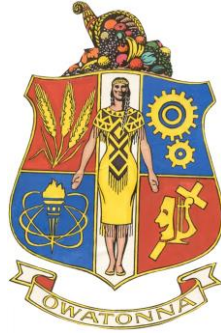


THE CITY OF



OWATONNA

Greg Kruschke
Community Development Manager

540 West Hills Circle
Owatonna, MN 55060-4794
Phone. (507) 774-7317
Fax: (507) 444-4394
Email:Greg.Kruschke@ci.owatonna.mn.us

DATE: March 10, 2021
TO: Mayor, City Council and City Administrator
FROM: Community Development Dept. – Greg Kruschke
SUBJECT: Development Agreement - Owatonna Public Schools

Purpose:

City Council to approve Resolution 43-21 approving the Development Agreement of the Owatonna Public Schools Addition.

Background:

See Attached.

Budget Impact:

None directly with the approval of the development agreement. There will be costs associated with the cooperative construction agreement with the round a bout.

Staff Recommendation:

Staff recommends approval of Resolution 43-21.

RESOLUTION NO. 41-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OWATONNA
APPROVING A DEVELOPMENT AGREEMENT
WITH INDEPENDENT SCHOOL DISTRICT NO. 761

BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota (herein called the "City") as follows:

That the City hereby approves a Development Agreement to be entered into with Independent School District No. 761 for the Owatonna Public Schools Addition and authorizes the Mayor and City Administrator to execute the Development Agreement on behalf of the City.

Passed and adopted this ____ day of _____, 2021, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of _____, 2021.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

DEVELOPMENT AGREEMENT

Project Name: Owatonna Public Schools Addition

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of _____, 2021, by Independent School District No. 761, a Minnesota municipal corporation, hereinafter referred to as "Developer," its successors and assigns, and the **CITY OF OWATONNA**, a municipal corporation, hereinafter referred to as "City”:

WITNESSETH:

WHEREAS, Developer wishes to plat one lot within Owatonna Public Schools Addition and legally described in the attached Exhibit B.

WHEREAS, Public improvements are needed to serve the proposed development as well as the surrounding neighborhood:

The above-described lot shall hereinafter be referred to as the “Property”. The public improvements to be made in accordance with this Development Agreement shall hereinafter be referred to as the “Project”, and

WHEREAS, Developer acknowledges the Project may impact the adjacent public infrastructure; and

WHEREAS, City agrees to allow the project to proceed subject to the execution of this Development Agreement.

03/10/2021

NOW, THEREFORE, Developer agrees to construct, develop and maintain the Property as follows:

1. **EXHIBIT A:** Developer agrees to the terms, covenants, agreements, and conditions set forth in Exhibit A.
2. **FUTURE RIGHT OF WAY:** The Developer agrees to deed the east one hundred (100) feet of the property commonly referred to as “Rose Street Property” to the City of Owatonna in exchange for cost participation in construction of the project to be further defined in the Cooperative Construction Agreement.
3. **PROJECT DEFINED.** The public improvements that comprise the Project shall include the following:
 - a. The installation of a roundabout at the intersection of 18th Street SE and Bixby Road. A separate agreement between Steele County, The City of Owatonna and ISD 761 will cover the cost share for the roundabout. In general, each party will pay 1/3 of the cost. Said agreement is attached as Exhibit C.
 - b. Installation of an island in 18th Street SE to facilitate the crossing of pedestrians including signage containing rectangular rapid flashing beacons triggered by push buttons.
 - c. Installation of a five (5) foot wide sidewalk along the north side of 18th Street SE from Hayes Avenue to the pedestrian crossing.
 - d. Installation of sidewalk along the south side of 18th Street SE from the westernmost driveway to the pedestrian crossing.
 - e. Restriping of 18th Street SE to allow for the required turn lanes and installation of the required no parking signage as required.
4. **PROJECT RESPONSIBILITIES:** In general, the Developer shall be responsible for completing all public improvements that comprise the project except as further described below:
 - a. Installation of the roundabout and associated improvements will be completed per the agreement attached as Exhibit C.
 - b. The Developer will reimburse Owatonna Public Utilities for the streetlight installation along 18th Street SE.
 - c. The Developer will willingly sign all necessary documents to allow for construction of the improvements or dedication of any right of way needed to complete the round about project.

