




HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

AGENDA

**Thursday, September 26, 2024 at 5:00 p.m.
Council Chambers
Governmental Services Building**

- 1. ROLL CALL**
- 2. MINUTES** – Approval or correction
 - 2.1 April 25, 2024 HEDA Minutes
- 3. MOTIONS**
- 4. RESOLUTIONS**
 - A. 2024-169 Resolution Approving a A Development Contract Amongst Bill & Irv's Properties, Inc., The City Of Hermantown And The Hermantown Economic Development Authority
 - B. 2024-171 Resolution Approving A Development Contract Amongst Hawline Development LLC, The City Of Hermantown And The Hermantown Economic Development Authority
- 5. WORK SESSION**
 - 5.1** Strategic Plan Update
 - 5.2** Comprehensive Plan Discussion
- 6. RECESS**

HEDA MEETING DATE:		September, 26 2024	
TO:	HEDA Commissioners		
FROM:	Chad Ronchetti, Economic Development Director		
SUBJECT:	Hawklane Business Park		

RESOLUTION: 2024-02H **WORK SESSION** **OTHER:** Add Name

REQUESTED ACTION

Approve several resolutions to fund infrastructure improvements at the corner of Hwy 53 and Lavaque Bypass.

BACKGROUND

Attached are a series of Resolutions related to the property at Hwy 53 and Lavaque Bypass, The City has been in discussion with the owners of this land for over 2 years to develop it in the highest and best use. The owners have several businesses who have expressed interest in locating at this site, but all of them require infrastructure (i.e. roads & utilities.) Because this site is considered a brownfield and was previously listed as an EPA Superfund site there is a desire and opportunity to develop this site.

City staff have prepared a MN Dept of Employment and Economic Development (DEED) Grant. The grant is a Business Development Public Infrastructure (BDPI) grant with a maximum amount of \$2 million. Some of the companies interested in this site would be ineligible expenses. Therefore, we have worked with the landowners to identify land that would be exclude from the business park where the ineligible businesses would be located. This splitting of the land then requires separate feasibility studies and public hearings, and separate development agreements.

The total cost of all of the infrastructure is approximately \$5.8 million. Of that amount \$2 million would be provided by the State Grant, just over \$1 million would be from the City for water improvements using sales tax revenue, and the balance of over \$2 million from the land owners through assessments.

Resolutions:

Bill & Irv’s parcel: The area to be excluded from the business park is called the Bill & Irv’s property and would be excluded from the park and ineligible for grant reimbursement. Business that would be included in this area would include a retail store related to agriculture, and some wholesale building supply distributors with potential for showrooms.

Hermantown Economic Development Authority

HEDA’s mission is to intentionally lead economic growth, creating a vibrant and prosperous community.

Resolution 2024-168 accepts the feasibility report for the property identified as the Bill and Irv's property and is not included in the Hawklime Business Park and the cost that would not be eligible for reimbursement under the grant. The Council is asked to accept the report and call for a public hearing as part of the statutory assessment process. The Feasibility Report is included in the packet.

Resolution 2024-169 is a development agreement with the owners in which they agree to cover their portion of the cost of the infrastructure and be assessed over 15 years.

Hawklime Business Park

Resolution 2024-170 accepts the feasibility report for the property identified as the Hawklime Business Park and the cost identified in the feasibility report would be eligible for reimbursement under the grant. Again, the Council is asked to accept the report and call for a public hearing as part of the statutory assessment process. The Feasibility Report is included in the packet.

Resolution 2024-171 is a development agreement with the owners in which they agree to cover their portion of the cost of the infrastructure and be assessed over 15 years. Their payment of the assessment would serve as the match for the grant.

Resolution 2024-172 authorizes the City Administrator and Assistant City Administrator to complete and submit a grant application to MN DEED for a Business Development Public Infrastructure Grant. We are applying for the maximum of \$2 million. The State requires the City to demonstrate that the City has the necessary match. Therefore, we will reserve \$3.8 million in the water fund to show the match. The actual money will come from the owner through the assessment process and the City's use of sales tax.

If all of these are approved and the City receives the grant, the Council will be asked to approve the development of final plans and specifications with the intent to construct the infrastructure in 2025.

SOURCE OF FUNDS (if applicable)

MN DEED State BDPI Grant
Assessments via a development agreements
Sales Tax for water improvements.

ATTACHMENTS

Resolutions
Feasibility Report – Bill & Irv's Properties
Development Agreement for Bill & Irv's Properties
Feasibility Report – Hawklime Business Park
Development Agreement for Hawklime Business Park

Hermantown Economic Development Authority

HEDA's mission is to intentionally lead economic growth, creating a vibrant and prosperous community.

Hermantown Economic Development Authority
Resolution No. 2024-01H

HEDA Commissioner _____ introduced the following resolution and moved its adoption:

**RESOLUTION APPROVING A DEVELOPMENT CONTRACT
AMONGST BILL & IRV’S PROPERTIES, INC., THE CITY OF HERMANTOWN AND
THE HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY**

WHEREAS, Bill & Irv’s Properties, Inc. (“Developer”) is the owner of certain property on the north side of Trunk Highway 53 (“Property”) in the City of Hermantown (“City”); and

WHEREAS, Developer desires to create lots for the development of various businesses on the Property (“Project”); and

WHEREAS, the Hermantown Economic Development Authority (“HEDA”) has determined that the interests of the residents of the City and the well-being and quality of life in the City will be enhanced by nurturing and encouraging the redevelopment of the Property; and

WHEREAS, in order to develop the Project, water improvements, sewer improvements, road improvements and stormwater improvements (“Infrastructure Improvements”) need to be constructed on the Property; and

WHEREAS, HEDA believes that it is more efficient and cost effective to have City construct the Infrastructure Improvements and pay for a portion of the waterline extension if Developer pays the remaining costs through a special assessment levied on the Property; and

WHEREAS, the Attorney for HEDA has prepared a Development Contract (“Development Contract”) with respect to the matters set forth above attached hereto as Exhibit A; and

WHEREAS, the HEDA Commissioners have reviewed the Development Contract and hereby believe that it is in the best interests of HEDA that the Development Contract be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The Development Contract substantially in the form of the one attached hereto as Exhibit A is hereby approved.
2. The President and Secretary of HEDA are hereby authorized and directed to execute and deliver the Development Contract on behalf of HEDA.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this _____ day of _____, 2024.

HEDA Administrator

**CITY OF HERMANTOWN
DEVELOPMENT CONTRACT**

BY AND AMONG

BILL & IRV'S PROPERTIES, INC.

AND

CITY OF HERMANTOWN

AND

**HERMANTOWN ECONOMIC
DEVELOPMENT AUTHORITY**

Dated as of the _____ day of _____, 2024

This document was drafted by:

Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue, Suite 101
Duluth, Minnesota 55802
(218) 625-8460

DEVELOPMENT CONTRACT

THIS DEVELOPMENT CONTRACT (“Agreement”), made on or as of the ____ day of _____, 2024, by and among the **City of Hermantown**, a statutory city organized under the laws of the State of Minnesota, (“City”) the **Hermantown Economic Development Authority**, an economic development authority under the laws of the State of Minnesota, (“HEDA”) and **Bill & Irv's Properties, Inc.**, a corporation organized under the laws of the State of Minnesota, (“Owner”) is in response to the following situation:

- A. Owner owns the property located in the City and identified as “Bill & Irvs” depicted on Exhibit A attached hereto (“Owner’s Property”).
- B. City, HEDA and Owner desire that development occur on Owner’s Property.
- C. A road, waterline extension, sewer main extension and stormwater improvements (collectively “Infrastructure Improvements”) need to be constructed in order for development to occur on Owner’s Property.
- D. City is willing to construct the Infrastructure Improvements and pay the portion of the cost of the Infrastructure Improvements related to the waterline extension if Owner agrees to pay for the costs of the Infrastructure Improvements not paid for by the City through a special assessment levied on Owner’s Property.
- E. This Agreement is intended to cover the items set forth in paragraph D above.

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I **DEFINITIONS**

Unless the context requires otherwise, when used in this Agreement the terms and phrases listed in this Article shall have the following meanings:

- 1.1 “Approval” or “Endorsed” shall, if by City, mean the appropriate approval at the appropriate level of government which shall not be unreasonably withheld or, if by Owner, the approval by a representative of Owner, which shall not be unreasonably withheld.
- 1.2 “Approved City Plans and Specifications” means the plans and specifications for the Infrastructure Improvements that have been approved in writing by the City Engineer.
- 1.3 “Business Subsidy Agreement” means that a Business Subsidy Agreement containing terms and provisions acceptable to both City and Owner.

1.4 “Community Development Director” means the person from time to time designated as the Community Development Director for the City.

1.5 “City Engineer” shall mean the person or firm from time to time designated by the City as its City Engineer. At this time, the City Engineer is David Bolf of Northland Consulting Engineers L.L.P.

1.6 “Feasibility Report” shall mean the Preliminary Engineering Report and Feasibility Study dated August 27, 2024 prepared by the City Engineer for the Infrastructure Improvements.

