right-of-Way Property.

7.2 No Third Party Recourse. Third parties shall have no recourse against the City or the Property Owners under this Agreement. The covenants and conditions of this Agreement are intended for the benefit of the parties hereto and are not intended to create any third party beneficiaries.

7.3 Validity. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Agreement.

7.4 No Assignment. The parties mutually recognize and agree that this Agreement shall not be assigned by the Property Owners unless said assignment is agreed to by the City in writing.

7.5 Amendment. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any agreement on the part of any party for any such amendment must be in writing.

7.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Minnesota.

7.7 Notice. Any notice required to be given under this Agreement shall be sufficiently

given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage prepaid, addressed as follows:

- a) If to the Property Owners: Joseph Allen Werner and Elizabeth Carol Werner
865 Bayside Lane
Minnetrista, MN 55364
- b) If to City: City of Minnetrista
7701 County Road 110 West
Minnetrista, MN 55364
Attention: City Administrator

or to such other address as the party addressed shall have previously designated by notice given in accordance with this section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above.

7.8 Successors and Assigns. The terms and conditions of this Agreement shall run with the Property and the Right-of-Way Property. All duties and obligations of the Property Owners under this Agreement shall also be duties and obligations of the Property Owners' heirs, successors, and assigns.

7.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

7.10 Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

7.11 No Additional Waiver Implied By One Waiver. In the event any agreement contained in this Agreement is breached by the Property Owners and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the City must be in writing.

7.12 Insurance. The Property Owners represent that the Property Owners have general liability insurance and hereby agrees to provide the City with a copy of their general liability insurance policy prior to any maintenance of the Retaining Wall Improvement pursuant to this Agreement. The Property Owners agree to keep their general liability policy in place and active at all times during the term of this Agreement and the Property Owners agree to give the City written notice of any policy cancellation or changes in the general liability policy limits.

IN WITNESS WHEREOF, the parties have executed this License and Maintenance Agreement for Retaining Wall Improvement.

PROPERTY OWNERS

By: _____
Joseph Allen Werner

By: _____
Elizabeth Carol Werner

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025,
by Joseph Allen Werner and Elizabeth Carol Werner, married to each other.

Notary Public

CITY OF MINNETRISTA

By _____
Lisa Whalen, Mayor

By _____
Ann Meyerhoff, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Lisa Whalen and Ann Meyerhoff, the Mayor and City Clerk, respectively, of the City of Minnetrista, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered (SJS)
Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

**EXHIBIT A TO
LICENSE AGREEMENT**

Legal Description of the Property

Lot 8, Block 1, Bayside, County of Hennepin, State of Minnesota.

**EXHIBIT B
TO LICENSE AGREEMENT**

Description of the Right-of-Way Property

The retaining wall located within the dedicated right-of-way of Bayside Lane as dedicated in the plat of Bayside, County of Hennepin, State of Minnesota, as shown below:

