

## CITY OF MINNETRISTA

### REQUEST FOR CITY COUNCIL ACTION/DISCUSSION



**Subject:** Approve License Agreement at 4090 Enchanted Lane

**Prepared By:** Alyson Fauske, PE, City Engineer

**Meeting Date:** June 2, 2025

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#### **Background/Discussion:**

Enchanted Lane is currently a rural road, meaning that runoff is conveyed via ditches instead of curb and gutter and storm sewer.

Due to elevation restrictions water is held within the right of way at 4090 Enchanted Lane. There is no opportunity to install public storm sewer to mitigate the residents' concern.

The owners request permission to install a private storm sewer system to convey runoff from the right of way to a storm water feature within the property. The approximate alignment of the proposed draitile shown on the graphic to the right. Two catch basins are also proposed to be installed in the right of way so that runoff can directly enter the draitile.

The attached agreement has been reviewed by the City Attorney and would allow the owners to install, own and maintain this private storm sewer.



#### **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 AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made, effective as of the last of the execution dates indicated below, by and between the City of Minnetrista, a Minnesota municipal corporation, located at 7701 County Road 110W, Minnetrista, Hennepin County, Minnesota, 55364 ("Licensor") and Janet B. Stone and Randy J. Hendricks, owners of 4090 Enchanted Lane, Minnetrista, Hennepin County, Minnesota 55364 ("Licensees").

WHEREAS, Licensees are the fee owners of real property located in the City of Minnetrista, Hennepin County, Minnesota, legally described as:

Lot 1, Block 6, Enchanted

(hereinafter referred to as "Licensee Property"); and

WHEREAS, the Licensee Property adjoins property dedicated to the City of Minnetrista for right-of-way purposes which property is described on the attached Exhibit A (the "ROW"); and

WHEREAS, pursuant to the dedication language in the Enchanted plat, full, absolute and exclusive control over the ROW has been dedicated to the Licensor; and

WHEREAS, the Licensor has previously approved the terms and conditions of that certain Declaration dated August 19, 2021, filed of record on September 14, 2021 as Document No. A11010506 in the Office of the County Recorder of Hennepin County, Minnesota, that, among other items, includes maintenance and other obligations regarding certain storm water facilities governed by the Minnehaha Creek Watershed District as described in the Declaration and as referenced in that certain Declaration of Covenants, Conditions, Easements and Restrictions dated August 23, 2021, filed of record on September 14, 2021 as Document No. A11010505 in the Office of the County Recorder of Hennepin County, Minnesota; and

WHEREAS, Licensees desire to install a private storm sewer in the ROW (the "Improvements") to convey runoff from the ROW to storm water facilities located on the Licensee

Property; provided, however, the Improvements do not include the area of the Licensee Property consisting of the storm water facilities; and

WHEREAS, Licensor is willing to allow Licensees to use the ROW to install and maintain the Improvements within the ROW, subject to the terms and agreements of the parties set forth herein.

NOW, THEREFORE in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Licensor hereby grants to Licensees and their contractors and agents a non-exclusive license for the installation and maintenance of the Improvements within the ROW, subject to all the terms and conditions of this Agreement.

2. Licensees agree that the use of the ROW is with Licensor's permission and is not open, continuous, notorious or in any other manner supportive of a claim of adverse possession, prescriptive easement or other entitlement to the ROW. The parties acknowledge that this Agreement is a license to use the ROW for the purposes described herein and does not confer any estate or interest in real property or the ROW to Licensees.

3. The ROW shall be used by Licensees solely for the installation and maintenance of the Improvements within the ROW during the period beginning upon full execution of this Agreement and continuing until this Agreement is terminated. Licensees shall comply with all applicable laws, ordinances, and governmental regulations affecting the ROW and the use of the ROW. Licensees shall not use the ROW for the transportation, storage, handling or disposal of any Hazardous Substance, Hazardous Waste, pollutant or contaminant as those terms are defined in 42 U.S.C. § 9601 et. seq. ("CERCLA") or Minnesota Statutes Chapter 115B ("MERLA").