1.7 “Infrastructure Improvements” means the Water Improvements, Sewer Improvements, Road Improvements and Stormwater Improvements constructed within Owner’s Property.

1.8 “Owner’s Assessment” means the assessment more fully described in Section 2.1 hereof payable by Owner against Owner’s Property with regard to the Infrastructure Improvements.

1.9 “Owner’s Property” means the real property identified as “Bill & Irvs” depicted on Exhibit A attached hereto.

1.10 “Road Improvements” means the road improvements described in the Feasibility Report.

1.11 “Sewer Improvements” means the sanitary sewer improvements described in the Feasibility Report.

1.12 “State” means the State of Minnesota.

1.13 “Stormwater Certificate” means the Stormwater Certificate to be issued to Owner by the Community Development Director.

1.14 “Stormwater Improvements” means the entire stormwater control and disposal system for Owner’s Property described in the Feasibility Report.

1.15 “Water Improvements” means the extensions to the City water system described in the Feasibility Report.

1.16 “Water Improvement Costs” shall mean the costs for construction the Water Improvements described in the Feasibility Report.

1.17 “Water Improvements Payment” means the payment required to be made by City pursuant to Section 3.2 hereof. The Water Improvements Payment will not exceed One Hundred Sixty-six Thousand Three Hundred Fifty-three and No/100 Dollars (\$166,353.00) without the prior approval of City.

ARTICLE II
REPRESENTATIONS AND WARRANTIES
AND COVENANTS BY OWNER

Owner represents and warrants, covenants and agrees as follows:

2.1 Owner agrees to pay an assessment (“Owner’s Assessment”) against Owner’s Property for the costs (hard costs and soft costs) incurred by City in connection with the construction of the Sewer Improvements, Stormwater Improvements and Road Improvements. City agrees that the amount assessed against Owner’s Property shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4%) per annum, from and after December 31 of the year in which the construction of the Infrastructure Improvements is completed in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year in which the construction of the Infrastructure Improvements is completed, collectible with such taxes during the subsequent year. Owner may at any time prior to December 31 of the year in which the construction of the Infrastructure Improvements is completed, pay the entire Owner’s Assessment without interest, to the Hermantown City Clerk. No interest shall be charged if the entire assessment is paid by December 31 of the year following the year in which the construction of the Infrastructure Improvements is complete. Owner may at any time thereafter pay to the Hermantown City Clerk the entire amount of Owner’s Assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Any such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.

2.2 Pursuant to Minnesota Statutes §§429.081 and 462.3531, Owner hereby waives any objection to any irregularity with regard to assessment for the Infrastructure Improvements, any claim that the amount levied against Owner’s Property is excessive and all rights to appeal the assessment levied granted Owner by Minnesota Statute §429.081. Owner acknowledges that the appeal rights granted by Minnesota Statutes §429.081 are Owner’s exclusive method of appeal of the special assessment that will be levied against Owner’s Property for the Infrastructure Improvements and by executing this Agreement, Owner will be forever and irrevocably waiving Owner’s right to appeal.

2.3 Owner hereby further waives the requirement of hearings and notices of any hearings and objections to the assessment proceedings, the bidding and letting of contracts for the Infrastructure Improvements and the calculation and assessment of the Infrastructure Improvements’ costs.

2.4 This Agreement will be filed for record with the appropriate St. Louis County land title recording office to reflect the fact that this Agreement is binding upon Owner and the heirs, successors and assigns of Owner and “runs with the land.”

2.5 Owner understands and agrees not to apply for deferral of the assessment payable with respect to the Infrastructure Improvements and that the City will not grant or approve any deferrals of any assessments payable with respect to the Infrastructure Improvements.

2.6 Owner shall pay to City's utility department all applicable water and sewer hook-up charges prior to obtaining a building permit for any development on Owner's Property.

2.7 Owner and its successors and assigns must at its cost and expense, maintain and repair the Stormwater System so that it continues to perform its designed storm water functions. Owner and its successors and assigns shall keep records for up to six years, or as required under applicable law, of inspection, maintenance and monitoring of the Stormwater System and provide such records to the City within thirty (30) days after receipt of written notice. In the event that Owner or its successors and assigns fails to repair and/or maintain the Stormwater System in accordance with applicable codes, regulations, laws, and statutes, then in that event, the City may, following sixty (60) days prior written notice to all of the then owners of Owner's Property, perform the required repairs or maintenance work on the Stormwater System and charge the reasonable costs of such work to Owner's Property in accordance with the provisions of Minnesota Statutes Section 429.021, subd. 1(2) and the special assessment procedures of Chapter 429 of Minnesota Statutes. In the event of an uncured default for which the City elects to perform the required repairs and maintenance work on the Stormwater System, the City shall do so strictly in accordance with all laws, rules and regulations applicable to Owner, the Stormwater Improvements, and Owner's Property, including without limitation, all applicable stormwater regulations.

2.8 Owner shall retain the ownership of the entire Stormwater System and shall be responsible for the repair and maintenance of the entire Stormwater System. City shall not be responsible for the maintenance and repair of any part of the Stormwater System, including without limitation any ponds or outlet structures located on Owner's Property. Owner hereby grants a permanent license to City for access to any portion of Stormwater System for the purposes of City performing testing and monitoring of the Stormwater System and performing maintenance and repairs permitted to be made by City under this Section.

2.9 The agreement by the parties set forth under this Article II shall constitute a Development Agreement as that term is used in Minnesota Statutes § 462.3531.

2.10 Owner agrees and binds itself to provide free of cost to City all necessary rights-of-way and/or easements required to construct all Infrastructure Improvements described in this Agreement, which may include, but are not limited to, (a) water; (b) sewer; (c) streets; (d) sidewalks and (e) storm drainage.

ARTICLE III
CONSTRUCTION OF
INFRASTRUCTURE IMPROVEMENTS

3.1. City shall prepare plans and specifications for the Infrastructure Improvements and shall submit them to Owner for approval, which approval shall not be unreasonably withheld and shall be deemed granted if the Owner fails to respond in writing with specific revisions within ten (10) days after receipt of the plans and specifications. After approval of the plans and specifications for the Infrastructure Improvements, City shall cause the Infrastructure Improvements to be constructed.

3.2. Upon completion of the construction of the Infrastructure Improvements, City shall pay the cost of the Water Improvements (hard costs and soft costs) up to a maximum of \$_____ and then create an assessment against Owner's Property for the balance of the cost of the Infrastructure Improvements.

3.3. The costs incurred in connection with the construction of the Infrastructure Improvements shall be allocated amongst the Water Improvements, Sewer Improvements, Road Improvements and Stormwater Improvements as shown on the Feasibility Report subject to the calculation of final costs from each of the improvements based on good engineering standards and practices. Without limiting the foregoing, the City Engineer intends to prorate total engineering costs, common excavation that benefits all of the improvement categories and soil correction amongst the four improvement categories based on the estimates set forth in the Feasibility Report as follows: (a) 67% Road Improvements; (b) 12% Sewer Improvements; (c) 12% Water Improvements; and (d) 9% Stormwater Improvements.

ARTICLE IV
LIMITATIONS ON AGREEMENT

The provisions of this Agreement shall only be applicable to the construction and funding of the Infrastructure Improvements. The construction of any building on Owner's Property is subject to compliance with all other requirements, including zoning, business permitting and environmental matters.

ARTICLE V
ASSIGNMENT AND TRANSFER

5.1. **Representation as to Development.** Owner represents and agrees that its undertakings pursuant to the Agreement, are, and will be, for the purpose of redevelopment of Owner's Property and not for speculation in land holding. Owner further recognizes that, in view of (i) the importance of the development of the Infrastructure Improvements to the general welfare of the community; and (ii) the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Owner is of particular concern to the community and City (iii) that

City is entering into the Agreement with Owner, and, in so doing, is willing to accept and rely on Owner for the faithful performance of all undertakings and covenants hereby by Owner to be performed, that the provisions of this Article V are being included in this Agreement.

5.2. Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons, Owner represents and agrees that, prior to the completion of the construction of the Infrastructure Improvements:

5.2.1. Except for the granting of easements necessary for the Infrastructure Improvements and except as permitted by Sections 5.2.1 and 5.3, and except only by way of security for, and only for, the purpose of obtaining financing necessary to enable Owner, to perform its obligations under this Agreement or any other purpose authorized by the Agreement, Owner (except as so authorized) has not made or created, and that it will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease, or any trust or power, or transfer in any other mode or form of, or with respect to, the Agreement or Owner's Property or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of City, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary set forth in this Agreement, a transfer to (a) a related entity under control of Owner or an affiliate of Owner or (b) an entity that acquires all or substantially all of the assets of Owner, shall not be in violation hereof or require the consent of the City or compliance with Section 5.2.2, but such a transfer shall be noticed to City in advance of its occurrence.

5.2.2. City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any approval for a transfer that requires the City's consent, the following:

5.2.2.1. Any proposed transferee shall have the qualifications and financial capability, as reasonably determined by City, necessary and adequate to fulfill the obligations undertaken in the Agreement by Owner (or, in the event the transfer is of or relates to part of Owner's Property, such obligations to the extent that they relate to such part).

