
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

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DAVID B. GATES
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
• ROGER C. MILLER
RETIRED

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◊ALSO ADMITTED IN OKLAHOMA

MEMO

TO: Sunfish Lake Mayor, Councilmembers and Consultants
FROM: Timothy J. Kuntz, City Attorney
DATE: February 26, 2014
RE: City of Sunfish Lake Project 2014-01 Street Improvement Project
Waiver of Assessment Appeal Agreement with Devee, LLC
March 4, 2014 Council Meeting; Agenda Item 8(c)

Section 1. Background. As part of the 2014-01 Street Improvement Project, property owned by Devee, LLC identified as Dakota County Tax Parcel Identification No. 38-03800-13-010 and legally identified on Exhibit A of the attached Waiver Agreement (the "Property") is subject to the special assessments proposed as part of the Project. The original proposed assessment was \$32,500. A dispute arose between Devee, LLC and the City over the proposal. The Property is vacant. The issues surrounding the dispute involve the following:

- Number of units that could be developed.
- Cost of new road to serve future units.
- Timing of future development.
- Whether a present benefit exists in light of the uncertain timing of future development.
- Whether the City's appraisal recognized the subdivision of additional units.

Devee, LLC and its attorney and the Mayor and City Engineer met to exchange information and outline the negotiations. Subject to approval by the Council, the resolution of the dispute is that the City would be willing to specially assess the Property at an amount not to exceed \$19,500. Devee, LLC would be willing to waive, at an amount not to exceed \$19,500, its right to appeal the City assessment of the Project against the Property.

The attached *Waiver Of Assessment Appeal Agreement At The Amount Of \$19,500 Relating To Dakota County Tax Parcel Identification No. 38-03800-13-010 For The 2014-01 Street Improvement Project* ("Waiver Agreement") sets forth the following agreement between the parties:

1. Deveen, LLC waives any and all procedural and substantive objections to the special assessment of \$19,500 against the Property. Deveen, LLC waives all notice and hearing requirements under Minn. Stat. § 429.031 with respect to the City ordering the Project or awarding a contract for the Project.
2. Deveen, LLC waives all notice and hearing requirements under Minn. Stat. § 429.061 with respect to the imposition of the special assessment against the Property at an amount not to exceed \$19,500.
3. With respect to the special assessment of \$19,500 against the Property for the Project, Deveen, LLC waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081.
4. The City agrees to fix and limit the special assessment against the Property in the amount of \$19,500.
5. The City agrees that the interest rate on the special assessment will not be more than 2% above the interest rate that the City pays on its bonds.
6. The City agrees that the principal amount of the assessment will be spread over ten (10) year payable by equal annual installments of principal together with interest on the unpaid principal balance.

Section 2. Council Action. At the March 4, 2014, Council meeting, the Council will be asked to consider the attached *Resolution Approving a Waiver Of Assessment Appeal Agreement At The Amount Of \$19,500 Relating To Dakota County Tax Parcel Identification No. 38-03800-13-010 For The 2014-01 Street Improvement Project.*

The Mayor, City Attorney and City Engineer recommend approval of the *Waiver Of Assessment Appeal Agreement At The Amount Of \$19,500 Relating To Dakota County Tax Parcel Identification No. 38-03800-13-010 For The 2014-01 Street Improvement Project.*

Approval of the Agreement does not increase any other landowner's special assessment. The difference between the \$32,500 and the \$19,500 will be paid by the City as part of the Project costs.

Attachments

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 14_____

**RESOLUTION APPROVING A WAIVER OF ASSESSMENT APPEAL AGREEMENT
AT THE AMOUNT OF \$19,500 RELATING TO DAKOTA COUNTY
TAX PARCEL IDENTIFICATION NO. 38-03800-13-010 FOR THE
2014-01 STREET IMPROVEMENT PROJECT**

WHEREAS, the City of Sunfish Lake (“City”) is considering whether to order and construct the 2014-01 Street Improvement Project (“Project”). The Project involves the bituminous reclamation and bituminous pavement surfacing to extend the life of Windy Hill Road, Windy Hill Court and the western half of Angell Road and related culvert work, shouldering, roadside swale grading and turf restoration.

WHEREAS, on January 7, 2014, the City approved the preliminary financing plan and preliminary assessment policy for the Project. The Project is proposed to be specially assessed against buildable tax parcels either abutting or served by the improvements.

WHEREAS, Property owned by Devee, LLC identified as Dakota County Tax Parcel Identification No. 38-03800-13-010 and legally identified on Exhibit A of the attached Waiver Agreement (the “Property”) is subject to the special assessments proposed as part of the Project.

