

**City Council Chambers**

**Tuesday, August 18, 2020**

**Immediately Following the 7:30pm Planning Commission Meeting**



### **Economic Development Authority Agenda**

1. Call to Order
  - a. Pledge of Allegiance
  - b. Roll Call
  - c. Agenda Modifications
2. Approval of the Agenda
3. Public Hearing
  - a. Sale of EDA owned land located at XXX East Dual BLVD NE PID 16.125.0020 to Swanees Trucking LLC.
4. Adjournment



## Memo for EDA Action

**To:** Economic Development Authority

**From:** Sheila Sellman, Community Development Director

**Date:** August 18, 2020

**Subject:** Sale of EDA Land to Swanees Trucking LLC

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### **Background:**

The EDA owns property located at XXX West Dual Blvd (PID 16.125.0020) and has this property for sale for \$1. The subject property is a certified Shovel Ready Site. The subject site is zoned Industrial and is ready for development. Swanees Trucking LLC is a trucking company looking for space to expand their office and maintenance shop. They have been in operation since 2015 and are currently located in the city of Coon Rapids.

They will be start out with 12 employees (including contract employees) with the plan to increase 35 employees as their business expands.

### **Recommendation:**

Staff recommends that EDA sell the subject site to Swanee Trucking LLC for \$1 and to execute the proposed purchase agreement and recommend approval of the subsidy agreement to City Council. Once this has been executed the City Council will need to review and approve a subsidy agreement for the sale.

### **Proposed Action:**

Approve the Resolution for the sale and enter into the Purchase Agreement.

### **Attachments:**

- Resolution
- Purchase Agreement

**RESOLUTION 2020-XX**

**AUTHORIZING THE SALE OF EDA-OWNED INDUSTRIAL LAND FOR  
CONSTRUCTION OF A TRUCKING MAINTENANCE FACILITY**

**WHEREAS**, the EDA owns certain real property at xxx East Dual Blvd NE PID 16.125.0020 in the City of Isanti, County of Isanti, state of Minnesota; and

**WHEREAS**, the subject site is part of the Certified Shovel Ready Program; and

**WHEREAS**, the buyer Sawnees Trucking LLC. proposes to build a trucking maintenance facility and employ 12 people within the first two years of the purchase date; and

**WHEREAS**, the sale of the land is in the best interest of the city to expand tax and employment growth and furthers its general plan of economic development; and

**WHEREAS**, the City attorney has drafted the purchase agreement for the sale of the land from the EDA to Swanees Trucking LLC for \$1.00; and

**WHEREAS**, said purchase is subject to a subsidy agreement through the City Council and is subject to site plan approval.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the Economic Development Authority of the City of Isanti, approves the sale of said property to Swanees Trucking LLC. and authorizes staff to execute any documents necessary for the sale and recommends approval of the subsidy agreement to the City Council.

This Resolution hereby approved by the Isanti EDA this 18<sup>th</sup> day of August 2020.

Attest:

\_\_\_\_\_  
EDA President Jeff Johnson

\_\_\_\_\_  
Sheila Sellman  
EDA Secretary/Community Development Director

## **PURCHASE AGREEMENT**

This Agreement is entered into by and between the **City of Isanti Economic Development Authority**, a Minnesota public body corporate and politic ("Seller"), and **Swanees Trucking LLC.**, a Minnesota limited liability company ("Buyer").

In consideration of the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

- 1. EFFECTIVE DATE.** The effective date of this Agreement is August 18, 2020 (the "Effective Date").
- 2. SALE OF PROPERTY.** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller the Property legally described as follows:  
  
Lot 00A, Isanti Centennial Complex 3<sup>rd</sup> Rearrangement, County of Isanti, State of Minnesota  
  
Isanti County PID Number: 16.125.0020  
  
Property Address: XXX Dual Blvd. N.E., Isanti, MN 55040
- 3. PURCHASE PRICE.** The purchase price for the Property is \$1.00 (the "Purchase Price").
- 4. EARNEST MONEY.** None.
- 5. SURVEY.** Buyer may, at Buyer's expense, obtain a survey (the "Survey") from a duly licensed surveyor. If so obtained, a copy shall be provided to Seller within 30 days of receipt by Buyer.
- 6. TITLE COMMITMENT.**
  - a. Seller makes no representations or warranties with respect to the status of title to the Property. Within 30 business days after the Effective Date, Buyer may, at Buyer's expense, obtain a commitment from Escrow Agent to issue an owner's policy of title insurance insuring Buyer's title to the Property (the "Title Commitment"). Buyer shall provide Seller with a copy of the Title Commitment and copies of or internet access to copies of all recorded documents referenced in the Title Commitment .