5.2.2.2. Any proposed transferee, by instrument in writing reasonably satisfactory to City and in form recordable in the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City expressly assume all of the obligations of Owner under the Agreement and agree to be subject to all the conditions and restrictions to which Owner is subject (or, in the event the transfer is of or relates to part of Owner's Property, such obligations, conditions and restrictions to the extent that they relate to such part).

ARTICLE VI
NO CLAIMS

Owner represents and warrants to City that neither Owner nor any agent, subcontractor or any other party affiliated with Owner has any existing claims or causes of action against City in connection with this Agreement or the construction of the Infrastructure Improvements.

ARTICLE VII
FEES

Owner acknowledges that the following fees will be applicable to any development on Owner's Property and Owner shall, prior to the delivery of a building permit for any such development, pay the following fees to the City:

7.1. Park dedication fees in the amount of One Thousand One Hundred and No/100 Dollars (\$1,100.00) per acre.

7.2. Wetland mitigation fees are required in the amount of \$0.10 per square foot of wetland impact.

7.3. WLSSD Capacity Availability fees ("CAF"). The CAF is determined by and payable to the Western Lake Superior Sanitary District but the check is delivered to City.

7.4. Building Permit fees.

7.5. No water availability fee or sewer availability fee will be charged.

7.6. Water Connection Commercial Building fees, plus a Fifty and No/100 Dollars (\$50.00) permit fee.

7.7. Sanitary Sewer Connection Commercial Building fees, plus \$50.00 per toilet/urinal, plus \$50.00 permit fee.

7.8. Water Connection fee for additional meters (i.e. sprinkler system).

7.9. Storm Water Certificate Application fees

7.10. Sign Permit fees.

ARTICLE VIII
NO APPROVAL OR ISSUANCE OF OTHER PERMITS

Except for the approvals provided herein, nothing herein shall be construed as a permit or approval by City or an agreement by City to issue or provide any permit or approval to Owner with respect to the construction of any development by Owner. Without limiting the generality of the foregoing, Owner acknowledges and agrees that even if it satisfies all of the requirements imposed on it under this Agreement that no development may be constructed unless and until all other required permits are obtained by Owner from all relevant governmental agencies.

ARTICLE IX
LIMITATION OF PUBLIC UNDERTAKING

It is hereby understood and agreed that the public undertakings and the public expenditures are limited to those undertakings and expressly set forth in this Agreement.

ARTICLE X
NOTICES

Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

If to City: City of Hermantown
 Attn: Its City Administrator
 5105 Maple Grove Road
 Hermantown, MN 55811

 Email: *jmulder@hermantownmn.com*

If to HEDA: Hermantown Economic Development Authority
 Attn: John Mulder
 5105 Maple Grove Road
 Hermantown, MN 55811

 Email: *jmulder@hermantownmn.com*

With a copy to: Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue
Suite 101
Duluth, MN 55802

Email: *soverom@overomlaw.com*

If to Owner: Bill & Irv's Properties, Inc.
Attn: William Wilson and Michael Koski
5792 N Tischer Road
Duluth, MN 55804

Email: *bill@5west.org*
mike@mkoski.com

If requested by recipient, any notice delivered by email shall be followed by personal or mail delivery of such correspondence and any attachments. Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

ARTICLE XI **BINDING EFFECT**

This Agreement shall inure to the benefit of and shall be binding upon City and Owner and their respective successors and assigns. It is intended and agreed that such agreements and covenants shall be covenants running with Owner's Property and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of City and enforceable by City against Owner and successors and assigns. City will record this Agreement with the appropriate land title recording office.

ARTICLE XII **AMENDMENTS, CHANGES AND MODIFICATIONS**

Neither this Agreement nor any other document to which Owner is a party, or which is made for the benefit of City, relating to the transactions contemplated hereunder may be effectively amended, changed, modified, altered or terminated, nor may any provision be waived hereunder, except upon the written approval of City or except as otherwise expressly set forth herein.

ARTICLE XIII
SEVERABILITY

In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

ARTICLE XIV
LIMITATION ON CITY LIABILITY

No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by City contained in any document executed by City in connection with this Agreement and the transactions contemplated herein or therein, shall give rise to any charge against its general credit or taxing powers.

ARTICLE XV
LAWS GOVERNING

This Agreement shall be interpreted in accordance with and governed by the laws of the State.

ARTICLE XVI
HEADINGS

The titles of articles and sections herein are for convenience only and are not a part of this Agreement.

ARTICLE XVII
DEFAULT

If Owner fails to perform its obligations hereunder and such failure continues after sixty (60) days written notice of such default is given to Owner by City, then, in that event, City may take any one or more of the following actions:

17.1 Suspend its performance under this Agreement until it receives adequate assurances from Owner that Owner will cure the default and continue its performance under this Agreement.

17.2 Take whatever action, at law or in equity, which may appear necessary or desirable to City to collect any payments due it hereunder including reasonable attorney's fees incurred in connection with such actions or under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Owner under this Agreement.

Notwithstanding the foregoing, if Owner's failure to perform its obligations hereunder reasonably requires more than sixty (60) days to cure, such failure shall not constitute a default provided that the curing of such failure is promptly commenced upon receipt by Owner of the notice of the failure, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Owner keeps City informed of its progress in curing the failure.

ARTICLE XVIII
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

ARTICLE XIX
FORCE MAJEURE

All obligations of Owner hereunder shall be extended by events of "Force Majeure." The term "Force Majeure" means any delays that are the direct result of strikes, other labor troubles, war, terrorist acts, natural disasters, adverse weather conditions, fire or other casualty, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit that results in delays and delays described in any force majeure provision that is contained in Owner's construction contract for any such work, the effect of such provision which is to extend the time allowed the contractor under such construction contract to complete the work, or any other event not within the reasonable control of Owner.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

CITY:

City of Hermantown

By _____
Its _____

And By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Wayne Boucher and Alissa Wentzlaff, the Mayor and City Clerk, respectively, of the City of Hermantown on behalf of the City of Hermantown, a statutory city organized under the laws of the State of Minnesota.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____ Notary Public _____

My commission expires: _____
(month/day/year)

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, HEDA has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

HEDA:

Hermantown Economic Development Authority

By _____
Its _____

And By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____ and _____, the _____ and _____, respectively, of Hermantown Economic Development Authority on behalf of Hermantown Economic Development Authority, an economic development authority under the laws of the State of Minnesota.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____ Notary Public

My commission expires: _____
(month/day/year)

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Owner has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

OWNER:

Bill & Irv's Properties, Inc.

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____, of Bill & Irv's Properties, Inc. on behalf of Bill & Irv's Properties, Inc., a Minnesota corporation.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____ Notary Public

My commission expires: _____
(month/day/year)

[END OF SIGNATURES]

EXHIBIT LIST

Exhibit A

Owner's Property

EXHIBIT A
Owner's Property





\\projects\025-8012 - Highway 33 Business Park FEPC\Design Engineering\DWG\1002.dwg Aug 19, 2024 - 10:22am dbm

Northland
Consulting Engineers L.L.P.
102 South 21st, Ave. West Suite #1
Duluth, Minnesota 55806
Tel: 218.727.5995
Fax: 218.727.7779
www.nce-engineers.com

BILL & IRV'S LOT
FEASIBILITY STUDY
ROADWAY, SANITARY, & WATERMAIN
EXTENSION

Sheet Title	8.5X11 EXHIBIT
PROJECT: 23-8012	Sheet #
DATE: 08/16/24	EX A
CHECKED: DGB	
DRAWN: CAE	

Hermantown Economic Development Authority
Resolution No. 2024-02H

HEDA Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING A BDPI GRANT FUND DEVELOPMENT CONTRACT AMONGST HAWKLINE DEVELOPMENT LLC, THE CITY OF HERMANTOWN AND THE HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

WHEREAS, Hawkline Development LLC (“Developer”) is the owner of certain property on the north side of Trunk Highway 53 (“Property”) in the City of Hermantown (“City”); and

WHEREAS, Developer has proposed to develop a business park on the Property (“Project”); and

WHEREAS, the Hermantown Economic Development Authority (“HEDA”) has determined that the interests of the residents of the City and the well-being and quality of life in the City will be enhanced by nurturing and encouraging the redevelopment of the Property; and

WHEREAS, in order to develop the Project, water improvements, sewer improvements, road improvements and stormwater improvements (“Infrastructure Improvements”) need to be constructed on the Property; and

WHEREAS, HEDA believes that it is more efficient and cost effective to have City construct the Infrastructure Improvements and pay for the cost of construction with the proceeds of a grant from the State of Minnesota (“BDPI Grant”) and special assessment levied on the Property for a portion of the remaining costs of the Infrastructure Improvements; and

WHEREAS, the Attorney for HEDA has prepared a BDPI Grant Fund Development Contract (“Development Contract”) with respect to the matters set forth above attached hereto as Exhibit A; and

WHEREAS, the HEDA Commissioners have reviewed the Development Contract and hereby believe that it is in the best interests of HEDA that the Development Contract be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The Development Contract substantially in the form of the one attached hereto as Exhibit A is hereby approved.
2. The President and Secretary of HEDA are hereby authorized and directed to execute and deliver the Development Contract on behalf of HEDA.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this _____ day of _____, 2024.