WHEREAS, through negotiations between the City and Devee, LLC, the City is willing to specially assess the Property at an amount not to exceed \$19,500. Devee, LLC, in turn, is willing to waive, at an amount not to exceed \$19,500, its right to appeal the City assessment of the Project against the Property.

WHEREAS, the attached *Waiver Of Assessment Appeal Agreement At The Amount Of \$19,500 Relating To Dakota County Tax Parcel Identification No. 38-03800-13-010 For The 2014-01 Street Improvement Project* (“Waiver Agreement”) sets forth the following agreement between the parties:

1. Devee, LLC waives any and all procedural and substantive objections to the special assessment of \$19,500 against the Property. Devee, LLC waives all notice and hearing requirements under Minn. Stat. § 429.031 with respect to the City ordering the Project or awarding a contract for the Project.
2. Devee, LLC waives all notice and hearing requirements under Minn. Stat. § 429.061 with respect to the imposition of the special assessment against the Property at an amount not to exceed \$19,500.

3. With respect to the special assessment of \$19,500 against the Property for the Project, Devee, LLC waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081.
4. The City agrees to fix and limit the special assessment against the Property in the amount of \$19,500.
5. The City agrees that the interest rate on the special assessment will not be more than 2% above the interest rate that the City pays on its bonds.
6. The City agrees that the principal amount of the assessment will be spread over ten (10) year payable by equal annual installments of principal together with interest on the unpaid principal balance.

NOW, THEREFORE, BE IT RESOLVED, as follows:

- 1.) The Council hereby approves the attached ***Waiver Of Assessment Appeal Agreement At The Amount Of \$19,500 Relating To Dakota County Tax Parcel Identification No. 38-03800-13-010 For The 2014-01 Street Improvement Project.***
- 2.) The Council authorizes the Mayor and City Clerk to execute the attached Waiver Agreement on behalf of the City.

Passed this 4th day of March, 2014.

Molly Park, Mayor

ATTEST:

Catherine Iago, City Clerk

CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA

WAIVER OF ASSESSMENT APPEAL AGREEMENT
AT THE AMOUNT OF \$19,500 RELATING TO
DAKOTA COUNTY TAX PARCEL IDENTIFICATION NO. 38-03800-13-010
FOR THE 2014-01 STREET IMPROVEMENT PROJECT

THIS WAIVER OF ASSESSEMENT APPEAL AGREEMENT (Agreement) is made, entered into and effective this 4th day of March 2014, by and between the City of Sunfish Lake, a Minnesota municipal corporation (hereafter referred to as “City”) and Devee, LLC, a Minnesota limited liability company (hereafter referred to as “Landowner”). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

WHEREAS, the City Council of Sunfish Lake (“City Council”) is considering whether to order and construct the 2014-01 Street Improvement Project (“Project”). The Project involves the bituminous reclamation and bituminous pavement surfacing to extend the life of Windy Hill Road, Windy Hill Court and the western half of Angell Road and related culvert work, shouldering, roadside swale grading and turf restoration.

WHEREAS, on April 2, 2013, the City Council of Sunfish Lake (“City Council”) directed WSB & Associates, Inc., the City’s consulting engineer, to prepare a feasibility study to review the condition of the existing bituminous street surface and local drainage for the best rehabilitation measures for Windy Hill Road, Windy Hill Court and the western half of Angell Road and related culvert work, shouldering, roadside swale grading and turf restoration in the City of Sunfish Lake, pursuant to Minnesota Statutes, Chapter 429 (the “Feasibility Report”).

WHEREAS, on January 7, 2014, the Feasibility Report was received, approved and ratified by the City Council of Sunfish Lake.

WHEREAS, on January 7, 2014, the City Council approved the preliminary financing plan and preliminary assessment policy for the Project. The Project is proposed to be specially assessed against buildable tax parcels either abutting, or served by the improvements.

WHEREAS, Landowner owns fee title in real property in the City of Sunfish Lake, Dakota County, Minnesota, legally described on the attached Exhibit A (hereafter referred to as the “Property”).

WHEREAS, The Property is legally described as two lots.

WHEREAS, The Property is subject to the special assessments proposed as part of the Project.

WHEREAS, The City and Landowner have discussed the amount of the special assessment that the City proposes to levy against the Property and based on an analysis and appraisal provided by Metzen Appraisals, there is a dispute between the City and the Landowner concerning the amount of benefit to the Property resulting from the Project.