5. **PROJECT INSPECTION AND APPROVAL:** The Developer agrees to the following provisions pertaining to the Project Construction, with the exception of 3a listed above which is subject to the Cooperative Construction Agreement:
 - a. The Developer will prepare all plans in conformance with the following:
 - i. City of Owatonna Standard specifications for construction
 - ii. City of Owatonna Stormwater ordinance and MPCA Construction Stormwater regulations
 - iii. MNDOT Standard Specifications for Construction and schedule of Materials control
 - iv. City Engineers Association of Minnesota
 - v. Americans with Disabilities Act
 - vi. Other standards as may apply
 - b. All plans and specifications must be approved by the City Engineer prior to construction commencing.
 - c. The Developer plans to construct these improvements in the 2022 construction season and will provide the neighbors and the City with a 30-day notice prior to construction commencing on the adjacent improvements.
 - d. The Developer will retain a Minnesota Licensed Engineer (PE) to oversee the construction and provide the City with a Minnesota PE certification that the project was completed in accordance with the plans and specifications.
 - e. The Developer is responsible to complete the construction for the Project within a reasonable time frame.
 - f. The Developer will provide as built drawings for the Project along with any associated documentation for materials etc.
 - g. Upon completion of all items the City will accept the Project as public improvements.

6. **PLANS FOR INDIVIDUAL LOT CONSTRUCTION:** Before issuing a grading permit for the lot, the Developer shall provide to the City the following information for approval of the grading plan for each individual lot:
 - a. Topography with 2-foot contour intervals for existing and proposed grades. Topography must be field verified.
 - b. Location of structures with finished floor elevations.
 - c. Retaining walls, type, height, and type of details.
 - d. Location of sewer, water, gas and electric lines.
 - e. Method of erosion control.
 - f. Detailed grading plans.
 - g. No construction or grading within any conservancy easement area.
 - h. No steepening of the natural slopes and walk out levels that meet natural grade.
 - i. Engineered design for retaining walls.
 - j. Wetland impacts
 - k. Preservation of flood plain

- 7. CONSTRUCTION OF OVERSIZED WATERMAIN/SANITARY SEWER SERVICE:** Oversizing is not required for this phase of development.
- 8. DEVELOPER'S RESPONSIBILITY FOR CODE VIOLATIONS:** In the event of a violation of City Code relating to use of the property construction thereon or failure to fulfill an obligation imposed upon the Developer pursuant to this Agreement, City shall give the developer written notice after which the Developer shall have 24 hours within which to cure such violation, provided however, City need not issue a building or occupancy permit for construction or occupancy on the Land while such a violation is continuing, unless waived in writing by City.
- 9. DEVELOPER'S RESPONSIBILITY FOR ITS CONTRACTORS:** Developer shall release, defend and indemnify City, its elected and appointed officials, employees and agents from and against any and all claims, demands, lawsuits, complaints, loss, costs (including attorneys' fees), damages and injunctions relating to any acts, failures to act, errors, omissions of Developer or Developer's consultants, contractors, subcontractors, suppliers and agents. Developer shall not be released from its responsibilities to release, defend and indemnify because of any inspection, review or approval by City.
- 10. GRADING, DRAINAGE, AND STORMWATER POLLUTION PREVENTION PLANS:**
- a. **FINAL GRADING AND DRAINAGE PLAN:** Prior to the release of a grading permit for the Property, Developer shall submit and obtain the City Engineer's written approval of a final grading and drainage plan for the Property. The final grading and drainage plan shall include all wetland information, including wetland boundaries, all Stormwater Facilities, such as water quality ponding areas, stormwater detention areas, and stormwater infiltration systems; and any other items required by the application for and release of a grading permit. All design calculations for storm water quality and quantity together with a drainage area map shall be submitted with the final grading and drainage plan. Prior to release of the bond, Developer shall certify to the City that the Stormwater Facilities conform to the final grading plan and that the Stormwater Facilities are functioning in accordance with the approved plans. Developer shall employ a licensed engineer. The licensed engineer or their agent shall monitor construction for conformance to the approved final grading plan and Stormwater Pollution Prevention Plan (SWPPP) (if required). The licensed engineer shall provide a final report to the City certifying completion of the grading in conformance the approved final grading plan and SWPPP.
 - b. **STORMWATER FACILITY CONSTRUCTION:** Permanent stormwater facilities are expected to comply with the MPCA Construction Stormwater Permit and the City of Owatonna Municipal Separate Storm Sewer Permit (MS4) permit.