HEDA Administrator

**CITY OF HERMANTOWN
BDPI GRANT FUND
DEVELOPMENT CONTRACT**

BY AND AMONG

HAWKLINE DEVELOPMENT LLC

AND

CITY OF HERMANTOWN

AND

**HERMANTOWN ECONOMIC
DEVELOPMENT AUTHORITY**

Dated as of the _____ day of _____, 2024

This document was drafted by:

Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue, Suite 101
Duluth, Minnesota 55802
(218) 625-8460

BDPI GRANT FUND DEVELOPMENT CONTRACT

THIS BDPI GRANT FUND DEVELOPMENT CONTRACT (“Agreement”), made on or as of the ____ day of _____, 2024, by and among the **City of Hermantown**, a statutory city organized under the laws of the State of Minnesota, (“City”) the **Hermantown Economic Development Authority**, an economic development authority under the laws of the State of Minnesota, (“HEDA”) and **Hawklane Development LLC**, a limited liability company organized under the laws of the State of Minnesota, (“Owner”) is in response to the following situation:

- A. Owner owns the property located in the City identified as “Hawklane Business Park” depicted on Exhibit A attached hereto (“BDPI Grant Area”).
- B. City, HEDA and Owner desire that development occur in the BDPI Grant Area.
- C. City has applied for a grant from the Great Minnesota Business Development Public Infrastructure Grant Program (“BDPI”) to provide funds to pay for a portion of the costs of providing infrastructure in the BDPI Grant Area (“BDPI Grant”).
- D. A BDPI Grant is subject to certain conditions and limitations (“BDPI Grant Conditions”).
- E. City, HEDA and Owner desire to identify the BDPI Grant Conditions and allocate responsibility for complying with the BDPI Grant Conditions in terms of actions and financial obligations.
- F. This Agreement is intended to cover the items set forth in paragraph E above.

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I **DEFINITIONS**

Unless the context requires otherwise, when used in this Agreement the terms and phrases listed in this Article shall have the following meanings:

1.1 “Approval” or “Endorsed” shall, if by City, mean the appropriate approval at the appropriate level of government which shall not be unreasonably withheld or, if by Owner, the approval by a representative of Owner, which shall not be unreasonably withheld.

1.2 “Approved City Plans and Specifications” means the plans and specifications for the BDPI Grant Area Improvements that have been approved in writing by the City Engineer.

1.3 “BDPI Grant Agreement” means the grant agreement between the City and State of Minnesota regarding the BDPI Grant.

1.4 “BDPI Grant Area” or “Owner’s Property” means the real property legally described on Exhibit A attached hereto and depicted on Exhibit B attached hereto.

1.5 “BDPI Grant Area Improvements” means the Water Improvements, Sewer Improvements, Road Improvements and Stormwater Improvements constructed within the BDPI Grant Area.

1.6 “Business Subsidy Agreement” means that a Business Subsidy Agreement between City and Owner containing terms and provisions acceptable to both City and Owner.

1.7 “City Engineer” shall mean the person or firm from time to time designated by the City as its City Engineer. At this time, the City Engineer is David Bolf of Northland Consulting Engineers L.L.P.

1.8 “Community Development Director” means the person from time to time designated as the Community Development Director for the City.

1.9 “Feasability Report” shall means the Preliminary Engineering Report and Feasability Study dated August 27, 2024 prepared by the City Engineer for the BDPI Grant Area Improvements.

1.10 “Owner’s Assessment” means the assessment more fully described in Section 2.1 hereof payable by Owner against Owner’s Property with regard to the BDPI Grant Area Improvements.

1.11 “Road Improvements” means the road improvements described in the Feasibility Report.

1.12 “Sewer Improvements” means the sanitary sewer improvements described in the Feasibility Report.

1.13 “State” means the State of Minnesota.

1.14 “Stormwater Certificate” means the Stormwater Certificate to be issued to Owner by the Community Development Director.

1.15 “Stormwater Improvements” means the entire stormwater control and disposal system for the BDPI Grant Area described in the Feasibility Report.

1.16 “Water Improvements” means the extensions to the City water system described in the Feasibility Report.

1.17 “Water Improvement Costs” shall mean the costs for construction the Water Improvements described in the Feasibility Report.

1.18 “Water Improvements Payment” means the payment required to be made by City pursuant to Section 3.2 hereof. The Water Improvements Payment will not exceed Eight Hundred Fifty-three Thousand Nine Hundred Fifty-two and No/100 Dollars (\$853,952.00) without the prior approval of City.

ARTICLE II
REPRESENTATIONS AND WARRANTIES
AND COVENANTS BY OWNER

Owner represents and warrants, covenants and agrees that, if the BDPI Grant is awarded to the City:

2.1 Owner agrees to pay an assessment (“Owner’s Assessment”) against Owner’s Property for the costs (hard costs and soft costs) incurred by City in connection with the construction of the Sewer Improvements, Stormwater Improvements and Road Improvements less the amount of the BDPI Grant actually received by City to pay such costs. City agrees that the amount assessed against Owner’s Property shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4%) per annum, from and after December 31 of the year in which the construction of the BDPI Grant Area Improvements is completed in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year in which the construction of the BDPI Grant Area Improvements is completed, collectible with such taxes during the subsequent year. Owner may at any time prior to December 31 of the year in which the construction of the BDPI Grant Area Improvements is completed, pay the entire Owner’s Assessment without interest, to the Hermantown City Clerk. No interest shall be charged if the entire assessment is paid by December 31 of the year following the year in which the construction of the BDPI Grant Area Improvements is complete. Owner may at any time thereafter pay to the Hermantown City Clerk the entire amount of Owner’s Assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Any such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.

2.2 Pursuant to Minnesota Statutes §§429.081 and 462.3531, Owner hereby waives any objection to any irregularity with regard to assessment for the BDPI Grant Area Improvements, any claim that the amount levied against Owner’s Property is excessive and all rights to appeal the assessment levied granted Owner by Minnesota Statute §429.081. Owner acknowledges that the appeal rights granted by Minnesota Statutes §429.081 are Owner’s exclusive method of appeal of the special assessment that will be levied against Owner’s Property for the BDPI Grant Area Improvements and by executing this Agreement, Owner will be forever and irrevocably waiving Owner’s right to appeal.

2.3 Owner hereby further waives the requirement of hearings and notices of any hearings and objections to the assessment proceedings, the bidding and letting of contracts for the

BDPI Grant Area Improvements and the calculation and assessment of the BDPI Grant Area Improvements' costs.

2.4 This Agreement will be filed for record with the appropriate St. Louis County land title recording office to reflect the fact that this Agreement is binding upon Owner and the heirs, successors and assigns of Owner and "runs with the land."

2.5 Owner understands and agrees not to apply for deferral of the assessment payable with respect to the BDPI Grant Area Improvements and that the City will not grant or approve any deferrals of any assessments payable with respect to the BDPI Grant Area Improvements.

2.6 Owner shall pay to City's utility department all applicable water and sewer hook-up charges prior to obtaining a building permit for any development on Owner's Property.

2.7 Owner and its successors and assigns must at its cost and expense, maintain and repair the Stormwater System so that it continues to perform its designed storm water functions. Owner and its successors and assigns shall keep records for up to six years, or as required under applicable law, of inspection, maintenance and monitoring of the Stormwater System and provide such records to the City within thirty (30) days after receipt of written notice. In the event that Owner or its successors and assigns fails to repair and/or maintain the Stormwater System in accordance with applicable codes, regulations, laws, and statutes, then in that event, the City may, following sixty (60) days prior written notice to all of the then owners of the BDPI Grant Area, perform the required repairs or maintenance work on the Stormwater System and charge the reasonable costs of such work to the BDPI Grant Area in accordance with the provisions of Minnesota Statutes Section 429.021, subd. 1(2) and the special assessment procedures of Chapter 429 of Minnesota Statutes. In the event of an uncured default for which the City elects to perform the required repairs and maintenance work on the Stormwater System, the City shall do so strictly in accordance with all laws, rules and regulations applicable to Owner, the Stormwater Improvements, and the BDPI Grant Area, including without limitation, all applicable stormwater regulations.

2.8 Owner shall retain the ownership of the entire Stormwater System and shall be responsible for the repair and maintenance of the entire Stormwater System. City shall not be responsible for the maintenance and repair of any part of the Stormwater System, including without limitation any ponds or outlet structures located on the BDPI Grant Area. Owner hereby grants a permanent license to City for access to any portion of Stormwater System for the purposes of City performing testing and monitoring of the Stormwater System and performing maintenance and repairs permitted to be made by City under this Section.

2.9 The agreement by the parties set forth under this Article II shall constitute a Development Agreement as that term is used in Minnesota Statutes § 462.3531.