WHEREAS, by this Agreement, the parties desire to resolve any disputes between them concerning the proposed special assessments.

WHEREAS, through negotiations between the City and Landowner, the City is willing to specially assess the Property at an amount not to exceed \$19,500.

WHEREAS, Landowner is willing to waive, at an amount not to exceed \$19,500, its right to appeal the City assessment of the Project against the Property.

WHEREAS, as a condition of fixing and limiting the proposed special assessment against the Property, Landowner agrees to execute this Agreement.

WHEREAS, Landowner warrants and represents that, as of the date of this Agreement, the undersigned Landowner is the fee title owner of the Property and has sufficient right, title and interest in the Property to make this Agreement and cause the same to be binding upon the Property.

WHEREAS, the City has explained the nature and scope of the Project with the undersigned Landowner and made available preliminary assessment information and analysis concerning the benefit of the Project to the Property.

WHEREAS, the undersigned Landowner has examined engineering data and calculations relating to the Project.

WHEREAS, the undersigned Landowner, after reviewing all the information about the Project and the information related to assessment methodology, has determined to waive its rights to appeal assessments at an amount not to exceed \$19,500 against the Property for such Project improvements.

NOW, THEREFORE, the undersigned Landowner recognizes, acknowledges, and knowingly and voluntarily agrees that:

1. Landowner waives any and all procedural and substantive objections to the special assessment of \$19,500 against the Property. Landowner hereby waives all notice and hearing requirements under Minn. Stat. § 429.031 with respect to the City ordering the Project or awarding a contract for the Project.

Landowner hereby waives all notice and hearing requirements under Minn. Stat. § 429.061 with respect to the imposition of the special assessment against the Property at an amount not to exceed \$19,500.

2. With respect to the special assessment of \$19,500 against the Property for the Project, Landowner waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081.
3. This Agreement shall be continuing and irrevocable and is made knowingly and voluntarily by the undersigned Landowner.
4. All terms and conditions of this Agreement shall run with the Property herein described, and shall be binding upon the Property and the successors and assigns of the undersigned Landowner. This Agreement shall also apply to any after-acquired title of Landowner in the Property.
5. City may record this Agreement with the Dakota County Recorder.

NOW, THEREFORE, for and in consideration of the covenants and agreements made by Landowner herein, the City agrees to fix and limit the special assessment to \$19,500 for the Property.

The City agrees to use its best efforts to complete the Project in 2014.

THE CITY AND LANDOWNER FURTHER AGREE AS FOLLOWS:

- a. That the principal amount of the special assessment for the Project will be equally amortized over ten (10) annual installments.
- b. The first principal installment will be due and payable in the calendar year 2015.
- c. The interest on the special assessment will begin to accrue from and after the date of levy. It is anticipated that the assessment will be levied in September or October 2014. The interest rate on the special assessment will not be more than 2.0% above the bond interest rate charged the City.
- d. Landowner will have thirty (30) days after levy of the special assessments to pre-pay the special assessment without any interest.

- e. In any calendar year, Landowner will be able to payoff the special assessment in full by making a payment equal to the principal balance owed together with interest through December 31 of the year of payoff.

The City and Landowner further agree that the recitals contained in this Agreement are an integral part of this Agreement.

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IN WITNESS WHEREOF, the Landowner and the City have executed this Agreement effective on the 4th day of March, 2014.

CITY OF SUNFISH LAKE

By: _____
Molly Park, Mayor

ATTEST:

Catherine Iago, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 4th day of March, 2014, before me a Notary Public within and for said County, personally appeared Molly Park and Catherine Iago, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Sunfish Lake, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER
DEVEE, LLC**

By: _____
Donald V. Mager
Its Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this _____ day of _____, 2014, before me a Notary Public within and for said County, personally appeared Donald V. Mager, to me personally known, who being by me duly sworn did say that he is the Chief Manager of Devee, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed on behalf of Devee, LLC by authority of the Boards of Governors of Devee, LLC.

Notary Public

This Instrument Was Drafted By:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**After Recording, Please Return This
Instrument To:**
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

The following real property located in the City of Sunfish Lake, County of Dakota, State of Minnesota:

Lots 12 and 13 in Section 32, all in Auditor's Subdivision No. 41 all in Township 28 North, Range 22 West, excepting therefrom that part thereof lying within Minnesota Department of Transportation Right of Way, (Plat No's 19-63 and 19-64). Except for the NSP Easement, Document No. 6598855, in the County of Dakota, State of Minnesota.

Dakota County Tax Parcel Identification No.: 38-03800-13-010