- b. Buyer shall have until the date 30 days after the receipt of the Title Commitment to review Title and to give Seller written notice of (i) any defects in the marketability of Seller title to the Property or any encumbrances on Seller's title to the Property that are objectionable to Buyer, and (ii) the specific actions Buyer requests that Seller take with respect to each such defect or encumbrance (a **"Title Objection Notice"**). Any defects in or encumbrances on Seller's title that Buyer does not identify in a timely Title Objection Notice are each a **"Permitted Exception."** Within three business days after Seller's receipt of a Title Objection Notice from Buyer, Seller will notify Buyer, in writing, of the actions, if any, that Seller is willing to take with respect to each of the matters identified in the Title Objection Notice and the time frame in which Seller will take those actions (**"Seller's Title Notice"**). If Seller's Title Notice indicates that Seller unconditionally agrees to make Seller's title to the Property marketable on or before the closing date established pursuant to Section 13, the parties shall proceed to closing pursuant to the terms of this Agreement. If Seller's Title Notice indicates that Seller does not unconditionally agree to make Seller's Title to the Property marketable on or before the closing date established in Section 13, Buyer may, at any time with three business days after Buyer's receipt of Seller's Title Notice, terminate this Agreement by written notice to Buyer in which case this Agreement is terminated (**"Buyer's Title Termination Notice"**). If Buyer does not deliver a Buyer's Title Termination Notice to Seller within the three business days after Buyer's receipt of Seller's Title Notice, then Seller must perform in accordance with Seller's Title Notice, Buyer shall be deemed to have waived Buyer's objections to the extent Seller has not agreed to address them in Seller's Title Notice, the matters to which Buyer objected and Seller did not agree to resolve are deemed Permitted Exceptions, and the parties shall proceed to Closing in accordance with the terms of this Agreement and the terms of Seller's Title Notice.

**7. RIGHT OF ENTRY.** Buyer (and its employees, agents, and contractors) may enter the Property for the purpose of conducting soil tests, environmental tests and additional survey work, subject to the following conditions:

- a. Within one week after the termination of this Agreement, if either Seller or Buyer terminate this Agreement in accordance with the provisions hereof prior to Closing, Buyer must repair and or restore any damage Buyer or its employees, agents or contractors cause to the Property and remove any personal property, refuse or debris Buyer or its employees, agents or contractors brought onto or authorized third parties to bring onto the Property.
- b. Buyer must defend and indemnify Seller from and against and hold Seller harmless Seller from all "Claims," as defined in Section 10, arising out of, resulting from or relating to any loss of or damage to any property or business or out of any injury to or death of any person, if the loss, damage, injury, or death arises or is alleged to arise either directly or indirectly and either wholly or in part from: (a) any action or omission of Buyer or its employees, agents, or contractors, while on the Property pursuant to this Section; or (b) actions or omissions of

Buyer or Buyer's employees, agents, or contractors that cause or result in the release of any Hazardous Substance onto the Property or onto other property.

- c. Buyer must comply with and shall cause its employees, agents, and contractors to comply with all applicable laws, while on the Property.
- d. Other than a standard Phase 1 environmental assessment, Buyer may not commence any environmental testing on the Property until Buyer submits a work plan for such testing to Seller and Seller approves the work plan, in writing. Seller may not unreasonably withhold, condition or delay Seller's approval of a work plan.
- e. Buyer must, promptly and without demand from Seller, provide Seller with true and complete copies of all draft and final reports relating to Buyer's geotechnical and environmental investigations and testing of the Property including, without limitation, any reports relating to any Phase I Environmental Site Assessment of the Property.
- f. The cost of any test or additional survey work will be borne solely by Buyer.