2.10 Owner agrees and binds itself to provide free of cost to City all necessary rights-of-way and/or easements required to construct all BDPI Grant Area Improvements described in this Agreement, which may include, but are not limited to, (a) water; (b) sewer; (c) streets; (d) sidewalks and (e) storm drainage.

ARTICLE III
**CONSTRUCTION OF BDPI GRANT
AREA IMPROVEMENTS**

3.1. City shall prepare plans and specifications for the BDPI Grant Area Improvements and shall submit them to Owner for approval, which approval shall not be unreasonably withheld and shall be deemed granted if the Owner fails to respond in writing with specific revisions within ten (10) days after receipt of the plans and specifications. After approval of the plans and specifications for the BDPI Grant Area Improvements, City shall cause the BDPI Grant Area Improvements to be constructed.

3.2. Upon completion of the construction of the BDPI Grant Area Improvements, City shall pay the cost of the Water Improvements (hard costs and soft costs) up to a maximum of \$_____, utilize the BDPI Grant Proceeds to pay for costs of the BDPI Grant Area Improvements and then create an assessment against the BDPI Grant Area for the balance of the cost of the BDPI Grant Area Improvements not paid by the City or BDPI Grant Proceeds.

3.3. The costs incurred in connection with the construction of the BDPI Grant Area Improvements shall be allocated amongst the Water Improvements, Sewer Improvements, Road Improvements and Stormwater Improvements as shown on the Feasibility Report subject to the calculation of final costs from each of the improvements based on good engineering standards and practices. Without limiting the foregoing, the City Engineer intends to prorate total engineering costs, common excavation that benefits all of the improvement categories and soil correction amongst the four improvement categories based on the estimates set forth in the Feasibility Report as follows: (a) 46% Road Improvements; (b) 25% Sewer Improvements; (c) 20% Water Improvements; and (d) 9% Stormwater Improvements.

ARTICLE IV
COMPLIANCE WITH BDPI GRANT AGREEMENT

Owner hereby agrees that the BDPI Grant Area is subject to the terms of the BDPI Grant Agreement. Without limiting the generality of the foregoing, Owner hereby specifically agrees:

4.1. To list any vacant or new positions that Owner may have with a State workforce center as required by Minnesota Statutes § 116L.66.

4.2. To pay any costs (hard costs and soft costs) of the Stormwater Improvements, Road Improvements or Sewer Improvements that are not covered by the BDPI Grant.

4.3. To comply with the provisions of Minnesota Statutes § 16C.075 regarding e-verification of employment.

4.4. To comply with the provisions of Minnesota Statutes § 116J.431, a copy of which is attached hereto as Exhibit 4.4 and all provisions of the BDPI Grant Agreement.

4.5. Owner agrees to not recruit or target a business currently located in another Minnesota community to relocate significant operations in the BDPI Grant Area. Furthermore, before any business that is within thirty (30) miles of the BDPI Grant Area decides to relocate significant operations to the BDPI Grant Area, evidence that the current, host community for that business agreed that the current community could not accommodate the businesses' needs shall be secured and provided to the State. This provision shall apply for twenty-four (24) months after the BDPI Grant Area Improvements is completed.

4.6. Owner must ensure that Owner and all contractors and subcontractors comply with applicable prevailing wage requirements including submitting all required certified payroll records, as required by Minnesota Statutes § 116J.871, to the following email address: wagedata.deed@state.mn.us for all development within the BDPI Grant Area.

4.7. This Agreement will be recorded against the BDPI Grant Area.

ARTICLE V **LIMITATIONS ON AGREEMENT**

The provisions of this Agreement shall only be applicable to the construction and funding of the BDPI Grant Area Improvements. The construction of any building in the BDPI Grant Area is subject to compliance with all other requirements, including zoning, business permitting and environmental matters.

ARTICLE VI **ASSIGNMENT AND TRANSFER**

6.1. **Representation as to Development.** Owner represents and agrees that its undertakings pursuant to the Agreement, are, and will be, for the purpose of redevelopment of the BDPI Grant Area and not for speculation in land holding. Owner further recognizes that, in view of (i) the importance of the development of the BDPI Grant Area to the general welfare of the community; and (ii) the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Owner is of particular concern to the community and City (iii) that City is entering into the Agreement with Owner, and, in so doing, is willing to accept and rely on Owner for the faithful performance of all undertakings and covenants hereby by Owner to be performed, that the provisions of this Article VI are being included in this Agreement.

6.2. **Prohibition Against Transfer of Property and Assignment of Agreement.** For the foregoing reasons, Owner represents and agrees that, prior to the completion of the construction of the BDPI Grant Area Improvements:

6.2.1. Except for the granting of easements necessary for the BDPI Grant Area Improvements and except as permitted by Sections 6.2.1 and 6.3, and except only by way of security for, and only for, the purpose of obtaining financing necessary to enable Owner, to perform its obligations under this Agreement or any other purpose authorized by the Agreement, Owner (except as so authorized) has not made or created, and that it will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease, or any trust or power, or transfer in any other mode or form of, or with respect to, the Agreement or the BDPI Grant Area or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of City, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary set forth in this Agreement, a transfer to (a) a related entity under control of Owner or an affiliate of Owner or (b) an entity that acquires all or substantially all of the assets of Owner, shall not be in violation hereof or require the consent of the City or compliance with Section 6.2.2, but such a transfer shall be noticed to City in advance of its occurrence.

6.2.2. City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any approval for a transfer that requires the City's consent, the following:

6.2.2.1. Any proposed transferee shall have the qualifications and financial capability, as reasonably determined by City, necessary and adequate to fulfill the obligations undertaken in the Agreement by Owner (or, in the event the transfer is of or relates to part of the BDPI Grant Area, such obligations to the extent that they relate to such part).

6.2.2.2. Any proposed transferee, by instrument in writing reasonably satisfactory to City and in form recordable in the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City expressly assume all of the obligations of Owner under the Agreement and agree to be subject to all the conditions and restrictions to which Owner is subject (or, in the event the transfer is of or relates to part of the BDPI Grant Area such obligations, conditions and restrictions to the extent that they relate to such part).

ARTICLE VII **NO CLAIMS**

Owner represents and warrants to City that neither Owner nor any agent, subcontractor or any other party affiliated with Owner has any existing claims or causes of action against City in connection with this Agreement or the construction of the BDPI Grant Area Improvements.

ARTICLE VIII
FEES

Owner acknowledges that the following fees will be applicable to any development in the BDPI Grant Area and Owner shall, prior to the delivery of a building permit for any such development, pay the following fees to the City:

8.1 Park dedication fees in the amount of One Thousand One Hundred and No/100 Dollars (\$1,100.00) per acre.

8.2 Wetland mitigation fees are required in the amount of \$0.10 per square foot of wetland impact.

8.3 WLSSD Capacity Availability fees (“CAF”). The CAF is determined by and payable to the Western Lake Superior Sanitary District, but the check is delivered to City.

8.4 Building Permit fees.

8.5 No water availability fee or sewer availability fee will be charged.

8.6 Water Connection Commercial Building fees, plus a Fifty and No/100 Dollars (\$50.00) permit fee.

8.7 Sanitary Sewer Connection Commercial Building fees, plus \$50.00 per toilet/urinal, plus \$50.00 permit fee.

8.8 Water Connection fee for additional meters (i.e. sprinkler system).

8.9 Storm Water Certificate Application fees

8.10 Sign Permit fees.

ARTICLE IX
NO APPROVAL OR ISSUANCE OF OTHER PERMITS

Except for the approvals provided herein, nothing herein shall be construed as a permit or approval by City or an agreement by City to issue or provide any permit or approval to Owner with respect to the construction of any development by Owner. Without limiting the generality of the foregoing, Owner acknowledges and agrees that even if it satisfies all of the requirements imposed on it under this Agreement that no development may be constructed unless and until all other required permits are obtained by Owner from all relevant governmental agencies.

**ARTICLE X
LIMITATION OF PUBLIC UNDERTAKING**

It is hereby understood and agreed that the public undertakings and the public expenditures are limited to those undertakings and expressly set forth in this Agreement.

**ARTICLE XI
NOTICES**

Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

If to City: City of Hermantown
Attn: Its City Administrator
5105 Maple Grove Road
Hermantown, MN 55811

Email: *jmulder@hermantownmn.com*

If to HEDA: Hermantown Economic Development Authority
Attn: John Mulder
5105 Maple Grove Road
Hermantown, MN 55811

Email: *jmulder@hermantownmn.com*

With a copy to: Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue
Suite 101
Duluth, MN 55802

Email: *soverom@overomlaw.com*

If to Owner: Hawklane Development LLC
Attn: William Wilson and Michael Koski
5792 N Tischer Road
Duluth, MN 55804

Email: *bill@5west.org*
mike@mkoski.com

If requested by recipient, any notice delivered by email shall be followed by personal or mail delivery of such correspondence and any attachments. Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

ARTICLE XII
BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon City and Owner and their respective successors and assigns. It is intended and agreed that such agreements and covenants shall be covenants running with the BDPI Grant Area and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of City and enforceable by City against Owner and successors and assigns. City will record this Agreement with the appropriate land title recording office.