- c. **STORMWATER POLLUTION PREVENTION PLAN (SWPPP):** Prior to issuance of a grading permit, Developer shall submit to the City Engineer and obtain City Engineer's written approval of Stormwater Pollution Prevention Plan (SWPPP) in accordance with City of Owatonna and MPCA standards. Prior to release of the grading bond, Developer shall complete implementation of the approved SWPPP.
- 11. OTHER AGENCY APPROVALS:** Prior to the issuance of any occupancy permit for any lot contained within the Property, the Developer shall submit to the City Engineer, copies of all necessary approvals issued by other agencies for the project. The agencies issuing such approvals include, but are not necessarily limited to, the following: the Minnesota Pollution Control Agency (Sanitary Extension and Construction Stormwater Permits), Minnesota Department of Health, etc.
- 12. PERFORMANCE STANDARDS:** Developer agrees that the Property will be operated in a manner meeting all applicable noise, vibration, dust and dirt, smoke, odor and glare laws and regulations. Developer further agrees that the facility upon the Property shall be operated, vibration, dust and dirt, smoke, odor and glare do not go beyond the Property boundary lines.
- 13. REMOVAL/SEALING OF EXISTING WELL AND SEPTIC SYSTEMS:** Prior to issuance by City of any permit for grading or building on the Property, Developer shall complete the demolition and removal of any existing septic systems and wells on the property and restore the property.
- 14. SEWER ACCESS CHARGE:** Developer acknowledges the City will collect a Sewer Access Charge in accordance with the ordinance in place at time of submittal of the grading permit.
- 15. WATER ACCESS CHARGE:** Developer acknowledges Owatonna Public Utilities will collect a water access charge based on the size of the water meter.
- 16. STREET AND UTILITY PLANS:** Prior to issuance by the City of any permit for the construction of utilities for the Property, Developer shall submit to the City Engineer, and obtain the City Engineer's written approval of plans for public roadway improvements, sanitary sewer, water and storm sewer. Plans for public infrastructures shall be of a plan view and profile at 40 scale on 11X17 plan sheets consistent with City standards. Upon completion of the project, the Developer shall provide an "As-Built" construction plan to the City Engineer in a format determined solely by the City Engineer within 30 days of completion.

Developer shall furnish to the City Engineer and receive the City Engineer's written approval of a surety equal to 125% of the cost of said improvements. A permit fee of five

percent of construction value shall be paid to City by Developer. The City will provide daily inspection, certify completion in conformance to approved plans and specifications and provide information to the design engineer in order to prepare record drawings. The design engineer shall provide construction staking and shall provide record drawings in accordance with City standards.

17. FLOOD PLAIN REGULATIONS: All permanent structures shall be constructed to meet all FEMA requirements for structures within a flood plain. The primary structure is not located within the flood plain. Any accessory structures that are located within the flood plain shall provide a Flood Elevation Certificate as required by FEMA. Further, any grading activities that occur within the flood plain shall provide a No Rise Certificate as defined by FEMA.

18. WETLAND PLAN: Developer will follow all Wetland Conservation Act requirements for development of the property.

19. FUTURE ASSESSMENTS: Developer agrees that the initial work does not complete the responsibility of the developer in perpetuity. The Developer will be responsible for their fair share of assessments in the future.

II. GENERAL PROVISIONS

1. **Waiver and Amendment.** This Agreement will not be altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by both parties.
2. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, beyond those specified in this agreement.
3. **Successors and Assigns.** This Agreement shall be binding upon the parties, their heirs, successors and/or assigns.
4. **Ordinances.** Except as otherwise expressly provided herein, the Owner and the City acknowledge that they will remain subject to all applicable City ordinances, policies, and other governmental regulations.
5. **Enforcements**
 - a. In the event of either party's default which is not cured within thirty (30) days after written notice thereof, describing with specificity the nature of the default asserted, to the defaulting party, the non-defaulting party or its third party beneficiaries shall have all rights and remedies available under law or equity with respect to the default either to restrain any violation or recover damages, or both. In addition, and without limitation, the parties shall have the following specific rights and remedies.