**8. PROPERTY SOLD AS IS.** Subject to Buyer's right to terminate this Agreement pursuant to Section 9, Buyer agrees to accept the Property in its current condition, including, without limitation, its current environmental and geological condition, and in an "AS-IS" and with "ALL FAULTS" condition. Buyer's payment of the Purchase Price at Closing constitutes Buyer's acknowledgment and agreement that:

- a. Seller has not made any written or oral representations or warranties of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose);
- b. Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property;
- c. Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing; and
- d. The condition of the Property is fit for Buyer's intended use.
- e. Buyer accepts all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the



presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

## 9. INSPECTION PERIOD.

- a. Except as otherwise provided in Section 6, Buyer shall have **90 days from the Effective Date** (the “**Inspection Period**”) to investigate the Property and determine, in Buyer’s sole judgment, whether (i) the condition of the Property is suitable to Buyer’s intended use; and (ii) Buyer will be able to obtain all governmental approvals (including, but not limited to, approvals necessary to subdivide and re-plat the Property) and utilities necessary for Buyer’s intended use of the Property. Buyer acknowledges and agrees that Seller has not made any covenants, representations or warranties regarding Buyer’s ability to obtain governmental approvals from the City of Isanti or any other governmental entity. The City of Isanti will review, consider and act on any applications Buyer submits to the City for governmental approvals in accordance with City Code.
- b. Buyer may, at any time on or before 5:00 p.m. on the last day of the Inspection Period, terminate the Agreement by written notice to Seller based on Buyer’s determination, in Buyer’s sole and absolute discretion, that the condition of the Property is not suitable for Buyer’s intended use or that Buyer may not be able to obtain all governmental approvals and utilities necessary for Buyer’s intended use of the Property. In addition, this Agreement automatically terminates at 5:00 p.m. on the last day of the Inspection Period unless, prior to that time Buyer delivers a written notice of Buyer’s intention to proceed (a “**Notice to Proceed**”) to Seller.

## 10. DEFINITIONS. As used in this Agreement:

“**Claim**” or “**Claims**” means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney’s fees, consultant’s fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

“**Environmental Law**” means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

“**Hazardous Substance**” or “**Hazardous Substances**” means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction,

radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

**11. RELEASE.** By accepting the deed to the Property, Buyer, for itself, its managers, members, directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors, and assigns and anyone acting on its behalf or their behalf hereby fully releases and forever discharges Seller from any and all Claims (including without limitation all Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation), past, present and future, known and unknown, existing and contingent, arising out of, resulting from, or relating to the condition of the Property, and Buyer hereby waives any and all causes of action (including without limitation any right of contribution) Buyer had, has or may have against Seller and anyone acting on its behalf with respect to the condition of the Property, whether arising at common law, in equity or under a federal, state or local statute, rule or regulation. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

**12. NOTICES.** Notices permitted or required by this Agreement must be in writing and shall be deemed given when delivered in legible form to the party to whom addressed. Notices may be sent by certified mail or e-mail. Notices are effective two business days after they are mailed via certified mail, return receipt requested or, if sent by email, upon email transmission (provided that any email transmission that occurs after 5:00 pm Pacific Time will be deemed provided on the following day). If delivered at the Closing, a notice shall be deemed given when hand-delivered to the party's representative at the Closing. The business addresses of the parties are as follows:

Seller: Josi Wood  
City Administrator  
City of Isanti  
110 1<sup>st</sup> Ave. N.W.  
Isanti, MN 55040  
Email: jwood@cityofisanti.us

Buyer: Gregory Swanson  
Swanees Trucking LLC  
10600 University Ave N.W., Ste 410  
Coon Rapids MN 55448  
Email: swaneestrucking@gmail.com

Notices not given in the manner or within the time limits set forth in this Agreement are of no effect and may be disregarded by the party to whom they are directed.



**13. CLOSING.** This transaction shall close within 30 days after Buyer delivers a Notice to Proceed to Seller or on such earlier date as Seller and Buyer may establish by mutual, written agreement. The Closing shall take place at City offices or at some other place as the parties may mutually agree prior to such date. At the option of either Party, the executed closing documents, Purchase Price and closing costs may be deposited with the City to avoid the necessity for a Closing at which the Parties are present.

a. **Seller's Obligations at Closing.** At Closing, Seller must deliver to Escrow Agent, for delivery to Buyer:

- i. A limited warranty deed, duly executed and acknowledged on behalf of the City and with the City's seal affixed, conveying title to the Property, subject to (A) Building, Subdivision and Zoning Ordinances; (B) Matters that would be disclosed by an accurate survey of the Property; (C) matters that constitute Permitted Exceptions pursuant to Section 6; and (D) a covenant restricting the use of the land pursuant to Minn. Stat. § 469.105, subd. 6.
- ii. A certified copy of a duly adopted Resolution authorizing Seller's sale of the Property to Buyer; and
- iii. Seller's affidavits, well disclosure certificate (if required), settlement statement approved by Seller and Buyer, and any other documents required by the Escrow Agent.

b. **Buyer's Obligations at Closing.** At Closing, Buyer must:

- i. Provide the Purchase Price; and
- ii. File or cause Escrow Agent to file an Electronic Certificate of Real Estate Value, if required and necessary.

c. **Closing Costs.**

- i. At Closing, the following Seller closing costs and expenses must be paid from the Purchase Price or, if the Purchase Price is not sufficient, paid by Seller:
  1. The cost of real estate broker commission fees as prescribed in Section 14.
- ii. At Closing Buyer must pay the Purchase Price to Seller and the following costs and expenses:
  1. Property taxes payable 2020, if any.
  2. Buyer's own attorney's fees.

3. All closing fees.
4. Documentary and recording fees for the deed(s).
5. State deed tax.
6. The cost of the title commitment.
7. The cost of the owner's title insurance policy, if Buyer elects to purchase an Owner's title insurance policy.

d. **Possession.** Seller must deliver possession of the Property to Buyer at Closing.

**14. REAL ESTATE BROKERS.** Seller and Buyer represent and warrant to each other that they have dealt with no brokers, real estate agents, finders or the like in connection with this transaction. Seller and Buyer agree to indemnify each other and to hold each other harmless against all claims, damages, costs or expenses of or for any broker's fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, other than the fees payable to Seller's Broker, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorney's fees.

**15. ASSIGNMENT.** This Agreement may not be assigned without the written consent of the non-assigning Party.

**16. THIRD PARTY BENEFICIARY.** There are no third-party beneficiaries of this Agreement, intended or otherwise.

**17. JOINT VENTURE.** Seller and Buyer, by entering into this Agreement and completing the transactions described herein, shall not be considered joint ventures or partners.

**18. CAPTIONS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

**19. ENTIRE AGREEMENT / MODIFICATION.** This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver or modification of any of its terms will be effective unless in writing executed by the parties.

**20. BINDING EFFECT.** This Agreement binds and benefits the Parties and their successors and assigns.

**21. CONTROLLING LAW.** This Agreement is made under the laws of the State of Minnesota and such laws will control its interpretation.

## **22. REMEDIES.**

- a. If Buyer fails to perform any of the terms or conditions of this Agreement within the specified time limits, Seller may declare this Agreement terminated pursuant to Minnesota Statutes section 559.21. Seller's sole remedy in the event of Buyer's default is retention of the Earnest Money, if any, unless Buyer defaults under Section 7 or 12 of this Agreement, in which case Seller may retain the Earnest money or suspend the performance of its obligations under this Agreement and commence an action in Isanti County District Court to recover its actual damages arising from the default.
- b. If Seller fails to perform any of the terms or conditions of this Agreement within the specified time limits, Buyer may, as its sole remedy, declare this Agreement terminated, or, in the alternative, Buyer may have this Agreement specifically enforced and recover any incidental damages. Buyer waives all claims for consequential damages against Seller based on Seller's breach or alleged default hereunder.

**23. WAIVER.** Failure of Seller or Buyer to insist upon the performance of any of the covenants, agreements and/or conditions of this Agreement or to exercise any right or privilege herein shall not be deemed a waiver of any such covenant, condition or right.

**24. SURVIVAL OF TERMS AND CONDITIONS.** The terms and conditions of this Agreement shall survive and be in full force and effect after the delivery of the deed and shall not be deemed to have merged therein.

**25. SEVERABILITY.** Each provision of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

**26. CONSTRUCTION.** The Parties acknowledge that this Agreement was initially prepared by Seller solely as a convenience and that all Parties and their counsel hereto have read and full negotiated all the language used in this Agreement. The Parties acknowledge that because all Parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement to construe ambiguous or unclear language in favor of or against any Party.