4. Licensees, at their expense, during the term of this Agreement, shall cause any contractors or other parties performing construction, maintenance, or repair of the Improvements in the ROW to keep in full force and effect a policy or policies of contractors' "all risk" coverage and (1) commercial general liability insurance with limits of at least One Million Dollar (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury or death and property damage insurance including coverage for contractual liability and personal and advertising injury, and (2) workers' compensation and employers' liability insurance with limits of at least \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit, all covering any accident arising in connection with the activities of Licensees, their contractors, agents and representatives within the ROW, which insurance, except for workers' compensation and employers' liability, shall (A) name Licensor and such other parties holding insurable interests as Licensor may designate as additional insureds thereunder, (B) be written by a reputable insurance company licensed to do business in the State of Minnesota, and (C) otherwise be subject to Licensor's ongoing right of review and reasonable approval. . In addition, during the term of this Agreement, Licensees shall keep in full force and effect a homeowner's liability insurance policy.

5. Licensees acknowledge that Licensor may have utilities or other facilities within the ROW and understands that Licensor's property rights are superior to Licensees' rights under this Agreement. Licensees acknowledge that Licensor and the authorized representatives of Licensor may enter the ROW at all times for the purposes of inspecting the same and conducting such investigations, testing, measurements and assessments as may be desired by Licensor or to conduct any other activities as may be desirable in the sole discretion of Licensor. Licensor agrees that Licensees, in their sole discretion, may mow grass and remove any noxious weeds that may grow within the ROW, subject, however, to Licensor's right to restrict such activities pursuant to this Agreement.

6. Licensees acknowledge that the Improvements that they are installing within the ROW will convey runoff from the public right-of-way and that the Licensor will not be responsible for maintenance of the Improvements or any damage that may occur to the Improvements from routing the runoff out of the ROW.

7. Licensee or its contractors or agents, as applicable, shall hold Licensor harmless from and indemnify and defend Licensor, its employees, agents, and officials from and against any claim or liability arising in any manner from Licensees' use of the ROW, including Licensees' installation and maintenance of the Improvements or relating to the death or bodily injury to any person or damage to any personal property on or upon the ROW, including the person and personal property of Licensees and all persons in or upon the ROW at Licensees' invitation or sufferance. Licensees agree to pay all sums of money in respect to any labor, service, materials, supplies or equipment furnished or alleged to have been furnished to Licensees for the ROW and will not allow any lien to attach to the ROW, or if a lien does attach, Licensees will: (i) cause such lien to be removed as soon as possible; or (ii) contest such lien, on the condition that Licensees first provide Licensor cash, bond or other security against such lien which Licensor reasonably determines to be sufficient.

8. Licensees accept the ROW "AS IS" and "WHERE IS," and with all defects whether known or unknown. Licensor disclaims any warranty that the ROW is suitable for Licensees' use. Licensees shall, at all times throughout the term of this Agreement, and at their sole expense, maintain the Improvements in a condition of good and safe repair. Repair and maintenance needed to the Improvements, in the discretion of the Licensor, shall be the sole responsibility and expense of the Licensees. Licensor shall have no duty to maintain the ROW. If the Licensor determines that any repair and maintenance is needed to the Improvements, Licensor shall send notice to Licensees stating the repairs and maintenance needed and the date said repairs and maintenance must be completed. In the event Licensees fail to complete said repairs and maintenance within the time stated in the notice, Licensor may terminate this Agreement.

9. Licensees shall not make any additional improvements to the ROW without the Licensor's prior written consent.

10. Licensee may commence the construction of the Improvements and any additional improvements only after obtaining and providing to Licensor the approvals, licenses, permits, and indemnifications required by Licensor. If it is determined by Licensor that the Improvements are interfering with the function of the ROW, the Improvements must be removed by Licensees at no

cost to Licensor when directed by Licensor. It shall also be understood that Licensor maintains the right to remove the Improvements. In the event that Licensor needs to remove the Improvements, it may assess those costs against the Licensee Property. However, in the event that this Agreement is terminated, the Improvements made by Licensees shall remain, unless ordered to be removed by Licensor. Under no circumstances shall the Licensees be entitled to any compensation from Licensor for the cost of any improvements made to the ROW.

