

CITY OF MINNETRISTA



CITY COUNCIL AGENDA ITEM

Subject: Approve ROW Maintenance Agreement with Carrie & Paul Keller

Prepared By: Gary Peters, Public Works Director

Meeting Date: July 20, 2026

Issue:

The City has a need for a maintenance agreement for the planting and care of trees in the City right-of-way (ROW) on Rainbow Road.

Background/History:

The resident at 1295 Preserve Boulevard, Paul Keller, contacted Public Works to ask if he could plant trees in the ROW on Rainbow Road to help give some shade to his horses. He stated that if trees were planted inside the fenced pasture, the horses would damage and kill the trees.

Overview:

The Keller property at 1295 Preserve Boulevard extends west and abuts Rainbow Road. The ROW on Rainbow Road where Mr. Keller would like to plant the trees is very large. There is approximately 30 feet between the edge of the road and end of the ROW. Public Works staff determined that there was more than ample room for these trees, and that these trees would have to be planted within six (6) feet of the property owner's fence. Public Works also stated that the property owner would need to pay for the installation of the trees, maintain these trees throughout their life span, and pay to have a formal maintenance agreement to be drafted. Public Works staff contacted the City Attorney with Kennedy & Graven and asked to have a maintenance agreement be drafted. That agreement is attached. Once signed by City Officials/Staff, the maintenance agreement will be sent to the property owner for their signatures, and copies will be placed in the property file at City Hall and sent to the property owner.

Fiscal Impact:

There is no cost to the City for this maintenance agreement, as the property owner will be invoiced for the City Attorney's fee for drafting the agreement.

Recommended City Council Action:

Motion to approve maintenance agreement with Carrie and Paul Keller of 1295 Preserve Boulevard, for the planting and care of trees in the City ROW of Rainbow Road.

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 TREE PLANTING

This License and Maintenance Agreement for Tree Planting (this “Agreement”) is made and entered into on the _____ day of _____, 2026, by and between the City of Minnetrista, a Minnesota municipal corporation, (the “City”) and Carrie Keller and Paul Keller, married to each other (the “Kellers”).

RECITALS:

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

WHEREAS, the Kellers keep horses on the Keller Property and desire to plant trees along the west boundary of the Keller Property to provide the horses with shade; and

WHEREAS, the trees will be planted within the Rainbow Road right-of-way, which was dedicated by the developers to the City in the plat of Berman Addition and Deer Creek Preserve which are described in Exhibit B attached hereto (the “Right-of-Way”); and

WHEREAS, the Kellers have requested that the City allow them to plant trees within the Right-of-Way; and

WHEREAS, the City is willing to allow the Kellers to plant trees within the Right-of-Way provided that the Kellers are responsible for maintaining the trees; and

WHEREAS, the parties wish to set forth the terms and conditions under which the Kellers will maintain the trees within the Right-of-Way; 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 Kellers agree as follows:

ARTICLE 1 **INSTALLATION AND MAINTENANCE OF TREES**

2.1 Installation of Trees. The Kellers may plant up to _____ trees in the Right-of-Way at their expense.

2.2 Maintenance of the Trees. The Kellers shall maintain the trees within the Right-of-Way in perpetuity. Maintenance and any removal of the trees shall be performed at the Kellers’ own expense.

2.3 Additional Trees and Other Landscaping Improvements. The Kellers may install additional trees or other landscaping improvements within the Right-of-Way, but only upon the City’s written authorization. The Kellers acknowledge and agree that they must apply for and

receive any applicable City permits for any activities that require a permit pursuant to the City Code.

ARTICLE 2

CITY LICENSE GRANT

3.1 License Grant. The City hereby grants the Kellers a license to maintain the trees within the Right-of-Way pursuant to the terms and conditions of this Agreement.

3.2 License. The terms of this Agreement shall only create a license for the Kellers to maintain the trees within the Right-of-Way. 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 Kellers acknowledge and agree that the City must have the ability to use the Right-of-Way for any public purpose and that such use may eliminate part or all of the Right-of-Way that is available for the trees.

3.4 Removal. The City reserves the right to remove, as necessary in the opinion of the City Engineer or Public Works Director, any and all of the trees from the Right-of-Way that threaten the safety of the public. The Kellers agree to reimburse the City for any reasonable expenses or costs incurred by the City for the removal of the trees from the Right-of-Way.

ARTICLE 4

INDEMNIFICATION OF THE CITY

4.1 Indemnification of the City. The Kellers 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 trees and the installation of any additional trees or new landscaping improvements within the Right-of-Way pursuant to this Agreement by the Kellers, their contractors or any party acting under the authorization or direction of the Kellers; and
- b) any other activity within the Right-of-Way pursuant to this Agreement or under the assumed authority of the City by the Kellers, their contractors or any party acting under the authorization or direction of the Kellers.

The Kellers 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 Kellers, 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 Kellers agree that no hazardous substances, pollutants or contaminants shall be used for any installation or maintenance of the trees within the Right-of-Way. 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 Kellers.

ARTICLE 5

CITY MAINTENANCE RIGHTS

5.1 Failure to Maintain. If the Kellers fail to maintain the trees within the Right-of-Way in accordance with the terms of this Agreement, the City may, but is not obligated to maintain the trees, as provided in this paragraph or terminate this Agreement. The City may also remove the trees. If the City reasonably believes that the Kellers have failed to maintain the trees in accordance with the terms of this Agreement and such failure continues for 30 days after the City gives the Kellers 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 Kellers are making a good faith effort to complete said task. If the Kellers 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 within the Right-of-Way or remove the trees, at the Kellers' 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 any tree removal costs, 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 Kellers shall plant the trees within the Right-of-Way and shall remain responsible for maintaining the trees within the Right-of-Way Property in perpetuity. In the event that the Kellers default with respect to the terms of this Agreement, after providing the Kellers with 30 days' written notice of the default and the Kellers 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 trees within the Right-of-Way Property. If the trees die, the City shall not be responsible for planting any replacement trees.

7.2 No Third Party Recourse. Third parties shall have no recourse against the City or the Kellers 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 Kellers 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 Kellers: | Carrie Keller and Paul Keller
1295 Preserve Boulevard
Minnetrista, MN 55359 |
| 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 Keller Property and the Right-of-Way. All duties and obligations of the Kellers under this Agreement shall also be duties and obligations of the Kellers' 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 Kellers 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 Kellers represent that they have homeowners' liability insurance for the Keller Property. The Kellers agree to keep their homeowners' liability policy in place and active at all times during the term of this Agreement and the Kellers 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 Tree Planting.

By: _____
Carrie Keller

By: _____
Paul Keller

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2026,
by Carrie Keller and Paul Keller, 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 _____, 2026, 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 Keller Property

Lot 1, Block 1, Deer Creek Preserve, according to the recorded plat thereof, County of Hennepin, State of Minnesota.



EXHIBIT B TO LICENSE AGREEMENT

Description of the Right-of-Way

Trees within the dedicated right-of-way of Rainbow Road as dedicated in the plats of Berman Addition and Deer Creek Preserve, County of Hennepin, State of Minnesota and adjacent to Lot 1, Block 1, Deer Creek Preserve.