ARTICLE XIII
AMENDMENTS, CHANGES AND MODIFICATIONS

Neither this Agreement nor any other document to which Owner is a party, or which is made for the benefit of City, relating to the transactions contemplated hereunder may be effectively amended, changed, modified, altered or terminated, nor may any provision be waived hereunder, except upon the written approval of City or except as otherwise expressly set forth herein.

ARTICLE XIV
SEVERABILITY

In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

ARTICLE XV
LIMITATION ON CITY LIABILITY

No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by City contained in any document executed by City in connection with this Agreement and the transactions contemplated herein or therein, shall give rise to any charge against its general credit or taxing powers.

**ARTICLE XVI
LAWS GOVERNING**

This Agreement shall be interpreted in accordance with and governed by the laws of the State.

**ARTICLE XVII
HEADINGS**

The titles of articles and sections herein are for convenience only and are not a part of this Agreement.

**ARTICLE XVIII
DEFAULT**

If Owner fails to perform its obligations hereunder and such failure continues after sixty (60) days written notice of such default is given to Owner by City, then, in that event, City may take any one or more of the following actions:

18.1 Suspend its performance under this Agreement until it receives adequate assurances from Owner that Owner will cure the default and continue its performance under this Agreement.

18.2 Take whatever action, at law or in equity, which may appear necessary or desirable to City to collect any payments due it hereunder including reasonable attorney's fees incurred in connection with such actions or under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Owner under this Agreement.

Notwithstanding the foregoing, if Owner's failure to perform its obligations hereunder reasonably requires more than sixty (60) days to cure, such failure shall not constitute a default provided that the curing of such failure is promptly commenced upon receipt by Owner of the notice of the failure, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Owner keeps City informed of its progress in curing the failure.

**ARTICLE XIX
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

ARTICLE XX
FORCE MAJEURE

All obligations of Owner hereunder shall be extended by events of “Force Majeure.” The term “Force Majeure” means any delays that are the direct result of strikes, other labor troubles, war, terrorist acts, natural disasters, adverse weather conditions, fire or other casualty, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit that results in delays and delays described in any force majeure provision that is contained in Owner’s construction contract for any such work, the effect of such provision which is to extend the time allowed the contractor under such construction contract to complete the work, or any other event not within the reasonable control of Owner.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

CITY:

City of Hermantown

By _____
Its _____

And By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Wayne Boucher and Alissa Wentzlaff, the Mayor and City Clerk, respectively, of the City of Hermantown on behalf of the City of Hermantown, a statutory city organized under the laws of the State of Minnesota.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____ Notary Public

My commission expires: _____
(month/day/year)

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Owner has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

OWNER:

Hawklime Development LLC

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____, of Hawklime Development LLC on behalf of Hawklime Development LLC, a Minnesota limited liability company.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____ Notary Public _____

My commission expires: _____
(month/day/year)

[END OF SIGNATURES]

EXHIBIT LIST

| **Exhibit [A](#)** BDPI Grant Area Depiction

Exhibit 4.4 Minnesota Statutes § 116J.431

EXHIBIT A
BDPI Grant Area Depiction



EXHIBIT 4.4
Minnesota Statutes § 116J.431

1

MINNESOTA STATUTES 2023

116J.431

116J.431 GREATER MINNESOTA BUSINESS DEVELOPMENT PUBLIC INFRASTRUCTURE GRANT PROGRAM.

Subdivision 1. **Grant program established; purpose.** (a) The commissioner shall make grants to counties or cities to provide up to 50 percent of the capital costs of public infrastructure necessary for an eligible economic development project. The county or city receiving a grant must provide for the remainder of the costs of the project, either in cash or in kind. In-kind contributions may include the value of site preparation other than the public infrastructure needed for the project.

(b) The purpose of the grants made under this section is to keep or enhance jobs in the area, increase the tax base, or to expand or create new economic development.

(c) In awarding grants under this section, the commissioner must adhere to the criteria under subdivision 4.

(d) If the commissioner awards a grant for less than 50 percent of the project, the commissioner shall provide the applicant and the chairs and ranking minority members of the senate and house of representatives committees with jurisdiction over economic development finance a written explanation of the reason less than 50 percent of the capital costs were awarded in the grant.

Subd. 1a. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "City" means a statutory or home rule charter city located outside the metropolitan area, as defined in section 473.121, subdivision 2.

(c) "County" means a county located outside the metropolitan area, as defined in section 473.121, subdivision 2.

(d) "Public infrastructure" means publicly owned physical infrastructure necessary to support economic development projects, including, but not limited to, sewers, water supply systems, utility extensions, streets, wastewater treatment systems, stormwater management systems, and facilities for pretreatment of wastewater to remove phosphorus.

Subd. 2. **Eligible projects.** (a) An economic development project for which a county or city may be eligible to receive a grant under this section includes:

(1) manufacturing;

(2) technology;

(3) warehousing and distribution;

(4) research and development;

(5) agricultural processing, defined as transforming, packaging, sorting, or grading livestock or livestock products into goods that are used for intermediate or final consumption, including goods for nonfood use; or

(6) industrial park development that would be used by any other business listed in this subdivision even if no business has committed to locate in the industrial park at the time the grant application is made.

(b) Up to 15 percent of the development of a project may be for a purpose that is not included under this subdivision as an eligible project. A city or county must provide notice to the commissioner for the commissioner's approval of the proposed project.

Subd. 3. **Ineligible projects.** Projects, including but not limited to the following types, are ineligible for a grant under this section:

- (1) retail development; or
- (2) office space development, except as incidental to an eligible purpose.

Subd. 3a. **Development restrictions expiration.** After ten years from the date of the grant award under this section, if an eligible project for which the public infrastructure was intended has not been developed, any other lawful project may be developed and supported by the public infrastructure. The city or county must notify the commissioner of the project.

Subd. 4. **Application.** (a) The commissioner must develop forms and procedures for soliciting and reviewing applications for grants under this section. At a minimum, a county or city must include in its application a resolution of the county or city council certifying that the required local match is available. The commissioner must evaluate complete applications for eligible projects using the following criteria:

- (1) the project is an eligible project as defined under subdivision 2;
- (2) the project is expected to result in or will attract substantial public and private capital investment and provide substantial economic benefit to the county or city in which the project would be located;
- (3) the project is not relocating substantially the same operation from another location in the state, unless the commissioner determines the project cannot be reasonably accommodated within the county or city in which the business is currently located, or the business would otherwise relocate to another state; and
- (4) the project is expected to or will create or retain full-time jobs.

(b) The determination of whether to make a grant for a site is within the discretion of the commissioner, subject to this section. The commissioner's decisions and application of the criteria are not subject to judicial review, except for abuse of discretion.

Subd. 5. [Repealed, 2009 c 78 art 2 s 44]

Subd. 6. **Maximum grant amount.** A county or city may receive no more than \$2,000,000 in two years for one or more projects.

Subd. 7. **Cancellation of grant; return of grant money.** If after five years, the commissioner determines that a project has not proceeded in a timely manner and is unlikely to be completed, the commissioner must cancel the grant and require the grantee to return all grant money awarded for that project. For industrial park development projects, if after five years the industrial park is not developed and available for business use, the commissioner must cancel the grant and require the grantee to return all grant money for that project. If the industrial park is developed and available for use within five years, but no businesses have located in the park, the grantee is not required to return any grant money.

Subd. 8. **Appropriation.** Grant money returned to the commissioner is appropriated to the commissioner to make additional grants under this section.




History: 2002 c 393 s 46; 2009 c 78 art 2 s 7-11; 2016 c 189 art 7 s 16-19; 1Sp2021 c 10 art 2 s 2-4



HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

Strategic Plan Update and Progress Report

09/26/2024

-  Completed or scheduled for completion (Green)
-  Underway and progressing (Yellow)
-  Not yet started or not progressing (Red)

SD1. Promoting Our Community for Investment

Actions	Status
Research competitive and aspirational cities	Completed, both as part of wage studies and brand/communications efforts in 2020 – based on where we are today Consider for on going with a non-brand/com focus
Create unified marketing strategy to share city’s message	Complete in 2020 – Hometown Hermantown
Dedicate funding for marketing strategy	Created a separate Budget in the General Fund in 2023 with \$25,000 dedicated to communications/marketing

SD2. Comprehensive Plan for Targeted Growth

Actions	Status
Secure dedicated funding & complete a comprehensive plan	The Comprehensive Planning process is about 85% complete with the first draft open for elected official and public comment. Anticipated completion and vote on the new Comprehensive Plan is anticipated in December of 2024.
Prioritize public engagement in comprehensive plan	The Comp Plan is currently out for public comment. City staff tabled at several public events, such as the Taste of Hermantown, and has provided an online platform for public comment. Once the draft Comp Plan is ready, staff will provide an additional opportunity for public engagement.
Create clear goals for potential growth areas	
Outline understanding of city’s assets in comprehensive plan	
Consider new zoning districts to meet growth opportunities	The updated comprehensive plan shows potential new future land uses of Mixed-Use, Corridor Residential,

Working together to serve and build our community.