**27. COUNTERPARTS; DIGITAL COPIES.** This Agreement may be executed in any number of counterparts and the signature pages of the separate counterparts combined into a single copy of this Agreement which will then constitute a fully executed version of this Agreement. A facsimile, .pdf file or digital copy of a signed counterpart or of an assemblage of counterparts of this Agreement shall be deemed to be an original thereof.

**28. CONSTRUCTION DEADLINE.** Buyer shall devote the Property to its intended use (trucking business) or begin work on the improvements to the Property to devote it to that



use, within one year after closing. In the event the above deadline is not met, Seller may cancel the sale and title shall return to Seller. Title to the Property may not be transferred by Buyer within one year of purchase without consent of Seller.

**29. TIME PERIODS.** The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. Central Time on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

**SELLER: The City of Isanti Economic Development Authority**

By: \_\_\_\_\_  
Jeff Johnson, Mayor

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

By: \_\_\_\_\_  
Katie Brooks, City Clerk

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

**BUYER: Swanees Trucking, LLC**

By: \_\_\_\_\_  
Gregory Swanson

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

## CITY OF ISANTI

### DEVELOPMENT AND SUBSIDY AGREEMENT FOR SWANEES TRUCKING LLC

This Agreement (hereinafter the “Agreement”) is dated as of this 18th day of August, 2020 and is by and between the **City of Isanti**, a Minnesota municipal corporation (the “**City**”) and **Swanees Trucking LLC**, a limited liability company under the laws of Minnesota (the “**Developer**”).

1. Subject Property. Developer is, or will be, the owner of the Subject Property legally described as Lot 00A, Isanti Centennial Complex 3<sup>rd</sup> Rearrangement, County of Isanti, State of Minnesota, PID Number 16.125.0020, located at XXX East Dual Blvd. N.E., Isanti, MN 55040. Sale of the Subject Property by the City to Developer at a price below market value is the subsidy contemplated by this Agreement.
2. Conditions of Approval. The City has approved development of the Subject Property, as subsidized by the City, subject to satisfaction of the following conditions:
  - a. The Developer’s Execution of this Agreement. That the Developer enter into this Agreement.
  - b. Marketable Title. That the Developer obtain, and retain, title to the Subject Property.
  - c. Proof of Authority. That the Developer provide proof that the governing boards or manager of the Developer authorized the Developer’s execution of this Agreement. This proof of authority may be satisfied by providing the City with a certified copy of the minutes of the governing board that grants such authority.
  - d. Site Plan. That Developer’s site plans, as required by the Isanti City Code, be completed by Developer and reviewed and approved by the City.

3. The Plans. The term "Plans" as used in this Agreement means the Site Plans prepared by Developer. The Plans are subject to: (a) Planning Commission review; (b) approval of the City Council; and (c) such further revisions as the Developer may propose and the City approves. The Plans shall not be attached to this Agreement but are in the City's files.
4. Required Private Improvements. The private improvements the Developer will construct or install are as follows:
  - a. Sanitary sewer
  - b. Water
  - c. Storm drainage facilities
  - d. Stormwater maintenance
  - e. Parking lot
  - f. Concrete curb and gutter
  - g. Lot grading
  - h. Landscaping
5. Financial Guaranty for Required Private Improvements. The Developer shall provide a financial guarantee to the City guaranteeing the construction of the Required Private Improvements, and their timely completion. The Developer shall be responsible for a financial guarantee in the amount of (\$\_\_\_\_\_ .00), which amount is 125% of the City Engineer's estimated cost of the Required Private Improvements. Upon completion of Improvements (including the removal of "temporary" erosion control measures as identified in the approved Grading Plan), acceptance by the City, supported by appropriate lien waivers, the Developer may request a reduction in the amount of the financial guarantee.
6. Inspection Fees for the Required Private Improvements. The Developer shall provide an inspection fee to the City to inspect the Required Private Improvements. The Developer shall be responsible for an inspection fee in the amount of (\$\_\_\_\_\_ .00), which amount is 5% of the City Engineer's estimated cost of the Required Private Improvements. The inspection fee must be in the form of a cash escrow. The balance in the escrow will be refunded upon completion of the Required Private Improvements, acceptance by the City.
7. Maintenance Guarantee for Landscaping. The Developer shall provide the City a maintenance guarantee to ensure the survival of the plantings. Said maintenance guarantee shall consist of cash or a Letter of Credit, approved as to form by the City, in the amount of \$\_\_\_\_\_ [# plantings (XX trees) x cost/planting (\$300/tree x 30% average non-survival rate, (XX shrubs) x cost/planting \$75/shrub x 30% average non-survival rate)], which shall be in effect for a two-year period commencing on the date of the City's acceptance of said plantings as part of the Required Private Improvements.