11. This Agreement may be terminated by Licensor in the event that Licensor decides to: 1) make improvements to the public street within the ROW; 2) in the event that Licensor decides to vacate the ROW; 3) if Licensees are in default of any of the terms of this Agreement; or 4) if Licensor determines it to be in the public interest to do so. Licensor may terminate this Agreement at any time by giving written notice to the Licensees, specifying the date of termination, such notice to be given not less than 30 days prior to the date specified in such notice for the date of termination. Licensees may terminate this Agreement at any time by giving written notice to the Licensor, specifying the date of termination, such notice to be given not less than 30 days prior to the date specified in such notice for the date of termination.

12. Upon termination of this Agreement, Licensees' use of the ROW and any future obligations of Licensees to perform under this Agreement shall be immediately terminated. The ROW shall be left by Licensees in the same or better condition as it was at the beginning of the term of this Agreement. If the ROW is left in lesser condition, the Licensor may repair the ROW itself, and Licensees shall be responsible for Licensor's costs and expenses incurred for the repairs.

13. Licensees acknowledge that Licensor is willing to enter into this Agreement and provide the Licensees' use of the ROW only because Licensees, in addition to performing their obligations hereunder, have stipulated and agreed that they waive any claim they may have based on Licensor's termination of this Agreement whether based on the value of any improvements, the value of the license, or for any other reason known or unknown at this time.

14. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota.

15. This Agreement and Exhibits constitute the entire agreement between Licensor and Licensees. There are no other agreements, either oral or written, between Licensor and Licensees. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

16. Any notice provided for or concerning the Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

17. Time is of the essence in the performance of the terms and obligations of this Agreement.

18. This Agreement does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Licensor and Licensees, the sole relationships of the parties hereto being that of Licensor and Licensees under this Agreement.

19. This Agreement shall run with the Licensee Property and shall inure to the benefit of and be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

20. Licensees shall reimburse Licensor for the costs that Licensor has incurred for Licensor's staff and consultants to draft this Agreement and review the plans for the Improvements.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below:

LICENSOR:  
City of Minnetrista

Dated: \_\_\_\_\_, 2025.

By: \_\_\_\_\_  
Lisa Whalen  
Its: Mayor

By: \_\_\_\_\_  
Ann Meyerhoff  
Its: City Clerk

STATE OF MINNESOTA    )  
                                  ) ss  
COUNTY OF HENNEPIN    )

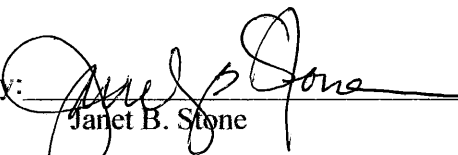
This instrument was acknowledged before me on \_\_\_\_\_, 2025 by Lisa Whalen and Ann Meyerhoff, to me known to be the persons described in the foregoing instrument, and who did say they are, respectively, the Mayor and City Clerk of the City of Minnetrista, and that said instrument was signed on behalf of the City.

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

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below:

LICENSEES:

Dated: 5/28, 2025.

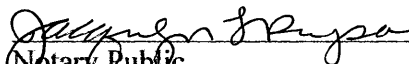
By:   
Janet B. Stone

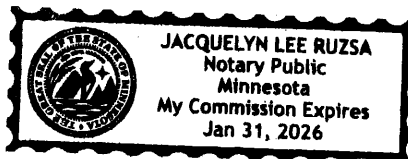
Dated: 5/28, 2025.

By:   
Randy L. Hendricks

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF Hennepin )

This instrument was acknowledged before me on May 28, 2025 by Janet B. Stone and Randy J. Hendricks, Licensees.

  
Notary Public



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

## Description of the ROW

[illegible]