5105 Maple Grove Road, Hermantown, MN 55811
218-729-3600 hermantownmn.com



	<p>and Neighborhood Residential. Though these new future land use areas do not define zone districts, they lay the ground work for future development and meeting growth opportunities.</p> <p>New zoning districts will be considered and evaluated in the first quarter of 2025.</p>
--	--

SD3. Positioning & Providing Infrastructure for Development

Actions	Status
Expand broadband throughout the whole city by engaging providers	<p>In 2021, City assisted Mediacom with a fiber to the home to 200 homes in western portion of the city</p> <p>In July of 2022, city supported Mediacom grant application for fiber to the home in SW portion of the City (effectively eliminating underserved areas) once completed.</p> <p>Work on that area should be completed in 2024.</p>
Support Broadband Task Force solutions	<p>Broadband Task Force stopped meeting after Mediacom received the Fiber to the Home grant.</p> <p>Maps available for status of broadband.</p>
Explore and plan for city water/sewer/gas expansion to include broadband, dig once	<p>In 2024 completed Feasibility study for sewer trunkline in Section 14 between Stebner and Lavaque. Construction planned in 2026.</p> <p>City Engineer also considered a plan for sewer expansion to the western half of the city, beyond the current Urban Service Area.</p>

SD4. Creating a Growth Environment & Tools for Businesses

Actions	Status
Investigate land acquisition for shovel readiness	<p>City staff continues to search for opportunities that both advance the objectives of our Comp & Strategic Plan and are thoughtful uses of taxpayer dollars.</p> <p>For properties that are currently owned, or have been recently acquired, staff continues to evaluate the best approach for development in consultation with elected and appointed officials.</p>

Working together to serve and build our community.

5105 Maple Grove Road, Hermantown, MN 55811
 218-729-3600 hermantownmn.com



	Acquisition and shovel readiness opportunities are considered from a housing and business/industrial park perspective
Determine funding, job description, and recruitment process for economic development position, ensuring staff capacity to implement comprehensive plan	
Explore grant opportunities for incubators/makerspace (e.g., federal EDA)	Staff continue to track this as a strategic priority, and will seek opportunities as workload allows.
Implement active and intentional BRE program	In 2022, the Northspan Group conducted a Business Retention and Expansion effort on behalf of HEDA. The report was provided in January of 2023. The report and work conducted by Northspan provides a good outline for what an active and intentional BRE could look like for HEDA. Forecast to design and begin implementing an intentional BRE program are for 2025
Utilize business subsidies to encourage growth	No capitalization funding or revenue streams have been identified. Evaluation of HEDA's budget at discussion with HEDA Commissioners will determine a timeline for this action.

SD5. Establish a Diverse, Livable Community with a Sense of Place

Actions	Status
Review and update zoning code	Forecasted start date is spring of 2025. Will be a resulting action from the completion of the Comp Plan.
Define and incorporate sense of place as part of marketing strategy	Hometown - High quality of life, youth sports, community recreation. Our sense of place is being incorporated into the Comp Plan as well as actions and development policies being developed by HEDA.
Update business subsidy policy to reflect changes in market	Housing removed from ineligible projects in 2023. Staff would recommend identifying other areas for improvements as well as drafting additional policies such as abatement and TIF policy.
Develop talking points for community engagement around development	Hometown/brand launch

Working together to serve and build our community.

5105 Maple Grove Road, Hermantown, MN 55811
218-729-3600 hermantownmn.com

Comprehensive Plan

- The guiding document for the city. Sets the priorities and vision for a community's growth and development.
- A living document that is often updated every 10-20 years.
- The Comp Plan is what city staff will work to achieve over the next 5-10 years

Future Land Use

- Does not identify zone districts, but land use categories provide limits to allowable zone districts and land uses.
- Notable land use categories to consider
 - Neighborhood Residential
 - Corridor Residential
 - Mixed-Use

Economic Development

- Expanded Business & Light Manufacturing areas
 - Large greenfield sites: Critical in attracting large employers/manufacturers
 - Major transportation corridors/nodes: highway/rail
- Focused and expanded commercial corridors
 - Expansion and concentration along the principal arterial
 - Room for expansion and densification of commerce
- Creation of Mixed-Use
 - Allows for flexible accommodations mixed of commerce and residential
 - Creates opportunity for vibrancy commercial destinations

Housing

- Workforce is the number one issue cited by business as the critical issue constraining growth. Housing is THE solution identified by employers for growing workforce.
- Expanded housing options provides a range of price points and workforce preferences.
 - Smaller lot detached, small apartments, townhouses, twin home/duplex, cottage homes (~1,000 sf)
- Walkable, vibrant, and connected neighborhoods

Transportation

- Collector roadway connections proposed
 - Increases potential development land
 - Coordinate trail/sidewalks

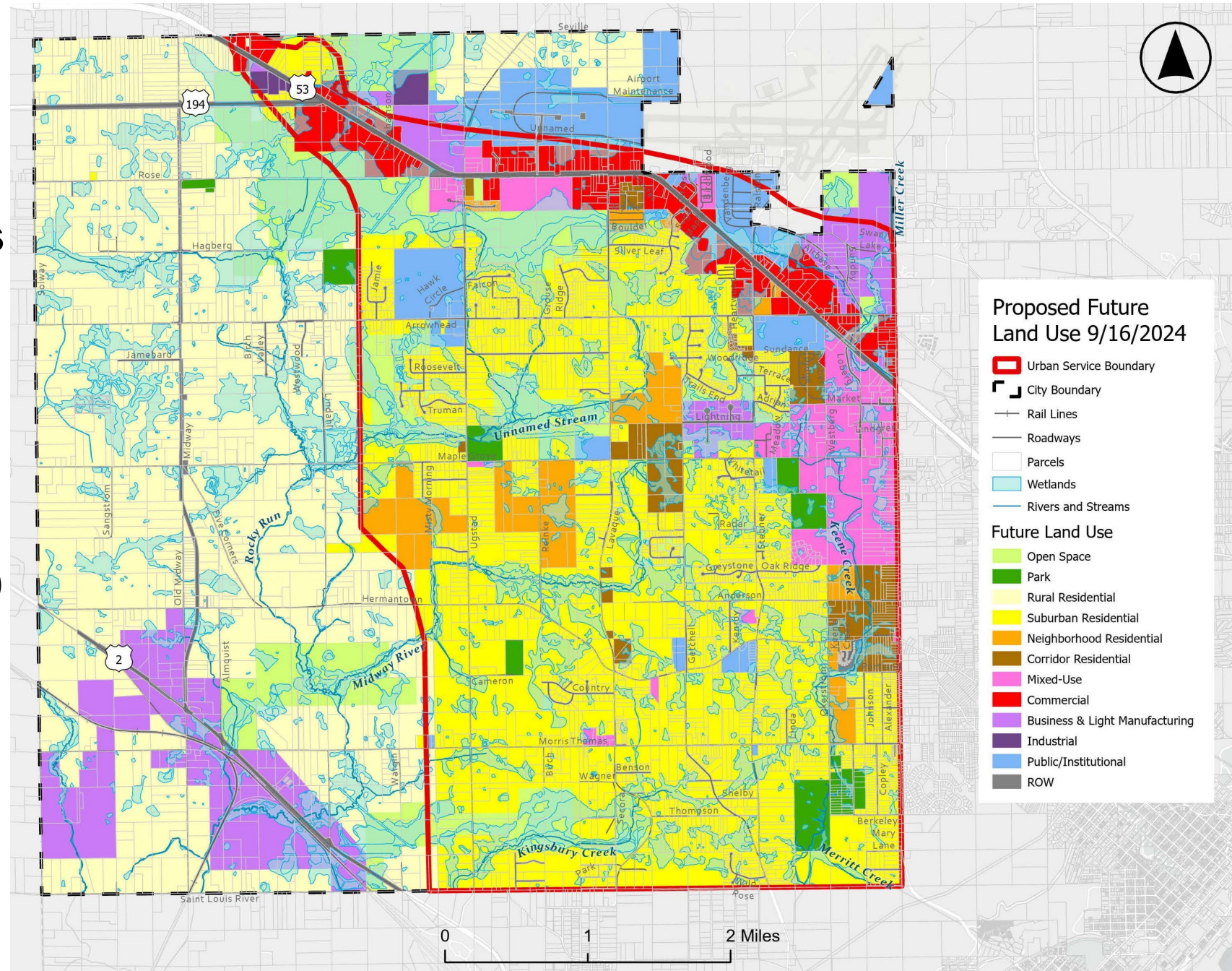
Trails & Parks

- Create a sense of place
 - Community recreation
 - Hometown youth sports
 - Quality of life

Draft Future Land Use Map

12 Land Use Categories

- Residential (4)
- Business (3)
- Mixed Use (1)
- Public / Institutional (1)
- Park & Open Space (2)
- Right-of-Way (1)



Draft Economic Development Goals

- Market the city to attract new businesses that contribute to a unique and dynamic economy within the region.
- Prepare land and infrastructure to create shovel-ready sites for new development.
- Create identifiable zones/districts for desired business types and potential growth areas.
- Attract and retain a labor force to strengthen businesses, provide services, and support tourism efforts.
- Create a strong sense of identity in Hermantown's business corridors.