At the end of the two-year period, the maintenance guarantee shall be returned to the Developer. The determination that all plantings that have been planted in accordance with the Site Plan have either survived or have been replaced shall be made by the City. In the event the Developer fails to maintain the required plantings for a two-year period, the City Council may order the replacement of plantings with City day labor and/or by letting contracts and draw upon the escrow for payment. Only the City Council shall have the authority to direct replacement of the plantings and withdraw from the escrow account. The Developer hereby grants permission and a license to the City and/or its contractors and assigns to enter upon the Site for the purpose of replacing plantings in the event of the Developer's default.

8. Payment of Development Fees. The Developer must pay to the City the fees described on Exhibit A which may include, but are not limited to, Sanitary Sewer Connection (Trunk) Fees, Water Connection (Trunk) Fees.
9. Developer Defaults. If the Developer defaults in the performance of one or more of the Developer's obligations under this Contract, i) the City gives the Developer 30 days written notice of the default and ii) the Developer fails to cure the default within said 30 days, then the City may pursue any and all remedies available at law or in equity including, but not limited to, the following:
  - a. The City may, at its option, perform or engage one or more third parties to perform the Developer's obligations. If, in the reasonable judgment of the City's staff, the Developer's default creates an immediate risk to public health or safety, the City may perform or engage one or more third parties to perform the work before the City provides the notice described in the initial paragraph of this Section, but the City must use commercially reasonable efforts to notify the Developer as promptly as possible that the City is undertaking to perform the Developer's obligation or obligations. If the City performs one or more obligations of the Developer, the Developer must reimburse the City for any costs or expenses the City incurs, including costs and expenses for City staff time, to perform the work within 30 days after the City notifies the Developer, in writing, of the costs and expenses the City incurred to perform the work. If the Developer does not reimburse the City within said 30 day period, the City may pursue any remedies available to the City either at law or in equity or, in the alternative, the City may draw on the financial guaranty the Developer has provided to the City pursuant to this Agreement to reimburse itself for the expenses the City incurs to perform the work. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a Court Order for permission to enter the Developer Property. As an alternative to seeking recovery from the Developer or the financial guaranty, the City may levy special assessments against the Developer Property in accordance with Minnesota Statutes chapter 429, and the Developer, for itself and its successors in title, hereby expressly waives any and all substantive and

procedural objections or defenses the Developer may have to such special assessments;

- b. The City may commence an action in Isanti County District Court to pursue any remedy available to the City at law or in equity including, but not limited to, injunctive relief;
- c. The City may refuse to grant building permits for improvements to be constructed on the Subject Property until the Developer has cured all of its defaults; and
- d. The City may draw upon all or any portion of the financial guaranty the Developer has provided to the City and (i) use all or any portion of the proceeds from the financial guaranty to reimburse the City pursuant to subsection (a) above; (ii) use all or any portion of the proceeds from the financial guaranty to satisfy any judgment the City obtains against the Developer pursuant to subsection (b) above; (iii) use all or any portion of the proceeds to reimburse the City pursuant to Section 11 (j) below; and (iv) hold all or any portion of the proceeds for a reasonable time for the future application as described in subsections (i), (ii) and (iii) of this paragraph.

10. Business Subsidy. As a condition of developing the Subject Property, Developer and City agree to the following terms:

- a. Subsidy. Developer acknowledges and agrees that it received a business subsidy from the City in the form of a reduced purchase price for the Subject Property. Pursuant to the City's appraisal, the Subject Property is valued at \$125,000. The City sold the Subject Property to Developer for \$1. The value of the subsidy is the difference between the appraisal value and the purchase price.
- b. Public Purpose. The public purposes for granting the subsidy are to create jobs within the City of Isanti and to increase the City's tax base.
- c. Subsidy Goals. Developer shall create a minimum of 12 full-time, or full-time equivalent, jobs within two years of the date of this Agreement. All jobs shall meet or exceed State minimum wage requirements. Developer shall continue to meet or exceed said employment goals for at least five years after the date of this Agreement. In the event these requirements are not met, Developer shall pay the City the amount of the subsidy in a single lump sum payment or as otherwise agreed to in writing by the parties.
- d. Statement of Need. Developer represents that without the business subsidy contemplated by this Agreement, Developer would not relocate its existing business to the City.