- i. With respect to matters that are capable of being corrected by the non-defaulting party, a non-defaulting party may, at its option enter upon the Property for the purpose of correcting the default and the non-defaulting party's reasonable costs in correcting same, plus interest as provided in Section C below, shall be paid by the defaulting party to the non-defaulting party immediately upon demand;
 - b. **Reimbursement.** Any amounts expended by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, together with interest provided in Section C below, shall be reimbursed or paid to the non-defaulting party.
 - c. **Interest.** Interest shall accrue on all amounts required to be reimbursed by the defaulting party to the non-defaulting party pursuant to Section B above at the rate of Prime Rate as established from time to time by U.S. Bank, Rochester, Minnesota, plus two percent per annum from the date of payment by the defaulting party until the date reimbursed in full with accrued interest.
 - d. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
 - e. **Failure to Enforce not a Waiver.** Failure of any party to enforce any provisions contained herein shall not be deemed a waiver of that party's rights to enforce such provision or any other provision in the event of a subsequent default.
6. **Severability.** Invalidation of any of the provisions in the Agreement by judgment or court order shall in no way effect any of the other provisions, which other provision shall remain in full force and effect.
7. **Force Majeure.** If either party fails to perform under this Agreement because of any delays caused by fire, flood, explosion, hurricane, earthquake, tornado, wind storm, heavy rain storm, unusually inclement weather, or other casualty, strikes, walk-outs, labor disputes, governmental laws or regulations, unavailability of labor or materials, contractor delays, or other similar causes beyond either parties control, performance by such party will be extended for the period of time attributable to such causes.
8. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota.

9. **Notices.** Any notice or election herein required or permitted to be given or serviced by any party hereto upon the other will be in writing and delivered in person, by facsimile, recognized overnight delivery service (i.e., Federal Express, UPS, etc.), or sent by United States certified or registered mail, postage prepaid, addressed as follows:

If to Owner: _____

Owatonna, MN 55060

If to the City: City of Owatonna
Attention: City Administrator
540 West Hills Circle
Owatonna, MN 55060

Any such communication, if mailed as provided herein, will be deemed to have been received on the expiration of four (4) business days after mailing. Any such communication, if sent by recognized overnight delivery service (i.e., Federal Express, UPS, etc.) will be deemed to have been received on the first business day after the communication is sent by such means. Any communication personally delivered or sent by facsimile will be deemed to have been given upon delivery thereof in the manner above provided on the date delivered. If the last day of a period within which either party is required or allowed to provide a notice, demand, offer, election, acceptance or other communication hereunder should fall upon a Saturday, Sunday or legal holiday then, the next full business day will be included in such period and such notice, offer, demand, request or communication may be made and given on such next full business day.

IN WITNESS WHEREOF, the parties to this Agreement have caused these presents to be executed as of the day and year aforesaid.

CITY OF OWATONNA

By _____
Thomas A. Kuntz
Its Mayor

By _____
Kris M. Busse
Its City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Thomas A. Kuntz and Kris M. Busse, respectively the Mayor and the City Administrator of the City of Owatonna, a Minnesota municipal corporation, on behalf of said corporation.

Notary Public

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____, of Independent School District No. 761, a Minnesota municipal corporation, on behalf of said corporation.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

03/10/2021

EXHIBIT A
DEVELOPMENT AGREEMENT
Between the City of Owatonna and ISD 761

- I. Prior to release of any grading permit for a lot contained within the Project, Developer shall submit to the City Engineer for approval two copies of a development plan (1" =100' scale) showing existing and proposed contours, proposed streets, and lot arrangements and size, minimum floor elevations on each lot, preliminary alignment and grades for sanitary sewer, water main, and storm sewer, 100-year flood plain contours, ponding areas, tributary areas to catch basins, arrows showing direction of storm water flow on all lots, location of walks, trails, and any property deeded to the City.
- II. If Developer fails to proceed in accordance with this Agreement within twelve (12) months of the date hereof, Developer, for itself, its successors, and assigns, shall not oppose the City's reconsideration and rescission of any Site Plan review and/or Guide Plan review approved in connection with this Agreement, thus restoring the status of the Property before the Development Agreement and all approvals listed above were approved.
- III. Provisions of this Agreement shall be binding upon and enforceable against the Property and the Owners, their successors and assigns of the Property.
- IV. Developer acknowledges that Developer is familiar with the requirements of Chapter 155 of the Code of City Ordinances, Subdivision and other applicable City ordinances affecting the development of the Property. Developer agrees to develop the Property in accordance with the requirements of all applicable City Code requirements and City Ordinances.
- V. As and for the Developer's contribution toward the City's cost to conduct construction observation and testing, Developer shall pay to City fees for engineering services an amount equal to five percent (5.00%) of the estimated cost of construction of the public improvements. As of the date of this Development Agreement, the estimated cost of construction of the public improvements is \$_(To be provided by Developer)_____.
- VI. The developer shall pay the actual cost of the street signs, if needed.
- VII. Developer shall submit detailed water main, fire protection, and emergency vehicle access plans to the Fire Marshal for review and approval. Developer shall follow all the recommendations of the Fire Marshal as approved by the City Council.
- VIII. Developer acknowledges that the performance of obligations of Developer contemplated in this agreement are special, unique, and of an extraordinary character, and that, in the event that Developer violates, or fails, or refuses to perform any covenant, condition, or provision made herein, City may be without an adequate remedy at law. Developer agrees, therefore, that in the event Developer violates, fails, or refuses to perform any covenant,