Housing Planning

Proposed housing types for each residential land use designation:

	Rural Residential	Suburban Residential	Neighborhood Residential	Corridor Residential	Mixed Use
Detached single-unit dwelling	X	X	X		
Attached two-unit dwelling (twinhomes/duplexes)	X	X	X		
Courtyard cottage/bungalow dwellings		X	X		
Attached three- or four-unit dwelling			X	X	
Townhomes			X	X	X
Small apartment building				X	X
Large apartment building				X	X
Accessory dwelling unit	X	X	X		

Housing Planning

Expanding the Range of Housing Options



Smaller lot
detached houses



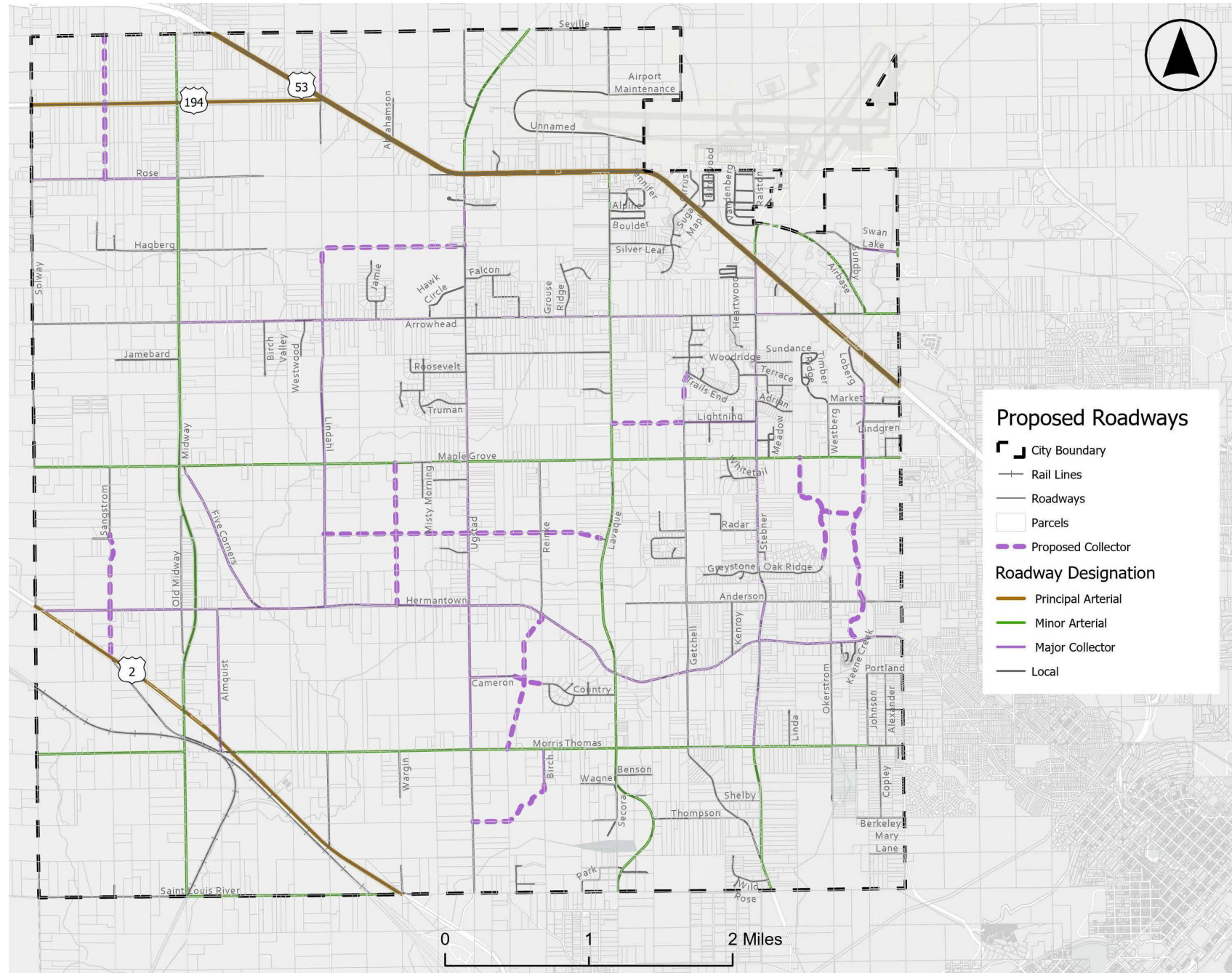
Twinhomes / duplexes



Townhouses

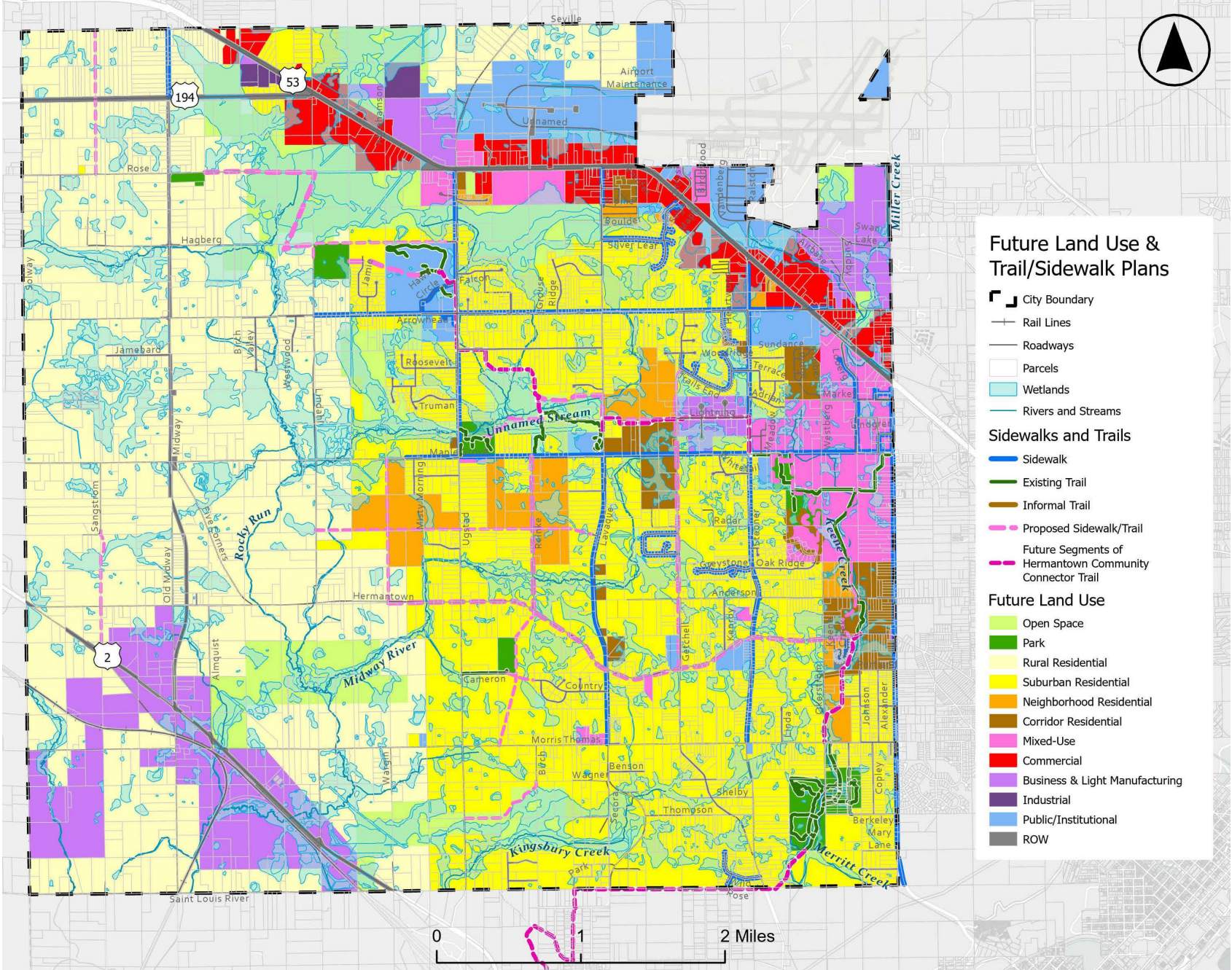
Proposed Future Roadways Network Map

- Proposed collector roadway connections
- Most within Urban Service Boundary
- Increases potential development land
- Coordinate trail/sidewalk connections



Land Use and Trails / Sidewalks Plans

Planning for expansion of trails and sidewalks in existing and future neighborhoods, particularly future Neighborhood Residential, Corridor Residential, and Mixed Use areas



Park Service Areas with Population Density

Existing Parks

- Fichtner Field
- Stebner Park
- Keene Creek Park
- Rose Road Fields
- School Parks

Future Parks

- Art Olson Park
- Cameron Park
- NE Park Search Area