- e. Reporting. Developer shall provide reports to the City as required by Minnesota Statutes section 116J.994, subdivision 7, on forms provided by the City.

11. Miscellaneous.

- a. Invalidity of Any Section. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- b. Written Amendments Only. The action or inaction of the City or the Developer shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties, and approved by the City Council. The City's or the Developer's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- c. Compliance with Laws and Regulations. If the City determines that the site plan does not comply with all City, State and Federal laws and regulations, the City may, at its option, refuse to allow any construction or development work on the Subject Property until the Developer does comply. Upon the City's demand Developer shall cease work until there is compliance.
- d. Mailbox Locations. If the Developer desires to construct a mailbox within the public right of way, the Developer agrees that the placement of a mailbox along public streets is subject to the approval by the Postmaster. Utility locates will be necessary.
- e. Boulevard and Wetland Restoration. The Developer shall be responsible for the cost of restoring all areas disturbed by the development grading operation in accordance with the approved Grading and Erosion Control plan. The Developer shall be responsible for the cost of cleaning any soil, earth, or debris from the wetlands within and adjacent to this Subject Property resulting from grading performed in the development of the Subject Property.
- f. Construction, Hours and Entrance Signs. The City restricts construction and delivery hours to Monday through Friday 7:00 a.m. to 9:00 p.m., weekends and holidays, 8:00 a.m. to 8:00 p.m. The Developer is required to provide a sign at each entrance point stating delivery and construction operation hours. Said signs are not to exceed 80 square feet in size and must be clearly visible at all times during the construction period.
- g. Construction Site Maintenance. The Developer shall adhere to all of the City ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc. The City reserves the



right to withhold permits, inspections, or certificates of occupancy to correct violations relating to construction site maintenance.

- h. Estimated Cost. It is understood and agreed that cost amounts set forth in this Agreement as to Required Private Improvements, unless qualified as fixed amounts, are estimated. The Developer agrees to pay the entire cost of said improvements including interest, engineering and legal fees related thereto.
- i. Plat Approval Expenses. Not applicable.
- j. Reimbursement to the City. The Developer agrees to reimburse the City for all costs incurred by the City in defense or enforcement of this Agreement, or any portion thereof, including court costs and reasonable engineering and attorney's fees.
- k. Certificate of Occupancy. The term "Certificate of Occupancy" as used in this Agreement shall be defined as a document issued by the City's Building Official, which authorizes the structure to be used for its intended purposes.
- l. Notices. Required notices shall be in writing, and shall be either hand delivered to the Parties, its employees or agents, or mailed to them by certified or registered mail at the following address:

To Developer:

Gregory Swanson  
Swanees Trucking LLC  
10600 University Ave N.W., Suite 410  
Coon Rapids MN 55448

To The City:

Josi Wood  
City Administrator  
City of Isanti  
110 1<sup>st</sup> Ave. N.W.  
Isanti, MN 55040

*[The remainder of this page is intentionally left blank.]*

The Developer:

Swanees Trucking LLC

By: \_\_\_\_\_,

Gregory Swanson

Its: \_\_\_\_\_

STATE OF MINNESOTA            )  
  )ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
by Gregory Swanson, \_\_\_\_\_ of Swanees Trucking LLC., a limited liability  
company under the laws of the State of Minnesota on behalf of the company.

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

The City:

City OF ISANTI

By: \_\_\_\_\_  
Its: Mayor

Attest:

By: \_\_\_\_\_  
Its: City Clerk

STATE OF MINNESOTA                    )  
  )ss.  
COUNTY OF ISANTI                    )

The forgoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by Jeff Johnson and Katie Brooks, the Mayor and the City Clerk of the City of Isanti, a municipal corporation organized under the laws of the State of Minnesota on behalf of the City.

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

**This document drafted by:**  
Ratwik, Roszak & Maloney, P.A  
730 Second Ave. S., Suite 300  
Minneapolis, MN 55402



**EXHIBIT A**

**Fees Payable to the City**