03/10/2021

condition, or provision made herein, City may, at its option, institute and prosecute an action to specifically enforce such covenant, withhold building permits or rescind or revoke any approvals granted by the City. No remedy conferred in this agreement is intended to be exclusive and each shall be cumulative and shall be in addition to every other remedy. The election of any one or more remedies shall not constitute a waiver of any other remedy.

- IX. Prior to building permit issuance, all fees associated with the building permit shall be paid to the Inspections Department.
- X. Before issuing a building permit for any lot, wells and septic systems shall be removed or properly abandoned as required by City Ordinance.
- XI. Prior to building permit issuance provide two copies of an approved survey or site plan (1" = 200 scale) showing proposed building location and all proposed streets, with approved street names, lot arrangements and property lines.
- XII. The City shall not issue any building permit for the construction of any building, structure, or improvement on the Property until all requirements listed in this Exhibit A have been satisfactorily addressed by Developer.
- XIII. No failure of the City to comply with any term, condition, covenant or agreement herein shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charges. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general fund or taxing powers of the City.
- XIV. Upon approval of the Development Agreement, the Developer shall sign the agreement and return to the City of Owatonna, along with recording fees to be recorded.
- XV. Prior to commencement of the project, Developer shall deliver to City a Subdivision Bond in the form and manner as attached as Exhibit D, from Kraus Anderson, as principal and the City of Owatonna as obligee in the sum of (125% of construction cost) _____ and no/100 (\$_____.00) Dollars.
- XVI. The City is hereby granted the option, but not the obligation, to complete or cause completion in whole or part of all of the Developer's obligations under this Agreement for which a bond, letter of credit, cash deposit or other security (hereinafter referred to as the "Security") is required if the Developer defaults with respect to any term or condition in this Agreement for which Security is required and fails to cure such default(s) within ten (10) days after receipt of written notice thereof from the City; provided however if the nature of the cure is such that it is not possible to complete the cure within ten (10) days, it shall be sufficient if the Developer has initiated and is diligently pursuing such cure. The Developer acknowledges that the City does not assume any obligations or duties of the Developer with respect to any such contract agreements unless the City shall agree in writing to do so.

The City may draw down on or make a claim against the Security, as appropriate, upon five (5) business day's notice to the Developer, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the obligations for which Security is required are not completed at least thirty (30) days prior to the expiration of the Security and if the Security has not then been renewed, replaced or otherwise extended beyond the expiration date, the City may also draw down or make a claim against the Security as appropriate. If the Security is drawn down on or a claim is made against the Security, the proceeds shall be used to cure the default(s) and to reimburse the City for all costs and expenses, including attorneys' fee, incurred by the City in enforcing this Agreement.

XVII. The Developer hereby grants the City, it's agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with this Agreement.

XVIII. This Agreement is a contract agreement between the City and the Developer. No provision of this Agreement inures to the benefit of any third person, including the public at large, so as to constitute any such person as a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

IN WITNESS WHEREOF, the parties to this Agreement have caused these presents to be executed as of the day and year aforesaid.

CITY OF OWATONNA

By _____
Thomas A. Kuntz
Its Mayor

By _____
Kris M. Busse
Its City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Thomas A. Kuntz and Kris M. Busse, respectively the Mayor and the City Administrator of the City of Owatonna, a Minnesota municipal corporation, on behalf of said corporation.

Notary Public

INDEPENDENT SCHOOL DISTRICT NO. 761

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____, of _____, a _____, on behalf of the company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

03/10/2021